

Appendix E

Liability arrangements that have special features, from four countries .

Question 11 – LIABILITY ARRANGEMENTS: Austria

11a) Is there a medical defence organisation based in your country?

X No

Comment:

In Austria, most hospitals and doctors have concluded a professional liability insurance. However, they are not legally obliged to do so and there are no regulations governing further details of this insurance. This decision as well as the costs involved, are up to the hospitals' and doctors' own responsibility. This system works very well in practice.

If there is no insurance, the hospital or doctor who is liable for a medical error has to come up for the costs himself. In addition, there are public funds which will financially support patients who have suffered harm.

If a hospital had to pay damages to a patient who was harmed by one of its employees, the hospital can sue the guilty person for a refund of the damages paid. This is done in the form of civil proceedings at court. If the health professional is found to have acted grossly negligent, he is condemned to pay damages to the hospital. If his fault is less major, the damages he has to pay can be reduced by the court down to nothing at all, depending on the situation.

In serious cases, a doctor who has harmed a patient has to undergo criminal proceedings at court, which can result in high fines or even imprisonment. In such cases the competent Provincial Governor can ban him from working as a doctor for the duration of the proceedings.

In addition, if a medical doctor has infringed professional law, the Medical Chamber initiates disciplinary proceedings against him. For disciplinary proceedings and sanctions, see §§ 136-139 Doctors Act.

a) Do clinicians use medical defence organisations based in other countries?

b) Are there any other malpractice protection schemes used in your country?
Please provide some brief details:

There are two institutions dealing with the majority of cases of **extrajudicial settlement of disputes**.

1. Patient advocacies / Patient representation bodies:

These bodies instituted in all nine provinces are supposed to allow professional legal action and protection of patient interests free of cost. They are no authorities, and as such are not taking legal coercive measures, but service bodies which are not bound by instructions for the purpose of qualified and specialised patient representation.

Depending on the provincial legislation, their scope of competence may cover the entire health care and social system (hospitals, nursing homes, self-employed doctors, emergency medical services, convalescent homes, home care, pharmacies)

or only specific areas (according to the Federal Hospital Law, hospitals have to be covered anyway).

Besides this, there are patient advocates (although the denomination is the same), representing and assisting exclusively patients in psychiatric hospitals.

2. Arbitration bodies:

Based on different models, these bodies are run in the provinces by the regional medical chamber, or with the contribution of the latter. It is their main purpose to achieve an out-of-court settlement of disputes between the patient and the doctor in the case of alleged misconduct due to a medical error.

Patient-compensation fund: This new form of out-of-court settlement of disputes has been instituted, in order to optimize civil liability law. This fund serve as "reserve" for special damage events (in case of difficulties in providing evidence or for uncompensable events which have lead to considerable damage for the patient).

c) Who are the premiums usually paid by?

Premiums for the professional liability insurance are usually paid by:

- i) **Individual clinicians** X Yes (self established physicians)
- ii) **Employer** X Yes (hospitals in case of employed physicians)
- iii) **The State** X No

Any other comments:

Question 11 – LIABILITY ARRANGEMENTS: Cyprus

11a) Is there a medical defence organisation based in your country? Yes/ No

d) Do clinicians use medical defence organisations based in other countries?

Yes/

No

Please provide some brief details:

e) Are there any other malpractice protection schemes used in your country?

Yes/

No

Please provide some brief details:

In case of litigation, health professionals seek the assistance of lawyers. If they win the case in Court, then their expenses are reimbursed.

Question 11 – LIABILITY ARRANGEMENTS: Estonia

11a) Is there a medical defence organisation based in your country? **Yes/No**

b) Do clinicians use medical defence organisations based in other countries?
Yes/No

Please provide some brief details:

f) Are there any other malpractice protection schemes used in your country?
Yes/No

Please provide some brief details:

1. Some hospitals have voluntary insurance contracts against malpractice cases
2. Estonian Union of Doctors has the voluntary insurance contract against malpractice cases for the members.

Question 11 – LIABILITY ARRANGEMENTS: France

11a) Is there a medical defence organisation based in your country? Yes/No
apart from specific insurance policies with legal support ,there is no special
organisation
but is an insurance policy with legal medical support considered as a medical
defence organisation

b) Do clinicians use medical defence organisations based in other countries? Yes/No

Please provide some brief details:

A limited number of physicians engaged in high risk activities use medical defence
organisations based in other countries

g) Are there any other malpractice protection schemes used in your country?
Yes/No

Please provide some brief details:

h) Who are the premiums usually paid by?

j) **Individual clinicians** Yes/No

ii) **Employer** /No

Yes : in part in public hospitals

iii) **The State** Yes/No

yes for physicians who are engaged in accreditation, a part of their premium is paid
by the " Assurance Maladie" social security

Any other comments:

