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# A decade of missed reform: Time for action – South Africa must implement medicolegal mediation now

In 2016, the *South African Journal of Bioethics and Law* published Neels Claassen's article 'Mediation as an alternative solution to medical malpractice court claims'.[1] Claassen, a retired High Court judge and experienced alternative dispute resolution practitioner, wrote in the aftermath of the 2015 Medico-Legal Summit convened by then Minister of Health, Dr Aaron Motsoaledi, where the growing medicolegal crisis facing South Africa (SA) was publicly acknowledged. At the summit, the severe financial and operational consequences of escalating medical malpractice litigation were laid bare.

At the time, the Gauteng Department of Health faced approximately 2 000 pending malpractice claims amounting to some ZAR3.5 billion, while having spent approximately ZAR256 million on legal costs during the 2013/14 financial year. Funds intended for healthcare services and essential medical equipment were increasingly diverted to settle claims and legal expenses, undermining service delivery and creating conditions that could generate further adverse events and litigation. The Medical Protection Society reported that malpractice claims had increased by nearly 550% over a decade, while claims exceeding ZAR5 million had risen by 900%. The consequences were felt across the healthcare system: rising indemnity premiums, increasing costs of care, growing reliance on defensive medicine, and an exodus of some healthcare professionals from practice.

Claassen identified several factors driving the increase in litigation, including the pursuit of financial compensation, contingency-fee arrangements, increased legal advertising, greater awareness of patient rights, poor communication following adverse events, and inefficiencies within the court system. Against this backdrop, he proposed mediation as a constructive alternative to conventional litigation. In his view, court proceedings are inherently adversarial, costly, time consuming, and emotionally taxing. They are primarily concerned with allocating blame and determining compensation, often failing to address the broader needs and concerns of those involved.

Mediation offers a fundamentally different approach. Facilitated by an independent and neutral mediator, it enables parties to engage in a structured process aimed at reaching a mutually acceptable resolution. Its advantages are well recognised: faster resolution of disputes, lower costs, confidentiality, preservation of relationships, flexibility in outcomes, opportunities for explanations and apologies, and reduced emotional distress for both patients and healthcare professionals. While acknowledging that mediation may not be suitable for every matter, Claassen argued that it should become the preferred first step before litigation. Wider adoption, he suggested, could reduce medicolegal costs, improve transparency and communication, enhance access to justice, and help alleviate SA's growing medical malpractice crisis.

A decade later, the concerns identified by Claassen have not diminished. If anything, they have intensified. In their 2026 *South African Medical Journal* correspondence, 'Taking medicolegal mediation from principle to practice: A South African venture', Muller *et al*.[2] argue that SA's medical negligence crisis has evolved into a broader healthcare sustainability crisis, with medicolegal claims reportedly exceeding ZAR100 billion during 2025. Medical negligence liabilities now consume substantial portions of some provincial health budgets, while resources that should support healthcare delivery are increasingly redirected towards litigation-related obligations.

Like Claassen, Muller *et al*. criticise the prevailing reliance on litigation. They describe it as adversarial, expensive and slow, but also as ill equipped to address the human and relational dimensions of healthcare disputes. Litigation rarely promotes reconciliation, restores trust, or facilitates meaningful communication between patients and healthcare professionals. Mediation, by contrast, provides a non-adversarial forum that encourages open dialogue, clarifies events, allows expressions of regret or apology, and facilitates solutions that extend beyond financial compensation. Such an approach can reduce costs, shorten resolution times, lessen emotional trauma, and produce more sustainable outcomes for all involved.

Importantly, Muller *et al*. draw attention to the Gauteng High Court's 2025 directive introducing mandatory mediation in civil matters. This development represents a significant step towards embedding mediation within SA's legal culture and improving access to justice through more efficient dispute resolution. Early evidence from the Gauteng Department of Health suggests that mediation has resulted in substantial reductions between amounts initially claimed and final settlement figures, indicating potentially significant savings for the healthcare system. The authors correctly conclude that translating mediation from principle to practice requires cultural, institutional and individual change. It also requires investment in education, research, policy development, and stakeholder engagement to support broader implementation.

The movement towards mediation has also received strong support from the South African Law Reform Commission (SALRC). In 'Discussion paper 154, Project 141, Medico-legal claims' (2021),[3] the SALRC proposed moving away from adversarial, expensive and protracted medical negligence litigation towards mandatory mediation processes. The Commission recognised mediation's potential to resolve disputes more rapidly, improve patient-provider relationships, and reduce the financial burden of claims on the public health sector.

More recently, in 'Discussion Paper 168, Project 94, Alternative dispute resolution: A mediation act for South Africa' (2025),[4] the SALRC proposed the enactment of a national Mediation Act. The proposed legislation would institutionalise mediation as a credible, regulated and accessible dispute resolution mechanism supported by accredited mediators, a Mediation Council, enforceable settlement agreements, and a coherent national legal framework. Although this initiative extends beyond healthcare disputes, its provisions would substantially strengthen the use of mediation in medical negligence and malpractice claims.

The time for merely discussing mediation has passed. Patients, healthcare professionals, legal practitioners, indemnifiers, policy-

makers and regulators must now commit to implementing mediation as a routine and meaningful component of the medicolegal landscape. The evidence accumulated over the past decade points consistently in the same direction: mediation offers an opportunity to reduce costs, improve access to justice, preserve valuable healthcare resources, and foster more constructive relationships between patients and healthcare providers. Equally important, the SALRC's recommendations must not be allowed to languish in reports and discussion papers. Legislative reform is urgently needed to create the enabling framework for mediation to flourish. SA cannot afford another decade of escalating litigation, shrinking healthcare resources, and repeated calls for change. The challenge is no longer identifying the solution. The challenge is implementing it.

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**Ames Dhai**
*Editor*
*Ames.Dhai@wits.ac.za*

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