

SCREENING PANELS AS AN APPROPRIATE DISPUTE RESOLUTION MECHANISM IN RESOLVING MEDICAL MALPRACTICE DISPUTES¹

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SUMMARY

A right only has any value if there is a remedy providing for the acknowledgement and enforcement thereof. An increase in medical malpractice claims can be expected in South Africa in view of the fact that the public is becoming more and more aware of its rights in respect of health services and health care. The public opinion calls for development of dispute resolution proceedings. The fact that the law is not accessible to everyone in South Africa is a matter of concern. High litigation costs, coupled with the time consuming protracted, formal and complicated process, call for a transformation towards an alternative, non-judicial process that is suitable for a particular dispute and apposite to the parties involved. Selection panels, the medical ombudsperson and arbitration clauses incorporated in doctor/patient agreements, are ADR mechanisms that have been proved by American law as suitable for resolution of medical malpractice claims. In this particular article attention is paid to screening panels as pre-trial mechanism with the exclusive purpose to select malpractice disputes, discourage unfounded disputes and to encourage an early settlement in case of a *prima facie* case.

Several objections have been raised by critics in this regard, for instance, a screening panel infringes on: the right of equal protection/the right of access to the courts/the right to a jury trial/the right to a due process as well as on the *trias politica* doctrine. These so-called infringements are attended to and

1 Original title in Afrikaans: *Keuringspanele ("screening panels") as gepaste geskilbeslegtingsmetode ter oplossing van mediese wanpraktyksgeskille*. See Crous AJ *Die beslegtingsproblematiek in geval van mediese wanpraktyksgeskille met spesifieke verwysing na die "action for wrongful conception" en die "ADR"-proses* (LLD thesis PU for CHE 2002).

eventually a positive conclusion regarding screening panels is made: medical screening panels (consisting generally of a medical doctor, a lawyer and a member of public), based on the American experience, is indeed an appropriate dispute resolution method.