



A comparison of malpractice lawsuits mediated and judged in court in China

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ABSTRACT

Objective: An analysis of malpractice lawsuits judged in court compared with those mediated in court may help explain perceptions of malpractice risk.

Methods: We conducted a retrospective study of malpractice lawsuits mediated and judged in court using data from district courts in Beijing from 2010 through 2014. We evaluated the number of cases, the payment amount, and the time to resolution, by resolution type. Patient age, sex, the severity of injury, and adverse event type were measured. Subsequently, a binary logistic regression identified factors associated with patients' pursuit of judgment.

Results: Between 2010 and 2014, there were 1226 lawsuits (49.9%) mediated in court and 1259 (50.1%) judged in court. The proportion of the judged lawsuits varied significantly across the study period ($p < 0.001$). The mean payment amount and the time to resolution were significantly higher in judgment lawsuits ($p < 0.001$). The younger the patients, the greater the possibility of being judged in court (odds ratio [OR] = 0.831, $p < 0.0001$). Lawsuits where the adverse event type was treatment, obstetrics, or diagnostics were more likely to be judged than those where the adverse event type was surgical (OR = 2.311, $p < 0.0001$; OR = 2.311, $p < 0.0001$; OR = 3.302, $p < 0.0001$, respectively). When lawsuits were for a temporary injury, they were more likely to be judged in court than those for a permanent injury (OR = 0.723, $p = 0.0139$).

Conclusions: The patient-physician relationship may in fact not be particularly close in our country. Lawsuits with certain characteristics tend to be judged in court. Understanding these characteristics may be useful for predicting the outcome of lawsuits against physicians.

1. Introduction

Perception of medical risk may contribute to tort reform proposals to limit defensive medicine and to reduce the frequency of claims.^{1,2} Many studies have investigated medical risk using physician-level data, revealing characteristics of claim-prone and complaint-prone physicians, such as those practicing in a high-risk specialty, those with a high volume of clinical activity, and those with a previous paid claim history.^{3–9}

Judged lawsuits are regarded as a more expensive resolution both in financial and emotional cost,^{10,11} impelling the physician to find other resolutions, such as settlement out of court and mediation in court.^{12–14} Furthermore, evidence has shown that the practice of defensive medicine to avoid malpractice liability risks is common among

physicians.^{15–20} However, little is known about judgment-prone claims. Only a few published studies have analyzed the nature of malpractice claims using judgments materials; these studies generally have been limited to claims data from a single medical specialty^{21–23} or only paid judgments.²⁴

If judgment-prone lawsuits are different from other lawsuits, these differences would be valuable for alerting physicians to their risk of being judged. Furthermore, choosing different types of resolution can also reflect patients' attitudes toward medical malpractice and their relationship with the physician.

In the Chinese legal system, malpractice claims filed in court by the plaintiff may be resolved in any of three ways: (1) by patients dropping their cases, (2) by mediation (judges acting as mediators) in court, conditional the agreement of the plaintiff and the defense (namely, in-

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court mediation), or (3) by the case being tried until a verdict is reached in court. In-court mediation, just like in-court settlement in Germany²⁵ and in-court mediation in Finland,²⁶ is a procedure, voluntary for the parties and managed by the judge, where the parties themselves find a satisfactory resolution of their conflict. The mediation has the same legal force as the judgment. Mediation, regarding as, a remedy available for the malpractice mess, in court is applied to shorten legal procedures, resolve uncertainty, and save litigation expenses. In-court mediation can occur at any stage of the trial. Litigants can abandon the in-court process and turn to the judgment anytime, but once the court finish the mediation; they can't take the case to trial. Our Civil Law advocates of the in-court mediation in medical malpractice cases. At the very start of the trail, the court would make clear that mediation is an option of the malpractice case. No jury is present in our legal system. Generally, after receiving the application of mediation by both sides, the court (usually one judge) will start the in-court mediation procedure. Patients, health care providers, and their lawyers sit down with a neutral mediator (one judge), to discuss the problem and try to reach the best possible mediation for the case.

In our legal system, judges do not have necessary medical knowledge to determine whether there has been medical negligence, so it is mandatory for them to request a forensic evaluation. Generally, in the first stage of trail, judges will send data and medical records related to the cases for forensic evaluation. Patients and doctors can accept the decision made by forensic panels, ask forensic experts to present in court for further explanation, or ask for another forensic evaluation. Thus, before the final type of resolution being chosen, both parties have already had the result of medical malpractice evaluations or have heard further explanation of forensic evaluation reports made by forensic workers appearing in court. Usually, the plaintiffs will drop their lawsuits after receiving the forensic report without confirmation of malpractice. While receiving the forensic report with insufficient evidence of malpractice, they probably prefer to mediate for the offer of physicians.

In China, there are 3 types of liability for medical injury. They are civil liability, criminal conviction, and sanctions applied by the administrative department of health. If patients apply for investigation on the physician's administrative punishment, the administrative department of health may order the physician to suspend business for a term of not less than 6 months but not more than a year. When circumstances are serious, licenses of practice may be revoked. If the malpractice is serious enough for criminal punishment, the physician may be subject to criminal liability in accordance with provisions of the criminal law concerning crimes of medical malpractice.

According to the "2016 China Health Statistical Yearbook", the number of physicians in China was 2.65 million and the number of malpractice lawsuits was 21,480. It can be approximately estimated that every 123 physicians had one malpractice lawsuit in 2016. We used data from civil court decisions on medical malpractice mediations and judgments taken by the regional courts of Beijing from 2010 through 2014, to address four research questions: What are the recent trends in the numbers, by the type of resolution (mediation and judgment)? How does the type of resolution affect the payment amount and the time to resolve? Are there differences in lawsuit characteristics for each type of resolution? What drives patients to pursue a judgment in court?

2. Materials and methods

2.1. Data source, sample, and variables

Using data from the district court in Beijing, we performed a retrospective trend analysis and cross-sectional comparison of malpractice lawsuits by the type of resolution (mediated in court vs. judged in court). Each lawsuit contains information on the date a claim was reported, the date a claim was filed, the date of closure, the adverse event

type confirmed by the forensic evaluation, the patient's sex and age, the alleged severity of the injury, whether a plaintiff was paid, the payment amount, and the medical specialty.

The main variables were the type of resolution, the medical specialty, the adverse event type, the severity of the injury, the time to resolution, and the patient's sex and age. Adverse event types were subdivided into six categories: diagnostic, surgical, obstetric, treatment, medication, and other. The severity of the injury was subdivided into three categories according to the degree of injury: cured and temporary injury, not cured and permanent injury, and death. With regard to the time to resolution, we focused our analysis on the time between reporting and closure, rather than from injury to the reporting of the lawsuit.

The study protocol was approved by the institutional review board of Sichuan University.

2.2. Statistical analysis

The primary outcome variables for our trend analysis and the first cross-sectional comparison were the type of resolution (mediated in court vs. judged in court) for all lawsuits between 2010 and 2014. The Pearson χ^2 test was used to compare the proportion of lawsuits resolved by mediation versus judgment. Given the skewed distribution of the payment amount, we used the Wilcoxon rank sum test to compare the difference in the payment amount by type of resolution.

The primary outcome variables for our second cross-sectional comparison were the lawsuit number and mean payment amount of different medical specialties by the type of resolution. The Pearson χ^2 test was used to compare the number distribution of lawsuits resolved by mediation versus judgment.

The primary outcome variables for the third cross-sectional comparison were the time to resolution. Given the skewed distribution of the time to resolution, we used the Wilcoxon rank sum test to compare the difference in the time to resolution by the type of resolution.

Logistic regression analyses were performed with a dichotomous dependent variable (mediation = 0 and judgment = 1) using the following admission variables to predict the type of resolution: the patient's sex, the patient's age, the adverse event type, and the severity of the injury. In the analysis, bi-variate variables were introduced (male = 1, female = 0) for "patient's sex", "Patient's age", and "severity of the injury" were recorded as ordered data, and when necessary, dummy variables for them were introduced in the regression analysis. Dummy variables were introduced for the variable of "adverse event type."

All analyses were performed using Stata analytic software V.12.0 (Stata Corp., College Station, Texas, USA). All tested were two-sided, with $p < 0.05$ being considered statistically significant.

3. Results

Between 2010 and 2014, there were 1226 lawsuits (49.9%) mediated in court and 1259 (50.1%) judged in court.

3.1. Trends in claims

The proportion of the judged lawsuits varied significantly across the study period (Fig. 1), with 39.0% of claims mediated and 61.0% judged in 2010 vs. 59.0% of claims mediated and 41.0% judged in 2012 ($p < 0.001$). The mean payment amount for paid lawsuits judged in court was significantly higher than that for paid lawsuits mediated in court (for judgment: 158,848.62 RMB; for mediation, 137,697.31 RMB; $p < 0.001$) (Fig. 2).

3.2. The time to resolution of malpractice claims

Fig. 2 depicts the cumulative percentage of closed lawsuits by time

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