

## HEALTH, MEDIATION AND THE SUSTAINABLE DEVELOPMENT GOAL 3

Rosa Pérez Martell

#TeachSDGsAmbassador

Senior Lecturer Procedural Law, Mediation and Arbitration. ULPGC.

Academic Dir<sup>a</sup> of SAMADR-ULPGC.

Arbitration and Mediation Services. [www.http://samadr.ulpgc.es/](http://samadr.ulpgc.es/) Dispute Resolution for Companies, and Consumers.

Las Palmas de Gran Canaria University.

**Abstract:** Organisations, professionals and users of health services find themselves in a scenario in which the existence of conflicts within the health system is a reality. The World Health Organisation, with sustainable development goal 3 in mind and concerned about the existence of controversies within the health system, its observation, study and proposed solutions, makes an investment in the optimization of human capital, in the improvement of the work atmosphere and in the relations of the organisation itself with its workers, users and patients. Definitely, an intelligent conflict management will have a positive influence in any health organisation, handling appropriately the resources invested, diminishing many problems associated in this area and reducing the expenses and the costs that are inevitably related to the conflict.

**Keywords:** Health, SDGs, ADR, ODR, Mediation

### INDEX

- I. Introduction. What's new?
- II. ODS 3 and ODS 16: strength in numbers
- III. Background, regulation and legislation: health protection, healthcare
- IV. Out-of-court settlement of disputes within the public health system
- V. Out-of-court dispute resolution within the private healthcare system
- VI. Conclusions

#### I. Introduction. What's new?

There are no scientific articles regarding ODS that focus on a specific objective (in this case, ODS 3) related to the Spanish positive law or to the conflicts that can occur in the healthcare

environment of our country, in the sustainable development goals (specifically number 16) and in the alternative ways of dispute resolution needed to achieve a response or remedy to the problems posed within the healthcare environment.

This initial outline presented, applicable in our country, can be used on a wider level respecting the existing regulations in any place, environment and scenario, as will be observed. This publication provides knowledge and conceptual tools in order to improve the effectiveness of legal rules and the fulfilment of their objectives, offering solutions to the real problems exposed in this article and providing the most advantageous solution for the parties in conflict from the point of view of quickness, efficiency, discretion and economy.

The problems arise from an existing dispute within the healthcare environment that will be explained further on and the solutions are supported by the strategies presented to make progress with a constructive dialogue that will help improve the relations, as well as in the catalogue of solutions proposed by our legal system to circumvent this problem, taking into account that ODS 16 proposes the promotion of "just, peaceful and inclusive societies for sustainable development, facilitating access to justice for all people and building effective and inclusive institutions" and is oriented and focused on finding solutions through mutual cooperation.

We start from the idea that in the last decades there have been important transformations in the healthcare environment: the increase of longevity, the expansion of the concept of health, the importance of physical, psychic and social well-being beyond the absence of illness and the need to guarantee the right to healthcare services<sup>1</sup> for all citizens, among others. In this fast-changing environment the reality is that, with the emergence of new scenarios, frameworks and circumstances, there are more and more complaints and claims in the field of health by users. It is within this framework that complaints and claims are growing more and more and, as conflicts tend to escalate and not be resolved or not knowing how to manage disputes can lead to greater conflicts between healthcare providers among themselves, patients, management or administrative personnel, the expense will be significant. On the other hand, it

---

<sup>1</sup> <https://www.mscbs.gob.es/organizacion/sns/planCalidadSNS/docs/InformeReclamaciones.pdf>  
<https://www.saludcastillayleon.es/transparencia/es/transparencia/sanidad-cifras/informes-estadisticos/ordenacion-alfabetica/reclamaciones-usuarios-ambito-sanitario>  
<https://www.sspa.juntadeandalucia.es/servicioandaluzdesalud/ciudadania/reclamaciones-sugerencias-y-gradecimientos>  
<http://www.comunidad.madrid/servicios/salud/reclamaciones-sugerencias-gradecimientos-asistencia-sanitaria>  
<https://www.saludinforma.es/portalsi/participacion/opinion-usuarios>  
<https://www.gobiernodecanarias.org/sanidad/sgt/oddus/>

is necessary to refer to the cases of health professionals who are the object of threats<sup>2</sup>, insults and aggressions by users of the health system due to dissatisfaction with the management of their complaints.

The existence of many complaints has already been stressed, but perhaps the most important grounds for complaint occur, above all, in relation to the aspects of organisation and complaint procedures, both in hospital care and primary care and mental health care. In the case of social health care, the main reason for complaint is assistance. This leads us to analyse the causes for complaint. The different reasons presented by citizens before health centres usually are<sup>3</sup>:

- In primary care: organisation and norms, inadequate personal treatment, disagreement with the change or assignment of the doctor, delay or dissatisfaction with assistance and waiting lists.
- In specialized care: excessive delay due to waiting list for surgical procedure, excessive delay due to waiting list for consultation/prior appointment, organisation and norms, dissatisfaction with assistance, inadequate personal treatment.

Another classification could be that which informs us that conflicts within the health field involve health workers, doctors, nurses, patients, their relatives, personnel or trade unions, sometimes between one another and other times among themselves.

-The hospital or clinic and its health staff in general, its management, workers or unions; conflicts between clinics and suppliers, product manufacturers or pharmaceutical laboratories regarding new drugs or medical devices; between clinics and insurance companies; clinics and their controversies with the public sector: patient referral

- Specific reference should also be made to labour conflicts, which are very common between a health worker or a worker in a hospital or clinic and a staff member of equal, superior or inferior category.

- Certain disputes over payment and reimbursement of money to insurance companies; private and public disputes over payments to pharmacies, doctors, patients...

---

<sup>2</sup> [http://www.aeds.org/img/aeds/files/documents\\_information/70/documentoagresiones.pdf](http://www.aeds.org/img/aeds/files/documents_information/70/documentoagresiones.pdf)

<sup>3</sup> <https://www.mscbs.gob.es/organizacion/sns/planCalidadSNS/docs/InformeReclamaciones.pdf>

In this context, and seeking solutions to the above-mentioned complaints, there are more and more organisations that use alternative ways of conflict resolution, the so-called ADR, within the health field. In general, many countries use mediation to solve healthcare conflicts, for example, Belgium, Denmark, France, Estonia, UK, Spain, Finland and Malta.

Of course, an organisation capable of successfully address conflicts both internally (between its professionals and workers) and externally (with its customers, suppliers and other organisations) will increase the certainty, confidence and safety of its patients and users.

## **II. ODS 3 and ODS 16: strength in numbers**

In Agenda 2030, sustainable development goal 3 is crucial, as it states: "Ensure a healthy life and promote well-being for all, of all ages"<sup>4</sup>. Its meaning is broad. It aims to reduce mortality rates, end deaths and stop epidemics, but also refers to the right of developing countries to make maximum use of the provisions of the Agreement on "Trade-Related Aspects of Intellectual Property Rights" concerning flexibility to protect public health and, in particular, to provide access to medicines for all. It refers to substantially increase health financing and the recruitment, development, training and continuity of health workers in developing countries.

Dr. Margaret Chan, Director-General of the World Health Organisation, noted in 2017: "We see again and again that, at the national and municipal level, legislative measures are among the most effective interventions to promote health". As an example, she provided "a technical report documenting the effectiveness of soft drink taxation" which led to a series of incidents with some soft drink companies. In this case, we see that because of the existence of certain conflicts, which may impinge on the health field, the management of the sector is quite complex given the circumstances.

After what we have seen, we affirm the importance of ODS 3 and its relevance "to ensure a healthy life and promote well-being for all, of all ages", but controversies might arise when making it effective. In that case, when ODS 3 relies on ODS 16<sup>5</sup> concerning peace, justice and strong institutions, both objectives come together and strongly ensure the best fulfilment of ODS 3.

---

<sup>4</sup> <https://www.who.int/sdg/en/>

<sup>5</sup> El ODS 16 propone "Promover sociedades justas, pacíficas e inclusivas para el desarrollo sostenible, facilitar el acceso a la justicia para todas las personas y construir instituciones eficaces e inclusivas que rindan cuentas"

This is because ADR in general and mediation in particular are important approaches in the development of a culture of peace, to find peaceful solutions and collaborate on how to promote access to justice.

Finally, in relation to women's health specifically, it is mentioned that the health consequences of violence against women<sup>6</sup> and girls extend to their children, who can witness the abuse and suffer long-term trauma affecting their physical, emotional and social development.

### **III. Background, regulation and legislation: health protection, healthcare**

Firstly, we will see the protection that the Constitution (in Spain) provides in our country to briefly analyse other decisive regulations within this field. The Spanish Constitution of 1978 establishes, in its article 43<sup>7</sup>, the right to health protection and healthcare for all citizens and 43.2 states that public authorities must "organise and protect public health by means of preventive measures and the necessary benefits and services and establish everyone's rights and duties regarding this aspect"; like the rest of the legal norms subordinated to it, they are aimed at making possible the right to health for all citizens, promoting integrated and free care. This is a mixed model that merges all health resources into a single network, with public financing and universal coverage.

In response to these constitutional contents, Law 14/1986, of 25 April, on General Health, was approved, which includes the principles that make possible to exercise the aforementioned fundamental right:

- Public financing, universality and free health services.
- Comprehensive provision of healthcare.
- Integration of public services to the health service.
- Political decentralisation of health in the Autonomous Regions, which have jurisdiction in areas such as: health planning, public health and healthcare.

The National Health System (NHS)<sup>8</sup> is the system formed by the State Health Services and the Autonomous Communities (ACs). It integrates all the functions and health services, which are the responsibility of the public authorities, and provides the widest framework of reference from which the health model is defined and, therefore, the operation of the different centres where the health service is provided to the citizens of the Canary Islands (Spain).

---

<sup>6</sup> <https://www.undp.org/content/undp/es/home/sustainable-development-goals/goal-3-good-health-and-well-being.html>

<sup>7</sup> <https://www.boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>

<sup>8</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1986-10499>

The fact that the Autonomous Regions assume these competences favours the approximation of the management of healthcare to citizens, thus ensuring the maintenance of guarantees such as equity, quality and citizen participation, included in Law 16/2003, of 28 May, on the Cohesion and Quality of the NHS.

On the one hand, Law 11/1994, of 26 July on Healthcare Planning in the Canary Islands<sup>9</sup> establishes the Canary Islands Healthcare Service as a single and inclusive independent body that manages all healthcare resources, centres and services of the islands and, simultaneously, allows their functional unification, all within the framework of a comprehensive approach on healthcare in the Canary Islands and a decentralised operation of human and material resources. At the same time, the Canary Islands Health Service is key to the development of the competences of the Autonomous Community of the Canary Islands in the area of promotion and protection of health, prevention of illnesses, as well as health centres management and administration, services and establishments integrated or functionally attached to the Service itself, which is configured as an Independent Body of an administrative nature.

#### **IV. Out-of-court settlement of disputes within the public health system**

Once we have seen the importance of the provisions of sustainable development 3 goals, the conflict that may exist in this area and how solutions to this problem may take place with other ODS, particularly ODS 16, taking into account that ODS 16 proposes "Promoting just, peaceful and inclusive societies for sustainable development, facilitating access to justice for all people and building effective and inclusive institutions" and is directed towards the search for solutions, we will analyse the appropriate means within this environment: consumer arbitration and mediation. These are very important ways of resolving conflicts in the public health system, in addition to the complaints made by patients to the Ombudsman, leaving aside court proceedings, which is not the object of study of this article, and specific complaints in the administrative procedures.

In our legal system there are scattered rules that allow the use of these channels:

---

<sup>9</sup> <https://www.boe.es/buscar/pdf/1994/BOE-A-1994-19583-consolidado.pdf>

- On the one hand, Article 9.2 of the Constitution<sup>10</sup> mentions the general clause on the participation of citizens in political, economic, cultural and social life, as a sufficient enabling provision for such techniques to be developed by public authorities.
- On the other hand, we find the legal possibility, under the protection of Law 41/2002, of Patient Autonomy<sup>11</sup>, interpreted in accordance with the principle *pacta sunt servanda* of our common civil order, to expressly include the necessary guarantees within the documents of informed consent, arbitration clauses whereby mediation is agreed and arbitration, when viable, as preferential means for the resolution of health conflicts.

We will see each of them below.

### 1. The consumer arbitration system.

Art. 1.2 of RD 231/08, of 15 February, states that the Consumer Arbitration System is the institutional arbitration of extrajudicial resolution, of binding and executive nature for both parties, of conflicts arising between consumers or users and companies or professionals in relation to the legal or contractual rights of the consumer.

Article 2 of this law (which formerly appeared in RD 636/93) indicates which disputes are subject to consumer arbitration: "Only those disputes referred to in Article 1.2 that deal with matters of free disposition of the parties in accordance with the law may be subject to consumer arbitration. Disputes concerning intoxication, injury, death or those in which there are reasonable grounds for believing that a crime has been committed, including liability for damages directly arising from them, shall not be subject to consumer arbitration". In practise, the problems, complaints and claims that predominantly reach Consumer Associations and are resolved through the Consumer Arbitration System are: delays in healthcare, surgical waiting lists, waiting in the emergency room, deficient information received by patients regarding the process of their disease.

As for the experiences of the Consumer Arbitration System, the resolution of public health disputes is increasingly successful. In fact, the 2006 statistics show the number of complaints and claims received by national public health organisations<sup>12</sup> at 16,206, but this figure is increasing.

---

<sup>10</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-1978-31229](https://www.boe.es/diario_boe/txt.php?id=BOE-A-1978-31229)

<sup>11</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2002-22188>

<sup>12</sup> Fuente. Ministerio de Sanidad y Consumo. <http://www.consumo-inc.es/Informes/docs/recla06.pdf>

With regard to complaints by patients to the Ombudsman, in the first half of 2016, depending on the type of conflict within the public health sector, the NHS received 297 complaints from patients to the Ombudsman, for example: problems with the interoperability of electronic prescriptions, problems with the surgical waiting list (especially in Plastic and Reconstructive Surgery) or the extra cost of gluten-free diets.

In the area of consumer associations, "FACUA<sup>13</sup>" mentions that health, telecommunications and banking were the most reported sectors by users. Specifically, in 2018, the closure of "iDental clinics sentenced" the health sector to lead the ranking of complaints in FACUA for the first time in history.

## 2. Mediation

Mediation is another extra-judicial means of conflict resolution by which a third party, an independent and impartial expert, facilitates communication and dialogue between the parties involved, encouraging them to find a solution to their problem and helping two or more people seek negotiated solutions to their conflict.

In addition to being a solution to the proposed conflict, mediation is a way of managing the conflict and a way of preventing it, given that its foundations are based on a culture of understanding and a peaceful solution to the problems that arise.

Most healthcare organisations have developed or are in the process of developing standard rules for the management of conflicts produced within them.

Mediation is based on the free will of the parties to dialogue and negotiate no matter how distant their respective positions are. Mediation aims to raise common issues upon which to build an agreement that satisfies both parties.

### 2.1. Legal support.

I pointed out earlier that Mediation is a self-sustaining form of dispute resolution through which the parties manage to end the conflict by means of an agreement adopted after a negotiation in which a third party (mediator) tries to bring their positions closer together or

---

<sup>13</sup> <https://www.facua.org/es/noticia.php?id=13631>

even proposing the agreement, without the solution to the conflict being decided or imposed on the parties by the mediator under any circumstances.

This trend has been evident not only at a national level but also in Community bodies, where the Commission, in its Recommendation 98/257/, seeks to promote the amicable settlement of health and consumer disputes by defining a common framework of guiding principles for out-of-court bodies to facilitate the creation of a European network for the resolution of consumer complaints.

Specifically, health mediation is a means of resolving disputes that may take place between health professionals, user-patient and health professional, user-user among themselves, an institution-professional and a user or provider and other related bodies.

- In private relations, between patient and doctor/private centre or between patient and insurance company, the aim is to reach an agreement, which is the result of the will of the parties, and the intervention of the mediator will only consist of bringing the positions of the parties closer in order to reach an agreement that will resolve the conflict and avoid the initiation of proceedings.

- However, more difficulty arises in the relationship between individuals and Administrations. Even so, the possibilities of settlement are set out in Article 2. 88 of the Law 30/92, of 26 November of LRJAP and PAC when it states that "the Public Administrations may enter into agreements, pacts, arrangements or contracts with people of both public and private law, provided that they are not contrary to the Legal Order and do not deal with matters that cannot be settled and that their purpose is to satisfy the public interest entrusted to them with the scope, effects and specific legal regime that in each case is provided for in the provision that regulates it. Such acts may be considered as finalising administrative procedures or be inserted in them prior to, binding or otherwise, the resolution that terminates them".

- In the same vein, Royal Decree 429/93, of 26 March, which approves the Regulations of Public Administration procedures in matters of asset liability, provides for the conventional termination of the procedure by means of a compensation agreement between the claimant and the administration" (arts. 8, 12 and 13)

Due to the existence of the above-mentioned legal coverage, there does not seem to be any obstacle for the Administration to negotiate and reach an agreement that will put an end to the controversy when the claim has its origin in the damages derived from the provision of a public health service. The effectiveness of mediation between a patient and the responsible administration will depend on the capacity of the administration's representatives to commit and find solutions.

It is important to specify the different possibilities granted by mediation in the current framework of Spain's health system. It is something that should be decided and defined by those involved in it: health institutions, users, doctors... and many proposals can be made.

## 2.2. Mediation development.

Mediation can take place in two different areas:

- On the one hand, mediation is part of the consumer arbitration procedure:

o The memorandum of the Royal Decree 231/2008, of 15 February, (which regulates the Consumer Arbitration System), mentions the important role of mediation in the consumer arbitration procedure. In art. 38 of the same RD is indicated that "mediation will be tried so that the parts reach an agreement that puts an end to the conflict, except for express objection of any of the parts or when it is known that the mediation has been tried without effect".

o In practise, more and more disputes are resolved at this stage of consumer procedure.

- On the other hand, mediation is deployed as an autonomous way of conflict resolution that takes place within the Public Health System to solve certain types of disputes. Let's discuss the experiences that will help us see how it takes place in different places:

- Health mediation in France.<sup>14</sup> Since 1990, the National Centre has developed a Charter and a Code of Mediation for Mediation. In 1995, the French Prime Minister Balladour "spoke of the improvement of relations between public services, specifically the health service, and its users" and considered "that mediation should be developed and strengthened within this sector".

The role of the mediator would be to avoid difficulties between users and services, to prevent as much as possible the number of disputes between the administered and administrations.

---

<sup>14</sup> En Francia, en 1990, se publica "*Temp des Mediateurs*", donde se da una definición, en esta obra, sobre la mediación.

- Health mediation in Spain<sup>15</sup>. At present, the development of a mediation culture in Spain is being promoted in different areas, with relevant efforts in legal, political and social fields and even with the inclusion of mediation as a service to the citizens.

- Health mediation units in Catalonia<sup>16</sup>. An innovative issue is the design of the Health Mediation Units (HMU)<sup>17</sup> that were implemented within the Catalan Public Health System. These are spaces designed for the positive management of conflicts in the health field. These units attend, in a confidential manner, both general consultations and requests for advice, as well as specific and highly personalised problems. The first unit was opened in the Bages health centre of Manresa. Subsequently, more units have been opened in order to provide care to users of the health system. The "Tarrasa's Health Consortium", as a health organisation, is leader in the implementation of a Health Mediation Unit.

It must be said that in the Spanish health legal system there is no express provision for mediation as a technique or means of resolving conflicts that may arise in this area. In any case, this lack of express provision within health regulations does not imply the impossibility of establishing and developing mediation systems and procedures.

### 2.3. Types of conflicts to be resolved by mediation

Not all disputes will have easy access to mediation as a means of dispute resolution:

- Cases where mediation is less used:

- First of all, our procedural law make it less and less difficult to reach an extra-procedural solution in criminal matters (it is interesting to read the experiences that are taking place in criminal mediation)

- In principle, it is difficult to go to mediation when the parties have gone to court to solve their problem, by filing a complaint or a lawsuit, among other reasons, because when this is done, the conflict, the problems and the degree of bitterness are substantial. However, an adequate negotiation or mediation intervention can change this position.

---

<sup>15</sup> En opinión de RICARDO DE LORENZO Y MONTERO, [https://www.balancesociosanitario.com/Ricardo-De-Lorenzo-y-Montero-El-profesional-sanitario-que-mas-habla-con-sus-pacientes-es-el-menos-demandado\\_a3921.html](https://www.balancesociosanitario.com/Ricardo-De-Lorenzo-y-Montero-El-profesional-sanitario-que-mas-habla-con-sus-pacientes-es-el-menos-demandado_a3921.html)

"cuando interviene la Administración, su actuación está sometida a procedimientos rigurosos

<sup>16</sup> [http://es.cst.cat/grupo-cst/quienes-somos/area-institucional/unidad-de-mediacion-sanitaria\\_w\\_1018\\_s\\_1\\_g\\_1\\_t\\_8\\_a\\_1.aspx](http://es.cst.cat/grupo-cst/quienes-somos/area-institucional/unidad-de-mediacion-sanitaria_w_1018_s_1_g_1_t_8_a_1.aspx)

<sup>17</sup> CARNERO DE BLAS, M. <https://revistademediacion.com/articulos/mediando-en-salud-una-propuesta-de-mediacion-sanitaria-en-hospitales/>

- Furthermore, mediation may not be effective if one of the parties is not willing to cooperate or to give in.

- Cases in which mediation would be appropriate

On the one hand, the most frequent complaints that could be resolved through mediation are those referring to: disagreement with the treatment of the health administration, delays due to benefits, reimbursement of expenses, scheduled transport service, urgent transport service, lack of information, situations not foreseen by the law...

On the other hand, mediation would be very useful in simple or complex procedures. There are some occasions when the lightness of the dispute is the keynote. Sometimes, one party requires only an apology, an explanation, an excuse or even an understanding of the reason for a certain action or behaviour from the other party. Some of the actions that would make impossible a solution to the problems relate to the lack of dialogue between the representatives.

Likewise, if the parties have a relationship that they want or have to keep. For example, in conflicts between health workers, this would be an option to develop.

At this point we could ask ourselves:

Why mediation in the public health system? I've selected the answers that have an impact on improving the quality of relations between patient and health administration, in which greater effectiveness and efficiency can be achieved with the use of the assigned resources... These considerations would already justify an effort to think about how to articulate this extrajudicial mechanism for its use by all: health professionals, patients...

#### 2.4. General and specific goals of health mediation

In the possible development of health mediation, the objectives could be both general and specific.

-The general goals in the development of health mediation could be:

To create a network of mediators, to train them so that they can intervene in mediation procedures within health organisations.

-The specific objectives could be:

Firstly, and of great importance, to create a culture of mediation in the health field, as well:

- Training in ADR, mediation and all alternative dispute resolution within the health field
- To promote and encourage the study, development of ADRs, within the health field
- Work on the diagnosis and treatment of conflicts

- To provide tools and mediation skills within the framework of the mediation process, creating a positive approach to conflicts through dialogue to promote coexistence and personal and professional well-being
- Training mediators in the health environment, empowering them, giving them skills and capacities to act
- Working in a multidisciplinary way for conflicts that often arise in the health world.
- To work with the most advanced mediation strategies in the national and international field.

## 2.5. Design of health mediation

It is important to design a health mediation program because it gives us the basis on how the system would be articulated.

An important and pivotal element of the system would be health mediators.

Mediators are a basic and fundamental figure in the system that aims to develop mediation as a method for conflict resolution. They help people who go to mediation understand their own and other's motivations, trying to achieve important consensus.

From the mediators, it has to be demanded:

- Knowledge of the factors that influence the problem in concrete, substantive problems. To know the object of conflict, which could enable a worker or another figure related to the health field to be a mediator.
- Knowledge of procedural development. To be prepared and instructed in the techniques and strategies of mediation...
- Knowledge of the substantial subject matter itself, as well as thorough procedural knowledge of mediation techniques and strategies.
- The ability to restore broken communication channels between the protagonists of the conflict
- Initial and ongoing training
- Experience in health case management

In addition, it would be crucial to develop a programme that would give concrete expression to the aims of the organisation.

## **V. Out-of-court dispute resolution within the private healthcare system**

1. Private arbitration of Law 60/2003.

This is a means of resolving conflicts that arise within the private health sector, whereby two or more persons - one of whom is a health professional - stipulate that the dispute resulting from a medical act be resolved, in accordance with a legally established procedure, by arbitrators appointed voluntarily by the two parties and to whose decision they expressly submit, in accordance either in law or equity.

The legal support for private arbitration is found in Law 60/2003 on Arbitration.

## 1.2. Health arbitration courts

Healthcare Arbitration Courts are an alternative means of solving the problems that arise within the healthcare environment for which a quick, efficient, economic and specialized solution is sought.

When discussing Healthcare Arbitration Courts, the idea is to provide those who intervene in the healthcare sector a framework that guarantees adequate assistance with less social and economic cost and greater speed and satisfaction guarantee of both parties endorsed by the experience and prestige of its members, professionals specialized in healthcare matters. This is applicable to doctors as well as to patients, insurers and healthcare service providers.

### 1.2.1. Role of Healthcare Arbitration Courts

The main one is to solve claims regarding sanitary matters by expert and specialized professionals looking for a quick, economic, specialized, discreet and effective solution.

### 1.2.2. Composition of Healthcare Arbitration Courts

The idea is that as a body or institution, representatives of all interests involved should participate: health professionals, users, insurers, health centres, lawyers... and it should be composed of lawyers specialised in health law. We will see how this has been articulated in our country.

### 1.2.3. Application scope of Healthcare Arbitration Courts

Their scope of action is limited to private health care.

The field of work of arbitration courts is made up of any type of claims of professional health responsibility, claims of patients against doctors, doctor against doctor, health publicity issues, conflict situations that come into contact with the usual content of the doctor's profession.

Healthcare Arbitration Courts can resolve any type of private dispute, with the exception of those facts that constitute a crime so the Criminal Jurisdiction has to intervene. In such a case, arbitration is excluded.

#### 1.2.4. Res judicata of Healthcare Arbitration Courts decisions

The decisions of Arbitration Tribunals have the force of res judicata and it is the Courts of Justice themselves that guarantee their respectability, as they are carried out by judgement enforcement proceedings.

#### 1.2.5. Healthcare Arbitration Courts experience in Spain

These courts represent an alternative dispute resolution formula to ordinary jurisdiction. As they are private arbitrations, their scope of action is limited to private healthcare, which obviously imposes a significant limitation on them. In the event of a claim arising, derived or produced within the Public Health Service, it is not their competence.

In Spain, Healthcare Arbitration Courts have a short existence and come from the agreement of various institutions and different starting points: Medical Associations, Bar Associations, Consumer Arbitration Boards, Autonomous Communities, etc.

#### 1.2.6. Health Arbitration Courts in Spain

- Biscay. It is the first Healthcare Arbitration Court in Spain, which began its activities in 1997 at the Medical Association of Biscay itself<sup>18</sup>. The creation of these arbitration tribunals by the Medical Association, as in the other provinces that have adopted it, was due to the need to find a formula for conflict resolution, alternative to ordinary jurisdiction. The full court is composed of several institutions: the College of Physicians, the Bar Association, UNESPA (the employers association of insurance companies), some Consumer and User Organisations...

The Arbitration Court of Biscay has issued several arbitral awards concerning medical damages in which claims for medical liability are settled out of court. The result of these decisions confirms the fulfilment of the objectives of this out-of-court procedure: the flexibility and speed of the proceedings and the lowering of costs.

- Madrid. Since 1999, the Arbitration Court of Health Disputes of the College has been constituted within the Arbitration Court, within the section of Civil Health Liability.

- Orense. Since 2000, they have had a "Conciliation, Mediation and Arbitration Service" which is administered by the Medical Association. The execution of conciliation will be a mandatory requirement for arbitration. If there is no agreement, mediation will be used in the second

---

<sup>18</sup> <http://www.diariomedico.com/normativa/norm301199combis.html>

term. As for arbitrators, if the matter under discussion is solely related to the proper practice of medicine, doctors will be the arbitrators, and if the conflict is of a legal nature between medical professionals, lawyers will be arbitrators and the arbitration will be in law.

- Castellón. The Medical Association of Castellón has also set up an Arbitration Tribunal to resolve disputes arising from relations with patients.

2. Consumer arbitration. Already explained in section IV. 1

3. Mediation. Already explained in section IV.2. There is no doubt about the possibilities of mediation to resolve private disputes between parties (e.g. between a patient and a private physician<sup>19</sup>).

Under the principle of free will, the parties voluntarily decide to submit the decision of their dispute to a mediator. The principle of free will of the parties embodied in the CC would allow for the formulation of agreements to redirect the resolution of certain matters to mediation procedures<sup>20</sup>.

## **VI. Conclusions**

We have seen how the relationship of sustainable development goal 3 with the conflicts related to health, ODS 16 and the alternative ways of dispute resolution, specifically and especially, mediation, can provide a benefit to the organisations, the professionals and the users of health services, which are in a framework in which conflicts, within different organisations and different health systems, are a reality.

This publication also pretends to make special reference to the importance of training in the environment of organisations, professionals and users of health services because providing the necessary competences, skills and abilities will have an impact on the better development of all the aspects that have been analysed.

In this sense, we mention the most relevant training proposals in Spain:

---

<sup>19</sup> <https://www.elmundo.es/comunidad-valenciana/2015/06/04/55702310268e3e681c8b4571.html>

<sup>20</sup> <https://www.quironsalud.es/marbella/es/elegir-centro> contempla el Hospital Quirón salud La "Mediación Sanitaria" sucede entre el médico /institución sanitaria y el paciente para evitar o complementar la resolución de un conflicto judicializable

1) The Spanish Medical Colleges Organisation has developed two editions of a training course in Healthcare Mediation

2) In the Canary Islands, the Arbitration and Mediation Service SAMADR-ULPGC has developed several editions of this specific health training. With more than 10,000 hours of extensive training accredited and carried out from 2000 to the present day not only in mediation but also in all ADR mechanisms: negotiation, mediation, conciliation and arbitration, one of the fields of work is health mediation, carried out through specialization courses in Health Mediation:

---for the Illustrious College of Physicians, training a large group of doctors which are members of the institution and its legal advisers, as well as personnel from some specific health insurance companies such as AMA;

---for San Roque University Hospital, aimed at a wide range of health professionals;

Likewise, training is provided in Health Mediation

-from SAMADR-ULPGC<sup>21</sup>, addressing a wide group of professionals of broad sectors such as doctors, nurses and pharmacists.

-finally, they have carried out specific training in "Health Tourism" thanks to an agreement with the Illustrious City Council of Las Palmas de Gran Canaria, for which students came from both tourism and health degrees, broadly speaking: pharmacists, doctors, nurses, physiotherapists...

In addition, we refer to University extension courses on Health Mediation, Mediation in Health and Insurance and Health.

The main objective of this training is for participants to specialise in the intervention of health conflicts, providing them with both theoretical and practical knowledge necessary for their role as qualified mediators in the health field.

Both formations referred above (the Spanish Medical Colleges Organisation and SAMADR-ULPGC) comply with the training requirements of Royal Decree 980/2013, of 13 December, which develops Law 5/2012 on mediation in civil and commercial matters, and which makes

---

<sup>21</sup> <http://samadr.ulpgc.es/images/cursos/curso-mediacion-civil-SANITARIA.pdf>

possible to sign in within the Register of Mediators. All training courses have followed the on-line modality through virtual campus, providing the qualification of health mediator. Once the course has been passed, the professional can register in the Ministry of Justice.

It is also possible to contribute to the development of health mediation through research (final degree projects, doctoral theses). Likewise, through publications<sup>22</sup>, one can help specific profiles or society as a whole by providing knowledge... in short, to promote this route.

## **BIBLIOGRAPHY, LEGISLATION**

CARNERO DE BLAS, M. <https://revistademediacion.com/articulos/mediando-en-salud-una-propuesta-de-mediacion-sanitaria-en-hospitales/>

DE LORENZO Y MONTERO, R. [https://www.balancesociosanitario.com/Ricardo-De-Lorenzo-y-Montero-El-profesional-sanitario-que-mas-habla-con-sus-pacientes-es-el-menos-demandado\\_a3921.htm](https://www.balancesociosanitario.com/Ricardo-De-Lorenzo-y-Montero-El-profesional-sanitario-que-mas-habla-con-sus-pacientes-es-el-menos-demandado_a3921.htm)

PEREZ MARTELL, R. Las organizaciones de salud y la necesaria apuesta por la mediación sanitaria en AtlanticoHoy.com,

<https://atlanticohoy.com/front/post/tag/las-organizaciones-de-salud-y-la-necesaria-apuesta-por-la-mediacion-sanitaria>

Ley 14/1986, de 25 de abril, General de Sanidad

<https://www.boe.es/buscar/act.php?id=BOE-A-1986-10499>

Ley 41/2002, de 14 de noviembre, básica reguladora de la autonomía del paciente y de derechos y obligaciones en materia de información y documentación clínica <https://www.boe.es/buscar/act.php?id=BOE-A-2002-22188>

Real Decreto 231/2008, de 15 de febrero, por el que se regula el Sistema Arbitral de Consumo <https://www.boe.es/buscar/doc.php?id=BOE-A-2008-3527>

Ley 11/1994, de 26 de julio, de Ordenación Sanitaria de Canarias

<https://www.boe.es/buscar/pdf/1994/BOE-A-1994-19583-consolidado.pdf>

<https://www.boe.es/buscar/doc.php?id=BOE-A-2008-3527>

<https://www.boe.es/buscar/act.php?id=BOE-A-2003-10715>

<https://www.boe.es/buscar/pdf/1994/BOE-A-1994-19583-consolidado.pdf>

<https://www.boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>

---

<sup>22</sup> PEREZ MARTELL, R. Las organizaciones de salud y la necesaria apuesta por la mediación sanitaria en AtlanticoHoy.com, en <https://atlanticohoy.com/front/post/tag/las-organizaciones-de-salud-y-la-necesaria-apuesta-por-la-mediacion-sanitaria>

<https://www.boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>

[https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-1978-31229](https://www.boe.es/diario_boe/txt.php?id=BOE-A-1978-31229)

<https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX%3A32013L0011>

<https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex%3A32013R0524>

<https://www.boe.es/doue/2013/165/L00063-00079.pdf>

<https://www.boe.es/doue/2013/165/L00001-00012.pdf>

[http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/non-judicial\\_redress/adr-odr/index\\_en.htm](http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/adr-odr/index_en.htm)

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2015.171.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2015.171.01.0001.01.ENG)

**-WEBSITES:**

<http://www.diariomedico.com/normativa/norm301199combis.html>

<https://www.mscbs.gob.es/organizacion/sns/planCalidadSNS/docs/InformelReclamaciones.pdf>

<https://www.undp.org/content/undp/es/home/sustainable-development-goals/goal-3-good-health-and-well-being.html>

<http://samadr.ulpgc.es/images/cursos/curso-mediacion-civil-SANITARIA.pdf>

<https://twitter.com/samadrulpgc1/status/1063481564456280066>

<https://www.elmundo.es/comunidad-valenciana/2015/06/04/55702310268e3e681c8b4571.html>

<https://www.quironsalud.es/marbella/es/elegir-centro>

[http://es.cst.cat/grupo-cst/quienes-somos/area-institucional/unidad-de-mediacion-sanitaria\\_w\\_1018\\_s\\_1\\_g\\_1\\_t\\_8\\_a\\_1.aspx](http://es.cst.cat/grupo-cst/quienes-somos/area-institucional/unidad-de-mediacion-sanitaria_w_1018_s_1_g_1_t_8_a_1.aspx)

<https://www.mscbs.gob.es/consumo/asocianismo/listadoAsociaciones.htm>

<https://www.facua.org/es/noticia.php?id=13631>

<https://www.mscbs.gob.es/organizacion/sns/planCalidadSNS/docs/InformelReclamaciones.pdf>

<https://www.saludcastillayleon.es/transparencia/es/transparencia/sanidad-cifras/informes-estadisticos/ordenacion-alfabetica/reclamaciones-usuarios-ambito-sanitario>

<https://www.sspa.juntadeandalucia.es/servicioandaluzdesalud/ciudadania/reclamaciones-sugerencias-y-agradecimientos>

<http://www.comunidad.madrid/servicios/salud/reclamaciones-sugerencias-agradecimientos-asistencia-sanitaria>

<https://www.saludinforma.es/portalsi/participacion/opinion-usuarios>

<https://www.gobiernodecanarias.org/sanidad/sgt/oddus/>

Ministerio de Sanidad y Consumo. <http://www.consumo-inc.es/Informes/docs/recla06.pdf>

<https://www.redaccionmedica.com/secciones/sanidad-hoy/estos-son-los-principales-motivos-de-queja-a-la-sanidad-espanola-6724>