

Preventing medical malpractice and compensating victimized patients in China

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VALORISATION ADDENDUM

1) What is the social relevance of your research results?

The troubled relationship between doctors/hospitals and patients is a topical subject in China. In particular, Chinese doctors complain that they are under threat from violence. Violence against doctors is a worldwide problem. However, what is unique to China is that the nature of violence is extreme and part of the violent events is labeled as *Yi Nao* incidents. Many patients and their family members use violence or a threat of violence to coerce hospitals into paying compensation. They may also employ *Yi Nao* gangs to help them to carry out *Yi Nao* incidents. These groups would threaten and assault hospital personnel, damage facilities, and equipment, and disturb the normal activities of the hospital, which has been widely reported in both Chinese and English media. In addition to the costs of medical malpractice, those violent *Yi Nao* incidents incur considerable social costs.

Various factors may account for the tension between doctors/hospitals and patients, such as deteriorating medical quality and ethics, bad communications between doctors and patients, low coverage of social security, and high medical bills. One of the causal factors that is pertinent to this thesis is that patients resort to *Yi Nao* incidents because they do not trust the legal remedies for medical malpractice in China. Hence, this thesis has explored what the legal remedies are in China, how good they are both from a legal perspective and from a law and economics perspective, and how we can improve them.

The research results show that the Chinese legal remedies for preventing medical malpractice and compensating victims of medical malpractice need to be further improved, although many aspects of the remedies are in line with economic benchmarks. At the end of this thesis, several policy recommendations are proposed in order for optimal deterrence and compensation to be achieved. The wider social relevance of these results is that if health care providers would be induced to invest optimally in care and patient safety and victimised patients could obtain sufficient compensation quickly, more medical malpractice would be prevented in the first place and fewer serious medical disputes would arise. A decreased rate of medical malpractice, iatrogenic injury, medical disputes, and *Yi Nao* incidents would surely economise on social costs and thus enhance social welfare.

2) To who, in addition to the academic community, are your research results of interest and why?

In addition to scholars, the research results of this thesis may be interesting to many other groups. First and foremost, policy recommendations proposed at the end of the thesis are of relevance for Chinese policy makers. In China, important decisions are generally made by the national legislature (NPC and SC-NPC) and sometimes by the central government (State Council). The legal remedies for medical malpractice have been changed several times and further reforms are still pending. If Chinese policy makers set the minimization of accident costs as a legitimate policy goal, then it would be helpful if they could take into account the policy recommendations that I put forward in my thesis. Overall, China should continue to improve the fault-liability-insurance system (FLIS) in order to provide physicians with sufficient incentives to take precautions at the moment. Besides, in order to provide victims with fast and fair compensation, China may conduct some experiments in the no-fault compensation scheme (NFCS) in some local jurisdictions and strengthen quality regulation at the same time. Any further reform proposal should be based on a careful comparison between the FLIS and the NFCS.

Also, this book may be of interest to businesses, especially liability insurance companies. China has reformed the medical malpractice liability regime drastically by enacting the new Tort Liability Law 2009. This book has examined not only how the law in books is written, but also how the law is applied in practice. The empirical data collected in this book should be able to help liability insurance companies, especially those from other countries, to assess the risk of medical malpractice in China and make informed decisions.

In addition to policy makers and businesses, this book may be interesting to judges, especially those from other countries. In modern times, especially within the member states of the European Union, judges more frequently make references to foreign case-law or legal doctrines in their decisions. This book provides foreign judges with an interesting example of how Chinese judges handle medical malpractice issues. After all, the problem of medical malpractice is not unique to China. Besides, the detailed information summarised in this book on how to construct an efficiency-oriented malpractice system may give judges fascinating insights into how to apply and interpret the law in a better way, irrespective of the particularity of jurisdictions.

3) Into which concrete products, services, processes, activities or commercial activities will your results be translated and shaped?

First, the results of my research will be published into a book by the Intersentia in its EDLE series (devoted to Law and Economics). This book will be available for researchers, students and other readers who are interested in topics such as medical malpractice law, tort law, health care regulation and law and economics. By reading this book, they will have a clear understanding of the legal remedies for medical malpractice in China, the latest developments in economic theories concerning medical malpractice and extensive empirical evidence.

Second, some parts of this thesis have already been published in law journals. For example, the Tsinghua China Law Review has published the article “Causal Uncertainty in Chinese Medical Malpractice Law – When Theories Meet Facts” in Volume 9, Number 1, 2016. In addition to this article, there is a plan to transform other parts of the thesis into articles in the near future.

Third, during the period between 2012 and 2016, some preliminary results were presented at several conferences and workshops, such as the METRO Seminar Series, the Joint Seminar “The Future of Law and Economics” in Paris and the “Liability and Insurance” Workshop at the 20th Ius Commune Congress in 2015. Feedback from the audience greatly facilitated the improvement of my research.

4) To what degree can your results be called innovative in respect to the existing range of products, services, processes, activities and commercial activities?

This research is innovative in two aspects. On the one hand, it generates new empirical findings pertaining to how the medical malpractice regime actually works in China. For the purpose of examining how the law is working in practice, a total of 592 court decisions have been analyzed and some semi-structured interviews conducted. These empirical data show that there is a gap between what the law says and what the law is applied in practice. Hence, it would be too superficial if only the substantive rules were addressed. On the other hand, it looks at the medical malpractice issue from the perspective of law and economics. Although the economic analysis of malpractice liability has been extensively carried out in the West, it is still relatively new to apply this approach to the analysis of the Chinese one. In particular, the book has summarised a lot of empirical evidence in favour of the deterrent effect of medical malpractice liability, which has laid a solid foundation for normative arguments.

5) How will these plans for valorization be shaped? What is the schedule, are there risks involved, what market opportunities are there and what are the costs involved?

First, social media, such as newspapers and blogs, are wonderful platforms to make the research results accessible to a wider public audience. The general public will read those results and acquire a better understanding of various disputes over medical malpractice. Readers, who find law and economics theories convincing or unconvincing, may try to participate in the discussions and put forward their own opinions.

Second, it may be helpful to provide legal advisers or commercial insurers with some handbooks or brochures, which include the introduction to the Chinese medical malpractice regime and major findings of this research. That is particularly important for international insurance companies who want to do businesses in China but who are unfamiliar with the Chinese legal system.

Third, the key findings of this research will be spread to policy makers, judges, scholars and the public through various conferences and workshops. In addition to the presentations in Europe mentioned before, the research results are going to be presented on new occasions in China in the near future.