

Alternate Dispute Resolution Mechanisms in Healthcare in Mexico: Strengthening Alternative Pathways Against the Judicialization of Medicine

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Abstract

Alternative dispute resolution mechanisms for medical disputes in Mexico are operated by the National Medical Arbitration Commission and the 29 autonomous state commissions through the Mexican Medical Arbitration Model. This specialized system is designed to resolve disputes between users and healthcare providers (public or private) free of charge,

impartially, and confidentially, without resorting to the courts. The model is divided into progressive stages according to the complexity of the conflict:

Orientation and Advice: Provides initial legal and medical information on the rights and obligations of both parties. **Immediate Management:** Seeks to resolve administrative or urgent care issues quickly through direct dialogue with the institution. **Conciliation:** Is a negotiation assisted by a neutral third party. If the parties reach an agreement, a settlement is signed that has the force of *res judicata* (equivalent to a court judgment). **Arbitration:** If no agreement is reached during conciliation, the parties may voluntarily submit to arbitration. The arbitrator reviews the medical record and issues a final decision called an award. **Its main characteristics are:** **Voluntariness:** Both parties must agree to participate in the process. **Specialization:** Cases are analyzed by multidisciplinary teams of medical and legal experts. **Culture of Peace:** It prioritizes communication and reparation of harm over punishment or legal confrontation. **National Scope:** In addition to the federal body, there are state commissions that apply this same model in the federal entities.

Keywords: Consultations, conciliation, medical arbitration

Introduction

The practice of healthcare has changed over time due to technological advancements. Since the 20th century, professional practice has been characterized by increasing societal involvement, leading to new approaches to patient care. The shift towards universal healthcare has moved towards a system of specialties, requiring healthcare professionals to be more highly trained to properly address health needs.

Meanwhile, as society becomes more informed, it evaluates medical practice and demands proper care from healthcare providers. Consequently, the perception of medical omission or error leads to dissatisfaction with traditional justice systems. By the late 1990s, medical malpractice lawsuits had increased, creating a need to protect the right to health and improve the quality of medical services. Therefore, in 1996, the National Medical Arbitration Commission (CONAMED) was established (Decree Creating the National Medical Arbitration Commission, 1996).

The National Medical Arbitration Commission was established as an alternative to litigation for resolving disputes between doctors and patients. It created a unique model for addressing complaints regarding healthcare services (Mexican Model of Medical Arbitration, 2003), both public and private, based on a culture of peace and promoting dialogue between the parties as a means of resolving their controversies. This model has been promoted throughout the states of Mexico, resulting in the creation of 28

State Medical Arbitration Commissions to date (Orozco, 2023). This has resulted in numerous benefits for healthcare providers and patients, thanks to advisory and guidance services. When a patient believes there is an irregularity, they **receive specialized** advice to resolve their doubts and address their disagreement. Alternatively, if it is determined that the issue is not a complaint but rather a need for medical attention, **immediate action** is taken to ensure timely access to medical services. If it is indeed a medical complaint, efforts are made to resolve it through conciliation, dialogue, good faith, and negotiation. The dispute can also be resolved through **arbitration**, which involves an in-depth study of the medical case by peers in the same specialty (National Medical Arbitration Commission, 2016).

As can be seen, there are various ways in which the Commissions can resolve a dispute, improving response times and costs for both parties, as well as enhancing healthcare services through feedback for correcting medical practices.

Finally, this chapter aims to explain the functions and powers of the Medical Arbitration Commissions in order to understand and learn about the services provided to facilitate a healthy resolution in the event of a medical conflict.

History

During 1982, an initiative was presented to add a fourth paragraph to Article 4 of the Constitution, which would enshrine access to health as a fundamental right for all Mexicans. This initiative was finalized in February 1983, leading to the promulgation of the General Health Law the following year. However, within the pursuit of health protection, the 1982 initiative, published in 1983, proposed the appointment of a Commissioner, responsible for protecting the interests of health service users and specialized in medical matters. This situation caused great concern in the medical community; therefore, it was not until the presidential term of Ernesto Zedillo Ponce de León that the issue was revisited (Political Constitution of the United Mexican States, 2001).

While it is true that Medical Arbitration Commissions belong to the Alternative Dispute Resolution Mechanisms; which are enshrined in our Magna Carta, through the constitutional reform of paragraph 3 of article 17, on June 18, 2008 (Uribe G. 2013); where it is established that: “**The laws will provide for alternative dispute resolution mechanisms**”; the origin of the Medical Arbitration Commissions dates back to 1996; with the creation of the **National Medical Arbitration Commission**; through a Presidential Decree of the then Federal Executive; subsequently and in abundance the State Medical Arbitration Commissions began to be created, which as well as CONAMED “*arise from the imperative need to have a specialized and*

reliable instance in the attention and resolution of medical complaints arising between medical personnel and users of these services” (Herrera D. 2023) being the State Commission of Conciliation and Medical Arbitration of Tabasco, created in 1997, subsequently the Commission of Conciliation and Medical Arbitration of the State of Mexico and the State Commission of Medical Arbitration of San Luis Potosí in 1998; The Medical Arbitration Commission of the State of Querétaro,(Decree Creating the Medical Arbitration Commission of the State of Querétaro, 1999) the State Medical Arbitration Commission of the State of Guerrero and the State Medical Arbitration Commission of Puebla in the year 1999; so successively the rest of the state Medical Arbitration Commissions until reaching the current number of 28 State Commissions, the Commission of Mediation, Conciliation and Medical Arbitration for the State of Baja California Sur in the year 2019.The last Commission created was that of Zacatecas in the year 2026.(National Medical Arbitration Commission, 2016).

Functions and Powers of the State Medical Arbitration Commissions in Mexico

The Commissions have full autonomy in the exercise of the following powers:

1. To provide advice and information to users of medical services and to the professionals providing them regarding their rights and obligations
2. To receive, investigate, and address complaints and grievances submitted by users of medical services regarding possible irregularities in the provision or denial of said services;
3. To act as a conciliation body for addressing grievances arising from the provision of medical services when irregularities are alleged;
4. To intervene in amicable settlements to resolve conflicts arising from the provision of professional medical services for any of the following reasons:
 - a) Probable acts or omissions related to the provision of the service;
 - b) Probable cases of negligence with consequences for the user's health;
 - c) Those agreed upon by the Council;
5. To act as arbitrator and issue the corresponding awards when the parties expressly submit to arbitration;
6. To receive information and evidence provided by medical service providers and users regarding the complaints filed and, where appropriate, to request all information necessary to resolve the case, as well as to carry out the corresponding procedures;

7. To gather information related to alleged irregularities submitted for its consideration, and, where appropriate, to arrange for immediate medical attention for users with medical facilities.
8. Issue technical and medical opinions and reports, requested by the authorities responsible for the administration of justice, as well as by internal control bodies, regarding the provision of medical care services, in accordance with the provisions of this law and procedural legislation.
9. Report to the competent internal control body any express or tacit refusal by a public servant to provide the information requested by the Commission in the exercise of its powers.
10. Inform the relevant authorities, medical associations, and the commissions and committees established in health legislation of any express or tacit refusal by service providers to provide the information requested by the Commission, any breach of the obligations assumed in conciliation agreements, and any non-compliance with its recommendations and awards.
11. To strive for the improvement of medical care, for which purpose it shall issue the recommendations it deems pertinent, whether regarding complaints of which it is aware, or through its own initiative in any matter it considers to be of general interest within its sphere of competence;
12. To request the intervention of the authorities in order to ensure the effectiveness of the right to health protection and the regulations governing the provision of medical care services;
13. To propose to the health authority that, in the exercise of its powers, it adopt the necessary measures for the issuance or updating of regulations that promote the protection of the population's health.
14. To enter into coordination, collaboration, or partnership agreements with public and private institutions, agencies, and organizations that enable it to fulfill its functions;
15. To coordinate its activities with the National Medical Arbitration Commission and provide it with the information it requires;
16. To guide users regarding the competent authorities for resolving disputes arising from medical services provided by individuals lacking a professional degree or license (Decree Creating the National Medical Arbitration Commission, 1996).

Objectives and Scope

The Commissions aim to:

1. Contribute to safeguarding the right to health protection;
2. Promote good medical practice, contributing to the improvement of healthcare services;
3. Provide guidance to users of medical services, healthcare personnel, and medical establishments and institutions regarding their rights and obligations in the provision of healthcare services;
4. Contribute to resolving public complaints related to irregularities in healthcare; and
5. Promote the improvement of healthcare services by issuing recommendations on matters of general interest in the provision of healthcare services (Decree Creating the National Medical Arbitration Commission, 1996).

Conclusions

Given the complexity of the issue and its relevance within the context of social dynamics, conflicts arising from healthcare are currently a problem that must be addressed in an interdisciplinary manner and by experts. It is important to highlight the benefits offered by alternative dispute resolution methods, which also help us improve the quality of healthcare services by making problems in medical care evident. This is because it allows communication between healthcare professionals and patients, fostering a better understanding between the parties and preventing further conflicts.

The saturation of the justice system also forces users to resort to other options, the most accepted being conciliation and mediation on the one hand, and arbitration on the other.

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