

UNIVERSITI TEKNOLOGI MARA

**IMPLEMENTING MEDIATION AS
AN ALTERNATIVE MEDICAL
DISPUTE RESOLUTION METHOD
IN THE MALAYSIAN PUBLIC
HEALTHCARE SETTING:
A FEASIBILITY STUDY**

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ABSTRACT

While ineffective communication has always been the main factor for the genesis of a medical dispute, improved and effective communication skills has a major role in preventing it. The number of medico legal complaints has shown a rising trend over the past few years. With the intention to prevent medical litigation, the Ministry of Health Malaysia has established an alternative method to resolve these complaints involving the public healthcare facilities, i.e. via *ex gratia*. Nevertheless, statistics have shown a gradual rise in the trend of the newly filed cases, and a 5-fold increase of *ex gratia* rejection percentage in 2019. Also, in some cases, patients still suffer from unresolved grief. While mediation has gained its spot as an alternative medical dispute resolution method in Singapore, it is still not utilised in Malaysia, especially in the public healthcare setting. Hence, this descriptive, comparative study examined the current methods used in the management of medical disputes in the Malaysian public healthcare setting, the mediation process and its advantages and disadvantages, as well as the feasibility of mediation as an alternative medical dispute resolution method in the Malaysian public healthcare setting. A doctrinal research approach which comprised of library-based research was implemented. This study described, explored and analysed the application of several laws, policies and guidelines, as well as taking other factors including technical, financial and ethical factors into consideration. Subsequently, the study found that there is substantial need to improve the current medico-legal complaint management system, and mediation is the most suitable approach as it offers settlement of both financial and non-financial issues. Nevertheless, there were challenges identified that could halt the applicability of mediation. Thus, to ensure the feasibility of the implementation of mediation as an alternative medical dispute resolution in the Malaysian public healthcare setting, several recommendations have been offered in this study, namely creating awareness, capacity building and policy changes. Apart from that, the study also suggested future research to be conducted and to utilise the recent Temporary Measures for Reducing the Impact of COVID-19 Act 2020 as a platform to kickstart medical mediation as an alternative medical dispute resolution method in the Malaysian public healthcare setting.

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CHAPTER ONE

INTRODUCTION

1.1 Introduction

Medical related injuries and poor patient outcome may be inevitable during the course of medical treatment. While poor outcomes might be anticipated, medical related injuries in some instances may unexpectedly occur. As a consequence to that, patients and relatives might experience anxiety and fear. Subsequently, most of them would seek for explanation on how the incident occurred, what the prognosis will be, as well as the cost of further treatment that they will have to bear. When a situation is poorly handled because of ineffective communication and inadequate information, further anxiety might build up and thus, increasing the tension between the doctor-patient relationship. Ultimately, heightened dissatisfaction and anger might spur a dispute between patients and relatives towards the health professionals involved. A dispute, which is defined as a conflict or a controversy (Black, 1990), may take the form of dissatisfaction, a complaint or worse, a litigation suit. Where trust is deemed as an essential component in maintaining the integrity of a relationship, disputes take place when trust is shattered (Pellegrini, 2017). In the context of healthcare, medical disputes are often contributed by poor communication (Amirthalingam, 2017). In the event of ineffective communication or miscommunication, the outcome can be disastrous, resulting in patient complaints and medical litigations. In 2016, about 1 in 5 medical disputes investigated by the Singapore Medical Council (SMC) were found to be preceded by poor doctor-patient communication (Lai, 2016).

A study was conducted in Singapore in 1998 to describe the reasons of why patients complained. The study revealed that almost 30% of the main reason was in relation to the attitude and conduct of doctors, and about 8% was due to communication skills (Lim et al., 1998). Nevertheless, in a more recent study conducted in China, aimed to among others, analyse the factors influencing medical disputes in the hospitals, revealed that 24% of disputes occurring in tertiary hospitals were due to inappropriate communication (Zeng et al., 2018). These studies highlighted that communication plays