

On the Construction of Administrative Mediation for Medical Disputes

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Abstract

The doctor-patient relationship is a type of civil legal relationship. Under normal circumstances, it is a contractual relationship based on the complete free will of both parties. In this relationship, patients voluntarily seek medical assistance from doctors, who in turn willingly accept them as patients. As one of the most important interpersonal relationships, the doctor-patient relationship is characterized by mutual interdependence and inseparability. Doctors exist and grow because of patients, and medical science advances in response to diseases—without patients, doctors would lose the foundation of their professional survival. On the other hand, patients suffering from illnesses rely on doctors' treatment to overcome diseases and regain health; without doctors' professional help, the protection of patients' health and lives would lack an effective safeguard. It can be said that patients are the "bread and butter" of doctors, while doctors are the messengers who help patients recover their health. Ideally, doctors and patients should maintain a relationship of mutual trust and harmonious coexistence. However, the conflicts in the doctor-patient relationship that have emerged in recent years have led to an increasing number of medical dispute cases, revealing that the tension between doctors and patients still persists.

In recent years, hospitals across the country have adopted various measures to improve their technical standards and medical quality, and strengthen the management of medical safety. Nevertheless, medical disputes and controversies still occur from time to time. These incidents seriously disrupt the normal order of medical work and activities, damage the legitimate rights and interests of medical institutions, medical staff and patients, and also undermine social harmony and stability. To further enhance the effectiveness of preventing and resolving medical disputes, hospitals have been continuously exploring experience in dispute handling and promoting a diversified dispute resolution mechanism. Administrative mediation of medical disputes is an important channel for settling such conflicts, and it is bound to play an even greater role in resolving medical disputes.

Keywords: medical dispute, resolution mechanism, administrative mediation, pathfinding

1. Overview of Medical Disputes

Medical disputes are generally believed to be

divided into broad and narrow categories. In a broad sense, medical disputes refer to all

disagreements and conflicts arising between patients and their relatives and medical institutions and their staff during the course of medical consultations due to conflicts. This includes disputes arising from differing understandings of the outcomes of diagnosis and treatment or care, as well as disputes caused by non-diagnostic or non-care activities. In a narrow sense, medical disputes refer only to disagreements between doctors and patients over adverse outcomes and their causes during the diagnosis and treatment process. Any situation where patients or their relatives are dissatisfied with the diagnosis and treatment work, believe that medical staff have made mistakes in their medical care, hold them responsible for harm to the patient, and engage in conflicts with the medical side is considered a medical dispute. The most narrowly defined medical dispute refers to medical accident disputes, which are conflicts and disagreements caused solely by medical accidents.

The essential characteristic of medical disputes does not lie in who initiates them; the core issue is medical harm. Medical disputes should be considered from the perspective of medical harm when addressing tort liability. The establishment and improvement of the medical harm liability system should be guided by the broader context of China's medical system reform, laying a solid legal foundation for building a harmonious doctor-patient relationship. It is necessary to fundamentally change the current dual-track system for medical accidents and medical negligence, and to achieve unification between medical harm compensation and general personal injury compensation in terms of the scope of compensation and calculation standards.

Medical disputes are often caused by torts, that is, medical tort liability, which refers to the liability for compensation that medical institutions should bear for personal injury caused to patients due to negligence during the medical process. This includes medical accident liability and other medical tort liabilities. Medical disputes are usually caused by medical negligence and fault. Medical negligence refers to mistakes made by medical personnel during the diagnostic and care process. Therefore, the standard for determining a misdiagnosis is that such an error could not have been made by a reasonable doctor; only then can it be considered a misdiagnosis, and the doctor may bear

compensation liability. Medical fault refers to errors made by medical personnel during medical activities such as diagnosis and care. These errors often lead to patient dissatisfaction or cause harm to the patient, resulting in medical disputes. With the increase in medical tort cases, the standards for determining medical fault have received growing attention. Traditionally, negligence is assessed from a human perspective, using the 'reasonable person' as an objective standard for determining fault. It considers the level of skill that 'a doctor with ordinary skills' exercising 'reasonable care' should reach, using 'the average, commonly possessed skills of medical staff' as the standard—the technical level a reasonable doctor should achieve when exercising reasonable care. Apart from medical disputes caused by medical fault and negligence, sometimes disputes may arise even when the medical side has no negligence or mistakes, solely due to the patient's unilateral dissatisfaction. Such disputes can be caused by the patient's lack of basic medical knowledge, misunderstanding of proper medical treatment, the natural course of disease, unavoidable complications, or medical accidents, or they may arise from the patient's unreasonable accusations.

2. Analysis of the Current Mechanisms for Resolving Medical Disputes

With the continuous increase in people's health needs, the gradual strengthening of awareness of rights and legal concepts, and the popularization of medical knowledge, the doctor-patient relationship in China has become increasingly tense, threatening the healthy development of the healthcare sector and social harmony. As a result, the mechanisms for resolving medical disputes have attracted widespread social attention and high-level government concern.

According to Article 22 of the Regulations on the Prevention and Handling of Medical Disputes, in the event of a medical dispute, both the medical institution and the patient can resolve the issue through the following means: (1) voluntary negotiation between both parties; (2) applying for people's mediation; (3) applying for administrative mediation; (4) filing a lawsuit with the people's court; (5) other methods stipulated by laws and regulations. Practice over the years has shown that the above dispute resolution channels have a certain positive effect

on resolving medical disputes and protecting the legitimate rights and interests of both medical institutions and patients. However, these channels also have their shortcomings, which often causes the handling of medical disputes to fall into a certain awkward situation.

2.1 Bilateral Consultation Mechanism

Negotiation has the advantages of convenience, high efficiency, and low cost, and can effectively reduce the burden on medical institutions, patients, and judicial authorities in handling medical disputes, lessen damage to the reputation of medical institutions, and help relieve increasingly tense doctor-patient conflicts. Therefore, it objectively meets certain needs of both parties. Negotiation is also referred to as self-determination. Self-determination is most suited to the individual nature of social conflicts, forming the original way humans resolve social disputes. It is precisely because of the moral superiority of 'harmony' that self-determination often becomes the primary, or even the sole, means of dispute resolution. Especially compromises and concessions in self-determination not only eliminate disputes but also resonate with moral concepts such as 'humility' and 'benevolence,' and are therefore widely esteemed. During the negotiation process, there should be no fraud, coercion, or opportunism, and no significant misunderstandings or unfairness; otherwise, even if a settlement agreement is reached, it would be invalid.

Negotiation is a resolution method completely undertaken by both parties within the scope of private autonomy, but the drawbacks of negotiation cannot be ignored either. In the process of negotiation, the positions of doctors and patients are unequal. The complexity and high risk of medical procedures, conflicts of interest between doctors and patients, doctors' reluctance to disclose information, and concealing medical misconduct all contribute to the asymmetry of medical information between the two sides. Under such circumstances, patients are at a disadvantage in negotiations. Doctors, leveraging their advantage in medical information, may conceal medical errors and downplay medical responsibility. Coupled with the vague handling of negotiations, inadequate compensation is also difficult to avoid. From a practical perspective, the urgent issue is how to maximize the positive effects of settlement while minimizing its negative effects. The negotiation

mechanism should be standardized and made more specific.

2.2 Third-Party Mediation Mechanism

Throughout history, mediation has had a wide range of applications in China. Western scholars refer to Chinese mediation as an "Eastern experience." "Harmony" occupies the core of Confucian ethics. In resolving disputes among the people, the first consideration is 'emotion,' followed by 'ritual,' then 'reason,' and only lastly resorting to 'law.' There is a belief that 'it is shameful to litigate' and 'litigation leads to misfortune,' and even rulers or family authorities advocate avoiding litigation as much as possible to resolve conflicts. Traditional village mediation often serves as a necessary procedure before litigation. Mediation involves a third party who steps in, based on certain moral and legal standards, to persuade both parties in a dispute to reach understanding and concessions, thereby resolving the conflict and improving their relationship. Mediators can use various flexible methods to help parties overcome barriers, analyze the core issues of medical disputes and the interests of both parties, propose solutions for discussion, and facilitate negotiations and communication between them, persuading the parties to make wise choices that maximize their benefits. This culture and system have deeply rooted mediation in Chinese society. Private mediation protects the personal privacy of the parties involved; at the same time, because mediation is not strictly bound by the law and can be based on social morality and other principles, it makes it easier for parties to reach mutually satisfactory outcomes. Mediation serves as a dispute resolution system that acts as a buffer between resolving conflicts through autonomous dialogue and litigation.

Promote a diversified medical dispute mediation mechanism. According to the main entities or institutions that lead the mediation, mediation can be classified into forms such as private mediation, administrative mediation, and court mediation. As a mediation system is the most distinctive form within a diversified dispute resolution mechanism in China, its greatest advantage is that it overcomes the inherent shortcomings of legal norms, goes beyond the formal justice of law, achieves substantive justice, and helps protect individual interests and properly resolve disputes. Some scholars believe: 'Faced with the overwhelming

number of conflicts, disputes, and litigation or quasi-litigation cases, relying solely on state adjudicatory organs is insufficient, and simple reliance on judgment alone does not help fully resolve conflicts and disputes. It is essential to attach great importance to mediation and resolve conflicts and disputes by strengthening mediation.' In the context of building a harmonious society, adhering to and improving China's mediation system has become an inevitable choice for judicial reform. The mediation system should become the core of a diversified medical dispute resolution mechanism. To fully leverage the advantages and functions of mediation in resolving medical disputes, it is necessary to establish and improve a diversified medical dispute mediation mechanism that integrates administrative mediation, mediation by private organizations, and court mediation.

If administrative agencies were to handle all civil and commercial disputes, it would inevitably increase their burden and affect the responsibilities they are supposed to undertake.¹ It is recommended to adopt a multi-faceted mediation model for dispute resolution, and to fully leverage the roles of administrative mediation, judicial mediation, and third-party mediation institutions.²

2.3 Litigation Handling Mechanism

Civil litigation for medical disputes refers to any party in a doctor-patient dispute filing a civil lawsuit with the people's court in accordance with regulations to seek resolution of the medical conflict. Litigation is a judicial remedy for resolving disputes. It is the most authoritative method of resolution and is also the most recognized by patients. However, due to the professional nature of medical cases, litigation consumes a large amount of time, effort, and money. Often, if a party is dissatisfied with the first-instance judgment, they may file an appeal, leading both parties into prolonged legal proceedings. Moreover, since litigation is a high-cost remedy system, any society inevitably considers the calculation of litigation costs and the pursuit of benefits as an important standard for measuring the value of litigation. This serves

as a principle for procedural design and a fundamental goal for reforming the litigation system, and accordingly imposes certain limitations on litigation. This is not only difficult for patients to bear, but even hospitals find it hard to endure the resulting reputational damage. Therefore, litigation is less effective and highly inefficient in resolving medical disputes. In reality, countless disputes are resolved without litigation, through negotiations between the parties, mediation or arbitration by a third party, or other non-litigation methods, which far outnumber those resolved through trial.

Because court judgments in civil litigation resolve disputes through coercion rather than based on the consent of the parties involved, in many cases, after a confrontational struggle, patients may experience significant psychological barriers. It becomes difficult for them to return to the hospital where they previously had a lawsuit, which poses great challenges for further cooperation between doctors and patients. Litigation may make a dispute appear to be settled on the surface, but in reality, it does not eliminate the psychological confrontation between the parties involved. Since the current legal system is still gradually being perfected, judicial corruption, such as the setting or seeking of rents, and lack of judicial independence exist to some extent. This greatly reduces people's expected benefits from judicial remedies, leading them to seek assistance through private means of resolution more often.

3. Utilize the Role of Administrative Mediation in Medical Disputes

3.1 Administrative Mediation

Administrative mediation refers to an administrative act in which administrative authorities, in accordance with legal provisions and within the scope of their administrative powers, mediate specific civil and economic disputes, general illegal acts, and minor criminal cases on the principle of voluntary participation by the parties, in order to encourage the parties involved to resolve the disputes through negotiation.³

Administrative mediation refers to a method and activity for resolving civil disputes and certain administrative disputes, in which the parties involved, under the guidance of state

¹ Du Chengxiu. (2019). Administrative Mediation of Civil and Commercial Disputes and Its Legal Reconstruction. *Rule of Law Society*, (2).

² Ding Suying. (2017). Cognition and Reflection on Mediation of Doctor-Patient Disputes. *Chinese Medical Ethics*, (6).

³ Lin Wenxue. (2008). *Research on the Mechanism for Resolving Medical Disputes*. Law Press, 2008 edition, pp. 122-127.

administrative bodies, voluntarily reach an agreement through friendly negotiation based on the country's legal norms, principles, and spirit, in order to resolve the dispute.¹

Administrative mediation is a dispute resolution mechanism led by administrative authorities, based on national laws and policies, following the principle of equality and voluntariness, and mainly addressing civil and administrative disputes.²

The current administrative mediation procedure has problems of design deficiencies, which are caused by the fact that the existing procedure does not adequately take into account the characteristics of administrative disputes.³

Although there are certain problems with administrative mediation by health authorities. Because there are intricate connections between health authorities and medical institutions, it is difficult for health authorities to fully achieve neutrality. The authority of health administrative departments is not high, and people prefer to opt for litigation rather than go through administrative mediation. Health authorities and medical institutions have an administrative subordinate relationship, and under the influence of departmental protectionism and industry-centric attitudes, it is questionable whether the handling by health authorities can ensure fairness. The involvement of health authorities can serve as a restraining factor for hospitals, as out of courtesy to higher-level supervisory departments, they may be reluctant to openly express their own intentions.

Although the process of building the rule of law has been accelerating and judicial litigation is increasingly accepted by the public, the traditional notion of 'turn to the government when problems arise' remains deeply rooted. Administrative mediation, which is relatively gentle and highly humane, helps properly resolve disputes among close acquaintances and familiar individuals, and is conducive to reconciliation between the parties involved.

Administrative mediation conducted by health administrative departments is also an important approach to resolving medical disputes, playing a significant role in mediating such conflicts. Through the involvement of health administrative departments in mediation, not only can the proactive role of these departments be demonstrated and patient complaints reduced, but medical institutions can also develop a sense of accountability and be more willing to reach a mediated resolution.

The procedures of administrative mediation are more flexible compared to litigation, offering significant time advantages and lower economic costs. In medical dispute administrative mediation, if a patient submits an application, once it is accepted, the patient does not need to wait for a long time.⁴

3.2 The Important Significance of Carrying out Administrative Mediation

Administrative mediation is an important way for administrative organs to practice the principle of serving the people and to build a service-oriented government. It is an important responsibility of administrative organs to serve the overall situation and maintain stability, and it is an essential part of a diversified system for resolving social conflicts and disputes. The Party Central Committee and the State Council attach great importance to administrative mediation work, aiming to improve the social governance system, adhere to and develop the 'Fengqiao Experience' in the new era, and resolve conflicts promptly at the grassroots level and at their nascent stages. Both the Fourth Plenary Session of the 18th Central Committee and the Fourth Plenary Session of the 19th Central Committee clearly proposed establishing and improving a diversified dispute resolution mechanism. The 'Implementation Outline for the Construction of a Rule-of-Law Government (2021-2025)' explicitly proposes strengthening administrative mediation work and promoting the effective coordination of the three mediation mechanisms.⁵ On September 20, 2023, the

¹ Guo Qingzhu. (2011). Research on the Functional Mechanism of ADR in Resolving Social Conflicts—Taking Administrative Mediation as a Research Sample. *Journal of Law*, (32), 371.

² Hu Jianmiao. (2015). *Administrative Law*. Law Press, 2015 edition, p. 493.

³ Liu Xin, Liu Hongxing. (2016). Research on Administrative Dispute Resolution Mechanisms. *Administrative Law Studies*, (4).

⁴ He Meiju, Xu Yuanhong, Liu Cong, Zheng Xiangyue. (2020). A Brief Analysis of the New Mediation Mechanism for Doctor-Patient Disputes in Chengdu—The 'Mediation Dream Team' at Huaxi Dam. *China Health Law*, (3).

⁵ Liao Yong'an, Wang Cong. (2021). A Discussion on the Legislation of Diversified Dispute Resolution Mechanisms in China: Observations and Reflections Based on Local Legislation. *Research on the Modernization of the Rule of Law*, (4).

General Secretary emphasized during his visit to the Fengqiao Experience Exhibition Hall that we must adhere to and develop the Fengqiao Experience in the new era, uphold the Party's mass line, properly handle contradictions among the people, rely closely on the masses, and resolve problems at the grassroots level and in their infancy. The national mediation work conference held in October 2023 required: 'We must improve administrative mediation laws and policies, strengthen the administrative mediation work system, and standardize the scope, procedures, effectiveness, and safeguards of administrative mediation.' The "Fujian Province Regulations on Diversified Dispute Resolution," the "Xiamen Special Economic Zone Regulations on Promoting Diversified Dispute Resolution Mechanisms," and the "Xiamen Municipal Rule of Law Government Construction Implementation Plan (2021-2025)" all provide clear provisions for strengthening administrative mediation work. Given that medical disputes are currently mainly mediated through doctor-patient dispute mediation committees, exploring administrative mediation channels for medical disputes is of great significance.

Under the current legal framework, administrative mediation plays a unique role in resolving medical disputes. Since health administrative departments possess both medical knowledge and a certain level of social credibility, and have industry and professional management functions over medical institutions, they can fully leverage the advantages of administrative mediation to mitigate disputes and promote their resolution if they can mediate quickly, objectively, and fairly.¹

Give full play to the functions of administrative mediation. Under the current legal framework, administrative mediation is also a practical and feasible way to resolve disputes. This is because health administrative departments possess both medical knowledge and a certain level of social credibility, and they also have the authority to manage the industry and professional affairs of medical institutions. By establishing appropriate permanent institutions and conducting fast, objective, and fair intermediary mediation, the advantages of administrative mediation can be

fully utilized to ease disputes and promote their resolution.²

As scholars have noted, not every judicial verdict achieves justice, but every judicial judgment consumes resources. Some medical disputes involve only minor harm or no harm at all, and resorting to litigation would inevitably lead to a significant waste of judicial resources. Compared to court staff, personnel in health administrative departments possess professional knowledge and communication experience, making them better equipped to properly resolve these contentious disputes. Unlike public trials in courts, they place greater emphasis on protecting the privacy of both parties.³

Compared with the judicial mediation system, on one hand, the reality of medical disputes is complex, and many disputes involve the identification and judgment of issues in medical and other professional fields, which may exceed the capacity of general judicial staff. In contrast, health administrative departments are involved in medical-related daily work, and their staff have the relevant knowledge and experience, allowing them to resolve medical disputes more professionally. On the other hand, judicial procedures are cumbersome and lengthy, whereas the work procedures of health administrative departments are relatively more flexible, simple, and practical, making them more conducive to the efficient handling of medical disputes.⁴

There is a large number of lawsuits in society, which has exceeded the capacity of judicial channels and civil mechanisms to resolve, making it unable to meet social needs. At the same time, based on the concept of a service-oriented government, administrative authorities must proactively respond to this situation.⁵

In the 1970s, the United States experienced an

¹ Shi Zhenfu, Li Guiling, Peng Yang, et al. (2007). Difficulties and Reflections on Handling Medical Disputes in Hospitals. *Chinese Hospital Management Journal*, 23(4), 270-272.

² Zheng Li, Jin Ke, Yan Xueqin, et al. (2006). Analysis of 111 Cases of Medical Disputes. *Chinese Hospital Management Journal*, 22, 250-252.

³ Gong Wenjun. (2015). Administrative Mediation of Medical Disputes: Significance, Problems, and Improvement. *Journal of Yunnan Administrative College*, (2), 155-159.

⁴ Wang Yue. (2018). Analysis of the 'Regulations on the Prevention and Handling of Medical Disputes'. *Chinese Hospital Director*, (20), 84-86.

⁵ Fan Yu. (2008). A Preliminary Discussion on Issues of Administrative Mediation. *Guangdong Social Sciences*, (6).

explosion of medical lawsuits. Faced with an increasing number of medical dispute cases, the U.S. began attempting to use administrative health courts to handle disputes.¹ The main highlights of the Health Court are: the administrative officer determines the scope and amount of compensation for medical accidents based on a fixed compensation schedule, eliminating the jury and thereby reducing the length of tort litigation procedures, which to some extent lowers legal fees and reduces the financial burden on the parties involved. By establishing a system for publicly sharing medical malpractice information, patients' rights are better protected. It requires that in the event of medical malpractice, the reasons must be explained to the patient, compensation negotiated, and an apology issued, which in practice strengthens doctor-patient communication and is also a form of respect.

3.3 Laying a Practical Foundation for the Administrative Mediation of Medical Disputes

From the perspective of the mediator, most administrative staff in health authorities have professional medical knowledge, which makes it easier to distinguish right from wrong. Health authorities have supervisory and administrative powers over medical institutions and can punish their illegal activities. These are the advantages of health authorities acting as mediators.²

It has provided strong support for the in-depth promotion of litigation source governance, the effective improvement of the legal level of conflict and dispute prevention and resolution, and the comprehensive deepening of the development of a world-class international business environment. All units have consistently adhered to a people-centered approach, raised political awareness, strengthened a sense of responsibility, enhanced organizational leadership, carefully planned and arranged measures, and taken effective actions to give full play to the important role of administrative organs in resolving disputes and maintaining social harmony and stability.

According to relevant laws and regulations, administrative authorities shall establish a coordination mechanism between

administrative mediation, people's mediation, and judicial mediation, promote the organic connection between administrative mediation and arbitration, administrative rulings, administrative reconsideration, and litigation, and legally carry out work such as identifying, reporting, diverting, collaboratively resolving, and maintaining stability for major administrative dispute risks that may arise in key areas. Administrative authorities shall specify the internal departments responsible for handling administrative mediation, or establish specialized mediation agencies responsible for the department's administrative mediation work. People's governments can take the lead in establishing, or jointly establish with relevant administrative authorities, a mediation center or a diversified dispute resolution center, responsible for administrative mediation within their administrative region or relevant fields.

The matters that administrative organs should mediate include civil and commercial disputes related to administrative management between citizens, legal persons, or other organizations that are mediated by administrative organs in accordance with the law; administrative disputes between citizens, legal persons, or other organizations and administrative organs arising from administrative compensation, administrative indemnity, and the exercise of discretionary powers by administrative organs in accordance with the law; and other disputes and controversies that can be mediated according to law. When administrative organs discover disputes and controversies in the course of performing their duties, they shall inform the parties that they can apply for administrative mediation.

3.4 Requirements for Effectively Handling Administrative Mediation of Medical Disputes

Carry out administrative mediation in accordance with the law, establish and improve a diversified mechanism for resolving conflicts and disputes, strictly conduct administrative mediation in accordance with the law, and continuously improve the quality and effectiveness of administrative mediation in medical disputes.

Improve system construction. Conduct a comprehensive review and evaluation of the current administrative mediation system, and carry out work such as legislation, revision, and abolition as appropriate. At the same time,

¹ Hong Ying, Xia Meng. (2014). The Mechanism for Resolving Medical Disputes in the United States and Its Implications. *China Judiciary*, (9), pp. 93-96.

² Wang Weijie. (2009, May). Building a mechanism to mediate and resolve medical treatment disputes. *Chinese Journal of Hospital Management*, 25(5).

thoroughly review administrative mediation matters, clarify the basis for administrative mediation, implement administrative mediation responsibilities, actively promote the construction of supporting administrative mediation systems, and improve the administrative mediation system, using regulations to guide and standardize the practice of administrative mediation.

Clarify the division of responsibilities. Administrative agencies should effectively fulfill their duties of leading, managing, and guiding administrative mediation work, establish a joint meeting system for administrative mediation, improve the accountability system for administrative mediation, actively report to the Party committees and governments, and seek support for their work. Administrative agencies at all levels are the main bodies responsible for administrative mediation and should perform their duties in accordance with the law, refine the scope of administrative mediation, standardize administrative mediation procedures, strengthen the organization and team building of administrative mediation, ensure the necessary working conditions and funding for administrative mediation, and provide parties with higher-quality and more efficient administrative mediation services.

Focus on key areas. Currently, disputes and conflicts are prone to occur frequently in key areas such as the economy, finance, labor relations, ecological environment, land acquisition and demolition, traffic safety, real estate, education, healthcare, and emerging business formats. These disputes have complex causes, wide-ranging involvement, and heavy mediation tasks. In response, relevant departments should take the initiative according to the principle of 'whoever is in charge bears the responsibility,' actively fulfill their duties, strengthen and take responsibility, comprehensively reinforce the standardized construction of administrative mediation organizations in key areas, routinely carry out various forms of targeted inspections and special inspection actions, timely grasp potential risks, conduct in-depth analysis and judgment of their characteristics and patterns, and adopt targeted preventive and resolution measures to ensure precise prevention and effective resolution, strictly preventing the escalation of conflicts and disputes. For major administrative disputes that may arise from significant projects

and key enterprises, work such as risk identification, reporting, diversion, coordinated resolution, and stability management should be carried out in accordance with regulations, lawfully and promptly.

Strengthen coordination and linkage. Deepen the development of mechanisms for diversified resolution of conflicts and disputes. It is necessary to adhere to early intervention and address minor issues, strengthen resource coordination, widely guide and mobilize social forces to participate in dispute resolution, and actively handle disputes referred by the 'one-stop' diversified dispute resolution centers at different levels. Improve and establish coordination mechanisms between administrative mediation, people's mediation, and judicial mediation, promote the organic connection of administrative mediation with arbitration, administrative rulings, administrative reconsideration, and litigation, complement the advantages of various dispute resolution methods, form joint efforts, advance litigation source governance, and resolve disputes substantively at the local level.

Strict supervision and assessment. Include administrative mediation work in the evaluation of public security construction, and link the assessment results to annual performance evaluations. Administrative organs should strengthen the supervision and assessment of administrative mediation organizations and mediators, and enhance work guidance to ensure that all tasks are properly implemented. Administrative organs at all levels should establish a reporting system for statistical analysis of administrative mediation work, analyzing the number of administrative mediation cases, types of disputes, outcomes, and other relevant information each quarter. If the responsibility system for administrative mediation is not implemented or the investigation and resolution of conflicts and disputes are ineffective, the competent authority shall handle it seriously in accordance with regulations, discipline, and law.

Demonstrate professionalism. Staff responsible for administrative mediation of medical disputes should have some experience in mediation. Administrative mediation is the ultimate test of the administrative department's

wisdom in resolving conflicts.¹ When handling medical disputes, administrative mediation staff not only need to be familiar with relevant laws, regulations, and medical knowledge, but also need to possess good mediation skills and experience. They must be able to listen to and understand the opinions and demands of both medical staff and patients, grasp the underlying causes of disputes, and coordinate both parties to reach a reasonable resolution. Therefore, in order to more effectively address the effectiveness of administrative mediation, it is necessary to further improve the relevant legal system, clarify the enforcement authority of administrative agencies, and provide parties with more channels to effectively safeguard their legal rights. To some extent, this “Opinion” does address the effectiveness issues that have troubled administrative mediation and carries certain positive significance.²

During the process of administrative mediation, it is necessary to further consider reasonable demands on a legal basis. Therefore, reference should be made to the future national-level unified legislation on administrative mediation, establishing a dynamic connection between administrative mediation and administrative law enforcement, arbitration, litigation, and other procedures, as well as improving the relevant systems and mechanisms of administrative mediation to prevent malicious exploitation and the loss of the advantages of administrative mediation.³ At the same time, during the administrative mediation process, full consideration should be given to social ethics, moral standards, and good customs, ensuring that the outcome of the mediation meets the expectations and requirements of the people.⁴

The advantages of administrative mediation

better meet the needs of resolving medical disputes. The relationship between administrative mediation and judicial litigation should be handled correctly, fully expanding the scope of administrative mediation in resolving medical disputes, and giving full play to the positive role of administrative mediation.⁵

4. Exploring Approaches to Effectively Conduct Administrative Mediation of Medical Disputes

4.1 Establish a Municipal-Level Medical Dispute Coordination and Handling Center

Medical disputes are numerous and complex, requiring dedicated and professional staff to handle them. Therefore, full-time mediators should be appointed to manage administrative mediation cases involving medical disputes. At the same time, medical dispute mediation work demands a high level of competence from mediators, who need knowledge in multiple areas such as medicine, law, and sociology. Thus, when selecting mediators for medical dispute administrative mediation committees, it is important to include personnel with professional knowledge or relevant work experience in law, medicine, or sociology. Furthermore, to ensure the effective implementation of administrative mediation, the professional skills of mediators should be strengthened through training, and a dedicated training and evaluation system should be established to build a team of outstanding administrative mediators.⁶

In order to make the medical safety supervision system more scientific, institutionalized, standardized, and systematic, comprehensively improve the quality of medical services, ensure medical safety, and prevent and reduce medical disputes, a Municipal Medical Dispute Coordination and Handling Center has been established. Members of the Coordination and Handling Center are dispatched from tertiary public hospitals across the city, and the duty personnel are jointly supervised and managed by the Medical Administration Department of the Health Commission and the hospitals. The

¹ Wang Bintong. (2022). The Governance Logic and Institutional Supply of the Large Mediation System from the Perspective of the “Fengqiao Experience”. *Folk Law*, (1).

² Zeng Yan. (2021). The Origins, Development, and Breakthroughs of Challenges in Administrative Mediation in China. *Journal of Shenyang University of Technology (Social Science Edition)*, (2).

³ Hunan Provincial Department of Justice. (2022). Research on the Administrative Mediation Mechanism—Taking the Administrative Mediation Work of Hunan Province as an Example. *People’s Mediation*, (12).

⁴ Diu Xiaodong, Xi Xiaofeng. (2021). On the Demands and Path Optimization of Environmental Administrative Mediation Mechanisms under the Complexity of Environmental Disputes. *Environmental and Sustainable Development*, (3).

⁵ Zhang Yupeng. (2020, July). Research on Administrative Mediation in the ‘Regulations on the Prevention and Handling of Medical Disputes’. *Chinese Health Law*, 28(4).

⁶ Yang Yuying, Guo Silun. (2023, May). The Application Dilemmas and Suggestions of the Administrative Mediation System for Medical Disputes. *China Health Law*, 31(3).

Coordination and Handling Center can bring together resources and expertise from hospitals across the city to jointly research, learn, handle, and resolve medical disputes, guiding patients to resolve medical disputes outside medical institutions. By establishing the Municipal Medical Dispute Coordination and Handling Center, a medical quality and safety management system, evaluation system, and management regulations are created to prevent and reduce the occurrence of medical disputes.

First-contact responsibility system. Establish a 'one-stop' reception system and implement first-contact responsibility. Personnel at the coordination center should carefully listen to the issues raised by petitioners according to the principles of service, coordination, legality, and convenience, confirm the medical institutions related to medical disputes, and guide petitioners in accurately filling out the medical dispute complaint registration form; for disputes that require handling by medical institutions, on-duty personnel should immediately notify the relevant medical institution of the medical dispute after receiving the petition. Upon receiving the notification from the coordination center, the responsible personnel of the medical institution handling the dispute must arrive at the coordination center within the specified time to address the medical dispute.

Communication and coordination system. Educate the parties involved about the laws and procedures for handling medical disputes, and inform complainants that medical disputes can be resolved through various legal channels such as doctor-patient negotiation, administrative mediation, mediation by the Medical Dispute Management Committee (third-party), and legal litigation; guide complainants in applying for medical accident appraisal; coordinate with the Municipal Medical Dispute Management Committee to jointly participate in on-site comprehensive handling of major and serious medical disputes to prevent the situation from worsening.

Investigation and Evidence Collection System. During the handling of medical disputes, for investigation, evidence collection, doctor-patient communication, and other tasks arranged by the coordination center according to work requirements, all medical institutions must actively cooperate, provide the coordination center with truthful information about the patient's condition and treatment process,

promptly supply medical records and other relevant materials, assist in the necessary investigations, and must not delay or evade without valid reasons.

Statistics and Reporting System. Medical disputes received through visits are to be compiled and reported in three forms: monthly, semi-annual, and annual. Regular reports should include the number of disputes, response times, handling methods, and outcomes for each medical institution (internal reports are also submitted to the committee leadership and relevant department heads). This helps each medical institution promptly identify issues in the handling of medical disputes.

Petition Transfer and Archive Management System. The Coordination Center shall, in accordance with relevant laws and regulations, carefully handle the transfer and response of various medical dispute complaints, such as letters and visits from the public and the Mayor's Hotline, within the stipulated time. The archival materials shall be stored and managed by year and by institution.

Coordination mechanism. Strengthen cooperation and coordination with the Municipal Medical Dispute Mediation Committee. Enhance collaboration with the municipal public security authorities and the Medical Accident Appraisal Office of the Municipal Medical Association, guiding the patients in a timely manner through medical accident appraisal and medical damage appraisal to further clarify responsibility for the incidents.

Division of labor and cooperation. Effectively raise awareness, strengthen organizational leadership, and send relevant personnel to participate in the rotation work of the coordination center as required. Medical institutions are the main bodies responsible for preventing and handling medical disputes, while health administrative departments are the supervisory bodies that guide and oversee medical institutions in preventing and handling doctor-patient disputes.

4.2 Establishment of Institutions for Administrative Mediation of Medical Disputes

After a medical dispute occurs, in order to have the patient choose administrative mediation as a way to resolve the dispute, it is necessary to dispel their doubts. Health administrative departments are responsible for supervising

medical institutions, and having them act as the mediator in administrative mediation may cause patients to question whether the health administrative department can remain neutral and fair during the mediation, leading to a lack of trust.¹ In practice, neutral third-party organizations, such as the People's Mediation Committee for Medical Disputes, are more favored by patients. Therefore, in order to reduce the parties' doubts about the health administrative departments being unable to remain impartial due to 'being both the player and the referee,' it is necessary to clearly delineate organizations specifically responsible for administrative mediation of medical disputes.

Determine the organizational setup for administrative mediation of medical disputes. Establish a specialized administrative mediation body within the health administrative authority, staffed with professionals in clinical medicine and pharmacy, insurance specialists, experts in health law, senior retired judges, representatives from bar associations, representatives from consumer associations, and other personnel. Clearly define their responsibilities, strengthen their sense of accountability, and ensure the professional, lawful, and reasonable resolution of various medical disputes.

Standardize the procedures for administrative mediation of medical disputes and determine the time limits for such mediation. Given that China still lacks specific legal provisions on administrative mediation procedures, health administrative departments at all levels should balance the conflict between the convenience of parties seeking administrative resolution and procedural standardization, clarify specific requirements and procedures for acceptance, review, and mediation stages, and, in cases where mediation is prolonged and harms the parties' interests, clearly set time limits for mediation to ensure its efficiency and fairness.

Ensure the neutrality of administrative mediation of medical disputes and enhance the social recognition of administrative mediation. The neutrality of administrative mediation in medical disputes is key to its success. Firstly, the mediator team should be strengthened, the concept of fairness reinforced, medical and legal

knowledge enhanced, and mediation and communication skills improved; secondly, institutional management should be strengthened, implementing a hearing system and recusal system for administrative mediation of medical disputes to avoid subjective arbitrariness by health administrative departments, ensure the fairness of mediation outcomes, and improve the fairness and authority of administrative mediation in medical disputes; thirdly, health administrative authorities should communicate and promote more to the public, breaking the outdated notion of "father versus son" in people's minds.

4.3 Administrative Mediation Agreements Need to Have Enforceable Power

Article 46 of the Regulations stipulates various remedies, but the Regulations clearly state that administrative mediation should yield to litigation and people's mediation. If administrative mediation conflicts with litigation or people's mediation, it should be immediately terminated or not accepted.² This further limits the role of administrative mediation in handling medical disputes, and to a certain extent, undermines the applicability of administrative mediation in medical conflicts.

The lack of legislative procedures has led health administrative authorities to often set specific procedures on their own, making it difficult to ensure the fairness and standardization of mediation, which results in parties questioning the outcome of administrative mediation and, in turn, affects the credibility of administrative mediation.³

Regarding the issue of the neutrality of administrative mediation bodies, some scholars have proposed 'establishing a medical dispute mediation committee mainly composed of health administrative officials and judicial administrative officials.' This approach involves coordination between two agencies, which may affect the efficiency of administrative mediation.⁴

Under the current laws in our country,

¹ Wang Zhixin. (2018). Dilemmas and Solutions of Traditional Medical Dispute Resolution Mechanisms in a Risk Society. *Journal of Jinzhou Medical University (Social Science Edition)*, (3).

² Zhang Yupeng. (2020). Research on Administrative Mediation in the Regulations on the Prevention and Handling of Medical Disputes. *China Health Law*, (4).

³ Wu Dan. (2017). A Study on the Administrative Mediation System for Medical Disputes in China. Heilongjiang University, 47-48.

⁴ Chen Meiya. (2006). Comparative Study on Extrajudicial Mechanisms for Medical Dispute Resolution. *Journal of Law and Medicine*, (3), 181-190.

administrative mediation agreements are not enforceable. Even if health administrative personnel perform their duties to mediate and both the medical staff and patients reach an agreement, the mediation agreement has no binding force if one party reneges, making the administrative mediation process seem redundant. The professional and efficient process, therefore, becomes ineffective. Specifically, in order to make an administrative mediation agreement operational, the parties can apply to the court for judicial confirmation of the agreement's validity in accordance with the law. If one party refuses to perform or does not fully perform, the other party can apply to the people's court for compulsory enforcement of the administrative mediation agreement. The judicial confirmation process is relatively short and does not significantly increase the parties' time costs, making it a good way to give full play to the role of administrative mediation. The most thorough solution would be to grant corresponding enforceability to the mediation agreement from the moment it is reached, ensuring the effectiveness of administrative mediation and enhancing the parties' willingness to choose administrative mediation.¹

It is necessary to pay attention to the validity of administrative mediation agreements in medical disputes. Some scholars in academia have proposed directly granting administrative mediation agreements the same enforceability as the decisions, awards, or arbitration rulings reached through administrative reconsideration, administrative adjudication, or administrative arbitration for dispute resolution.²

The lack of enforceability of administrative mediation agreements is also a reason why few parties choose administrative mediation to resolve medical disputes in practice.³ Therefore, in the future development and exploration of administrative mediation in medical disputes, attention can be paid to the effectiveness of administrative mediation agreements, so that

parties have greater trust in administrative mediation, and health administrative departments are more motivated, truly achieving the goal of resolving medical disputes through a non-litigation mechanism.

The so-called 'comprehensive mediation' work system essentially refers to a structure in which, under the leadership of party committees and governments at various local levels, departments such as political and legal affairs, comprehensive governance, stability maintenance, and letters and visits work together collaboratively, and various sectors of society participate widely, establishing a comprehensive mediation mechanism that includes multiple mediation methods such as people's mediation, administrative mediation, and judicial mediation. In this work system, the government-led comprehensive mediation institution serves as the core and plays an important role. This institution should be composed of professionals with legal knowledge and mediation skills, responsible for coordinating mediation work and liaising with relevant departments and units.⁴

Medical institutions are the primary entities responsible for preventing and handling medical disputes, while health administrative departments are the regulatory bodies that guide and supervise medical institutions in managing and resolving doctor-patient disputes. Medical institutions should further strengthen their management of medical complaints, implement the long-term mechanism for preventing and handling medical disputes which includes 'internal hospital communication and coordination, emergency response linkage, people's mediation of medical disputes, medical liability insurance, and social medical assistance' as its main components, and actively work to resolve conflicts and disputes.

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