

Preventing medical malpractice and compensating victimized patients in China

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Propositions to the dissertation

Preventing Medical Malpractice and Compensating Victimised Patients in China
A Law and Economics Perspective

by Xiaowei Yu

- 1) In light of corrective justice, the malpractice system under Chinese tort law is unfair because it imposes liability solely on the hospital even when the doctors involved are negligent, because it sometimes impose liability not based on fault on the part of providers but the hospital's deep pockets (equitable liability), and because it provides for damages lower than what victims suffer.
- 2) Medical malpractice liability does have a deterrent effect and the deterrent benefits of the malpractice system are likely to outweigh the costs.
- 3) Regarding the prevention of medical malpractice, many aspects of the tort system in China embody the features of optimal deterrence, whereas regulation concerning the prevention of medical malpractice is insufficiently enforced in China.
- 4) As far as compensation for iatrogenic injuries is concerned, the tort system in China is not compatible with the goal of optimal compensation due to slow and insufficient compensation, and alternative compensation instruments are either under-developed (medical liability insurance and first-party insurance) or provide rather limited coverage (social security).
- 5) One of the major reasons that Chinese victims of medical malpractice often resort to violent *Yi Nao* incidents is that they do not trust the legal remedies provided by the state.
- 6) Carefully designed legal remedies in the health care sector that pay attention to both deterrence and compensation may ease the tension between dissatisfied patients and health care providers and promote social harmony.
- 7) Life is priceless and we cannot sell and buy human beings in the market. However, for the sake of primary accident cost avoidance, the value of life should be measured.
- 8) Efficiency is not the sole policy goal of law, but it is an important and legitimate one. We may have to accept a certain loss of efficiency if we want to achieve justice, but a completely inefficient regime is likely to be unjust.
- 9) An interdisciplinary approach to the study of law is interesting and challenging, which calls for close collaboration and interaction between lawyers and social scientists.
- 10) "The life of the law has not been logic; it has been experience." — Oliver Wendell Holmes Jr.