



Is the New Medical Malpractice Law Sufficient to Prevent Physicians from Practicing Defensive Medicine in Turkey?

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To the Editor,

In recent years, the explosion in complaints against physicians and the large amounts of compensations paid to patients have strained the doctor-patient relationship, which has increased “defensive medicine (DM).” In 1978 in the USA, Tancredi and Barondess² found that approximately 70% of doctors are engaged in DM practices due to the fear of malpractice lawsuits. DM is applied more intensively in risky surgical fields such as general surgery, gynecology, orthopedic surgery, and neurosurgery.¹ Malpractice claims not only increased DM practices but also affected the preferences in “Medical Specialty Exam.” In 2022, the most preferred fields that are ranked by the Clinical Medical Sciences score are skin and venereal diseases, plastic, reconstructive, and aesthetic surgery, and radiology. Specialties such as general surgery, cardiovascular surgery, neurosurgery, pediatric surgery, and thoracic surgery are among the least preferred. In recent years, economic factors, increased violence in healthcare, and increase in malpractice claims have led to the immigration of physicians from Turkey to European countries, especially Germany, which is another proof that this situation will negatively affect public health.³ A new law on malpractice was enacted on May 27, 2022, in the Turkish Grand National Assembly to prevent problems caused by DM practices. This law is states: “The Professional Responsibility Board shall decide within one year whether the person abused his/her duty by acting contrary to the requirements of his/her duty and the fault situation and whether to recourse the person and the amount of recourse for the compensation paid by the administration due to the medical procedures and practices related to the examination, diagnosis and treatment performed by the physicians, dentists and other healthcare professionals working in public institutions and organizations and state universities within the healthcare profession”.⁴ The new law does not bring any new convenience in compensation lawsuits filed in consumer courts, which is an important problem of physicians working in private hospitals. If a case against a physician is concluded, the payment of the compensation will continue, as it

was before by the physician or the institution where the medical practice was made in joint responsibility.

This law brings partial changes in terms of lawsuits filed against public institutions. When the public institution lost the case, the institution pays the compensation to the patient and then recurses to the physician. With the new law, the recourse process will be left to a newly established board “Professional Responsibility Board,” and according to the decision of this board, the recourse against the physician may be waived. The statements of “whether the person abused his/her duty by acting contrary to the requirements of his/her duty and the fault situation” must be detailed. Moreover, we think that a board that is composed of scientists rather than bureaucrats will reduce the external bureaucratic-political influence.

In conclusion, the law in its current form will be insufficient to prevent DM practices, and it would be more appropriate to draft a new and effective malpractice law in collaboration with professional organizations, expert associations, independent scientists, and physicians as soon as possible.

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