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Mandatory Mediation as a Means to Address the Medical Litigation Crisis in the South African Health Sector

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Abstract

Background

The cost of settling medical negligence claims in the South African (SA) public health sector has spiralled out of control and it is an issue of great concern. It is well known that the cost of litigation is the major contributor. The advantages and benefits of mediation as compared to litigation suggests that mediation would benefit state hospitals with medical negligence cases. Studies looking at whether mandatory mediation would be morally justifiable could not be identified.

Objectives

This research aims to normatively assess whether mediation ought to be a mandatory process when disputes with potential for medical litigation arise in the SA health sector.

Methods

The study is based on desktop and library-based research. No new data is collected or analysed and the research involves no human participants. The discussions involve the ethical analysis of findings from the literature.

Results

With the use of the theory of deontology it is argued that there is a categorical imperative to ensure access to health care, life and dignity; and that the current medicolegal climate impedes this access. The medical litigation crisis and its impact on the health care system, bring forth further infringement on the constitutional rights of the people of SA. Mediation would be considered morally justifiable, according to utilitarianism because it addresses the harm brought about by litigation. Mediation by addressing medical negligence disputes without negatively impacting on the society at large would be considered morally acceptable according to ubuntu.

Conclusion

It would be morally permissible to institute as a mandatory step prior to litigation in the SA health sector.