

On the Historical Development of Medical Alternative Dispute Resolution in the US: Lessons for Taiwan

Chih-Ming Liang

Graduate Institute of Health and Biotechnology Law, Taipei Medical University
Email: cliang4@tmu.edu.tw

Abstract

This paper explores the experience of medical alternative dispute resolution in the US. Part I lays out the background and research question. Part II introduces the historical background of medical malpractice crisis and the two generations of policy responses to the crisis. Part III further examines the development and evolution of four of the most widely used medical ADR options, including pre-trial screening panels, arbitration, mediation, and communication-and-resolution programs. The paper discovers some of the most promising and anticipated medical ADR options and policy proposals, including interest-based mediation and communication-and-resolution programs, which emphasize such ideas as repairing patient-physician relationships, promoting patient safety, ensuring full disclosure, expressing timely sympathy and apology, committing to prevention efforts, and making early offer of compensation. Based on these observations, Part IV reflects on the current status of medical alternative dispute resolution in Taiwan, and points out that limiting litigation exposure remains the dominant risk management philosophy of Taiwan's healthcare organizations, which constitutes a significant barrier to the local development of communication-and-resolution type of reforms.

Key Words: medical alternative dispute resolution, pre-trial screening panels, arbitration, mediation, communication-and-resolution programs (CRPs)