

Notes on patient compensation system suggestion

To the Editor,

We have read with great interest the letter to the editor entitled "An alternative malpractice system suggestion for Turkey: Patient compensation system" by Olcay et al. (1) that was published in *Anatolian J Cardiol* 2015; 15: 775-6. It is our opinion that the patient compensation system (PCS) that was proposed to prevent healthcare staff burnout, defensive medical practices, and increased healthcare expenditures at first appears convenient in general terms. According to our previous study in which judicial issues experienced by emergency physicians were examined, we determined that 57.8% of emergency physicians were complained to patient communication units and 14.2% of them were sued for medical malpractice. Furthermore, we observed that clinical decisions of 41.5% of emergency physicians were affected by previously experienced judicial and administrative inquiries (2). With respect to these studies, we believe that some legal points need to be considered while designing PCS, which is deemed beneficial to conduct healthcare services.

First, PCS cannot alter the physicians' responsibilities within the context of penal law and disciplinary law. It would be useful to mention that such a compensation system cannot concern the physicians' penal and administrative/disciplinary responsibilities but can concern their civil (pecuniary) responsibilities. Moreover, regarding the scope of PCS, it would be appropriate to clarify the compensation matter of "moral damages" alongside "material damages", arising from malpractice.

Besides, it appears that the PCS board would comprise healthcare professionals and is projected to function as part of PCS has been designed as a relatively autonomous "administrative" board. The organization, powers, and activities of such a board should be regulated by the "law" in accordance with the Principle of Legality of the Administration that is provided by Article 123 of the Constitution.

Legislative regulations concerning the compensation board must comply with the constitutional principles and rules. In this context, because the board authorized to pay compensation would not be regarded as a "judicial organ" and its decisions as "judicial decisions"; it would not be legally possible for this board to be organized and authorized in a manner that it would replace "courts"/"judicial review", even for merely a specific field. This system can be expected to form a facultative alternative rather than a compulsory substitution to a judicial review. What needs to be currently stressed is that judicial review cannot be excluded against the board's decisions. Hence, according to Article 125 of the

Constitution stating that "Recourse to judicial review shall be available against all actions and acts of administration.", it will be clearly unconstitutional to enact that decisions of a compensation board, considered to be "administrative", would be definitive and cannot be sued.

Moreover, composing additional regulations should be considered for the time limit to bring actions, such as providing that application to the board shall stop the time limit. Furthermore, Article 129 of the Constitution, which states "Compensation suits concerning damages arising from faults committed by public servants and other public officials while exercising their duties shall be filed only against the administration in accordance with the procedure and conditions prescribed by law, as long as the compensation is resorted to them." should be considered while making legislative regulations with respect to the pecuniary liability of physicians who have a "public official" status.

As it can be observed, an array of legislative regulations and amendments are required to realize PCS. However, in that case, it is clear that such a system would be completely different from the one proposed and would deviate from its original goals when the abovementioned points are to be considered. Moreover, this subject has some other dimensions that may lead to some professional and legal issues that require careful attention. In conclusion, PCS may initially make sense by providing hope of minimizing actions for compensation resulting from malpractice; however, the authors of this study regard it as a proposal that is not so easy to implement in the short term because the "conciliation procedure", with which PCS has some similarities and that had been promulgated in 2011 (3) concerning the compensation for damages arising from the health practices, was abrogated in 2014 (4).

Afşin Emre Kayıpmaz, Orçun Çiftçi*, Cemil Kavalcı, Serdar Yılmaz¹, Haldun Müderrisoğlu*

Departments of Emergency and *Cardiology, Faculty of Medicine, Başkent University, Ankara-Turkey

¹Department of Administrative Law, Faculty of Law, Ankara University, Ankara-Turkey

References

1. Olcay A, Güler G, Güler E. An alternative malpractice system suggestion for Turkey: Patient compensation system. *Anatol J Cardiol* 2015; 15: 775-6. [\[CrossRef\]](#)
2. Kayıpmaz AE, Kavalcı C, Güllalp B, Kocalar UG, Giray TA, Yeşilağaç H, et al. Investigation on legal problems encountered by emergency medicine physicians in Turkey. *PLoS One* 2015; 10: e0127206.
3. Decree Having the Force of Law numbered 663, article 24. *Official Gazette*; 02.11.2011-28103-bis. Available from: URL: <http://www.resmigazete.gov.tr/eskiler/2011/11/20111102M1-3.htm>
4. Law numbered 6514, article 2. *Official Gazette*; 18.01.2014-28886. Available from: URL: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140118-1.htm>

Address for Correspondence: Dr. Afşin Emre Kayıpmaz
Başkent Üniversitesi Tıp Fakültesi, Acil Tıp Anabilim Dalı
Fevzi Çakmak Cad. No: 45
Bahçelievler, Çankaya, Ankara- *Türkiye*
Phone: +90 312 203 68 68 Fax: +90 312 223 73 33
E-mail: aekayipmaz@baskent.edu.tr



©Copyright 2016 by Turkish Society of Cardiology - Available online
at www.anatoljcardiol.com
DOI:10.14744/AnatolJCardiol.2016.6913

Author's Reply

To the Editor,

We are very well aware of the fact that the changing current malpractice system in Turkey will be very hard and exhausting when current political, legal, and sociological perspectives are considered. Not assuming any responsibility is a tradition in the Turkish bureaucracy, and this carelessness can only be overcome by interdisciplinary work and education. Fear of penal, administrative, and pecuniary (moral/material) punishment adds a heavy psychological burden on physicians and prevents them from practicing sound clinical medicine. A physician who is held back by the multilayered punishment threat cannot normally function. When an upper respiratory tract infection treatment is in question, a multilayered punishment structure is tolerable by physicians; however, every critically ill patient deserves a fearless doctor's treatment. According to our study, which investigated the defensive medicine practice in 250 Turkish cardiologists, 11.6% were sued for malpractice claims, 6.9% of the sued cardiologists were given financial compensation fines, and 3.4% of the sued cardiologists were given an imprisonment sentence because of negligence. From the surveyed cardiologists, 132 (52.8%) reported that they had revised their practice patterns because of the fear of litigation and 232 (92.8%) reported that they would like to see implementation of our new proposed PCS instead of the current malpractice system (*author's unpublished data*). Legal claims of citizens are universal constitutional rights; however, preliminary results of our study show that a significant percentage of cardiologists unnecessarily appear in courts and change their practice patterns. Current malpractice laws are undermining many citizens with severe diseases from obtaining effective medical treatments.

Because of limited space and need for a larger body of experts to implement PCS, we had just discussed the main frame and purpose of PCS in our previous letter. Implementation of our proposed PCS requires an interdisciplinary study between doctors and lawyers and a thorough legal structure that provides patient safety and safeguards physician from unnecessary stress and exaggerated punishments. The authors' suggestions are important to avoid previous mistakes and to design a strong and functional PCS, which will be under the title of "alternative dispute resolution methods." Compared to the developed and most developing countries, it can be reported that it is too late for Turkey to have such functioning bodies to provide alternative dispute resolu-

tions and arbitration services that are alternatives to the court system. We envisage PCS as an "compulsory arbitration board," which is a stronger body than the previously abrogated "conciliation board." A stronger PCS board would regulate penal, administrative/disciplinary, and pecuniary responsibility areas. Moral and material damages will also be resolved under a single entity in PCS. Regarding the patients' right to recourse to judicial review, a strong legal foundation can be established, and jurists who are expert in health law will be required to be part of PCS to provide an independent, impartial, and compulsory arbitration board. The foundation of PCS can be laid from similar compulsory arbitration boards in Turkey, and jurists who are experts in health law need to be educated in the medical law division of law faculties. Patients can leave compulsory arbitration board and follow ordinary court procedures as a basic constitutional right but courts generally accept autonomous arbitration court's decisions.

We believe that PCS is a stronger body than the previously abrogated "conciliation procedure" and its mainframe structure and purpose should not be changed by auxiliary regulations. Although the PCS system includes legal and structural deficits, we believe that discussing this subject will increase awareness, which might be a good start for preventing physicians from discontinuing traditional and solution-targeted medical practice. As distinct from comments of lawyers, the involvement of physicians similar to us who experience this problem in person would help in the development of new systems. We thank the authors for their suggestions, which can help the implementation of our proposed PCS.

Ayhan Olcay, Gamze Babür Güler¹, Ekrem Güler¹, Kıvanç Yalın
Department of Cardiology, Bayrampaşa Kolan Hospital, İstanbul-Turkey
¹Department of Cardiology, İstanbul Medipol University, İstanbul-Turkey

Address for Correspondence: Doç. Dr. Ayhan Olcay
Bayrampaşa Kolan Hastanesi, Kardiyoloji Bölümü,
İstanbul- *Türkiye*
E-mail: drayhanolcay@gmail.com

Electrical storm might be the initial presentation of arrhythmogenic right ventricular cardiomyopathy

To the Editor,

We read with great interest the paper by Özcan et al. (1) entitled "Catheter ablation of drug refractory electrical storm in patients with ischemic cardiomyopathy: A single center experience," published as Epub ahead of print in *The Anatolian Journal of Cardiology* 2015. They aimed to evaluate the safety and efficacy of catheter ablation in a relatively large cohort with the electrical storm. We congratulate the authors for the successful clinical management of these patients.