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Health mediation as an alternative means of conflict resolution in the practice of medicine in turbulent times: An update

La mediación sanitaria como vía alternativa en la solución de conflictos en el ejercicio de la medicina en tiempos convulsos: puesta al día

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Introduction

Mediation in conflicts has been proposed as an alternative and/or complementary voluntary process to the judicial system, and depending on its use, can prevent, resolve or limit many of the conflicts that affect the practice of medicine and the medical system.^{1,2} Mediation in Spain regulated at national level by Law 5/2012 on mediation in civil and commercial matters and different additional provisions that regulate its application in the different autonomous communities. It is expected that the future law on Procedural Efficiency Measures of the Public Justice Service will promote its use by making it compulsory at the beginning of any judicial process.³

Mediation allows the use of open discussion, peaceful dialogue and negotiation to manage the changes that arise in a social, cultural, relational and personal setting. Therefore, it is clear that mediation can have the capacity to prevent or minimise the impact of health complaints, improve the quality of care, nurture interpersonal and structural relationships, and manage labour conflicts.² *Mediation in the healthcare setting* is seen as part of new systems and procedures for handling conflict between professionals and users in a hospital setting, allowing for better management of change and the use of dialogue as a central intervention axis in clinical interaction. This has an impact on patient safety and the working environment and it makes it possible to avoid judicial action in disputes. Moreover, some studies show that when profession-

als are trained in mediation, the treatment of health service users improves and potential disputes are avoided.⁴

The COVID-19 pandemic had a major socio-economic impact, highlighting the shortcomings of the system.² The system was in upheaval, under continuous stress, and had to adapt to the changes and the crisis. Professionals, especially those on the front line, suffered a psychological impact.⁵ The shortcomings of the system are highlighted through different studies, and these conditions have been identified as influencing the way healthcare is delivered today.⁶

The system is affected by high facility costs, ongoing restructuring of primary care and insufficient medical and nursing staff, as well as increased demand, among other variables. Healthcare professionals continue to work in complex and stressful environments. It is noteworthy that the medical professionals who tackled the COVID-19 pandemic now find themselves overwhelmed in managing the conflicts that exist in dealing with the care of their patients.² Proper conflict management is more important than ever for several reasons: 1) dysfunctional conflicts impact on patient care, and 2) professionals' job satisfaction and well-being are at stake, affecting their performance and productivity. Significant staff deficits in healthcare centres have not been remedied and this situation has been exacerbated by a shortage of resources and a lack of coordination. All this leads to patient saturation in the existing medical services, which in turn causes work stress, emotional overload, psychosocial distress, etc. Unfortunately, public administrations have failed to respond to the needs of the health sector, whose workers risked their lives during the pandemic: proof of this is the significant number of sick leave registered due to COVID-19 infection, reaching 112 doctors in 2021, according to the General Council

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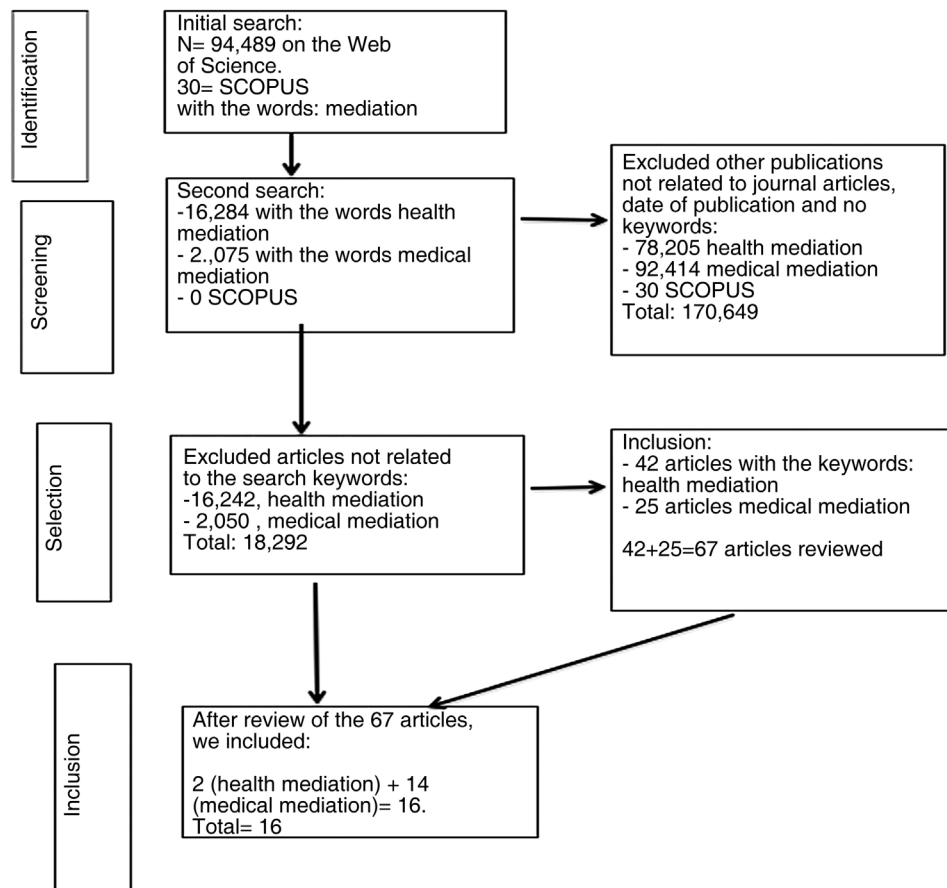


Fig. 1. PRISMA flow chart of the selection process.

of Official Medical Associations. Health professionals need better working conditions, given that the current number of patients exceeds the capacity of these professionals to respond.

The *practice of the medical profession* in the clinical context involves personal sacrifices and the use of empathy. Conflicts exist in the different health care relationships that arise: doctor-patient, doctor-family; with the work team; with the centre's management; and, recently, conflicts with the public administration running the Spanish public system through whatever means available (e.g., protests, rallies, etc.).

Medical or health mediation protects and helps in the doctor-patient relationship by fostering appropriate communication and emotional management so that, for example, the patient and family can be satisfied with the medical practice and, in the case of medical liability, it can try to reach an agreement through an impartial professional who could guide a mediation.^{4,7} In these circumstances, professionals should manage their conflicts through mediation in order to avoid long and complex legal proceedings, with the corresponding legal, socio-economic, emotional and personal costs involved. Unlike other techniques, such as conciliation, negotiation and arbitration, the principles of mediation ensure the satisfaction and duration of agreements. In mediation, the presence of a mediator, who takes care of the process, ensures that the parties are the main actors in the solution adopted. This technique favours meeting and communication, objectives that are not present in the other Alternative Dispute Resolution Procedures (ADRP).⁴ It is based on fairness, privacy, freedom and the capacity of individuals to resolve their own affairs while respecting their legitimate interests.

The use of mediation avoids the publicity of the judicial process; practitioners may feel more vulnerable at the beginning, having to talk to the patient about what happened, although in the end they

feel more satisfied than in a judicial process, because they have been heard and have been able to give their version to the patient or the family. This type of satisfaction is not found in a judicial process.⁴

For all these reasons, we asked ourselves: where is research being carried out on health mediation; has its effectiveness been investigated in those countries where it is applied? Thus, our general objective was to find out what has been published in international impact databases (*Web of Science* and SCOPUS) on medical mediation and health mediation.

Methodology

Publications were reviewed and the PRISMA protocol⁸ was applied to follow the indications of a systematic literature review. Inclusion criteria were: 1) studies published between 1979 and March 2023; 2) articles in journals indexed in SCOPUS and *Web Of Science* (WOS); 3) publications with the search keywords "health mediation" and "medical mediation"; 4) articles in English; and 5) peer-reviewed publications. Exclusion criteria were: 1) not having the established search keywords; 2) not being related to the object of study; 3) date of publication. The Boolean operators used were (" , ").

Web of Science found 94,489 publications and SCOPUS found 30 articles. The initial search keyword was "mediation", which yielded 94,489 results (distributed in Highly Cited Papers = 590; Hot Papers = 22; Review Article = 2665; Early Access = 3504; Open Access = 35,804; Enriched Cited References = 13,893). In total, we obtained a sample of 67 articles on mediation, which after a thorough evaluation were reduced to 16, as they dealt with mediation as an alternative procedure to judicial proceedings, eliminating the

Table 1
Articles included in "health mediation".

Authors and year	Article title	Journal	Description
Asensi and Pinheiro (2015) ²²	"Public defence and institutional dialogue on health: The Brasilia-DF experience".	<i>Direito e Praxis</i>	Presents the results of an investigation of cases dealt with by the Permanent District Chamber of Health Mediation in Brazil that led to out-of-court settlements.
Santos and Gerhardt (2015) ²³	"Mediation in health: Spaces and professional actions in the rural population care network".	<i>Saude e Sociedade</i>	Qualitative study conducted in rural Brazil, using semi-structured interview, field diary and participatory observation.

Table 2
Articles included in "medical mediation".

Authors and year	Article title	Journal	Description
Lewer (1990) ¹⁷	"Mediation: Developing a new role for physicians in peacemaking processes".	<i>Medicine and War</i>	Article describing the research programme on medical mediation undertaken jointly by MAPW and the Department of Peace Studies at the University of Bradford (England).
DeAngelo (2000) ²⁶	"Mediation in health care settings: Some theoretical and practical concepts".	<i>Journal of Clinical Psychology in Medical Settings</i>	Paper on family disputes and Do Not Resuscitate (DNR) orders. This article includes some theoretical issues relevant to dealing with disputes in healthcare settings.
Gatter (2004) ¹³	"Institutionally sponsored mediation and the emerging medical trust movement in the U.S.".	<i>Medicine and Law</i>	Paper with data from the emerging medical trust movement in the United States, explaining how these tools can be used to confirm the economic value of classical mediation in current institutionally sponsored medical mediation programmes.
Ong (2013) ¹⁴	"Medical mediation: Bringing everyone to the table".	<i>Bulletin of the American College of Surgeons Medical Press</i>	Paper analysing the advantages of mediation from the experience of the Rush Medical Center in Chicago.
Decoulx and Scherpereel (2013) ¹¹	"For a more humane hospital: Experience of medical mediators".		Quantitative and qualitative study on the experience of two mediators on the basis of 182 mediations conducted over ten years. The two mediating doctors of the regional university hospital centre (CHRU) in Lille find a great similarity in the complaints received which were the subject of mediation. This is based on the results of the questionnaires carried out.
Casilli et al. (2014) ²⁵	How to build consensus in a health-oriented online community: Modeling a 'Pro-Ana' Forum".	<i>Revue Française de Sociologie</i>	Quantitative and qualitative study on the usefulness of mediation in a healthcare-related internet forum
Nakanishi (2014) ¹⁵	"Disclosing unavoidable causes of adverse events improves patients' feelings towards doctors".	<i>Tohoku Journal of Experimental Medicine</i>	Quantitative study examining the effects of disclosure of avoidable and unavoidable causes of medical conduct that have led to malpractice or inconsiderate behaviour on patients' feelings in medical mediation. A questionnaire is used to survey 385 Japanese hospital outpatients. The results indicate that information should be disclosed in all cases.
Kim and Lee (2016) ²⁰	"The medical disputes and its alternative dispute resolutions in Germany".	<i>The Korean Society of Law and Medicine</i>	Compares the experience of the German Medical Colleges and the Korean Medical Dispute Mediation Agency
Young (2017) ²¹	"Present and future challenges of medical dispute mediation system under the revised Medical Dispute Mediation Act".	<i>Human Right and Justice</i>	Study on the implementation of the Medical Dispute Mediation Act that came into force on 8 April 2012 in Korea. The study makes a comparative analysis of the medical mediation system in Korea with that of other countries. Finally, it suggests ways to facilitate communication and negotiation between disputing parties.
Munuera (2020) ¹⁹	"La mediación sanitaria en Chile [Medical mediation in the international context]"	<i>Medical Journal of Chile</i>	Paper analysing the results of official statistics from the Chilean State Defence Council on the use of mediation in Chile.
Wang et al. (2020) ⁹	"The role of mediation in solving medical disputes in China".	<i>BMC Health Services Research</i>	Quantitative study analysing the impact of mediation in the Chinese system with a sample of 5614 mediation records in Guangdong Province, China, between 2013 and 2015.
Bek and Hanc (2021) ⁶	"Can a patient's death go unpunished? Mediation with the deceased patient's family in criminal cases involving a medical error".	<i>Medicine Law & Society</i>	Qualitative study advocating the widest possible use of mediation in medical error cases, particularly in criminal cases.
Chen et al. (2023) ¹²	"Narratives in the medicolegal field from the perspective of physicians involved in medical dispute mediation meetings in Taiwan".	<i>Heliyon</i>	A qualitative study of the medical dispute mediation system in Taiwan through a study involving 16 semi-structured interviews with legal and administrative specialists in medical mediation and doctors who participated in mediation meetings. In addition, a questionnaire was administered to 209 chronic stroke patients treated at the General Hospital. Among the conclusions is the need for the development of medical mediation that can reduce the economic stress and increase the quality of life of stroke patients.
Miles et al. (2023) ²⁹	"Boldly going... Introducing conflict management training to Starship Children's Hospital".	<i>Journal of Paediatrics and Child Health</i>	Paper describing the collaboration between Starship Children's Hospital in Auckland (New Zealand) and the <i>Medical Mediation Foundation</i> (MMF) in the UK, focusing on training staff to recognise and manage conflict early through the use of mediation techniques.

Health Mediation

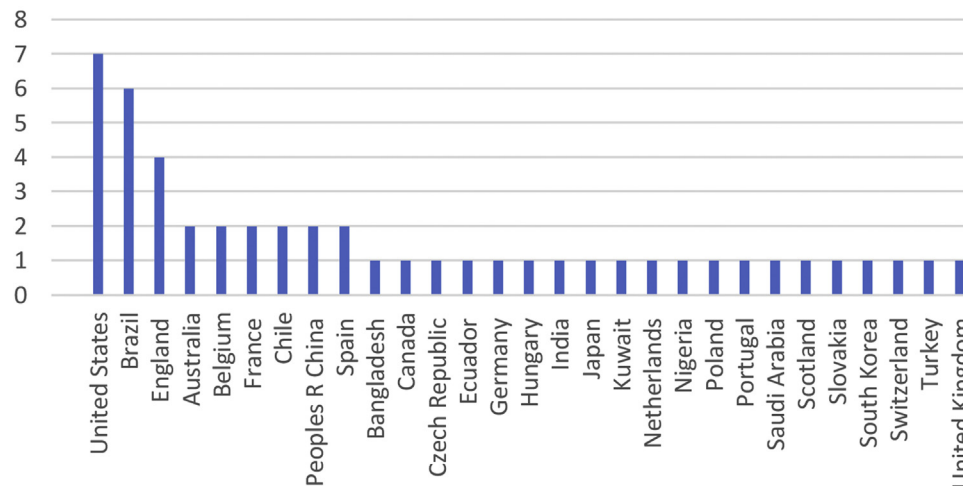


Fig. 2. Web of Science search results for "health mediation".

rest of the articles, which allowed us to know the current situation of health mediation and medical mediation. The selection and screening process is shown in Fig. 1.

Results

Forty-two articles were obtained with the keywords "health mediation", with the United States being the country with the highest percentage, with 7 articles, as can be seen in Fig. 2.

Only 2 articles out of the 25 selected articles met the criterion of dealing with "health mediation" (Table 1).

New Zealand appears as a country in the articles with the keywords "medical mediation", and the United States is still the country with the highest number of publications (5), as can be seen in Fig. 3.

Table 2 analyses the articles that meet the criteria set out in the "medical mediation" selection.

Mediation of healthcare conflicts in the practice of medicine

ADRP, including mediation has been shown to be effective in managing healthcare conflicts at an international level.^{2,4} Medical professionals in Spain do not have the support of specific legislation or research to support the need for its use, leaving them at the mercy of judicial processes to resolve their conflicts. Among the research that demonstrates its advantages is the experience developed in China, with a sample of 5614 mediation records in the province of Guangdong between 2013 and 2015. There, 1995 cases (41% of the cases) were positively resolved through mediation and settlements were reached. A further 1030 cases were resolved through reconciliation, of which 559 cases were settled in court. Other cases (1017 cases) were withdrawn after mediation, which are not counted as success. Experience shows that 505 from the Yinao area were resolved with the help of field mediators.⁹ These figures point to the success in resolving medical disputes through mediation, as they account for 90% of medical disputes during the years analysed. The average financial compensation is minimal (around 10 euros or 60,200 CNY). The average duration of the process is 87 days. The authors assess two variables that determine the success of mediation (the time spent on each process and the amount of money claimed). The relationship between both variables is proportional, i.e., the more time spent, the higher the resolution of cases, and the higher the amount of money claimed by

patients, the lower the resolution rate ($p < 0.01$) and the higher the levels of compensation ($p < 0.01$).⁹ These results show the effectiveness of this measure in resolving medical disputes, reducing litigation and increasing satisfaction with the health system among the population and physicians.^{9,10} The impact of litigation on hospitals, on the economy and on patients' perceptions of quality is reflected in a study carried out in 2014, based on interviews (1039 doctors and nurses) in 510 hospitals. This study established a negative and significant relationship between hospital management practices and the number of medical conflicts and the amount of compensation, and a positive and significant relationship between management and inpatient satisfaction and staff well-being.^{11,12} This experience is in line with the movement initiated in the United States^{13,14} and in Japan.¹⁵

Other studies¹⁶ on medical malpractice in Britain saw advantages in the use of mediation, where the explanation given to the patient by the practitioner helped the patient to reflect on what had happened and to avoid a recurrence.¹⁷

In Chile and Korea, its consolidation is favoured through legislation. Chile's Health Guarantees Regime Law 19.966¹⁸ has allowed the use of mediation since 2005 to resolve disputes over health damages, limiting compensation costs and providing those affected with rapid access to justice through the State Defence Council (CDE).¹⁹ In 2022 they received 1943 requests for health mediation, where 49.17% of the settlements reached by the parties in mediation (148 cases) did not involve the payment of any financial compensation, as the claimants had waived any possible legal action. Korea also has a Medical Dispute Mediation Act, which entered into force on 8 April 2012.^{20,21}

In countries such as Brazil, where mediation is developed through the Permanent District Chamber of Health Mediation, it has become a tool for institutional dialogue resulting in out-of-court settlements.^{22,23}

The analysis of the publications allows us to establish 4 specialities for its application:

1. Medical or health mediation, which resolves conflicts and disputes between health professionals and patients, avoiding judicial proceedings⁶ (*National Health Service Resolution* (NHSR) in the UK, Massachusetts Alliance for Medical Error Communication and Resolution (MACRMI) in the US, etc.).²⁴
2. Digital medical mediation, which resolves conflicts in healthcare forums or on social networks.²⁵

Medical Mediation

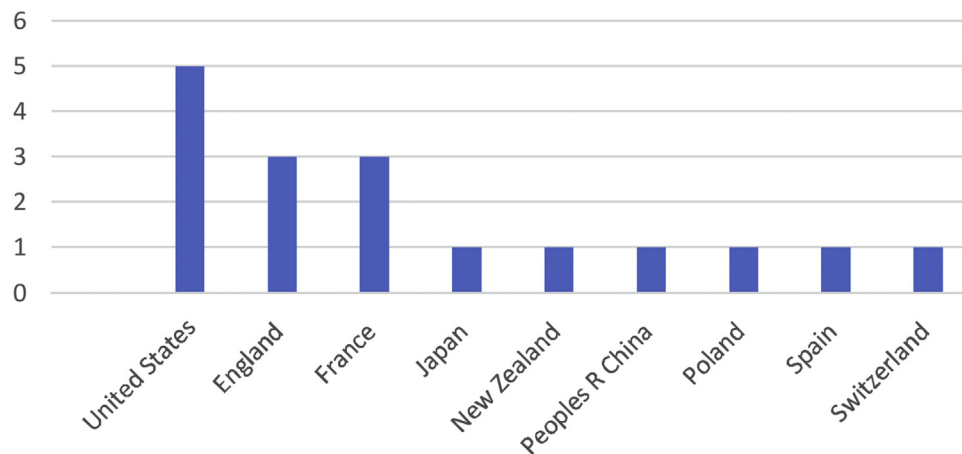


Fig. 3. Web of Science search results for "medical mediation".

- Social and intercultural mediation in the health care context, which resolves conflicts related to access to health care and is focused on the cultural diversity existing in today's society.
- Bioethical mediation, which, according to some authors,^{26–28} is based on bioethical principles such as self-determination, autonomy, etc., and favours decision-making in end-of-life care or in situations of patient resuscitation.

Conclusions: the immediate future

Knowledge of these experiences on the application of mediation at an international level should motivate the medical profession to use it by means of the entities that promote it, including the *Catalan Society for Health Mediation*, professional organisations and the public administration.

There is an increase in research presenting mediation as an alternative to the judicial system (Chile, Guangdong Province [China], NHSR, MACRMI, and others).

The social and health crisis caused by SARS-CoV-2 has generated serious problems in the lack of an adequate response from the Spanish system. The medical disputes that have arisen must be resolved through the use of mediation, thereby avoiding litigation, confrontations, etc., and improving the doctor-patient relationship and increasing the quality of care in the system. This may be implemented through structures endowed with the necessary human resources and materials. To this end, there is a need for training in mediation.²⁹

Ethical considerations

The authors have complied with the principles and protocol of the Declaration of Helsinki.

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Conflict of interest

The authors declare that they have no conflict of interest.

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