

Quantifying the Economics of Medical Malpractice: A View from a Civil Law Perspective

Summary

Medical malpractice might create several costs for society. Medical mishaps can have devastating consequences for patients and their families. Also, physicians might suffer from the consequences of their own mistakes, *e.g.*, psychologically or by the effects on reputation. Medical errors can never be fully eliminated: even the most brilliant and studious doctors can make mistakes. Victims of medical malpractice might also react: patients and their families can make a claim, hoping to be compensated for their losses. Therefore, “*to err is human*”¹ but to “*sue is human*”² as well. The most recent empirical literature on medical malpractice is revised in Chapter 1.

The goal of this thesis is to investigate, in the first place, some of the consequences of having two separate sub-systems coexisting within the same legal system, which is common in civil law tradition countries with a public national health system. When this holds, and taking the Spanish case as an example, civil courts decide claims involving private hospitals and administrative courts decide claims involving public hospitals. This means that different rules might apply depending on the type of hospital where the injury took place. Moreover, one question that might arise is why (or why not) both civil and administrative courts should decide medical malpractice cases. In medical malpractice decisions, the level of compensation attributed to patients is a crucial variable. Identical patients suffering similar medical accidents should receive analogous compensation amounts. In order to study these issues, the Spanish Supreme Court Medical Malpractice Dataset (SSCMMD) was created. It consists of medical malpractice decisions made by the Spanish Supreme Court from 2006 until 2009. With this dataset, a comparison between administrative and civil decisions is made in Chapter 2. Chapter 3 uses the SSCMMD to assess predictors of compensation in medical malpractice cases and to investigate how much patients are receiving for damages.

¹ As part of the title from Kohn *et. al.* (2000).

² As part of the title from Zeiler *et. al.* (forthcoming).

In the last few years, there was a general concern with patient safety, which is currently in the agenda of numerous national governments. Some initiatives have been taken at the international level, with the aim of preventing harm to patients during treatment and care. In several European countries, health care is mainly provided by a public national health system, which means that if a patient, harmed in a public hospital, succeeds in a claim against the hospital, national expenditures increase because the State takes part in the litigation process. This poses a problem in a context of increasing national health expenditures and public debt, which is the case in several European countries. In Italy, some regions implemented a monitoring system for medical claims. If properly implemented, monitoring medical claims might increase patients' safety and allow a reduction in medical liability insurance premiums. The impact of this policy is assessed in Chapter 4.

Finally, Chapter 5 discusses our main findings, describes possible future research and concludes.

It seems a sick joke that so many people die or become physically impaired due to medical mishaps nowadays. It is imperative that efforts are done in order to improve patients' safety. This is naturally a joint effort between medical practitioners, legal scholars, economists, empiricists and policy makers. Empirical analysis can be a powerful tool.