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## Medical Dispute Resolution by Using Peace Principles

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**Abstract:** The national development program in the health sector seeks to improve the level of public health. In an effort to realize the goals of national health development, the medical profession is a noble profession that is the main pillar. The provision of health services involves doctors and patients who are legal subjects involved in the field of health care and create medical and legal relationships. This relationship can cause conflict in its implementation. Lack of good communication and unsatisfactory quality of information from doctors to patients are the main triggers of conflict. In general, disputes in the health sector are resolved through the judicial system, which tends to cause disputes. Alternative dispute resolution is an approach to resolving conflicts amicably, without involving the courts. The most important and effective form of this approach is mediation. The advantage of using mediation is that the procedure is simple, effective, speeds up the process of resolving cases, lowers costs, provides an opportunity to achieve resolution of problems by agreement, and The decision is still under the control of the parties to the dispute. Mediation contributes to the maintenance of healthy relationships between the involved individuals or groups by ensuring their dedication to the mediation outcome and providing legal options in case of non-fulfillment.

**Keyword:** Medical Disputes, Mediation.

## INTRODUCTION

The focus of health development efforts is to cultivate greater awareness, a stronger desire, and the necessary skills for all members of society to lead healthy lives. This is undertaken to attain an optimal state of health, which is recognized as an integral part of the overall well-being of the populace, in accordance with the principles set forth in the Preamble of the 1945 Constitution of the Republic of Indonesia. A common understanding among many is that the right to health is confined to the right to receive medical treatment and care, especially medical or curative services. Curative health services are only a small part of the right to health because health is not just "cured from disease" but covers much broader things. Other health services include promotive, preventive and rehabilitative.

To truly recognize health as a human right, it is imperative to implement comprehensive health development for the community, ensuring that a diverse range of health services are provided to everyone in a manner that is both of good quality and economically accessible. As

primary healthcare providers, doctors play a vital role in society. Their direct involvement in the delivery of care and the quality of care they provide is significant.

Given that medical practice forms the core of all activities aimed at improving health, it is crucial that it is implemented by doctors who possess and consistently uphold a strong sense of ethics and morality. Beyond this, doctors must possess expertise and authority that is constantly refined via continuous learning, professional recognition, and regulatory measures, alongside supervision, to ensure their medical practice evolves with scientific and technological advancements. The legal system acknowledges the unique role of doctors, granting them permission to perform medical procedures for health purposes. Performing these procedures without medical qualifications is legally a criminal offense.

Beyond legal compliance, doctors must also abide by ethical standards set by their professional groups and based on medical knowledge. Despite this, the practical application of these principles can sometimes lead to conflicts and medical disputes. The nature of medical disputes often revolves around instances of unethical conduct, failures in professional standards, violations of patient rights, or actions that harm the broader public. As a result, medical professionals involved in these disputes may face consequences related to medical ethics, professional discipline, and legal ramifications, including both civil and criminal charges.

Medical accidents can occur due to a medical risk or medical malpractice. Malpractice occurs due to a doctor's error or negligence in carrying out medical procedures and the doctor does not carry out his profession according to medical service standards. In terms of medical risks, doctors have carried out medical services according to standards but there are risks to medical services, such as side effects of a drug or hypersensitive reactions to certain drugs.

Disputes in healthcare are typically settled through the inherently adversarial legal system. This process involves both sides presenting their arguments and evidence, culminating in a judge's binding decision. It is important to acknowledge that the pursuit of justice through the judicial process can be impeded by systemic limitations. These include unequal access to competent legal counsel, the presentation of insufficient or untrustworthy evidence and witness testimonies, and the possibility of subjective inclinations influencing the decision-making process (Joseph-Williams et al., 2014).

The term "Alternative Dispute Resolution" describes a range of methods used to settle disputes in a cooperative and non-adversarial way, completely outside the jurisdiction of the court system. Among these methods, mediation stands out as one of the most important and effective approaches (Bayer et al., 2021). Mediation is a process in which a Mediator tries to reach a resolution between the parties to a dispute. Communication and resolution programs encourage communication and facilitate restitution for injured parties (Balzer & Schneider, 2021).

## **METHOD**

### **Approach Method**

This study employs a normative juridical approach, utilizing a literature review as its primary research method. This entails a thorough investigation of various library materials and secondary data sources, which are then critically evaluated and interpreted in light of existing legal theories, relevant legal concepts, established legal principles, pertinent statutory regulations, and the legal norms that are currently in practice within the society and are directly pertinent to the subject matter of this research.

### **Research Specifications**

In this research, the author uses descriptive analytical research specifications, namely the author wants to describe, discover legal facts, and systematically examine the problems that will be discussed in the research. This analysis will undertake an investigation into the

resolution of medical disputes, employing applicable legal statutes and regulations, in conjunction with relevant legal theories and their practical implementation within this specific context of seeking peaceful resolutions.

### **Research Stages**

The author of this research utilizes a normative juridical approach as the primary methodology. The data for this study is derived from secondary sources, which are comprised of primary legal materials, secondary legal materials, and tertiary legal materials. For the purposes of the required library data, the author conducted research, namely library research. For this research, relevant legal materials were classified as primary legal materials (including legislation and binding regulations), secondary legal materials (providing context and explanation, such as legal opinions and scholarly works), and tertiary (providing reference and guidance, such as dictionaries and periodicals).

### **Data Collection Techniques**

The technique used in collecting secondary data is a literature study which will be carried out by the author by reading related literature to answer the problem identification mentioned above. The author studied the literature and assessed whether the data could answer the problem identified above.

### **Data Analysis Method**

The approach to data analysis in this study was normative juridical, and the analysis itself was conducted qualitatively, focusing on the interpretation of the information discovered during the research process. A qualitative approach was chosen because it required a descriptive explanation that was able to provide comprehensive answers and conclusions.

### **Research Location**

1. Mochtar Kusumaatmadja Law Library, Faculty of Law, Padjadjaran University, Jl. Dipati Ukur No. 35, Bandung
2. Padjadjaran University Master of Law Library, Jl. Cimandiri No. 5, Bandung

## **RESULTS AND DISCUSSION**

Health development is one of the important efforts in improving the quality of life of the community. The main focus is to encourage individuals to have an awareness of the importance of healthy living, build willingness to adopt a healthy lifestyle, and improve their ability to maintain health.

The ultimate goal is to realize optimal health status as part of the community's basic right to prosperity, as stated in the Preamble of the 1945 Constitution which affirms the state's commitment to protect and promote the general welfare.<sup>1</sup> Article 28 of the Constitution of 1945, as it has been amended, explicitly states that "everyone has the right to receive health services." Despite this constitutional guarantee, a common perception often limits the interpretation of this right to the provision of medical or curative treatments..

Curative health services are only a small part of the right to health because health is not just "cured from disease" but covers much broader things. Other health services include promotive, preventive and rehabilitative.

The principle of health as a fundamental human right necessitates the provision of a wide range of health-related services and interventions to the entire populace, which should be achieved through the implementation of community health development initiatives that prioritize both quality and affordability for all. As one of the primary groups responsible for delivering health services to the community, doctors hold an exceptionally significant position

because their activities are directly intertwined with the actual provision of healthcare and the overall quality of the services rendered.

The practice of medicine is the main activity in health care that includes diagnosis, treatment, disease prevention, and patient recovery. In order for this service to run well and provide maximum benefits to society, doctors are expected to have high ethical and moral standards. Medical ethics include principles such as maintaining patient confidentiality, providing fair services, and prioritizing patient safety and well-being.

High morals reflect a doctor's commitment to act honestly, professionally and responsibly in every medical action. Maintaining and improving doctors' expertise and authority through ongoing learning and regulation is crucial for keeping medical practice current. This, combined with their scientific tools, gives doctors their unique professional identity.

The legal system provides a clear justification for this unique aspect of the medical profession by explicitly permitting qualified individuals to perform medical interventions on the human body in pursuit of maintaining and improving health standards. Medical procedures on the human body carried out by non-doctors can be classified as criminal acts.

In the execution of their medical practice, doctors are required to comply with the existing legal framework and, in addition, must adhere to the principles and regulations outlined in a code of ethics that has been formulated by relevant professional organizations and is founded upon the established principles of medical disciplines.

Nevertheless, the practical application of these ethical frameworks can occasionally give rise to complications that subsequently result in medical disputes. These disputes commonly arise from instances of unethical conduct, breaches of professional discipline, violations of patient rights, or actions that are deemed contrary to the public interest. Consequently, the medical professionals involved may be held accountable across ethical, disciplinary, and legal dimensions, encompassing both civil and criminal liabilities.

Medical accidents can occur because of something risky medical nor exists malpractice medical. Medical malpractice is defined as the occurrence of harm to a patient resulting from a doctor's mistake or failure to exercise the expected level of care and skill during medical procedures, thereby not fulfilling the established standards of medical practice. Regarding medical risks, doctors have carried out medical services according to standards but there are risks to medical services, such as side effects of a drug or hypersensitive reactions to certain drugs.

The standard method for resolving disagreements in health services is the legal system, which inherently operates in a confrontational manner. Within this legal framework, the involved parties are required to formally define the specific issues at hand and provide substantiating evidence to the court, culminating in a ruling by the judge that favors one of the parties.

While the judicial process strives for fairness, its outcomes can be compromised by systemic constraints, such as disparities in the quality of legal representation available to different parties, the presence of inadequate or unreliable evidence and witnesses, and the inherent potential for subjective biases to influence judgments (Joseph-Williams et al., 2014).

The term "Alternative Dispute Resolution" describes a range of methods used to settle disputes in a cooperative and non-adversarial way, completely outside the jurisdiction of the court system. Among these methods, mediation stands out as one of the most important and effective approaches (Bayer et al., 2021). Mediation is a process in which a Mediator tries to reach a resolution between the parties to a dispute. Communication and resolution programs encourage communication and facilitate restitution for injured parties (Balzer & Schneider, 2021).

## **Definition of Mediation**

Mediation, as a specific type of alternative dispute resolution, is notable for its voluntary participation, its adaptable processes, and its confidential nature. This method involves a neutral third party, known as a Mediator, who assists the involved parties in reaching a mutually agreeable resolution to their conflict, thereby avoiding the need for formal legal proceedings. Distinguished by its voluntary engagement, flexible procedures, and confidential environment, mediation serves as a form of alternative dispute resolution.

Through this process, a neutral third party (the Mediator) facilitates communication and negotiation between the disputing parties with the aim of achieving a resolution without resorting to the court system.

The mediator's role is to guide dialogue for resolution and consensus. Unlike judicial figures, they don't rule or favor either party. Crucially, a mediator must be impartial and have no personal connection to the dispute's result (Frosch et al., 2012; Sohn & Sonny Bal, 2012).

## **Principles of Mediation**

Several foundational principles govern the practice of mediation. Firstly, the principle of equality dictates that each individual or party involved in the conflict is afforded the same rights and opportunities throughout the mediation process.

Secondly, the principle of voluntariness underscores that participation in mediation is entirely a matter of choice; all parties enter the process willingly and retain the right to withdraw at any point without obligation.

To ensure a fair process, the mediator upholds strict impartiality and neutrality, refraining from any form of bias or influence that could sway the resolution, which is solely determined by mutual agreement. Furthermore, confidentiality is a critical element, with all information shared during the mediation proceedings being kept strictly private and not subject to disclosure by either the Mediator or the involved parties (Hyman et al., 2010; Kachalia & Mello, 2011).

## **Purpose of Mediation**

Functioning as a dispute resolution tool, mediation is strategically designed to yield resolutions that are both effective and economical, and to achieve these resolutions with relative speed, while also helping to alleviate the strain on judicial resources.

A central aim of this process is to eliminate impediments such as financial constraints, organizational inefficiencies, and procedural complexities that often serve as obstacles to the pursuit and attainment of justice for the involved parties.

The mediation process is characterized by the active involvement of the parties, who collaboratively determine the structure of the sessions, identify their individual requirements and aspirations, jointly explore various options for settlement, and ultimately achieve a resolution that has the full consent of all involved, thus bringing the conflict to a definitive close.

Moreover, mediation actively promotes reform within the realm of conflict resolution by emphasizing the power of effective communication and seeks to alter the prevailing societal attitudes towards addressing disagreements. This process resolves disputes in a private setting, while simultaneously prioritizing and serving the specific interests of the individuals or entities involved.

## **Stages of the Mediation Process**

The mediation process is structured around a series of significant stages. The initial step involves the Mediator facilitating a voluntary gathering between the involved parties. Subsequently, during the introductory phase, the Mediator provides an overview of the mediation process itself and explains its underlying principles to all participants.



The subsequent stage entails the Mediator actively investigating and clarifying the respective interests and concerns of both parties involved in the dispute. Throughout the negotiation and problem-solving stage, the Mediator actively encourages each party involved to put forward proposals and suggestions that have the potential to address the needs and interests of both sides.

Once a resolution that is acceptable to all parties has been successfully negotiated and agreed upon, the Mediator proceeds to prepare a formal written agreement that outlines the terms of the settlement (Mello et al., 2010).

Efforts to resolve medical disputes are carried out in stages. At the first level, if symptoms of open disputes begin to appear, letters of dissatisfaction are only addressed to the hospital, it is best for the hospital, through the public relations department, to immediately take an approach to answer or clarify existing problems so that the reporting party feels satisfied and the problem is resolved.

At the second level, if the dispute has spread and involves third parties, it is necessary to have a Mediator who is considered neutral to help resolve the dispute. At the third level, if reports of health disputes have spread to the judiciary, then a certified mediator is absolutely necessary if the dispute resolution approach is still desired by health service providers. If the mediation process fails, dispute resolution will continue through a trial process in court.

## **Mediation In Health Care**

### **Conflict Resolution in Health Care: The Potential of Mediation**

The relationship between doctors and patients is inherently collaborative, built upon the patient's inherent vulnerability and trust in the doctor's professional knowledge. However, when conflicts arise between medical professionals and their patients, this crucial relationship can be negatively impacted.

Historically, the prevailing method for resolving such disagreements has been through the legal system, which by its very nature involves a confrontational process where each side defines the issues and presents evidence to a judge for a final, binding decision in favor of one party.

It is important to acknowledge that the pursuit of justice within the legal system can be compromised by inherent shortcomings, including disparities in the quality of legal representation available to different parties, the potential for flawed or unreliable evidence and witness testimonies, and the inherent possibility of subjective biases influencing judicial decisions (Bhavnani & Fisher, 2010; Bishop et al., 2010).

Consequently, due to the aforementioned defects within the justice system, a significant number of patients who have suffered serious injuries resulting from medical errors are unable to secure any form of compensation.

Moreover, in instances where compensation is granted, the amount awarded is frequently inconsistent and difficult to predict. In stark contrast to traditional court proceedings, the mediation process is specifically designed to facilitate agreements only when the identified needs and interests of both involved parties are adequately addressed. If such a mutually satisfactory resolution cannot be attained through mediation, the participants retain the right to discontinue the process and pursue the matter through the formal court system.

The legal process of a trial necessitates that the plaintiff bears the burden of proving the defendant's guilt, and the ultimate decision of the judge is based on a careful consideration of the presented evidence, the testimonies of witnesses, expert opinions, and the applicable legal statutes.

This entire procedure is governed by a multitude of specific procedural requirements and rules, which can often appear daunting and overwhelming to the plaintiffs involved.

Furthermore, in cases of medical malpractice, the testimony of expert witnesses holds significant importance.

However, the reluctance of a majority of medical professionals to serve as expert witnesses often serves to exacerbate the already complex nature of these proceedings. The hesitation among doctors to serve as expert witnesses can be linked to several considerations, such as their unwillingness to take time away from their demanding professional responsibilities, concerns about potentially delaying or disrupting their patients' care, the significant time commitment involved in dealing with potential trial delays, and a general lack of familiarity with complex legal procedures.

In contrast, the mediation process provides a platform for the opposing parties to maintain control over the resolution of their dispute and to arrive at a mutually satisfactory conclusion without the necessity of formally proving fault (Weinstein, 2009).

### **Costs of Traditional Litigation in Health Care**

The traditional healthcare system is weighed down by exorbitant medical malpractice litigation costs, including payouts, legal fees, defensive practices, and other expenses, exceeding \$55 billion yearly in the US.

Although doctors win the vast majority (86%) of these cases, the legal costs per case are substantial (\$24,000-\$90,000), with plaintiffs succeeding in only 1% (Bhavnani & Fisher, 2010). At the same time, In the United States a common practice is that patients who successfully secure a court settlement in medical malpractice cases may be required to remit a significant portion of their awarded compensation, which can amount to as much as 30 to 40 percent, to cover the associated legal fees (Weinstein, 2009).

The legal expenditures associated with healthcare services in the United Kingdom constitute approximately 0.04% of the nation's Gross Domestic Product.

Moreover, the substantial administrative and legal fees frequently act as a deterrent, preventing numerous patients from initiating legal proceedings. In Canada, the initial financial outlay required to file a lawsuit typically ranges between \$40,000 and \$50,000.

In contrast to the expenses of a full-scale court case, mediation offers a more cost-efficient approach due to its reduced requirement for extensive preparation and the frequent elimination of the need to retain legal counsel (Szmania et al., 2008) research indicated that the implementation of interest-based collaborative strategies for managing conflict resulted in cost savings of approximately \$52,000 per individual case for Children's Hospital of Atlanta.

Furthermore, findings from jury verdict research demonstrate that resolving conflicts prior to the commencement of a trial leads to an average saving of \$50,000 in litigation expenses for each case. Moreover, the associated legal fees for attorneys are notably reduced in such scenarios (Hyman & Schechter, 2006).

### **The Impact of Effective Communication Facilitated by Mediators on Conflict Resolution in Health Services**

The prevailing view is that the primary reason patients initiate legal action against their doctors is due to a lack of effective or a complete breakdown in communication between them. This issue is further compounded by patients' hesitance to seek clarification through additional questions, coupled with doctors' tendency to avoid open discussions when treatment outcomes are not as anticipated.

Notably, the majority of lawsuits filed against medical practitioners are not primarily rooted in actual medical errors, but rather in instances of inadequate communication between the patient and their doctor, alongside the significant emotional distress experienced by the patient (Mokhtar, 2022).

Furthermore, the inherently adversarial character of the justice system places an additional emotional burden on patients, thereby often complicating their ability to secure the

aspects that are of paramount importance to them, such as a clear and comprehensive explanation of the events, a sincere apology from the treating physician, information regarding measures that will be implemented to prevent similar occurrences in the future, and financial compensation that adequately addresses their losses and suffering.

As stated by Galton, an American mediator with expertise in resolving healthcare disputes, the advantages of mediation for patients extend far beyond the mere possibility of financial compensation.

These benefits include the chance to articulate their experiences or receive a thorough explanation (facilitating free communication), the opportunity for expressions of regret, a formal apology, the demonstration of empathy and sympathy, a higher likelihood of achieving a sense of closure, the potential for granting forgiveness, and the possibility of restoring valuable relationships.

In contrast to the adversarial nature of litigation, mediation provides a platform for open and secure conversations, guided by the assistance of a neutral Mediator, thereby enabling the involved parties to engage in active listening and to gain a deeper understanding of each other's respective needs and demands (Mokhtar, 2022).

This approach leads to a high rate of satisfaction, with around 90% of both the patient and the doctor reporting positive outcomes.

The mediation process, being voluntary, confidential, and designed to be supportive, fosters an environment that encourages open and transparent communication, which in turn helps to maintain and strengthen the existing relationship and trust between the patient and their physician.

Furthermore, the less formal and more relaxed setting of mediation encourages doctors to engage in more open and direct communication with their patients. The adversarial nature of court proceedings, where doctors and patients clash, often results in damage to their relationship and a decrease in patients' overall trust in the medical profession.

Conversely, mediation, characterized by its voluntary participation, confidentiality, and supportive environment, actively promotes open and honest communication, thereby contributing to the preservation of trust and the maintenance of positive relationships. Furthermore, the less formal setting of mediation encourages doctors to communicate more candidly with their patients.

Unlike the formal and often confrontational nature of judicial proceedings, the primary objective of mediation is not only to resolve the existing dispute but also to facilitate the rebuilding of the relationship between the involved parties. The doctor-patient relationship, while multifaceted and constantly evolving, is nonetheless an absolutely critical element for ensuring effective medical treatment (Mello et al., 2010; Mokhtar, 2022).

## **Defensive Medicine**

The primary objective of the legal framework within healthcare is to guarantee that health professionals deliver services of a high caliber and in accordance with established standards. Nevertheless, the fear of punitive measures has not demonstrated significant efficacy in either deterring medical errors or in fostering increased productivity within the healthcare system.

Conversely, the implementation of open communication mechanisms that enable the discussion of system deficiencies and the subsequent implementation of corrective measures are crucial for reducing the incidence of medical errors and for strengthening the overall healthcare system.

Moreover, medical professionals tend to be more receptive to making meaningful adjustments and improvements after having reached a negotiated agreement rather than following the conclusion of a formal court proceeding. The US House of Representatives reports only 3% of those harmed by medical errors sue, and 80% of claims lack actual harm. This implies the court system poorly compensates victims and doesn't effectively regulate



healthcare. Similar data from Italy shows 80% of doctor lawsuits are dismissed. Yet, doctors still face stressful, lengthy legal battles and reputational harm. Excessive legal pressure can have unintended effects.

One illustrative instance is the phenomenon of defensive medicine, wherein medical practitioners may opt to deviate from established and standard medical practices out of a concern for potential legal repercussions.

Defensive medicine is specifically defined as the utilization of a range of diagnostic and therapeutic interventions primarily with the objective of safeguarding physicians from potential legal action, rather than with the primary goal of enhancing the patient's overall health and well-being.

The implementation of this approach carries several adverse consequences for the overall quality of medical care, encompassing the delivery of treatments that may be inefficient or even pose potential risks, the withholding of beneficial medical interventions, and the generation of excessive healthcare expenditures.

Moreover, the practice of defensive medicine has a detrimental impact on the fundamental doctor-patient relationship by shifting the primary focus from the patient's optimal well-being to the physician's own personal protection against potential legal action.

Research conducted by the Catholic University of Milan indicated that the principal drivers of defensive medical practices were the fear of facing legal disputes (reported by 80.4% of respondents), prior experiences with legal issues (65.7%), concerns about potential compensation claims (59.8%), personal involvement in legal matters (51.8%), and apprehension regarding negative media attention (43.5%).

Furthermore, the practice of defensive medicine is associated with an increase in overall healthcare expenses, a heightened level of medical risks, and the creation of emotional distress among patients, especially when undergoing invasive medical interventions. Moreover, the practice of defensive medicine contributes to a reduction in access to healthcare services, as medical professionals may opt to refrain from undertaking procedures that carry a higher level of risk due to concerns about potential legal action. Within the United States, the financial burden of defensive medicine on hospital expenditures constitutes 5.4% of the total, with the associated costs reaching \$45.6 billion in the year 2008 and averaging between \$83 billion and \$151 billion annually. It is suggested that these substantial expenses could be mitigated through the implementation of reforms within the justice system.

## **Completion Time**

A primary disadvantage inherent in the traditional court system is the substantial amount of time required to obtain a final judgment and bring a case to a resolution. These delays can manifest at various phases of the legal proceedings, including the process of securing legal representation, the gathering of information from opposing parties, the production of expert reports, the exchange of documentary evidence, and the scheduling of trial dates.

According to the United States General Accounting Office, the average duration for the initiation of a lawsuit against a medical professional is 14 months, while research by Jury Verdict Research indicated that the average time to resolve medical malpractice cases in the year 2000 was approximately 45 months.

Furthermore, in Canada, the typical timeframe from the initial filing of a claim to the commencement of court proceedings is estimated to be between 5 to 6 years. Notably, in Malaysia, the judicial process for medical malpractice cases is particularly protracted, taking a minimum of 15 years and potentially extending up to 25 years.

Conversely, when compared to the lengthy durations associated with court proceedings, a survey of thirteen of the leading mediation firms in the United States determined that the typical timeframe for reaching a consensus through mediation ranged from just 1 to 3 days.

Additionally, a research study undertaken in New York, involving 24 medical malpractice cases that underwent mediation, found that the average time required to achieve a settlement was a mere 2.34 hours, and the preparation time demanded of the legal counsel was a significantly reduced factor, being ten times shorter than the preparation time typically involved in litigating the same types of cases.<sup>11,14</sup> Based on the estimations of lawyers, the average duration of preparation required for a court trial is approximately 36 hours, whereas the corresponding preparation time for engaging in mediation is considerably less, amounting to only about 2.5 hours.<sup>18,19</sup> A subsequent research endeavor revealed that the duration required to achieve a resolution through the mediation process varied from a matter of a few hours to several months in more complex or formal disputes, with a noteworthy 90% of cases ultimately aligning with the expectations of the involved parties.

Furthermore, there is a significant reduction in associated legal costs, as mediation typically necessitates an average of only 2.5 hours of preparation time when contrasted with the 36 hours commonly required for court cases. The swift and timely resolution of conflicts facilitated by mediation serves to alleviate emotional stress for both the individuals involved and allows medical practitioners to continue their clinical practice without the added burden of protracted and lengthy litigation.

The confrontational character of the traditional legal system, coupled with the lengthy durations required for settlements and the considerable financial burdens associated with legal proceedings, often compromises the effectiveness of this method in addressing conflicts within the healthcare sector.

This situation negatively affects healthcare organizations, medical professionals, and patients alike, leading to increased levels of stress and burnout among those in the healthcare field and potentially contributing to a decrease in patient satisfaction.

Conversely, mediation, as a voluntary, flexible, and confidential approach, offers a means of resolving disputes more rapidly and affordably, while also reducing the psychological strain on all parties involved and aiding in the maintenance and restoration of the vital doctor-patient connection. Ultimately, the process of settling healthcare disputes can be substantially improved by incorporating mediation as a key component of the dispute resolution system.

## CONCLUSION

Disputes always arise when two interests cannot be accommodated together and this dispute can occur in medical services which is called a medical dispute. Medical disputes between doctors and patients need to be communicated further legally through mediation.

A doctor, based on professional standards or competence and authority, tries to solve the problems faced by patients, so what is assessed is the process, not the final result, so that if the final result does not match the patient's expectations, but the process is appropriate, then the doctor is not worthy of being sued.

The push for implementing alternative dispute resolution through non-litigation channels is due to the high possibility that litigation will not improve professional standards and patient safety.

In fact, it can lead to an increase in the tendency for defensive treatment due to medical personnel being afraid of being sued by patients or their families. Litigation resolution of medical disputes is designed to provide "win-lose" results. Settlement by non-litigation means such as mediation will encourage conciliation, facilitate settlement, and encourage the presentation of explanatory narratives rather than defensive narratives. The result of this non-litigation will be a "win-win" agreed upon by all relevant parties.

## REFERENCE

Balzer, B., & Schneider, J. (2021). Managing a conflict: optimal alternative dispute resolution. *The RAND Journal of Economics*, 52(2), 415–445.

- Bayer, S., Kuzmickas, P., Boissy, A., Rose, S. L., & Mercer, M. B. (2021). Categorizing and rating patient complaints: an innovative approach to improve patient experience. *Journal of Patient Experience*, 8, 2374373521998624.
- Bhavnani, V., & Fisher, B. (2010). Patient factors in the implementation of decision aids in general practice: a qualitative study. *Health Expectations*, 13(1), 45–54.
- Bishop, T. F., Federman, A. D., & Keyhani, S. (2010). Physicians' views on defensive medicine: a national survey. *Archives of Internal Medicine*, 170(12), 1081–1083.
- Frosch, D. L., May, S. G., Rendle, K. A. S., Tietbohl, C., & Elwyn, G. (2012). Authoritarian physicians and patients' fear of being labeled 'difficult' among key obstacles to shared decision making. *Health Affairs*, 31(5), 1030–1038.
- Hyman, C. S., Liebman, C. B., Schechter, C. B., & Sage, W. M. (2010). Interest-based mediation of medical malpractice lawsuits: a route to improved patient safety? *Journal of Health Politics, Policy and Law*, 35(5), 797–828.
- Hyman, C. S., & Schechter, C. B. (2006). Mediating medical malpractice lawsuits against hospitals: New York City's pilot project. *Health Affairs*, 25(5), 1394–1399.
- Joseph-Williams, N., Elwyn, G., & Edwards, A. (2014). Knowledge is not power for patients: a systematic review and thematic synthesis of patient-reported barriers and facilitators to shared decision making. *Patient Education and Counseling*, 94(3), 291–309.
- Kachalia, A., & Mello, M. M. (2011). New directions in medical liability reform. In *New England Journal of Medicine* (Vol. 364, Issue 16, pp. 1564–1572). Mass Medical Soc.
- Mello, M. M., Chandra, A., Gawande, A. A., & Studdert, D. M. (2010). National costs of the medical liability system. *Health Affairs*, 29(9), 1569–1577.
- Mokhtar, M. F. M. (2022). Medical negligence dispute in Malaysia: choosing mediation as the best constructive approach to address the paradoxes in medical negligence claims. *European Journal of Natural Sciences and Medicine*, 5(2), 75–87.
- Sohn, D. H., & Sonny Bal, B. (2012). Medical malpractice reform: the role of alternative dispute resolution. *Clinical Orthopaedics and Related Research®*, 470, 1370–1378.
- Szmania, S. J., Johnson, A. M., & Mulligan, M. (2008). Alternative dispute resolution in medical malpractice: a survey of emerging trends and practices. *Conflict Resolution Quarterly*, 26(1), 71–96.
- Weinstein, S. L. (2009). Medical liability reform crisis 2008. *Clinical Orthopaedics and Related Research®*, 467(2), 392–401.