On the current situation of the expert commissions and arbitration centres

Nationwide administrative and evaluation solution needed

The expert commissions and arbitration centres of the state medical associations were founded 50 years ago so that patients who suspect a medical error and doctors who are accused of such an error have the possibility of an out-of-court settlement. The historical development, the current status and current problems, in particular with regard to standardised nationwide data collection and data analysis, are described and a proposed solution is presented.

>> In the 1960s and 1970s, there was a significant increase in medical law disputes, particularly in connection with medical malpractice. Patients increasingly sued for damages or compensation for pain and suffering and courts were burdened with more and more medical cases. This led to the state medical associations setting up centres for the out-of-court settlement of medical malpractice allegations. The task of these expert commissions or arbitration boards (hereinafter referred to as arbitration boards) is to offer patients a point of contact where they can present their concerns and where these are subjected to an expert assessment by lawyers and doctors with the aim of "facilitating the enforcement of justified claims and the rejection of unfounded accusations by means of an objective assessment of medical actions by the person whose health has been damaged by a possible treatment error", as the statutes of the Baden-Württemberg expert commissions state.

In 1975, the Bavarian LÄK set up an expert committee for medical liability issues, and the other chambers followed suit with corresponding institutions. Five medical associations founded the "North German Arbitration Centre" [1, 2] in 1976, and other associations joined after 1989. By the time it was dissolved in 2021, 10 of the 17 German medical associations were members. This ensured that at least for these 10 chambers there was a standardised procedure and a standardised recording of the results. The remaining seven chambers operated their own centres for the assessment of allegations of malpractice, each with slightly different procedures.

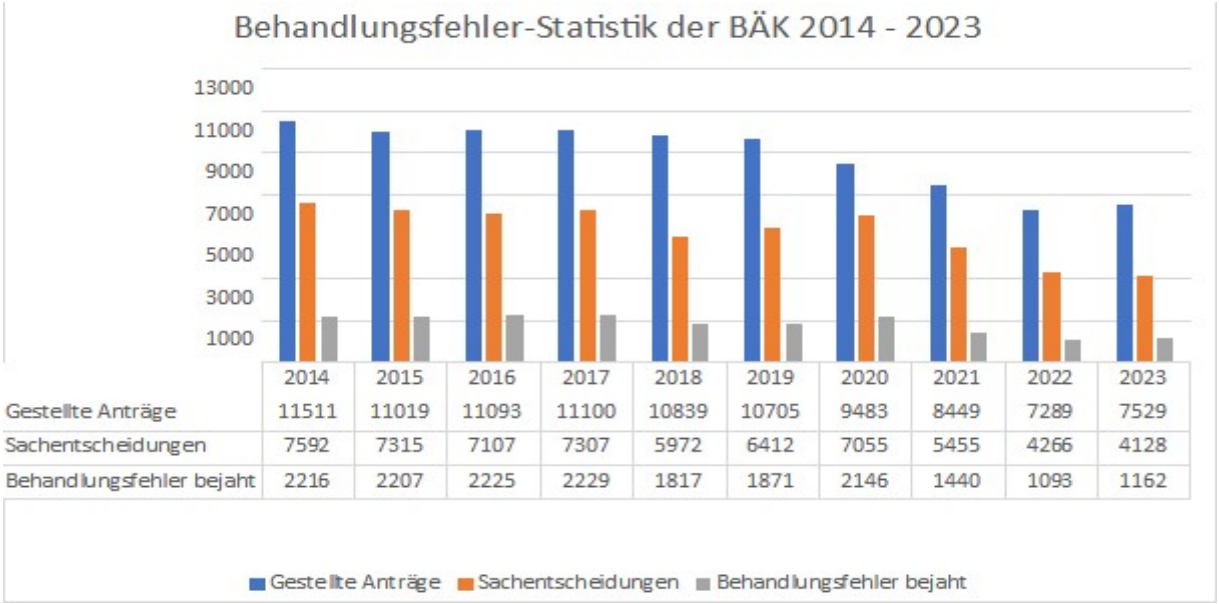
What they all have in common is that the allegations of malpractice are assessed by a commission of experienced and specialised doctors and

lawyers with the involvement of expert assessors and that these bodies are independent in their decisions. Until the dissolution of the North German Arbitration Centre, the proceedings were also free of charge for the parties involved everywhere. In many cases, it was possible to avoid legal disputes, as evaluations show [3, 4, 5].

The report "To err is human: Building a Safer Health System" in 1999 [6] on avoidable medical errors in the USA was the starting point for a great deal of interest in the topic of patient safety in many other countries. In Germany, the standardised recording and consolidation of the results of the arbitration boards was promoted under the leadership of the North German Arbitration Board. The bodies that are not part of the North German Arbitration Centre were given the opportunity to enter their results into the North German Arbitration Centre's database, which all bodies have done over the years, with the exception of Bavaria. The consolidation of the data and corresponding plausibility checks at the North German conciliation body, which had the expertise and the necessary personnel and technical resources, made it possible to collect data in a standardised and consistent manner. As a result, it was also possible to compile standardised national statistics for the German Medical Association from 2006 onwards and publish them annually [7]. Fig. 1 shows the compilation of the results over 10 years.

After the North German Arbitration Board was dissolved at the end of 2021 due to tax considerations, the participating chambers had to set up their own arbitration boards relatively quickly. This was also done, unfortunately without much coordination among themselves and with the other chambers, which already had such bodies, regarding a standardised procedure. Since the state medical associations are independent public corporations and the German Medical Association is only a working group of the state medical associations without legal capacity, there is no superordinate body that could have brought about standardised rules of procedure. There are currently 16 independent arbitration boards (Saarland has joined Rhineland-Palatinate), each with their own rules of procedure with more or less significant differences. For example, in two of the newly established centres, the procedure is subject to a fee for the doctors or institutions involved. While some arbitration centres only issue an opinion on whether incorrect treatment has occurred, others may make a proposal to increase compensation. And there are centres where the proceedings can be concluded with a settlement without determining whether there has been malpractice.

The North German Arbitration Centre is no longer the central institution in Germany for statistically recording the results of proceedings. In order to avoid a break in the recording process, all bodies have agreed to temporarily record the data in a joint table that corresponds to the previous specifications of the North German Arbitration Centre. The standardised statistics of the BÄK will then be compiled more or less manually from this. There is currently no consolidation of the data, as was done by the North German Arbitration Centre. Fortunately, the majority of the arbitration boards have now agreed to use standardised software to manage the procedures, with the aim of making the procedures paperless for all parties involved in the medium term. This software also includes a module for the statistical recording of results, for the preparation of the BÄK statistics and for further analyses. Unfortunately, it is also evident here that there is currently no institution that could deal with and regulate the questions and problems arising from the implementation of the software in a standardised, competent and binding manner throughout Germany. As a result, a laborious coordination process is currently taking place in working groups without decision-making powers in order to establish a standardised nationwide administration and evaluation solution that is well adapted to the needs of the arbitration boards. And there is no sign of a body similar to the North German conciliation body that could also analyse the data.



	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Gestellte Anträge	11511	11019	11093	11100	10839	10705	9483	8449	7289	7529
Sachentscheidungen	7592	7315	7107	7307	5972	6412	7055	5455	4266	4128
Behandlungsfehler bejaht	2216	2207	2225	2229	1817	1871	2146	1440	1093	1162

Fig. 1: **Results of the arbitration centres over 10 years. Source: German Medical Association; own compilation.**

This is all the more regrettable as the decisions made by the arbitration boards are based on a high level of legal and medical expertise. A wide range of utilisation in the form of scientific evaluations, publications of case histories, further training, etc. with the aim of contributing to the avoidance of errors

should continue to be guaranteed. This requires a central institution that collects, validates, manages and evaluates the data and also regulates the transfer of data to authorised parties in accordance with data protection law.

To this end, it would be necessary for all state medical associations to conclude a cooperation agreement in which the regulations and funding are defined, as only the state medical associations have the legal authority to create such an institution. The alternative is a relapse into a small state system, combined with the creation of a data graveyard with actually very valuable data for error prevention.

In general, a patient who suspects an error in treatment can turn not only to the arbitration centres of the medical associations but also to their health insurance company. This can then arrange for an assessment by the Medical Service (MD). The number of cases at the MD is similar to that of the medical associations, although it should be noted that the MD also assesses dental and nursing cases. There is an unknown number of overlaps between the cases of the arbitration boards of the medical associations and the cases of the MD, as there is no obligation to notify an assessing body of a preliminary assessment.

Furthermore, there is also the possibility of seeking direct judicial clarification and there is the possibility of reaching a settlement through the liability insurance of the accused doctor or institution. Unfortunately, there is no data and hardly any analyses or publications on the number of cases that go directly to court or seek a settlement directly with the liability insurers. This makes it all the more important to carefully collate the results of the arbitration boards' assessments and use them to prevent errors. <<

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Author's declaration

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