Fédération Européenne
des Médecins Salariés
European Federation
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MEDICAL RESPONSIBILITY IN EUROPEAN COUNTRIES

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In the field of medical responsibility in Europe we can group countries into three categories:

Denmark-Finland-Sweden

These countries are able to provide accurate data on all elements of medical responsibility such as the total and relative number of complaints, the number of claims compensated, the cost of per capita liability through transparency and centralization of complaints.

In these countries there is a high number of complaints with a tendency to increase and have been able to combine the high number of complaints with a high number of damages (44% in Denmark, 35% in Finland, 45% in Sweden) .

There is a NO FAULT system for medical error management.

Despite this favorable relationship between claims and compensation, the cost per capita per inhabitant is modest, varying from EUR 7 (Sweden) to EUR 10 (Denmark).

A possible explanation may be the relatively low cost of administrative activity, the cost of the compensation system and, on the other hand, the average remuneration for a relatively moderate patient (EUR 10 000 Finland and Sweden, EUR 22 600 in Denmark)

The number of complaints settled in court is very low: 0.1% in Sweden, 0.3% in Finland, 0.5 in Denmark.

There are no mediation or arbitration systems.

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With a complaint patients first want to get an explanation from the responsible doctor, then expect the apologies in the last they want compensation.

There are no barriers or obstacles in these countries for compensation.

In comparison with other countries, the perception of the population of medical error as a problem is very low and citizens seem to have more confidence in the safety of their healthcare system.

In Finland and Sweden, they have a high degree of confidence that doctors make no mistake when handling them (89% France and 83% Sweden, while in Denmark the percentage is only 58%).

A possible explanation may be the highest percentage of accidents in Danish hospitals.

In Finland and Sweden, great efforts have been made to improve mutual understanding between doctors and the legal profession.

France Germany and the United Kingdom

These countries are able to present partial and recent data on some important elements of medical responsibility.

There is a relatively low number of complaints with a declining tendency (France) or stabilization (Germany and UK).

There is no exact data on claims that are being reimbursed. Where these data exist, the percentage of claims compensated is rather low (Germany).

There is no accurate data on the cost of medical responsibility per inhabitant, but where there is a high cost, especially for high administrative costs (UK).

There is no average payroll data for the patient.

The number of complaints settled in court is 4% in the United Kingdom and 60% in France; there is no data available for Germany.

The most interesting aspect in these countries is the recent initiatives taken to resolve claims by using mediation techniques.

The results seem promising: in France, 98% of the complaints brought before the National Office for Compensation for Health Care Damage have reached a friendly agreement.

In 2006, 12,000 complaints for medical malpractice in Germany were reported to the arbitration commissions in Germany. However, the outcome of the arbitration is still unknown.

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With a complaint, patients in France and the United Kingdom (no data for the Germans) want first to get apologies from the responsible doctor, followed by explanations and finally financial compensation.

No obstacles or barriers are known in these countries for obtaining compensation.

Compared to other countries, perception of medical error as a problem by the population is quite high, while personal experience with casualties in hospitals is rather low or very rare (Germany).

Between 40% and 50% of citizens in these countries believe that patients should be worried about the possibility of a serious medical error.

In France and the UK, citizens have a high level of of trust that doctors make no mistakes (86% in France 79% United Kingdom), while in Germany the percentage is 63%.

In these countries initiatives have been brought to improve mutual understanding between the medical profession and the legal profession.

Italy, Spain , Portugal, Switzerland, Slovakia, Iceland

It is a fairly heterogeneous group, however, there are common features related to medical responsibility. None of these countries can provide data on the various aspects of medical responsibility, such as the number of complaints (Italy, Iceland and Slovakia provide limited data) on the number of claims compensated and on the cost of medical responsibility per inhabitant. Data is available for a very large number of complaints that are solved in court (86% in Italy and 100% in Portugal). Mediation systems to resolve complaints in the case of medical liability in these countries are little known or nonexistent.

Even if the tendency is less clear than in the other groups of countries, the available data tells us that when making a complaint, patients in these countries want to get a financial compensation first, followed by apologies and preventing the repetition of errors as a deterrent effect.

The health sector shows a high interest in confronting complaints about medical responsibility. Consumers' interests are also quite high as well as the media's ones. There are important barriers and obstacles to obtaining compensation in most of these countries.

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We provide some data from a questionnaire diffused by the Council of Europe that was used to draw the aforementioned groups:

Absolute numbers of claims in Member States that replied to the questionnaire						
YEAR	2002	2003	2004	2005	2006	2007
DENMARK	3.558	3.789	4.693	4.967	4.848	
FINLAND	7.125				7.935	
FRANCE	5.208	5.196	4.982	5.048	4.750	
GERMANY			7.659	7.860		
ICELAND				15		
ITALY		15.000				
SLOVAK R				1.632	1.321	
SWEDEN	+/- 9.000	+/- 9.000	+/- 9.000	9.250	9.600	9.800
UK	7.977	7.121	7.205	9.321	8.575	

Average compensation per patient	
DENMARK	22.610 €
FINLAND	10.000 €
FRANCE	13.000 €
IRELAND	65.000 €
NETHERLANDS	10.000 €
SPAIN	48.000 €
SWEDEN	10.000 €

Cost of medical liability per inhabitant	
DENMARK (2006)	70 DKK or 10 €
FINLAND	5 to 9 €

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Cost of medical liability per inhabitant	
ITALY (2004)	9 €
SWEDEN (2005)	7 €
UK (2006-2007)	11.42 pound or 14,8 €

Resolution of claims by the courts	
DENMARK	Between 2002 and 2006 less than 1% of the claims reported to the administrative instance (Patient Insurance Board) have been brought before a court. In 2004 even less than ½%.
FINLAND	No exact figures are available but very few case. According to HOPE: 0,3% claims go to court[27]
FRANCE	In 2006, 60% of all claims have been resolved through court proceedings
ICELAND	40% of claims are resolved by courts.
ITALY	86% of claims are resolved by courts of which 50% by criminal courts and 36% by civil courts
LITHUANIA	9 claims are resolved by courts for the last five years
MALTA	98% of claims go to court[28]
NETHERLANDS	100 claims go to court every year[29]
PORTUGAL	100 % of claims go to court
SLOVAK R.	30 cases judged by the courts (2006)
SPAIN	15% of the claims go to court (HOPE, 14)
SWEDEN	10-15 out of 10.000 claims = 0,1%.
UK	4% of the claims handled by the NHS Litigation Authority are resolved in court. Data on claims against private health providers is not collected centrally

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RESOLUTION OF CLAIMS THROUGH MEDIATION TECHNIQUES

Three distinct categories of Member States can be distinguished from the perspective of resolving claims through mediation techniques.

In the first category of Member States mediation techniques are not (yet) used because one is not familiarised with this kind of techniques (for instance Slovak Republic) or because of another particular reason (in the UK, the main barrier to the use of mediation is the lack of awareness as well as some opposition from the legal profession).

In a second category of Member States mediation techniques are not used to settle claims because other mechanisms exist to resolve medical claims. The Danish reply to the questionnaire states: "mediation techniques are not used to solve claims that are brought before the administrative instances". Comparable replies came from Finland and Sweden, also countries with a patient compensation scheme.

Third, in some other Member States experiments have been set up with mediation techniques to settle medical claims. Because these experiments are relatively recent and the information contained in the replies to the questionnaire rather limited, we will give some broader descriptions of them, based on other sources.

AUSTRIA. There are the so called Schiedsstellen (conciliation panels) which provide a first forum for both patients and doctors to solve disputes arising from or in the course of treatment. These panels are organised at the seat of the respective Landesärztekammer (provincial Chambersof physicians) which also bears the costs. The proceedings are entirely voluntary for both sides and can be initiated upon an informal request. In a typical case, an independent expert will be appointed. The panel's decisions are not binding: they serve as mere recommendations, so that the patient can still file suit in an ordinary court of law.

GERMANY. The different German Physicians' Chambers (Ärztekammern) have instituted either mediation boards (Schlichtungsstellen) or expert commissions (Gutachterkommissionen) or both expert and mediation boards for medical malpractice cases. The reason was to offer a speedy and cheap procedure in order to cope with the increasing number of medical malpractice cases. The mediation boards deliver a decision on the disputed question between the patient and the doctor whether a claim is founded in principle (but not on the amount of any compensation) whilst the expert commissions state an opinion on the question only whether or not a certain medical treatment complied with the required medical standard. The coupled expert and mediation boards do both. All these kinds of procedures are entirely voluntary. Neither the patient nor the doctor can be forced to approach the board or commission. And neither the board's decision nor the commission's opinion is formally binding on the parties though both have some persuasive

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authority in proceedings before a civil (or criminal) court. The procedure before the board or commission is free of charge.

In 2006 the first uniform federal report was released concerning these out-of-court proceedings of the mediation boards in the "Medical Error Reporting System". According to this report, 11 949 complaints of medical malpractice were referred in 2006 to the arbitration boards (reply to the questionnaire). The impact on cases brought to the courts is not yet known.

NETHERLANDS. An interesting way of handling smaller disputes, easier and quicker, has been introduced in the Netherlands with the so-called Dispute Committee for Hospitals. This arbitration board deals with claims up to about EUR 4 500 and applies the ordinary rules of tort law. It provides a cheap and fast solution of smaller disputes.

SPAIN. In case the defendant is not of public nature, hence falling under the competence of the civil jurisdiction, there is also the possibility to go to arbitration, according to the law of 1988. The permanent, nationwide installed, arbitral institutions offer their services especially to the physicians and other professionals related to medical and health services, including psychologists and dentists. Due to a lack of more precise information it is not possible to evaluate the impact of this system on the resolution of claims by the courts in Spain and especially the remarkable low number of claims settled by the Spanish courts (only 15%).

UNITED KINGDOM. In the UK, to address the rising costs of compensation (principally related to obstetrics claims), the Chief Medical Officer led a working Group, which made recommendations for reform of clinical negligence procedures. A first review of clinical negligence was accordingly released in a consultation document on 1 July 2003. In late 2005, the Department of Health introduced the NHS Redress Bill into Parliament paving the way for the establishment of an NHS Redress Scheme to offer patients an alternative to litigation for low monetary value claims.

Also in FRANCE an interesting development is going on since the changes operated by the act on the rights of patients and the quality of the health care system. While fault-based liability remains the rule, some injuries are compensated irrespective of fault. Side by side with fault-based liability, there is a collective compensation of treatment accidents and hospital-acquired infections, where it is not necessary to establish fault, according to the principle of solidarity throughout a non-litigious dispute resolution procedure. In the initial phase of the procedure,a regional commission of conciliation and compensation is seized by the aggrieved patient. This commission, after evaluating the injury with the help of a board of experts, verifies whether the injury sustained by the patient is eligible for compensation under the principle of solidarity where fault does not need to be established. If the injury qualifies for the exceptional regime of compensation under

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the principle of solidarity, the national office for compensation of treatment accidents (ONIAM) offers the patient a settlement for full compensation of the injury. If the patient disagrees with the terms of the settlement, he can appeal to a court of law. According to the reply to the questionnaire 98% of claims brought before ONIAM reached a friendly settlement in 2006.

If ONIAM considers that the injury is not eligible for compensation under the principles of solidarity but a health care professional or organization is responsible for the injury under the fault principle, the insurer of the professional or the organization is obliged to present the patient a settlement proposal for the full compensation of damages. According to the reply on the questionnaire, in 2006 in 40% of the cases the patient and the insurance company reached a friendly settlement. If the patient does not accept the proposal, he may go to court. This happened in 60% of the cases in2006.

WHAT PATIENTS WANT TO OBTAIN THROUGH MEDICAL CLAIMS

Priorities expectations	FIRST	SECOND	THIRD	FOURTH	FIFTH
Financial compensation	Georgia Lithuania Portugal	France Slovak Republic	Denmark Finland Sweden Ukraine	Italy UK	
Apology	France Italy UK	Denmark Finland Georgia Lithuania Ukraine	Slovak Republic	Portugal Sweden Ukraine	
Deterrence effect (prevent repetition)	Slovak Republic	Italy	Georgia Lithuania UK	France Ukraine	Denmark Finland Portugal Sweden
Restoration of a violated right	Sweden		Italy Portugal	Denmark Finland	France Lithuania Slovak Republic UK
Explanation	Denmark Finland	Portugal Sweden UK	France	Lithuania Slovak Republic	Ukraine
Punishment of guilty	Ukraine				

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PERCEPTION OF MEDICAL ERRORS AS A PROBLEM BY CITIZENS.

Data from a survey by the European Commission (Eurobarometer) [1] *and the most recent data was collected in 2006*

It is very high in Italy (97%) and Lithuania (90%), high in Portugal (77%) and moderately high in the republic of Slovakia (65%) while personal experience with hospitals is quite low, except in Lithuania where it is rather high (26%). The citizens of these countries are the ones most concerned about medical errors. On the other hand, approximately half of the respondents in Finland (51%) and Denmark (48%) do not consider medical errors to be an imminent issue in their country.

These two countries clearly stand out from the rest and Finland is the only country where those not indicating a problem outnumber those assessing medical errors as problematic (51% against 48%).

Lithuania 70% Italy 60% Portugal 50 %, Slovakia 41%, are also the most concerned about patient safety in hospitals: 69% Italy, 65% Lithuania, 55% Portugal.In Slovakia, citizens have high confidence that doctors make no mistakes (83%), while in Italy and Portugal it is 68% and very low in Lithuania 35%.

Almost 4 in 5 EU citizens (78%) classify medical errors as an important problem in their country. 38% of respondents rank the issue as very important and a slightly higher share (40%) sees the topic as fairly important. 20% of responses fall into the category of "not important" out of which only 3% indicate medical errors to be of no importance at all.

At the country level, considerable variation in result can be depicted: the share of those perceiving the problem as important varies from 97% in Italy to 48% in Finland.

It is obvious that many European citizens perceive medical liability as a serious problem. It is probably not a coincidence that in Finland and Denmark – Scandinavian countries with a patient insurance system that offers broad protection against the financial consequences of adverse events – half of the population does not consider adverse events as a serious problem.

No information is available for the other Member States of the Council of Europe.

The EUROBAROMETER also contains interesting information concerning personal experiences of medical errors by European citizens: 23% of Europeans citizens state to have been directly affected by a medical error personally or in the family. 18% indicate that they or their family members have experienced a serious medical error in a hospital whereas 11% announces having been prescribed wrong medication. Roughly, it

[1] Eurobarometer:http://data.europa.eu/euodp/en/data/dataset/S403_64_3_241

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can be stated that in countries with fewer adverse events in hospitals also the number of adverse events with medication are rarer. In general, incidents in hospitals appear to be more common than incidents of unsuitable medicament.

	Medical errors in hospitals	Medical prescription errors
AUSTRIA	11%	7%
DENMARK	29%	21%
ESTONIA		18%
LATVIA	32%	23%
MALTA		18%
POLAND	28%	
GERMANY	fairly rare	
HUNGARY	fairly rare	

TRUST IN HEALTH CARE PROFESSIONALS

Most of the EU citizens trust medical professionals not to make a mistake while treating their patients. Dentists are appreciated with the most confidence as almost 3 in 4 respondents (74%) trust in them. 69% have faith in doctors and 68% in other medical staff.

However, a significant share of respondents has doubts about the quality of health care provided by these professional groups. The proportions are respectively 30% not feeling confident about other medical staff, 29% about doctors and 23% about dentists. This may be seen to imply that the trust in the functioning of health care systems could be improved.

At the country level, the degree of confidence varies greatly though it remains consistent between the professional groups. Finnish citizens have the most faith in all three professionals' groups, 93% for dentists and 89% for doctors and other medical staff. France and Belgium follow close by. Respondents that have the least trust in health care professionals reside in Greece and Cyprus. Only 24% of Greeks have confidence in medical staff, 25% in doctors and 35% in dentists. The respective figures for Cyprus are 27%,

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28% and 30%. The other countries with low level of confidence in their medical professionals are Bulgaria, Poland, and Lithuania.

FINAL CONCLUSIONS AND RECOMMENDATIONS

As this report deals only with the factual situation of medical liability in the Council of Europe Member States one cannot draw normative conclusions and recommendations from it.

Nonetheless some interesting conclusions emerge out of the factual data.

When looking at the factual situation there seems to exist a relation between:

- What patients want to obtain by making a complaint;
- The degree that citizens perceive medical errors as a problem, the confidence they have in the safety of hospitals and the trust they have in the medical profession;
- The existence or not of alternatives ways to resolve a claim;
- The existence or not of barriers or obstacles to obtain compensation;
- The mutual understanding between the medical and the legal profession.

We do not claim that there is a causal relationship between these different elements because this would be a normative statement and the data available do not allow us to do such statements.

However:

- The countries where citizens perceive medical errors as a high problem are highly concerned of the safety of hospital patients and where trust in the medical profession is rather low and where the only resort to resolve a claim is to go to court whereas the barriers or obstacles to this resort are high and no initiatives have been taken to ameliorate the mutual understanding between the medical and the legal profession, patients want in the first place to obtain financial compensation by complaining.
- The countries where citizens perceive medical errors as a rather high problem are moderately concerned of the safety of hospital patients and where trust in the medical profession is high and where claims can be resolved through mediation techniques and where there are no barriers or obstacles to obtain compensation and initiatives have been taken to ameliorate the mutual understanding between the medical and the legal profession, patients want in the first and second place to obtain apology and explanation and only in the third place financial compensation.
- The countries where citizens perceive medical errors as a rather low problem have confidence in the safety of their health care system and where trust in the medical profession is high and where claims are

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only very exceptionally resolved through the courts but almost all through a patient compensation scheme and where there are no barriers or obstacles to obtain compensation and initiatives have been taken to ameliorate the mutual understanding between the medical and the legal profession, patients want in the first and second place to obtain explanation and apology and only in the third place financial compensation.

Against the background of these elements and the relation between them, the following themes are proposed for discussions in the form of recommendations.

In order to deal efficiently with the challenge of medical liability one should:

- invest in restoring confidence of the citizens in the safety of the health care system and trust in the medical profession.
- lift barriers and obstacles to obtain compensation by offering alternative means of compensation instead of a procedure through a court.
- take initiatives to ameliorate the mutual understanding between the medical and the legal profession.

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