

**MEDICAL PROTESTS IN CHINA:  
HOW CHINA'S ONE-PARTY SYSTEM ADAPTS TO  
SOCIAL CONFLICT**

by  
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## ABSTRACT

Over the past two decades, protests and violence have become increasingly common ways for Chinese patients and families to settle their disputes with hospitals. There are likely hundreds of thousands of these incidents annually, and they have become so widely known that they have their own name in Chinese - *yinao*.

This study posed three research questions about *yinao*. First, why and how did *yinao* become a nationwide social phenomenon? Second, how has the Chinese state and society responded to *yinao* and the sources that drive it? Lastly, what are the implications of how both the Chinese state and society have responded to *yinao* for how single-Party authoritarian systems can adapt to meet the challenges of their changing societies?

I primarily relied on qualitative methods to answer these questions, though where possible I provided analysis on the limited quantitative data available for *yinao*. For data collection, I used interviews and participant observation in health care and legal settings. For data analysis, I used process tracing, counterfactual analysis, comparative analysis, and evaluation of policy and social variables.

My first finding is that while many factors have contributed to the development of *yinao*, the key to its escalation into a national phenomenon in the early 2000s is likely due in large part to increasing Internet access. Second, I argue that while over time both the Chinese state and society have shown increasing capacity to manage complex policy problems, no matter how innovative policy production is, the unchanging underlying political system continually hampers policymaking, implementation, and social innovation.

From this second argument I build two concepts, “tetheredness” and “slack”, to answer the third research question. “Tetheredness” is whether or not institutions are tied to the Chinese Party-state system. The second concept is “slack”: even if an entity is tied to the system, its ability to move freely is influenced by how much “slack” the system has given it. My analysis suggests that giving institutions slack is not enough to realize necessary reforms, and that the real challenge facing China’s leaders will be deciding which institutions need to be completely untethered from the Party-state.

Primary Reader and Advisor: David M. Lampton

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## CHAPTER 1: INTRODUCTION

It was almost midnight on September 11, 2016 in Kunming city when Mr. Huang was rushed to Yunnan Pingan Hospital after a night of excessive drinking. The Emergency Department later proclaimed him dead following attempts to revive him. Mr. Huang's family questioned the timeliness of the care he had received and the types of medication the hospital had used, refusing to let the hospital remove his body from the scene. The next day, after some intervention by the police, the family decided to take the case to court and allowed the hospital to transport Mr. Huang's body to the undertaker's office. But the next evening, Mr. Huang's family returned with 61 people and over 10 cars to surround the hospital's main entrance. They hung a banner in the hospital lobby, laid funeral wreaths, and demanded an explanation from the hospital for Mr. Huang's death. Police detained all 61 people at the scene after they refused orders to stop their disruptive actions. According to police reports, Mr. Huang's family had hired the cars to join the protest for RMB 500 (\$71.88) each.<sup>1</sup>

This is just one example of the tens of thousands and likely hundreds of thousands<sup>2</sup> of *yinao* incidents – or “medical disturbances” that occur annually in China. Patients, families, and hired professional protesters use both violent and non-violent actions to demand explanations, apologies, or compensation from hospitals during medical disputes. *Yinao* incidents range in severity, from a few family members quietly holding a banner to high-profile incidents of patients murdering physicians. These events

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<sup>1</sup>The news story about this case did not explain more of the technical medical features of the case. Story translated and adapted from: “Kunming *Yinao*: Deceased Patient's Family Call in 10 Cars to Surround the Hospital, 61 People Are Detained [昆明医闹：死者家属叫 10 多辆车围堵医院 61 人被拘留],” September 22, 2016, [http://news.ifeng.com/a/20160922/50004802\\_0.shtml](http://news.ifeng.com/a/20160922/50004802_0.shtml).

<sup>2</sup> While data on *yinao* remain incomplete, estimates calculated in Chapter 5 on data on *yinao* suggest that the number of annual incidents exceeded 200,000 in 2012, the last period of time for which national survey data was available.

have become common stories across Chinese news and social media over the past decade and have turned into a nationally known phenomenon – even President Xi Jinping has addressed *yinao*, stating it should be strictly punished in remarks during the 2014 annual “Two Meetings” (*lianghui*) of the Chinese People’s Political Consultative Conference (CPPCC) and the National People’s Congress (NPC).<sup>3</sup>

### **Broader Significance of *Yinao***

*Yinao* lies at the intersection of three crucial systems of governance in China: health care, justice, and public security. Not only are these systems crucial to governance everywhere, but at this moment in China they are arguably new sources of the Chinese Communist Party’s (CCP) performance-based legitimacy, which in the past was derived from strong economic growth.

China’s health care system is in the process of addressing various challenges stemming from the beginning of China’s economic reform era in 1978. During this time, government financing did not prioritize spending on China’s health care system, a decision that resulted in problems such as low health care insurance coverage for the Chinese population, price and salary regulation that incentivized physicians to overprescribe pharmaceuticals and diagnostic tests, and uneven distribution of advanced care facilities between rural and urban areas.<sup>4</sup> Under this system, Chinese patients faced high out-of-pocket costs in overcrowded facilities, while physicians in large urban hospitals faced high patient volumes and increasing reputational losses due to notorious

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<sup>3</sup> “Xi Jinping: Violent Acts toward Physicians Should Be Severely Dealt with According to Law [习近平：伤医行为要依法严肃处理],” Xinhua News, March 8, 2014, [http://news.xinhuanet.com/health/2014-03/08/c\\_126237901.htm](http://news.xinhuanet.com/health/2014-03/08/c_126237901.htm).

<sup>4</sup> Karen Eggleston, “Health Care for 1.3 Billion: An Overview of China’s Health System,” 2012, 3, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2029952](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2029952).

corruption with the pharmaceutical industry.<sup>5</sup> All of these factors have contributed to the deterioration of patient-physician trust in China.<sup>6</sup> This is the context in which *yinao* began to emerge and continue to proliferate in. While there have been improvements to the Chinese health care system with reforms beginning in the early 2000s,<sup>7</sup> it still faces many of these challenges today. In his 19<sup>th</sup> Party Congress speech in October 2017, China's supreme leader Xi Jinping reiterated the importance of deepening reform of the health care system to ensure a healthy Chinese population – a “key mark of a prosperous nation and strong country.”<sup>8</sup>

In addition to health care, the development of China's legal system represents another important basis for CCP legitimacy. At the 19<sup>th</sup> Party Congress in October 2017, Xi Jinping repeatedly asserted the importance of pursuing “law-based governance” in China,<sup>9</sup> which encompasses ensuring “sound lawmaking, strict law enforcement, impartial administration of justice, and observance of laws.”<sup>10</sup> There has been a mix of opinions,<sup>11</sup> however, regarding what rule of law or law-based governance actually means in practice in the Chinese context. In the area of dispute resolution, a primary focal point of this study, there has been increased official advocacy for mediation (as opposed to

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<sup>5</sup> Waikung Tam, “Organizational Corruption by Public Hospitals in China,” *Crime, Law and Social Change* 56, no. 3 (2011): 265–82.

<sup>6</sup> Joseph D Tucker et al., “Patient–physician Mistrust and Violence against Physicians in Guangdong Province, China: A Qualitative Study,” *BMJ Open* 5, no. 10 (2015): e008221.

<sup>7</sup> Eggleston, “Health Care for 1.3 Billion.”

<sup>8</sup> “Full Text of Xi Jinping’s Report at 19th CPC National Congress,” Xinhua, 43, accessed January 6, 2018, [http://news.xinhuanet.com/english/special/2017-11/03/c\\_136725942.htm](http://news.xinhuanet.com/english/special/2017-11/03/c_136725942.htm).

<sup>9</sup> “Full Text of Xi Jinping’s Report at 19th CPC National Congress,” 34.

<sup>10</sup> “Full Text of Xi Jinping’s Report at 19th CPC National Congress,” 34.

<sup>11</sup> For a roundtable debate on Xi Jinping’s “rule of law”/ “rule according to law”, see: Carl Minzer et al., *The Future of “Rule According to Law” in China*, vol. 20, Asia Policy, 2015, <http://www.nbr.org/publications/element.aspx?id=815>.

adjudication) of civil disputes over the past two decades.<sup>12</sup> In 2014 the Fourth Plenary Session of the Central Committee of the 18<sup>th</sup> Party Congress, known for its focus specifically on advancing “law-based” governance, reiterated the importance of continuing to develop mechanisms for mediation of disputes.<sup>13</sup>

## Research Questions

*Yinao* occurs when frustration with the health care system fails to be channeled through existing avenues for complaint and dispute resolution, ending in protest or violence. It therefore offers a unique opportunity to study how China’s health, justice, and public security systems are evolving to better address the needs of Chinese citizens.

This study thus asks the following three central research questions:

1. Why and how did *yinao* become a nationwide social phenomenon?
2. How have the Chinese state (comprises policymakers, governing agencies, etc.) and society (NGOs, individuals, businesses, etc.) responded to *yinao* and the sources that drive it?
3. What are the implications of how both the Chinese state and society have responded to *yinao* for how single-Party authoritarian systems can adapt to meet the challenges of their changing societies?

These questions involve the idea of responsiveness, which can take two different forms. The first is responding to direct fallout from individual events. For example, if there were a series of *yinao* incidents, the state could condemn them through an announcement, and in society, thousands of social media users could engage in debate about these events. The second type of responsiveness aims to respond by solving

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<sup>12</sup> Fu Hualing and Richard Cullen, “From Mediator to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” in *Chinese Justice: Civil Dispute Resolution in Contemporary China* (New York: Cambridge University Press, 2011).

<sup>13</sup> “The Central Committee of the Chinese Communist Party Decisions Concerning Several Major Issues in Comprehensively Advancing Governance According to Law [中共中央关于全面推进依法治国若干重大问题的决定],” CPC News, October 29, 2017, <http://cpc.people.com.cn/n/2014/1029/c64387-25927606-3.html>. For a history on the transition toward mediation in the early 2000s, see: Fu Hualing and Richard Cullen, “From Mediator to Adjudicatory Justice: The Limits of Civil Justice Reform in China.”

problems that contribute to *yinao*, not just to its immediate fallout. This is the type of responsiveness that I am most interested in for this study because it is related to another crucial idea – adaptation. This study defines adaptation as the extent to which responses to better address citizen concerns are internalized as either state or social institutions. As a starting point, I use the simple definition that Douglass North provides for institutions: “humanly devised constraints that shape human interaction”<sup>14</sup> to define this concept for both state and social institutions. As the analysis proceeds, I tend to focus on certain institutions, such as state policies and social organizations established to respond to *yinao* and its sources.

### **Main Arguments and Theoretical Contributions**

I make the following arguments based on in-depth group and individual interviews, participant observation, secondary data collection of *yinao* incidents, and tracing the development of *yinao* through time. First, while many factors have contributed to the development of *yinao*, which was first documented by the *People's Daily* in 1986,<sup>15</sup> the key to its escalation into a national social phenomenon in the early 2000s is likely due to the increase in Internet access and usage during this period of time. I argue that Internet access increased awareness of *yinao* as a socially legitimate and effective outlet for expression and as a way to elicit compensation from hospitals. While the Internet may have some stabilizing effects on the Chinese system by enabling the Party-state to efficiently collect information on citizen concerns and providing an outlet

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<sup>14</sup> Douglass North, *Institutions, Institutional Change and Economic Performance* (New York: Cornell University Press, 1990), 3.

<sup>15</sup> Zemin Huang, “These Past Few Years Some Places Have Seen Doctor-Patient Conflicts Become Extreme, Vandalizing Hospitals Repeatedly Occur, after the Event Occurs No Questions Asked [进来一些地方医患矛盾激化 打砸医院率发生 事发之后无人问],” *People's Daily*, August 28, 1986, Third edition, [http://58.68.145.22.proxy1.library.jhu.edu/deta11?record=13&channelid=101&searchword=\\_D5\\_FD\\_CE\\_C4\\_3D\\_28\\_B4\\_F2\\_D4\\_D2\\_D2\\_BD\\_D4\\_BA\\_29&sortfield=+-%C8%D5%C6%DA+](http://58.68.145.22.proxy1.library.jhu.edu/deta11?record=13&channelid=101&searchword=_D5_FD_CE_C4_3D_28_B4_F2_D4_D2_D2_BD_D4_BA_29&sortfield=+-%C8%D5%C6%DA+).

for citizens to express themselves, my analysis suggests that in the age of Internet and social media, the costs of poor policy choices are exacerbated by the speed with which the Internet spreads news about them.

Second, I argue that while over time both Chinese state and society have shown increasing capacity to manage complicated policy problems by adopting a diverse set of policy and entrepreneurial initiatives, ultimately, no matter how innovative policy production is, the unchanging underlying political system – the hardware<sup>16</sup> on which the policy and society software runs – continually hampers policymaking, implementation, as well as social innovation.

From this second argument I build two concepts to help explain the mechanisms for understanding how China, and perhaps how single-party authoritarian governing systems more broadly, adapt in order to answer the third question. The first concept I develop is called “tetheredness”<sup>17</sup>: the extent to which Chinese Party-state institutions are tied together. Imagine Chinese government and Party agencies as well as other affiliated organizations as people standing in a long line with their shoes tied together. The whole line can move forward without anyone tripping by making small, incremental steps forward, but if one individual wants to run out in front of the others to pursue a new or

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<sup>16</sup> I first saw this helpful hardware analogy made in the work of Richard McGregor in his description of the modern Chinese state running on Soviet hardware. See: Richard McGregor, *The Party: The Secret World of China's Communist Rulers* (HarperCollins e-books, 2010), 32.

<sup>17</sup> This term is somewhat related to, but differs from David M. Lampton's *untethered pluralism* from his 2014 book David M Lampton, *Following the Leader: Ruling China, from Deng Xiaoping to Xi Jinping* (University of California Press, 2014). Lampton explains: “In short, a once dominant center increasingly faces more potent localities, economic actors, and social groupings that possess greater financial resources, human talent, and information. These various forces have given rise to untethered pluralism – a stronger society and bureaucratic activism at all levels, uninhibited by an established rule of law, adequate oversight, sufficient regulatory structures, or, in many cases, ethical norms” (55). In Lampton's work, “tethered” is about the extent to which non-central state and non-state actors are controlled by the governing center of China. I make a slightly different distinction here, however, not just about whether actors are tied to the central government, but to any part of the Party-state apparatus (agencies, committees, local governments, etc.), at either the central or local levels. The concept I use here emphasizes the web of Party-state connections and how they pull on an actor more than the administrative direction they go in.

progressive policy, he will be pulled back by the laces that tie him to the system. Thus, while components of an authoritarian system can exhibit incremental progress and innovation, ultimately the structure to which they are tied holds them back. This is a subtle but important point – reform and adaptation are often viewed as a choice the leaders and governing agencies in China are willing or unwilling to make, but my analysis shows that even when there are intentions and policies to make strides to better manage *yinao*, those strides cannot always be realized, not just because of regional variation, but also because the system by design inhibits policies from being fully and fairly realized.

Tetheredness, however, represents only one dimension of the adaptation story. The other dimension I call “slack”: even if an entity is tied to the system, its ability to move is influenced by how much slack the system has given it. Again, imagine the line of individuals tied together. While some individuals may not have a lot of distance between them and the other actors in the system, others may have been given greater slack, so they can walk out significantly ahead of the line before being pulled back. This latter type of individual has more independence.

A medical dispute mediation committee (MDMC), an institution created by local government entities in response to *yinao*, is a concrete example of tetheredness and slack. An MDMC is an officially sponsored institution, the daily activities of which are dictated by neither Party nor government agencies. So while it is tied to the Party-state system, it has also been given a lot of slack in conducting its work. Although this allows the MDMC to informally play some patient advocacy roles, this study shows that ultimately, its full potential as an NGO cannot be realized because the local political, legal, and

health care systems it must interact with have structural biases that ultimately influence the way in which it conducts its work. In other words, while the MDMC has been given slack, its tetheredness to the governing system still restrains it from realizing its full potential.

Thus, when authoritarians adapt, they can adapt on the dimensions of tetheredness, slack, or both. Along the lines of tetheredness, they can completely cut off entities to allow for complete institutional independence. What seems to be more common for authoritarian systems, however, is to adapt along the lines of slack – to give an entity some distance, but not total independence. The question facing Chinese leaders is whether changes along the lines of slack are enough to sustain the Party-state system or whether ultimately they need to let go of (untether) entire institutions in the current system.

Of course tetheredness and slack can move in more restrictive directions – an authoritarian system could conversely string more elements of its state and society together and give them little to no slack at all (or eliminate certain elements altogether), indicating a move towards totalitarianism. Some have argued that this is what has been occurring under Xi Jinping’s leadership, which has seen increasing restrictions on civil society,<sup>18</sup> arrests of individuals expressing controversial views in private instant messaging groups,<sup>19</sup> and a renewed focus on ideology and propaganda, reminiscent of

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<sup>18</sup> Benjamin Haas, “China ‘eliminating Civil Society’ by Targeting Human Rights Activists – Report,” *The Guardian*, February 16, 2017, sec. World news, <http://www.theguardian.com/world/2017/feb/16/china-eliminating-civil-society-by-targeting-human-rights-activists-report>; “The Economics Behind China’s Crackdown On Civil Society : NPR,” accessed January 7, 2018,

<https://www.npr.org/2017/10/18/558477319/the-economic-backdrop-to-chinas-crackdown-on-civil-society>.

<sup>19</sup> Jamil Anderlini, “Under Xi Jinping, China Is Turning Back to Dictatorship,” *Financial Times*, October 10, 2017, <https://www.ft.com/content/cb2c8578-adb4-11e7-aab9-abaa44b1e130>; Sarah Cook, “Opinion | China’s Thought Police Are Giving a Master Class in Censorship,” *Washington Post*, September 14, 2017, sec. DemocracyPost Opinion Opinion A column or article in the Opinions section (in print, this is

Chairman Mao's leadership style.<sup>20</sup> Both elements of tetheredness and slack are important for providing a nuanced understanding of the dimensions along which authoritarian systems can move.

## Chapter Overview

This dissertation develops the arguments outlined above in the chapters that follow in three parts. Part I contains the base upon which I build the substantive analysis of *yinao*: a discussion of the literature that has established the theoretical foundations and questions for this work in chapter 2 and my research design and methodology in chapter 3.

In Part II, chapters 4 through 6, I develop the argument for the first research question concerning why and how *yinao* became a national social phenomenon. In chapter 4, I provide a sketch of the entire complaint and dispute management system in Chinese hospitals in order to build a foundation for the proceeding analysis. In chapter 5, I develop a more rigorous definition of *yinao* and analyze available data on it to better understand trends in its evolution and its use over time relative to other forms of medical dispute resolution. In Chapter 6, I untangle the sources that have contributed to *yinao* in order to identify the factors that most likely led to its proliferation. In this chapter I also briefly compare China with other countries to begin to test the argument I developed for how *yinao* became a nationwide social phenomenon.

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known as the Editorial Pages), <https://www.washingtonpost.com/news/democracy-post/wp/2017/09/14/chinas-thought-police-are-giving-a-master-class-in-censorship/>; Eva Dou, "Jailed for a Text: China's Censors Are Spying on Mobile Chat Groups," *Wall Street Journal*, December 8, 2017, sec. World, <https://www.wsj.com/articles/jailed-for-a-text-chinas-censors-are-spying-on-mobile-chat-groups-1512665007>.

<sup>20</sup> "China Enshrines 'Xi Jinping Thought,' Elevating Leader to Mao-Like Status - The New York Times," accessed January 7, 2018, [https://www.nytimes.com/2017/10/24/world/asia/china-xi-jinping-communist-party.html?\\_r=0](https://www.nytimes.com/2017/10/24/world/asia/china-xi-jinping-communist-party.html?_r=0); Beijing bureau, "China's Propaganda Gets a Reboot," *BBC News*, March 14, 2017, sec. China blog, <http://www.bbc.com/news/blogs-china-blog-39263795>; "Document 9: A ChinaFile Translation," ChinaFile, November 8, 2013, <http://www.chinafile.com/document-9-chinafile-translation>.

In Part III, chapters 7 through 9, I address the second question, which in many ways represents the main question driving this dissertation about how the Chinese system has responded and adapted over time to *yinao*. Chapter 7 examines these questions from a high-level perspective, examining relevant national policies that address *yinao* over time as well as their implementation. Chapter 8 delves into the question of the quality of implementation by focusing on one particular policy response: the implementation of a medical dispute mediation committee (MDMC). Chapter 9 tackles the question of how society has responded to *yinao*, examining how physicians, citizens, entrepreneurs, and civil society organizations have responded and attempted to resolve problems contributing to *yinao*. Lastly, in the conclusion, chapter 10, I summarize the findings of this project and conclude with thoughts about the policy implications of this study.

**PART I**  
**EXISTING LITERATURE**  
**AND RESEARCH DESIGN**

## CHAPTER 2: CHINESE PROTEST AND POLITICAL STABILITY IN ACADEMIC LITERATURE

The research agenda proposed by this study has the potential to contribute to many areas of existing scholarship, especially since it relates to both medicine and law. To the topic of *yinao*, I seek to add perspectives from the social sciences, specifically comparative politics and area studies. The three main sub-topics I touch upon within these fields are: political stability and authoritarian resilience, contentious politics as it relates to interest expression and state-society relations amidst protest, and the debate on China's rule of law. I also briefly touch upon politics in China's health care system, as it remains an understudied topic.<sup>21</sup> This literature review is meant to be a broad overview, and each subsequent chapter in this dissertation provides even greater detail from the existing scholarship as it relates more specifically to each subtopic of this dissertation. In the following sections, I provide synopses of the debates in each of the broad areas of literature and then discuss how this dissertation both fits in and contributes to those debates.

### **Political Stability and Authoritarian Resilience**

Much of how western academia views and debates China's political trajectory stems from scholarship about the roles institutions play in political transition and stability. Arguably the most common definition for institutions comes from Douglass North who

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<sup>21</sup> While there have been numerous studies on the issues within China's health care system and its system reform, how politics affect and work within the system remain understudied. To my knowledge, the most recent book to broach the issue is Yanzhong Huang's *Governing Health in Contemporary China*, see Yanzhong Huang, *Governing Health in Contemporary China* (Routledge, 2013). For past studies of how politics relates to China's health care system, see: David M. Lampton, *The Politics of Medicine in China: The Policy Process 1949-1977*, Westview Special Studies on China and East Asia (Boulder, CO: Westview Press, 1977); David M. Lampton, *Health, Conflict and the Chinese Political System*, vol. 18, Michigan Papers in Chinese Studies (Ann Arbor: Center for Chinese Studies, 1974).

defined them as “humanly devised constraints that shape human interaction.”<sup>22</sup>

Condoleezza Rice paraphrases his definition as the “rules of the game in society.”<sup>23</sup>

In 1968 Samuel Huntington in *Political Order in Changing Societies* examined the relationship between political institutions and social development. He argued that instability and social disorder resulted from the lag between the development of political institutions and social and economic change: if the rates of social mobilization and expansion of political participation is high, but the rate of political organization and institutionalization is low, then this situation foments instability and disorder.<sup>24</sup> In this argument, Huntington challenged modernization theory, which contends that economic development spurs democracy, by emphasizing that economic development does not lead to democratization in countries where political institutions are not sufficiently developed to meet the demands of their citizenries.

Ronald Inglehart and Christian Welzel later revised modernization theory with a nod towards the role of institutions, arguing that socioeconomic development reduces external constraints on human choice by increasing people’s material, cognitive, and social resources, bringing a growing mass emphasis on self-expression values, which in turn increase demands for civil and political liberties, gender equality, and responsive government. As values become more oriented toward self-expression, this helps to establish and sustain institutions best suited to maximize human choice, which are the institutions of democracy.<sup>25</sup>

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<sup>22</sup> North, *Institutions, Institutional Change and Economic Performance*, 3.

<sup>23</sup> Condoleezza Rice, *Democracy: Stories from the Long Road to Freedom* (Twelve, 2017), 8.

<sup>24</sup> Samuel P Huntington, *Political Order in Changing Societies* (Yale University Press, 2006).

<sup>25</sup> Ronald Inglehart and Christian Welzel, *Modernization, Cultural Change, and Democracy: The Human Development Sequence* (Cambridge University Press, 2005).

## China's Authoritarian Resilience

Despite Inglehart's and Welzel's implication over a decade ago that China is on the path towards political transition, the Party-state remains intact – a phenomenon that scholars have called China's "authoritarian resilience." The concept of "authoritarian resilience" is difficult: the term "authoritarian" itself is conceptually vague, and the word "resilience" is often left undefined. James Reilly acknowledges that the term authoritarian is a "placeholder for a conceptual jumble of nondemocratic regimes that says more about what they are not than what they are."<sup>26</sup> Rice differentiates between totalitarians, China's former regime-type under Mao, and authoritarians because unlike totalitarians, authoritarians leave "space for groups that are independent of them," such as NGOs, businesses, universities, and labor groups, though they live in an "uncomfortable cold peace with their rulers" and often represent the leading element of change.<sup>27</sup>

As for the definition of authoritarian resilience, Cheng Li succinctly adapts a definition from an earlier piece written by Bruce Dixon: "the CCP's resilient authoritarianism refers to a one-party political system that is able 'to enhance the capacity of the state to govern effectively' through institutional adaptations and policy adjustments."<sup>28</sup> Yongshun Cai understands authoritarian resilience based on the state of Chinese society today, which is "characterized by the coexistence of numerous social conflicts and social stability."<sup>29</sup> Andrew Nathan, who authored the seminal article in 2003 on China's authoritarian resilience, rationalized the puzzle of China's resilience as

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<sup>26</sup> James Reilly, *Strong Society, Smart State: The Rise of Public Opinion in Japan's China Policy*, Contemporary Asia in the World (New York: Columbia University Press, 2012), 2.

<sup>27</sup> Rice, *Democracy: Stories from the Long Road to Freedom*, 17.

<sup>28</sup> Cheng Li, "The End of the CCP's Resilient Authoritarianism? A Tripartite Assessment of Shifting Power in China," *The China Quarterly* 211 (2012): 598.

<sup>29</sup> Yongshun Cai, "Social Conflicts and Modes of Action in China," *The China Journal*, no. 59 (2008): 89.

stemming from regime theory, which recognizes that “authoritarian systems are inherently fragile because of weak legitimacy, overreliance on coercion, over-centralization of decision making, and the predominance of personal power over institutional norms.”<sup>30</sup> The causes of China’s resilience are complex, but Nathan argues that institutionalization is the most important concept behind understanding it. He highlights institutionalization in China’s norm-bound succession politics, meritocratic promotion of political elites, the differentiation and functional specialization within the institutions of the regime, and the establishment of institutions for political participation and appeal that strengthen the CCP’s legitimacy. Together, these elements help the regime adapt and survive.<sup>31</sup> Even in his updated work on the regime’s ability to adapt a decade later, Nathan asserts that the “PRC regime as it stands today is more adaptive than other authoritarian regimes. The leadership proactively addresses the most neuralgic sources of popular dissatisfaction by making health and retirement insurance available, attacking corruption, cracking down on the worst polluters, and increasing the appearance of transparency and accountability with devices such as e-government, opinion surveys and limited-scope elections.”<sup>32</sup>

Both Reilly and Kellee Tsai, albeit in different ways, articulate the idea that incremental institutional reforms over time reveal the regime’s ability to adapt and survive. In her work on adaptive, informal institutions in the economic sphere, Tsai agrees that the regime shows elements of institutional resilience.<sup>33</sup> In investigating state responses to nationalist protest, Reilly too emphasizes the role of institutions, arguing that

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<sup>30</sup> Andrew J. Nathan, “Authoritarian Resilience,” *Journal of Democracy* 14, no. 1 (2003): 6.

<sup>31</sup> Nathan, 6–7.

<sup>32</sup> Andrew J. Nathan, “Foreseeing the Unforeseeable,” *Journal of Democracy* 24, no. 1 (2013): 22.

<sup>33</sup> Kellee Tsai, “Adaptive Informal Institutions and Endogenous Change in China,” *World Politics* 59 (2006): 116–41.

a more telling explanation for authoritarian resilience may lie in “the innovative ways nondemocratic regimes have responded to the rise of new social forces with institutional innovation, policy shifts, and rhetorical persuasion, or propaganda.”<sup>34</sup> He continues: “The Communist Party has responded to the rise of social and economic liberalization in incremental and instrumental fashion. Just as economic reforms developed by ‘feeling the stones while crossing the river,’ so too has the Party’s approach to social change emerged piecemeal over time through a gradual learning process. The response is thus incremental. It is also instrumental – designed to address the public’s demands for political participation in ways that blunt pressure for broader political change.”<sup>35</sup>

Survey data often appears to support the idea of authoritarian resilience. Yongnian Zheng in 2007 argued that even though it is difficult to conduct public opinion surveys regarding institutions in China, “all available information points to a serious crisis in public confidence in government institutions.”<sup>36</sup> Yet existing surveys such as those by scholar Marin King Whyte<sup>37</sup> in 2009 and Pew Research Center in 2014<sup>38</sup> show that in spite of corruption and social inequality among other top concerns,<sup>39</sup> Chinese people – 89% of them in the Pew poll – remain optimistic about their economy. Whyte’s work even shows that this optimism exists among rural villagers,<sup>40</sup> casting doubt on the idea

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<sup>34</sup> Reilly, *Strong Society, Smart State: The Rise of Public Opinion in Japan’s China Policy*, 127.

<sup>35</sup> Reilly, 207.

<sup>36</sup> Yongnian Zheng, *Technological Empowerment: The Internet, State, and Society in China* (Stanford University Press, 2007), 120.

<sup>37</sup> Martin King Whyte and Dong-Kyun Im, “Is the Social Volcano Still Dormant? Trends in Chinese Attitudes toward Inequality,” *Social Science Research* 48 (2014): 62–76.

<sup>38</sup> Katie Simmons, “China’s Government May Be Communist, but Its People Embrace Capitalism,” *Pew Research Center* (blog), October 10, 2014, <http://www.pewresearch.org/fact-tank/2014/10/10/chinas-government-may-be-communist-but-its-people-embrace-capitalism/>.

<sup>39</sup> Richard Wike and Bridget Parker, “Corruption, Pollution, Inequality Are Top Concerns in China,” *Pew Research Center’s Global Attitudes Project* a(blog), September 24, 2015, <http://www.pewglobal.org/2015/09/24/corruption-pollution-inequality-are-top-concerns-in-china/>.

<sup>40</sup> King Whyte and Im, “Is the Social Volcano Still Dormant? Trends in Chinese Attitudes toward Inequality”; Simmons, “China’s Government May Be Communist, but Its People Embrace Capitalism”;

that China's citizenry would be disgruntled enough to protest the CCP's governance of the country. Using the World Values Survey from 2012, Wenfang Tang analyzed how different subgroups of Chinese (by age, education level, socioeconomic class, etc.) felt about two areas that could potentially be linked to citizens calling for regime change: policy satisfaction and overall life happiness.<sup>41</sup> Tang found mixed results: for example, some groups exhibited higher life happiness but low policy satisfaction. He argued that overall there was an increasing trend in policy satisfaction since 1989, but also noted that the evidence was not enough to entirely discount the "political crisis" view of so many scholars in western academia.<sup>42</sup>

Scholars have continued to advance this "regime crisis" view into the Xi administration. In an article written in 2013, a decade after the publication of his influential article on China's resilience, Nathan notes that despite the successes and survival of the Chinese regime, "the expectation of dramatic change persists," adding that "there is a sense of impermanence that we do not find in mature political systems."<sup>43</sup> It is important to note that no data or evidence was offered specifically in support of these claims. Cheng Li argues that the CCP's authoritarian resilience "is a stagnant system, both conceptually and empirically, because it resists much-needed democratic changes in the country."<sup>44</sup> He traces the problems of resilient authoritarianism to the "monolithic conceptualizing of China," identifying three paradoxical trends that cast doubt on the

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1615 L. St NW, Suite 800 Washington, and DC 20036 USA 202-419-4300 | Main 202-419-4349 | Fax 202-419-4372 | Media Inquiries, "Global Public Downbeat about Economy," *Pew Research Center's Global Attitudes Project* (blog), September 9, 2014, <http://www.pewglobal.org/2014/09/09/global-public-downbeat-about-economy/>.

<sup>41</sup> Wenfang Tang, "Authoritarian Regime Sustainability," in *Populist Authoritarianism* (New York: Oxford University Press, 2016), 13–16, <https://doi.org/10.1093/acprof:oso/9780190205782.003.0002>.

<sup>42</sup> Tang, Chapter 2 (online version), 15-16.

<sup>43</sup> Nathan, "Foreseeing the Unforeseeable," 24.

<sup>44</sup> Li, "The End of the CCP's Resilient Authoritarianism? A Tripartite Assessment of Shifting Power in China," 595.

regime's resilience: 1) weak leaders, strong factions; 2) weak government, strong interest groups; 3) weak Party, strong country.<sup>45</sup> Li ultimately asserts that people should not "confuse China's national resilience with the Party's capacity and legitimacy to rule the country."<sup>46</sup> He proposes that the CCP adopt a plan for systematic democratic transition with steps toward intra-Party elections, judicial independence, and gradual opening of the mainstream media.<sup>47</sup>

Scholar Minxin Pei has long challenged China's resilience, arguing that the country lives in a "trapped transition."<sup>48</sup> More recently Pei has stated, "Despite the façade of impregnability, cracks in the regime's foundation are beginning to emerge."<sup>49</sup> He identifies the problems of slowing economic growth, massive overcapacity, and unsustainable debt levels, and the lack of unity in the ruling elite.<sup>50</sup> Pei further pushes back against the idea of incremental reforms as the saving grace of the CCP, asserting that "there is no distinction between regime and state in the party-state. Consequently, even incremental reforms could lead to the regime's unraveling, as the party would find that its loss of control over the administrative state would instantly and drastically undercut its power and authority."<sup>51</sup> He also points out that the historical record so far shows that no totalitarian or post totalitarian regime has succeeded in democratizing through reform.<sup>52</sup>

### Regime Legitimacy

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<sup>45</sup> Li, 595.

<sup>46</sup> Li, 595.

<sup>47</sup> Li, 595.

<sup>48</sup> Minxin Pei, *China's Trapped Transition: The Limits of Developmental Autocracy* (Cambridge: Harvard University Press, 2006).

<sup>49</sup> Minxin Pei, "Transition in China?: More Likely than You Think," *Journal of Democracy* 27, no. 4 (2016): 5.

<sup>50</sup> Pei, 5.

<sup>51</sup> Pei, 13.

<sup>52</sup> Pei, 13.

A closely related debate to China's authoritarian resilience concerns the basis for China's regime legitimacy. In the words of Yongshun Cai "legitimacy is about the political system's worthiness to be recognized."<sup>53</sup> There is a general consensus in the literature on China's regime legitimacy that the economic performance-based legitimacy that has provided the basis for the Party's legitimacy is no longer sufficient. As early as 2005, when China still had a double-digit GDP growth rate, Dickson recognized that in addition to deriving its legitimacy from economic growth, the party "also relies on patriotic/nationalist feelings and the CCP's ability to maintain national unity to justify its rule."<sup>54</sup> Along similar lines, Shambaugh notes<sup>54</sup> that a problem facing the party's popular and political legitimacy is its lack of a convincing vision for leading the nation,<sup>55</sup> though this has arguably changed under Xi Jinping with the "Chinese dream."<sup>56</sup> Yongnian Zheng emphasizes the continuing importance of scientific and technological development because it has been perceived as a foundation of economic rapid growth, so it is also tied to the survival of the Chinese communist state.<sup>57</sup>

Beyond economic growth, strengthening the legal system in China is also viewed as a basis for regime legitimacy. Rhetoric around this has been emphasized during the Xi administration.<sup>58</sup> In the area of dispute resolution, Cai emphasizes that weak legal institutions and the resulting limited institutionalization of dispute resolution undermine

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<sup>53</sup> Yongshun Cai, *Collective Resistance in China: Why Popular Protests Succeed or Fail* (Stanford University Press, 2010), 5.

<sup>54</sup> Bruce J Dickson, "Populist Authoritarianism: The Future of the Chinese Communist Party," *Occasional Papers*, George Washington University, 2005, 11–12.

<sup>55</sup> David Shambaugh, *China's Communist Party: Atrophy and Adaptation* (Washington, DC: University of California Press, 2008), 168.

<sup>56</sup> According to the *China Daily* website, "The "Chinese dream," put forth by Chinese President Xi Jinping, is to build a moderately prosperous society and realize national rejuvenation." See: "Chinese Dream," *China Daily*, accessed January 13, 2018, <http://www.chinadaily.com.cn/china/Chinese-dream.html>.

<sup>57</sup> Zheng, *Technological Empowerment: The Internet, State, and Society in China*, 26–27.

<sup>58</sup> Jacques deLisle, "The Rule of Law with Xi-Era Characteristics: Law for Economic Reform, Anticorruption, and Illiberal Politics," *Asia Policy*, no. 20 (July 2015): 26.

regime legitimacy.<sup>59</sup> Mary Gallagher noted that while some may argue that the CCP would never submit to laws limiting its discretion, the possibility exists that the Chinese party-state will gamble that the rule of law and its resulting benefits of increased legitimacy both at home and abroad are worth the risk of activating social forces and enlarging the role of new interest groups.<sup>60</sup> Gallagher considered this possibility about a decade ago. While since then the CCP has turned its attention to establishing the “rule of law” (*fazhi*, 法治) and “law-based governance” (依法治国, *yifa zhiguo*)<sup>61</sup> under Xi, in practice it is not the type of “rule of law” that places limitations on the CCP<sup>62</sup> or enables greater realization of individual rights.<sup>63</sup> In 2016, Su Lin Han emphasized that a central concern for the CCP as it tries to make its own brand of “rule of law” part of its new basis for legitimacy is “how to improve the delivery and benefits of rule of law to its increasingly ‘rights-conscious’ population through better enforcement of individual rights protection promised by existing laws.”<sup>64</sup> She notes the difficulty of realizing this, especially because following the Fourth Plenum of the 18<sup>th</sup> Party Congress (which

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<sup>59</sup> Cai, “Social Conflicts and Modes of Action in China,” 108–9.

<sup>60</sup> Mary E. Gallagher, “‘Use the Law as Your Weapon!’: Institutional Change and Legal Mobilization in China,” in *Engaging The Law In China: State, Society, And Possibilities For Justice*, ed. Neil Jeffrey Diamant, Stanley B. Lubman, and Kevin J. O’Brien (Stanford University Press, 2005), 75.

<sup>61</sup> I use the translation of these Chinese terms as provided from the translation of Xi Jinping’s report from the 19<sup>th</sup> party congress. See: “Full Text of Xi Jinping’s Report at 19th CPC National Congress.”

<sup>62</sup> Susan Trevaskes, “China’s Party-Led Rule-of-Law Regime,” *East Asia Forum* (blog), October 2, 2017, <http://www.eastasiaforum.org/2017/10/02/chinas-party-led-rule-of-law-regime/>.

<sup>63</sup> Matt Ford, “China’s Widening Crackdown on Lawyers,” *The Atlantic*, January 14, 2016, <https://www.theatlantic.com/international/archive/2016/01/china-lawyer-crackdown-arrest/424005/>; Andrew Jacobs and Chris Buckley, “China Targeting Rights Lawyers in a Crackdown,” *The New York Times*, July 22, 2015, sec. Asia Pacific, <https://www.nytimes.com/2015/07/23/world/asia/china-crackdown-human-rights-lawyers.html>; A. B. A. Journal, “China’s Latest Crackdown on Lawyers Is Unprecedented, Human Rights Monitors Say,” *ABA Journal*, accessed July 18, 2017, [http://www.abajournal.com/magazine/article/chinas\\_latest\\_crackdown\\_on\\_lawyers\\_is\\_unprecedented\\_human\\_rights\\_monitors/](http://www.abajournal.com/magazine/article/chinas_latest_crackdown_on_lawyers_is_unprecedented_human_rights_monitors/).

<sup>64</sup> Su Lin Han, “Individual Rights Protection or Social Management? Equal Employment Laws and Policies in China,” in *China’s Socialist Rule of Law Reforms Under Xi Jinping*, ed. John Garrick and Yan Chang Bennett (Routledge, 2016), 134.

specifically addressed law-based governance in China), it was clear that the CCP showed no signs of relinquishing power in areas related to maintaining social stability.<sup>65</sup>

Though the literature often portrays legitimacy as a kind of massive underbelly of China's CCP, Cai notes that it is not something that emanates solely from the center of the Party-state, arguing that there are differences between how China's national and local governments perceive and interact around the issue of legitimacy. Because most conflicts are handled by local governments, they tend to lose legitimacy more rapidly than the central government and as a result, citizens tend to trust the central government more.<sup>66</sup> Tony Saich's survey research spanning 2003 to 2011 also found that Chinese citizens tended to be more satisfied with the central government than with lower levels of government.<sup>67</sup> Tang's analysis of survey data (mentioned above) also supports these findings, showing that the lower the government level, the lower the satisfaction with the government and trust of officials.<sup>68</sup> Cai points out that despite trust in the central government, the central government can still feel pressure from issues with local governments, especially when local citizens seek out the central government for redress.<sup>69</sup> He further argues that this tension is important because the central government is more responsible for the operation of the political system and as a result, has a greater interest in protecting the regime's legitimacy, in contrast to local officials.<sup>70</sup> Legitimacy therefore cannot be defined solely by single issue-areas (rule of law, economic growth,

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<sup>65</sup> Su Lin Han, "Individual Rights Protection or Social Management? Equal Employment Laws and Policies in China."

<sup>66</sup> Cai, "Social Conflicts and Modes of Action in China," 109.

<sup>67</sup> Tony Saich, "The Quality of Governance in China," ed. Keping Yu, *China Governance Review*, April 2013, 1-27.

<sup>68</sup> Tang, "Authoritarian Regime Sustainability," Chapter 2 (online version) 17-18.

<sup>69</sup> Cai, "Social Conflicts and Modes of Action in China," 109.

<sup>70</sup> Cai, *Collective Resistance in China: Why Popular Protests Succeed or Fail*, 6.

health care, etc.); legitimacy also involves the push and pull between central and local governments around various sets of social issues.

### Social Stability

While Inglehart and Welzel discuss democratic institutions, Louis Coser emphasizes the role of “safety-valve” institutions, which are not necessarily democratic; they are grievance-expressing institutions that serve to drain off hostile and aggressive sentiments, thereby helping to maintain the system by preventing otherwise probable conflict or reducing its disruptive effect.<sup>71</sup> Coser warns that while these institutions may help prevent conflict from erupting because they deflect anger away from modifying the system, they can also create dammed-up tension in individuals and potentialities for disruptive explosion.<sup>72</sup> Along similar lines, Piven and Cloward echo the importance of institutions on political stability, asserting that institutional patterns shape the collectivity from which protest arises: “institutional life aggregates people or disperses them, molds group identities, and draws people into the setting within which collective action can erupt.”<sup>73</sup>

### **Interest Articulation and Civil Society in Authoritarian Systems**

Tianjin Shi in his seminal work on interest articulation in China in the 1990s aptly noted that a central question facing students of communist participation is: how are the political activities of ordinary people linked to the policy-making process in communist societies?<sup>74</sup> In other words, how can people articulate their interests in authoritarian/communist systems? Rice notes that civil societies are useful to

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<sup>71</sup> Lewis Coser, *The Functions of Social Conflict* (New York: The Free Press, 1956), 48.

<sup>72</sup> Coser, 48.

<sup>73</sup> Frances Fox Piven and Richard A Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Vintage Books, 1979), 21.

<sup>74</sup> Tianjian Shi, *Political Participation in Beijing* (Cambridge Univ Press, 1997), 7.

authoritarian regimes up to a certain point and it is a matter of balance to act before the groups become threatening, but not so brutally that cracking down on them would provoke backlash.<sup>75</sup> But as Chinese society becomes increasingly liberal, Reilly noted in 2012 that China presents “a curious case of liberalization without democratization.”<sup>76</sup> As this study comes to an end six years after Reilly’s analysis, China may represent an even more extreme example of this: as Chinese citizens have become increasingly well-off and educated, the government, as mentioned above, has increasingly restricted individual rights, from use of the Internet to being able to engage in legal activism.

One of the reasons that this (western-driven) paradox may persist in China is because, as scholars have noted since the 1990s, the regime “has developed a series of input institutions that allow Chinese to believe that they have some influence on policy decisions and personnel choices at the local level.”<sup>77</sup> These include both formal and informal channels, from the infamous and omnipresent *xinfang* system (also called Letters and Visits system) that allows citizens to issue formal complaints in both government and Party-run agencies to informal channels such as protest.<sup>78</sup> Yet questions remain about whether or not these institutions are adequate. Cai notes that the “Party-state faces serious pressure because of the magnitude of conflicts and the recurrence of

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<sup>75</sup> Rice, *Democracy: Stories from the Long Road to Freedom*, 18.

<sup>76</sup> Reilly, *Strong Society, Smart State: The Rise of Public Opinion in Japan’s China Policy*, 207.

<sup>77</sup> Nathan, “Authoritarian Resilience,” 14; Dickson, “Populist Authoritarianism: The Future of the Chinese Communist Party,” 4; Shambaugh, *China’s Communist Party: Atrophy and Adaptation*, 168; Shi, *Political Participation in Beijing*. Shi’s work represents one of the earliest identifying and analyzing the various sources of input institutions in China.

<sup>78</sup> Shi’s *Political Participation in Beijing* provides a full summary of available formal and informal institutions of expression. Also see Carl Minzer’s work for a more detailed analysis and history for the *xinfang* system: Carl Minzer, “Xinfang: An Alternative to Formal Chinese Institutions,” *Stanford Journal of International Law* 42 (2006): 103–79.

non-institutionalized or illegal modes of action,” which imply that regular or permitted channels have limitations.<sup>79</sup>

### *Why People Protest*

As Cai’s analysis implies, people in China resort to extralegal forms of interest expression because existing institutions are inadequate. Yet other factors also influence whether or not people decide to protest. Goldstone and Tilly frame the decision to protest with the concepts of opportunity and threat, arguing that these factors combine to shape decisions regarding actions: “a group may decide to bear very high costs for protests if it believes the chances of success are high, but the same group may avoid even small costs of protest if it believes chances of success are low.”<sup>80</sup> A group may also decide to risk protest, even when opportunities are seemingly absent, if the costs of acting are not too great.<sup>81</sup> In the context of China’s environmental protests, Deng and Yang argue that the relationship between pollution and protest is context dependent: if the issue of pollution is effectively framed, Chinese villagers may protest; however, if the pollution is caused by other villagers, they may not protest due to concerns about community relations and economic dependency.<sup>82</sup> Tang’s analysis shows that the level of government affects whether or not citizens protest: when pursuing grievances, citizens are far more likely to protest, petition, and join social organizations at the local levels than at higher levels of government.<sup>83</sup>

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<sup>79</sup> Cai, “Social Conflicts and Modes of Action in China.”

<sup>80</sup> Jack Goldstone and Charles Tilly, “Threat (and Opportunity): Popular Action and State Response in the Dynamics of Contentious Action,” in *Silence and Voice in the Study of Contentious Politics*, ed. Ronald Aminzade et al. (Cambridge: Cambridge University Press, 2001), 183.

<sup>81</sup> Goldstone and Tilly, 183.

<sup>82</sup> Yanhua Deng and Guobin Yang, “Pollution and Protest in China: Environmental Mobilization in Context,” *The China Quarterly* 214 (2013): 321, <https://doi.org/10.1017/S0305741013000659>.

<sup>83</sup> Tang, “Authoritarian Regime Sustainability,” Chapter 2 (online version) 21-22.

Scholars specifically studying medical protests argue that health care and dispute resolution systems characterized by mistrust create the context through which protest emerges to resolve medical disputes. Because hospitals have often resolved these protests by paying off protesters, this mode of action has become further encouraged.<sup>84</sup> While these current studies provide a rich analysis of the potential causes of *yinao*, in Chapter 6, I add to existing research a thorough analysis of variables leading to the proliferation of *yinao*. I also offer a comparison across space, time, and other countries to more precisely tease out why *yinao* erupted into a national phenomenon.

### *How People Protest*

Another important part of the protest literature concerning China centers around how people choose to protest and why some protests are successful while others are not. Kevin O'Brien and Lianjiang Li, in their seminal book *Rightful Resistance in Rural China*, develop the concept of "rightful resistance" to encompass four main ideas: "it operates near the boundary of authorized channels, employs the rhetoric and commitments of the powerful to curb the exercise of power, hinges on locating and exploiting divisions within the state, and relies on mobilizing support from the wider public."<sup>85</sup> Elizabeth Perry, however, rejects the idea that rightful resistance is new, arguing that local villagers employing official narratives to pursue their interests represents a practice dating back to imperial China.<sup>86</sup> Mertha adds that protesters often

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<sup>84</sup> Benjamin Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," *Columbia Law Review* 113, no. 1 (2013); Sarah Biddulph, *The Stability Imperative: Human Rights and Law in China* (UBC Press, 2015).

<sup>85</sup> Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* (Cambridge: Cambridge University Press, 2006), 2.

<sup>86</sup> Elizabeth J. Perry, "Chinese Conceptions of 'Rights': From Mencius to Mao—and Now," *Perspectives on Politics* 6, no. 1 (2008): 37–50; Elizabeth J. Perry, "A New Rights Consciousness?," *Journal of Democracy* 20, no. 3 (2009): 17–20; Elizabeth J. Perry, "Popular Protest: Playing by the Rules," in *China Today, China*

choose “issue frames” to pursue their causes, such as cultural or environmental.<sup>87</sup> While all of this scholarship has been crucial to our understanding of protests, *yinao* protests use a wide range of strategies from banners to funeral rites, thus enabling us to understand how individuals, not just communities, choose to pursue and frame their grievances.

### *Success of Protest*

Beyond the means by which protesters pursue their claims is how and whether they are ultimately successful in achieving their goals. Piven and Cloward hold a fatalistic view of why protests succeed or not, claiming that if protesters win, they win “what historical circumstance has already made ready to be conceded.”<sup>88</sup> Cai, echoing Giugni and Tarrow, asserts that so many different factors and intervening variables combine to shape the outcomes of protest movements, making it exceedingly difficult to assess the impact of citizen resistance on policy changes and movement outcomes.<sup>89</sup> Yet Mertha’s work on whether or not anti-dam protests succeed in China argues that several factors are important to whether or not protests succeed. He asserts that issue-framing, policy entrepreneurship (support by officials, media, or NGOs), and broad-based support are important factors for success.<sup>90</sup> Cai echoes the importance of the media in Mertha’s work, claiming that “in China the media are perhaps the most crucial third party in citizen’s resistance, despite the party’s control.”<sup>91</sup> In studying protests that spread across different administrative districts, Zhang argues that protest leaders play decisive roles in whether or not protests spread while at the same time, he also maintains that the state

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*Tomorrow: Domestic Politics, Economy, and Society*, ed. Joseph Fewsmith (Lanham, MD: Rowman & Littlefield Publishers, 2010).

<sup>87</sup> Andrew Mertha, *China’s Water Warriors: Citizen Action and Policy Change* (Ithaca: Cornell University Press, 2008), 12–23.

<sup>88</sup> Piven and Cloward, *Poor People’s Movements: Why They Succeed, How They Fail*, 36.

<sup>89</sup> Cai, *Collective Resistance in China: Why Popular Protests Succeed or Fail*, 14.

<sup>90</sup> Mertha, *China’s Water Warriors: Citizen Action and Policy Change*.

<sup>91</sup> Cai, *Collective Resistance in China: Why Popular Protests Succeed or Fail*, 15.

molds and restricts the scale of protest diffusion.<sup>92</sup> Liebman's work on whether or not petitioners are successful in changing court decisions echoes the importance of obtaining the support of external actors, arguing that in some cases petitioners' success was tied to their ability to attract the attention of senior party officials, people's congress representatives, or the media.<sup>93</sup>

To this literature I add the importance of the Internet and social media not just as ways to make protest successful, but as part of the cycle that encourages protests to occur. Further, I trace the modes in which people pursue medical protests to broader social problems in today's China in addition to other cultural and historical influences on how protests are carried out.

### Civil Society

In addition to available institutional channels for political participation, citizens in China have increasingly participated in civil society organizations. In her reflection on how authoritarians generally interact with civil society, Rice notes that "up to a certain point, these organizations are useful to the regime...but there are limits to what the regime will tolerate."<sup>94</sup> Nathan notes that the Chinese governing system has become better funded, more technologically advanced, and more skillful in repression than other authoritarians. The Party-state keeps up with and uses social media to its advantage, an ability that also enables it to broadcast the punishment of potentially dangerous messengers like Liu Xiaobo and Ai Weiwei, so the rest of China's citizenry has a

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<sup>92</sup> Wu Zhang, "Protest Leadership and State Boundaries: Protest Diffusion in Contemporary China," *The China Quarterly* 222 (2015): 360, <https://doi.org/10.1017/S0305741015000715>.

<sup>93</sup> Benjamin Liebman, "A Populist Threat to China's Courts?," in *Civil Dispute Resolution in Contemporary China*, ed. Margaret Y.K. Woo and Mary E. Gallagher (New York: Cambridge University Press, 2011), 287.

<sup>94</sup> Rice, *Democracy: Stories from the Long Road to Freedom*, 18.

“frightening picture of the regime’s capacity and willingness to repress critics.”<sup>95</sup> While the Chinese system has allowed for various types of NGOs to exist,<sup>96</sup> under Xi Jinping, China has taken a more illiberal turn with the arrests of human rights lawyers and restrictions on NGOs,<sup>97</sup> and increasing monitoring and collecting data on its citizens.<sup>98</sup> With this increasingly repressive context in mind, this study inquires into the state of civil society’s ability to respond to and address *yinao* and the issues that contribute to it.

### **State Response to Protest**

How states – China in particular – respond to protest has become a focal point for research. Much of the debate revolves around the extent to which concession and repression is used and the balance between them. Piven and Cloward asked why states withdraw some of their concessions to protesters while others become permanent institutional reforms. They conclude that those institutions that become more permanent are compatible with the interests of powerful economic groups, while other reforms granted during turmoil are not.<sup>99</sup> McAdams and Tilly argue that for authoritarian regimes, concessions to any group challenging their monopoly of power is likely to be more costly than repression, so repression is more likely to dominate protest in authoritarian settings. However, they acknowledge that protests have costs as well and as a result, authoritarian regimes swing back and forth between concessions and repression as their cost estimates

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<sup>95</sup> Nathan, “Foreseeing the Unforeseeable,” 22.

<sup>96</sup> For an updated, extensive coverage of NGOs in China, see: Karla W. Simon, *Civil Society in China: The Legal Framework from Ancient Times to the “New Reform Era”* (New York: Oxford University Press, 2013).

<sup>97</sup> Nathan, “Foreseeing the Unforeseeable,” 22.

<sup>98</sup> Human Rights Watch, “China: Police ‘Big Data’ Systems Violate Privacy, Target Dissent,” Human Rights Watch, November 19, 2017, <https://www.hrw.org/news/2017/11/19/china-police-big-data-systems-violate-privacy-target-dissent>; Dou, “Jailed for a Text.”

<sup>99</sup> Piven and Cloward, *Poor People’s Movements: Why They Succeed, How They Fail*, 35.

fluctuate.<sup>100</sup> In the study of China, scholars often highlight this balance between concession and repression. Dickson characterizes the government's response to protests as a mix of "carrots and sticks." When the government deems the protests legitimate, it makes tangible and even monetary concessions, but in cases of illegitimate protests, it punishes a few protest leaders to warn others that protests are risky.<sup>101</sup> Reilly articulates a cyclical model for China's protest responsiveness to nationalist, anti-Japanese protests: "By combining tolerance and responsiveness with persuasion and repression, the CCP has developed a system of responsive authoritarianism based on accommodating popular pressures within its policy-making process in ways that shore up regime stability."<sup>102</sup> Cai examines responsiveness at different levels of governance, arguing that different levels have different perceptions of the costs and benefits of addressing citizens' resistance. The perceptions of each level shape its responses, thereby both determining the opportunities for resistance and outcomes.<sup>103</sup>

Another branch of research that more directly relates to this study discusses individual grievances. Han asserts that the Chinese government's policy toward individual grievances concerning equal employment law is characterized by "top-down mobilizing of political and bureaucratic machinery as opposed to promoting individual assertion of rights and claims through existing judicial and administrative enforcement channels."<sup>104</sup> In his analysis of petitioning of courts, Liebman observes that individual grievances can be a focus of official concern, and courts can be swayed by individual

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<sup>100</sup> Ronald Aminzade et al., *Silence and Voice in the Study of Contentious Politics* (Cambridge: Cambridge University Press, 2001), 192–93.

<sup>101</sup> Dickson, "Populist Authoritarianism: The Future of the Chinese Communist Party," 7.

<sup>102</sup> Reilly, *Strong Society, Smart State: The Rise of Public Opinion in Japan's China Policy*, 1–2.

<sup>103</sup> Cai, *Collective Resistance in China: Why Popular Protests Succeed or Fail*, 5.

<sup>104</sup> Su Lin Han, "Individual Rights Protection or Social Management? Equal Employment Laws and Policies in China," 138.

protest.<sup>105</sup> Liebman also notes the dichotomy of over-responsiveness and under-responsiveness of the Chinese Party-state particularly in medical disputes. While hospitals try to tame conflicts by quickly paying off protesters, at the same time there is also “widespread shirking” by state institutions like the public security and health bureaus because they do not want to get involved.<sup>106</sup>

The literature has largely discussed short-term responses to protest, but there is clearly a need for the CCP, and any government, to go beyond immediate responses to particular incidents, whether individual or group; there needs to be lasting institutional reforms for a more permanent solution to unrest. While many scholars agree that institutional reforms are important for the CCP to maintain lasting power, to my knowledge few studies actually look at how the Chinese state responds to protests with new institutions and further, how these institutions operate. This dissertation provides direct information on both of these dimensions.

### **State-Society Interaction around Protest**

State responsiveness to protest, however, is not linear – understanding how society interacts with state responsiveness is also important. Liebman has noted that state responsiveness to petitioning and protest encourages more petitioning and potential for unrest.<sup>107</sup> Cai argues that in addition to influencing policy implementation, citizen resistance also contributes to policy adjustment by the government. Policy adjustment means “the revision or abolition of policies that have directly caused or failed to address citizens’ grievances, as well as the creation of new policies to address the problems that

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<sup>105</sup> Liebman, “A Populist Threat to China’s Courts?,” 309–210.

<sup>106</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 251–52.

<sup>107</sup> Liebman, “A Populist Threat to China’s Courts?,” 360.

have triggered resistance or to accommodate protesters' demands."<sup>108</sup> In seeking to understand whether nationalist protest impacts Chinese foreign policy, Jessica Chen Weiss argues that the degree of popular influence on Chinese foreign policy is affected by the government's management of anti-nationalist, anti-foreign protest; state and society influence and shape each other.<sup>109</sup>

Analysis of state responsiveness to protest alone leaves out the role of society. Yongnian Zheng aptly captures the importance of understanding state-society interactions: "In any political setting, some dimension of state power has more to do with the state's ability to work through and with other social actors, and a state's apparent disconnection from social groups turns out to be associated in many cases with weakness rather than strength. The state itself is a part of a given society, and it needs society to achieve its objectives."<sup>110</sup>

### **State Responses to *Yinao***

Literature on *yinao* recognizes that it is a complicated, multifaceted problem that should be dealt with by various types of policy responses spanning both health care and law.<sup>111</sup> One of the main arguments of the literature is the extent to which different types of solutions, such as health-care based, legal-based, or security-based are effective in addressing *yinao*. Some scholars focus more on policy initiatives and recommendations that increase hospital and public security measures as well as strengthen dispute

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<sup>108</sup> Cai, *Collective Resistance in China: Why Popular Protests Succeed or Fail*, 13.

<sup>109</sup> Jessica Chen Weiss, *Powerful Patriots: Nationalist Protest in China's Foreign Relations* (New York, NY: Oxford University Press, 2014), 1.

<sup>110</sup> Zheng, *Technological Empowerment: The Internet, State, and Society in China*, 12.

<sup>111</sup> Lina Chen and Shixiong Deng, "Medical Disturbance and Its Countermeasures [“医闹”事件的产生原因及解决对策],” *Law and Medicine Magazine* 14, no. 4 (2007): 253–55; Li Zhu and Yingchen Yuan, "The Types of Doctor-Patient Contradictions, Distinctive Characteristics, and Countermeasures at the Present Stage, [现阶段我国医患矛盾的类型, 特征与对策],” *Social Science Research* 21, no. 6 (2014): 104–8.

resolution mechanisms to address *yinao*.<sup>112</sup> Other authors argue that legal and security measures alone will not resolve the issue and that health-care related solutions, especially those that increase trust between patients and physicians, are perhaps the most pressing for addressing *yinao*.<sup>113</sup>

In addition to the type of response, Liebman has also discussed the degree of state responsiveness, citing that in medical disputes, the state shows both qualities of over-responsiveness and under-responsiveness. While the Party-state has been over-responsive by encouraging the settlement of disputes by paying off protesters in order to preserve social stability, it has also been under-responsive because police and health bureaus have refused to get involved.<sup>114</sup>

I build on the existing literature of responsiveness to *yinao* in several ways. First, while most literature focuses on the responsiveness to *yinao* and medical disputes directly, I examine the entire system for managing both complaints and disputes, from the first time a patient or family member communicates or complains that something is wrong all the way through adjudication. This provides important context for *yinao* because disputes initially begin as complaints, so understanding how complaints are managed in their initial phases can provide insight into the path that led to their escalation.

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<sup>112</sup> Yong Luan and Hua Meng, “Study on Sorts, Characteristics, Harms, Reasons, and Disposing Strategies of Medical Violations [医闹种类、特征、危害与成因对策研究],” *Medicine and Philosophy: Humanities and Society Medicine Edition* 33, no. 5 (2012): 28–30; Jiang Jinyan et al., “医院工作场所暴力现状及防范策略研究 Yiyuan Gongzuo Changsuo Baoil Xianzhuang Ji Fangfan Celue Yanjiu [The Current Situation of Hospital Area Violence and Research on Preventative Tactics],” *Journal of Traditional Chinese Medicine Management* 23, no. 10 (May 2015): 1–4.

<sup>113</sup> Benjamin Liebman, “Law in the Shadow of Violence: Can Law Help to Improve Doctor-Patient Trust in China?,” *Columbia Journal of Asian Law* 30 (2017): 115, 128–30; Ryan Rossner, “Medical Liability and the Doctor-Patient Relationship in China,” 2013, 22; Joseph D. Tucker et al., “Patient-Physician Mistrust and Injustice in China” (Confidential Paper, 2014), 2,10.

<sup>114</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 186, 251–52.

Second, I trace state responses since 1986, when the first *yinao* incidents were reported in the *People's Daily*. I show how events correspond with policy responses in addition to policy implementation to provide a full picture of responsiveness. I also dive specifically into the implementation of the newly created medical dispute mediation committees (more below), which critics write off as another institution that distracts from meaningful, legal dispute resolution. In the area of state-society relations, I look not only at society as responsible for protest and online criticism, but also the source of problem solving for many of the health care and legal system issues contributing to *yinao*.

### **Chinese-Style Rule of Law**

In basic terms, rule of law means that “law distributes power to ordinary citizens against the state in subjecting state authority to legal rules and norms as any other citizen.”<sup>115</sup> A system of rule of law must have “independent and impartial decision makers, transparent and open rules that apply uniformly to all (including government powers), and a process that ensures the protection of fundamental rights and interests.”<sup>116</sup> Gallagher points out that the majority of Western scholars are pessimistic regarding the rule of law in China, with a dominant concern being the CCP’s “unwillingness to submit to legal regulations and strictures that may reduce its political power.”<sup>117</sup> This tension between promotion of the greater rule of law and one-party rule permeates China’s entire legal system.<sup>118</sup> Jianfu Chen echoes Gallagher’s concerns a decade later, stating that the lack of judicial independence continues to be a major problem for rule of law in China

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<sup>115</sup> Margaret Y.K. Woo and Mary E. Gallagher, “Introduction,” in *Chinese Justice: Civil Dispute Resolution in Contemporary China* (New York, NY: Cambridge University Press, 2011), 5.

<sup>116</sup> Woo and Gallagher, 5.

<sup>117</sup> Gallagher, “‘Use the Law as Your Weapon!’: Institutional Change and Legal Mobilization in China,” 75.

<sup>118</sup> Joseph Fewsmith and Jamie Horsley, eds., “The Rule of Law: Pushing Limits of Party Rule,” in *China Today, China Tomorrow: Domestic Politics, Economy, and Society* (Lanham, MD: Rowman & Littlefield Publishers, 2010), 67.

and “is unlikely to be resolved any time soon.”<sup>119</sup> DeLisle agrees that under Xi “laws role in containing threats to the strategy for economic growth appears to include law’s longstanding function of addressing social disorder that could disrupt the economy.”<sup>120</sup> The concept of the rule of law has had a mixed reception in China, in part because historically China has not had a rule-of-law system, and Chinese scholars often have looked to western conceptions of law as a resource to create their own interpretation of it.<sup>121</sup> Although western scholars have expressed concern about whether true “rule of law” can exist in a one-party state, for many Chinese scholars, rule of law does not detract from the Party’s leadership of the state and in fact, the CCP is supposed to help guide the process for establishing rule of law.<sup>122</sup>

#### Procedural Justice and Mediation

One important aspect of the rule of law relevant to this study is procedural justice, which encompasses two main demands: 1) that government decisions are made under certain procedural principles established for the protection of those affected by those decisions; 2) that the resolution of disputes or administration of justice will be conducted under procedural safeguards against injustice.<sup>123</sup> In traditional Chinese culture and in the early days of the PRC, procedural justice was mostly neglected and regarded with secondary importance.<sup>124</sup> In post-Mao China, procedural laws were developed as working

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<sup>119</sup> Jianfu Chen, “Efforts towards Procedural Justice in Post-Mao China,” in *China’s Socialist Rule of Law Reforms Under Xi Jinping*, ed. John Garrick and Yan Chang Bennett (Abingdon & New York: Routledge, 2016), 105.

<sup>120</sup> deLisle, “The Rule of Law with Xi-Era Characteristics: Law for Economic Reform, Anticorruption, and Illiberal Politics,” 27.

<sup>121</sup> Albert HY Chen, “Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law,” *UCLA Pac. Basin LJ* 17 (1999): 130.

<sup>122</sup> Chen, 148.

<sup>123</sup> Chen, “Efforts towards Procedural Justice in Post-Mao China,” 94.

<sup>124</sup> Chen, “Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law,” 1999, 146.

procedures for implementing substantive laws; “notions of protection and safeguard were absent.”<sup>125</sup> Martin King Whyte asserts that procedural injustices, rather than distributive injustices, may be the canary in the coalmine for China because procedural injustices have triggered unrest – unfairly burdensome rural taxes and fees until 2004, inability to block nearby enterprises from emitting pollution, or the confiscation of land for development without proper consultation or compensation.<sup>126</sup>

One concern regarding the development of procedural justice in China relates to China’s more recent push for mediation rather than adjudication, which occurred in the early 2000s following a period of civil justice reform that emphasized adjudication.<sup>127</sup> The issue that mediation presents for procedural justice as it relates to the rule of law is that it privatizes disputes, which carries three main issues: 1) it privatizes disputes and issues of social concern, blocking the development of general legal norms and the rule of law;<sup>128</sup> 2) it does not have the procedural protections that a trial affords, which is designed to protect parties against each other’s cheating by a watchful tribunal and a set of procedures designed to deter and expose lying;<sup>129</sup> 3) as a result of the lack of such safeguards in number two, parties sit down at a “poker table” and play hardball, so “complete candor is impossible in negotiation.”<sup>130</sup>

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<sup>125</sup> Chen, 105.

<sup>126</sup> Martin King Whyte, *Myth of the Social Volcano: Perceptions of Inequality and Distributive Injustice in Contemporary China* (Stanford: Stanford University Press, 2010), 196.

<sup>127</sup> Fu Hualing and Richard Cullen, “From Mediatorial to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” 25; Wu Yingzi, “The Abilities and Limitations of ‘Big Mediation’: The Social Autonomy and Systemic Provisions of Dispute Resolution [‘大调解’的功能及限度, 纠纷解决的制度供给与社会自治],” *Peking University Law Journal [中外法学]* 20, no. 2 (2008): 309–19.

<sup>128</sup> Fu Hualing and Richard Cullen, “From Mediatorial to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” 37.

<sup>129</sup> David Luban, “Bargaining and Compromise: Recent Work on Negotiation and Informal Justice,” *Philosophy & Public Affairs* 14, no. 4 (October 1, 1985): 406, <https://doi.org/10.2307/2265340>. NOTE: not to be confused with the famous Chinese legal scholar Stanley Lubman.

<sup>130</sup> Luban, 406.

There is a sticky debate about the role of mediation and the rule of law especially around medical disputes. Mediation is not necessarily in conflict with rule of law and in fact, in western scholarship, there is a growing consensus that mediation and other alternative dispute resolution (ADR) methods might be best for resolving malpractice claims.<sup>131</sup> However, in China mediation under Mao was infused with political ideology and coercion,<sup>132</sup> pressuring parties to reach agreements they did not want. Though it has moved away from its ideological and normative roots in the post-Mao era,<sup>133</sup> concerns remain that it is still coercive.<sup>134</sup> For Chinese scholar Zhang Jing, mediation is not in conflict with the rule of law; the rule of law in fact provides legitimacy for “old” institutions like mediation.<sup>135</sup> I contribute to and update this debate directly by shadowing and evaluating the procedures of one medical dispute mediation committee from 2015-2016, in the era of Xi Jinping, to shed light on how mediation may have changed over time. While most literature debates mediation, procedural justice, and the rule of law in a general sense, I observe cases in real-time to uncover the extent to which procedures are followed, among other characteristics and roles of mediation committees.

### Rule of Law Paradox in Dispute Resolution

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<sup>131</sup> David H. Sohn and B. Sonny Bal, “Medical Malpractice Reform: The Role of Alternative Dispute Resolution,” *Clinical Orthopaedics and Related Research* 470 (2012): 1370–78; Susan J. Szmania, Addie M. Johnson, and Margaret Mulligan, “Alternative Dispute Resolution in Medical Malpractice: A Survey of Emerging Trends and Practices,” *Conflict Resolution Quarterly* 26, no. 1 (June 2008): 71–96, <https://doi.org/10.1002/crq.224>.

<sup>132</sup> Stanley B Lubman, “Chapter 3: Law Under Mao, I: Mediation,” in *Bird in a Cage: Legal Reform in China after Mao* (Stanford: Stanford University Press, 1999), 40–70.

<sup>133</sup> Stanley B Lubman, “Chapter 8: Mediation After Mao,” in *Bird in a Cage: Legal Reform in China after Mao* (Stanford: Stanford University Press, 1999).

<sup>134</sup> Benjamin Liebman, “China’s Law and Stability Paradox,” in *China’s Challenges*, ed. Jacques deLisle and Avery Goldstein (Philadelphia: University of Pennsylvania Press, 2015), 162.

<sup>135</sup> Jing Zhang, “Research of Legal Countermeasures on Hospital Violator Phenomenon [对医闹现象的法律对策研究],” *Hospital Director’s Form* 4 (July 2010): 1.

Dispute settlement represents another indicator for whether rule of law has been established. As Gallagher and Woo assert: “A ‘rule of law’ state develops when the law gives context, legitimacy, a name, and a framework to disputes, even when the disputes involve powerful state actors.”<sup>136</sup> Yet despite the ability of rule of law to lessen the political nature of disputes by legitimizing moral claims and providing a regulated process for debate, the Chinese system has shown reluctance in allowing law and legal procedures to play a dominant role in dispute resolution. This reluctance arises from the perceived tension and tradeoff between the Party-state’s interest in short-term stability and the long-term need for a rule-based system, a phenomenon Liebman calls the “law-stability paradox.”<sup>137</sup> Medical disputes provide an apt example of this: in order to preserve short-term stability, complainants have often been paid off, incentivizing protest so that now violence and protest are key aspects of how the system functions.<sup>138</sup> As Liebman summarizes: “Despite three decades of emphasis on constructing a comprehensive legal framework, medical cases show that in many disputes in China the ‘shadow of the law’ is weak or nonexistent.”<sup>139</sup> Other authors have found tension between stability and law in the areas of civil justice reform and litigation of individual rights claims.<sup>140</sup>

### Politics in China’s Health Care System and Hospitals

While the political nature of the court process has been well documented, the politics of China’s health care system remain understudied. There is a great amount of

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<sup>136</sup> Woo and Gallagher, “Introduction,” 5.

<sup>137</sup> Liebman, “China’s Law and Stability Paradox,” 175.

<sup>138</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 248.

<sup>139</sup> Liebman, 247.

<sup>140</sup> Su Lin Han, “Individual Rights Protection or Social Management? Equal Employment Laws and Policies in China,” 134; Fu Hualing and Richard Cullen, “From Mediatory to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” 56.

scholarly research dedicated to China's health care reforms,<sup>141</sup> development and governance,<sup>142</sup> and organized corruption,<sup>143</sup> but the politics and promotion of officials within the health care bureaucracy and public hospital system remain opportunities for further scholarship. Henderson and Cohen, in their pioneering fieldwork in a Chinese hospital in Wuhan during the 1980s, documented some of the political aspects of hospital life. During the Cultural Revolution, hospitals and physicians were subject to some of the greatest criticism, and physicians frequently went to political meetings.<sup>144</sup> They reported, "The hospital *danwei* [work unit] is embedded in the Communist Party, the Health Ministry bureaucracy, and the cultural framework of health care and health behavior of China."<sup>145</sup> Although the communist work unit system is no longer as tightly knit as it was in the past, providing community and almost all cradle-to-grave services to its staff,<sup>146</sup> the political nature of the health care system remains. Medical disputes offer an opportunity to tease out the political nature of the current health care system, and as Liebman highlights: "[Medical] review boards consist entirely of local doctors and are thus likely

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<sup>141</sup> Eggleston, "Health Care for 1.3 Billion"; Winnie Chi-Man Yip et al., "Early Appraisal of China's Huge and Complex Health-Care Reforms," *The Lancet* 379, no. 9818 (March 3, 2012): 833–42; Feng Hui and Yu Wen, "Achievements of China's Health Care Reform," People's Republic of China National Health and Family Planning Commission, January 14, 2015, [http://en.nhfpc.gov.cn/2015-01/14/content\\_19318938.htm](http://en.nhfpc.gov.cn/2015-01/14/content_19318938.htm); Christina Ho, "China's Health Care Reform: Background and Policies," in *Implementing Health Care Reform Policies in China: Challenges and Opportunities*, ed. Charles III Freeman and Lu Boynton (Washington, DC: Center for Strategic and International Studies, 2011), 1–6, [http://csis.org/files/publication/111202\\_Freeman\\_ImplementingChinaHealthReform\\_Web.pdf](http://csis.org/files/publication/111202_Freeman_ImplementingChinaHealthReform_Web.pdf); Christine Kahler, "China's Healthcare Reform: How Far Has It Come?," *The China Business Review* 38, no. 1 (March 2011): 50–55.

<sup>142</sup> Yanzhong Huang, "The Sick Man of Asia: China's Health Crisis," *Foreign Affairs* 90, no. 6 (December 2011): 119–36; Huang, *Governing Health in Contemporary China*.

<sup>143</sup> Tam, "Organizational Corruption by Public Hospitals in China."

<sup>144</sup> Gail E. Henderson and Myron S. Cohen, *The Chinese Hospital* (New Haven and London: Yale University Press, 1984), 3–4.

<sup>145</sup> Henderson and Cohen, 6–7.

<sup>146</sup> Henderson and Cohen, 6–7.

to protect local doctors and hospitals. Local medical associations are overseen by local health departments – which also oversee hospitals and doctors.”<sup>147</sup>

I build on these important studies, not only highlighting the issues of how local health care politics influences medical associations, but the broader issue of how the politicized nature of the health care system enables it to influence other aspects of the dispute resolution system, including media and broader provincial governance. This is important because it paints a full picture of the political nature of the health care system, which often foments injustice and impartiality, further contributing to mistrust in the health care system.

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<sup>147</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 196.

### CHAPTER 3: RESEARCH DESIGN AND METHODOLOGY

I primarily use qualitative methods to study why *yinao* became a national phenomenon and how actors in both state and society have responded to it, though where possible I provide preliminary analysis on the limited quantitative data available for *yinao*. This study examines three dependent variables – the proliferation of *yinao*, Chinese Party-state responsiveness, and the responses of society. I dedicate the first part of the dissertation to establishing the context, definitions, and analysis for explaining the proliferation of *yinao* into a national phenomenon. The second part of the dissertation traces state and society responses. However, I hesitate to characterize state and society responsiveness in the sense of traditional dependent variables<sup>148</sup> because my primary goal is not to explain the causal mechanisms behind why state and society are responding in the ways that they do; it is to understand how these entities – an authoritarian single Party-state and the society under its authority – manage to adapt and respond within the constraints of their environment and in response to each other. I find the “how” question in this case the more interesting question because we want to know how the process of adaptation occurs, if at all, as well as the challenges and advantages the Chinese system may have in doing so. In this chapter I explain how I designed and conducted the research for this dissertation. I first discuss the overall approach to the research design. Next I detail my methods for data collection and analysis. Lastly, I discuss some of the limitations of the methods used in this study.

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<sup>148</sup> For a thoughtful discussion on analyzing complex social processes instead of trying to tease out causality, see: Yuen Yuen Ang, *How China Escaped the Poverty Trap* (Ithaca: Cornell University Press, 2016), 10.

## **Development of Research Design**

This study has two parts that build upon each other. The first part (chapters 4-6) attempts to explain why *yinao* became a social phenomenon. This part not only helps to explain why *yinao* took off, but also creates an important foundation for the second part of the study by identifying the multitude of factors contributing to *yinao* that responsive policies would need to address in order to effectively stop it. The design of the second part of the study (chapters 7-9) aims to analyze adaptation at both high levels and low levels of the Chinese system. Chapter 7 provides the “forest” view at the national level, while Chapter 8 explores the inside of a tree (inside of a single, local-level mediation institution). Chapter 9 on how society responds to *yinao* moderates between the tree and forest levels, examining national-level civil society organizations as well as individual and small community activities occurring online and offline. While imperfect, I hope that this design helps elucidate a picture of adaptation at both the national and local levels and at the group and individual levels.

## **Fieldwork**

Over the course of 12 months, I conducted fieldwork mainly across five large eastern Chinese cities: Beijing, Guangzhou, Nanjing, Shanghai, and Wuhan. Shanghai and Beijing are directly controlled municipalities, meaning they are on administrative par with provinces. Guangzhou, Wuhan, and Nanjing are all provincial capitals. All of these cities are some of the most modern and economically developed in China, with Shanghai, Beijing, and Guangzhou typically classified as first-tier cities and Nanjing and Wuhan as second tier,<sup>149</sup> meaning that the places I am studying are relatively well-off, large urban

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<sup>149</sup> “The Best Chinese Cities: Ranking of the Most Commercially Charming Chinese Cities 2017,” Yicai Global, accessed November 11, 2017, <https://www.yicaiglobal.com/node/32574>.

areas, so the conclusions of this study cannot necessarily be generalized to rural areas, smaller cities and counties, or western China. In Chapter 5, however, I briefly touch upon the dynamics of *yinao* in those parts of China. In the field, I spent time primarily at two types of field sites: hospitals and a medical dispute mediation committee.

### Hospital Sites

I had access to two public tier 3-grade A hospitals<sup>150</sup> (“3A hospitals”), one in Guangzhou and one in Nanjing. “3A” means that the hospital is a tertiary facility, which is large (500 beds or more)<sup>151</sup> and has the capacity (such as appropriate specialists and equipment)<sup>152</sup> to perform medically advanced and complex procedures (e.g. cancer treatment and neurosurgery). Grade A means that they have been certified as a high-quality facility.<sup>153</sup> I purposely chose this type of facility for several reasons. First public 3A hospitals in urban areas have a reputation for providing the best medical care in China, so they have high patient volumes. Second, they perform advanced procedures, so they manage riskier cases.<sup>154</sup> Because of these two factors, they tend to be prone to medical disputes and therefore, *yinao*.<sup>155</sup> For the purposes of methodology, I chose these types of facilities because they have often been on the front lines of medical disputes and *yinao*. This does not mean that more rural areas, counties, or smaller cities do not experience

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<sup>150</sup> China has a tiered and graded hospital system. Depending on their size and capabilities, hospitals are ranked across three tiers. This ranking is similar to that used in the US, where primary facilities (tier 1) are smaller and provide more basic services and tertiary facilities (tier 3) are larger and provide more advanced procedures. Grades are also given based on the quality of the hospital, with A being the best, B being passing, and anything below being substandard. Private hospitals are not consistently given tiers and grades. See: Ministry of Health, “Basic Standards for Medical Institutions,” 1994, <http://www.moh.gov.cn/mohzcfgs/pgz/200804/18713.shtml>; Ministry of Health, “Provisional Measures for Hospital Evaluation,” September 27, 2011, <http://www.nhfpc.gov.cn/yzygj/s3585u/201109/d2f032e736754c3ab74793779acb424c.shtml>.

<sup>151</sup> Ministry of Health, “Basic Standards for Medical Institutions.”

<sup>152</sup> Ministry of Health.

<sup>153</sup> Ministry of Health, “Provisional Measures for Hospital Evaluation.”

<sup>154</sup> See Chapter 5 Data and Definition, section on *Yinao* Distribution Across Different Types of Hospitals.

<sup>155</sup> See Chapter 5 Data and Definition section on distribution of *yinao* incidents throughout China.

*yinao*, as there have been reports in those areas as well.<sup>156</sup> But due to time, budget, and access constraints, I was unable to perform research in these areas and encourage future research to focus on them.

These two hospitals represent high-access sites because I was able to engage with many parts of the hospital staff and observe different hospital processes, though what I was able to observe in each hospital depended on the specific circumstances in each context.<sup>157</sup> While I am able to conduct some comparison between them in chapter 7 when I discuss policy implementation on the hospital level, on the whole I am not conducting cross-hospital comparisons since I had different types of access in each. I also conducted interviews in hospital settings in Beijing and Shanghai, but do not count these as whole field sites as I was not able to engage in significant observation of the settings.

#### Medical Dispute Mediation Committee (MDMC)

In addition to spending time at hospitals, another aspect of my fieldwork included spending time regularly at a Medical Dispute Mediation Committee (MDMC) in one of the cities. I document my experiences and interaction with this committee in detail in chapter 7. I was able to receive full access to the MDMC because its director, whom I had met through previous interviews, asked for and received permission from superiors at the associated Bureau of Justice to allow me to become a regular visitor.

#### **Methods for Data Collection**

I use several different methods for data collection and analysis. I collected most of the data used for this dissertation during 12 months of fieldwork in China, where I

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<sup>156</sup> See Chapter 5, section on *yinao* in rural v. urban areas for information on *yinao* in rural areas.

<sup>157</sup> This type of field site and observation is similar to Gail Henderson and Myron Cohen did for their 1984 book *The Chinese Hospital*, though I did not live as closely with the hospital staff as Henderson and Cohen. See: Henderson and Cohen, *The Chinese Hospital*.

conducted in-depth individual and group interviews and engaged in participant observation. I also collected and translated primary documents, mostly government policies, to understand their evolution over time. Additionally, I also use Chinese academic research for secondary data collection and to see whether other studies verify or challenge my findings. For analysis, I use process tracing, comparative case studies, and structured evaluation of criteria that define adaptation. I describe these methods in more detail below.

### Interviews

The foundation of this study is information from interviews. I have a total of 92 interview files that vary in type of interview and the number of individuals involved. The interview files contain in-depth interviews (1-2 people present), group interviews (3 or more people), and participant observation from shadowing the MDMC (not traditional interviews because I mainly observe). I received exemption from the Johns Hopkins

University Homewood IRB for this study. All participants were aware of my study, and I have kept all interviewees' identities confidential. I cite information they gave me with anonymous identifiers they specifically provided or titles I have chosen that do not make them readily identifiable. I explain the participants and types of interviews in detail in the following subsections.

<b>Table 1: Participant Type and Numbers</b>	
<b>Participant Type</b>	<b>No.</b>
Physicians	35
Nurses	10
Hospital Administrators	23
Patient/Family Complainants	11
Mediators	7
Officials	6
Insurance Companies	6
Journalists	3
Scholars	3
Hospital Security Personnel	3
Business leaders	4
Other	4
<b>Total</b>	<b>115</b>

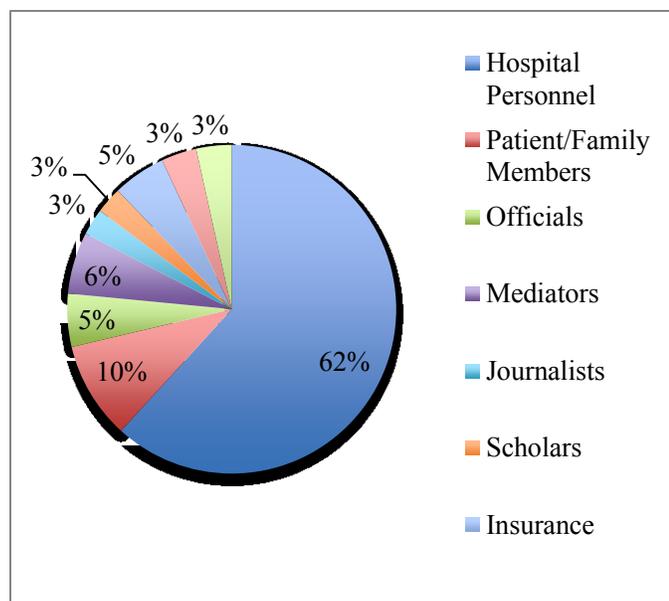
### *Interview Participants*

There were 115 participants involved in the interviewing. I have included the entire spectrum of interviewees in Table 1 above and in Figure 1 below. The largest proportion of interviewees came from hospitals (62% - physicians, nurses, hospital administrators, and security personnel). There is clearly a lack of patient interviews, which I discuss in the limitations section of this chapter.

**Figure 1: Percentage Breakdown of Participants**

### *Group Interviews*

Between the two hospital sites, I conducted seven group interview sessions, each ranging from three to ten people. Six of these seven group interviews were integrated into a project for Johns Hopkins Medicine International (JHI). A partner



hospital of JHI's in China generously organized the group interviews according to my request to interview different stakeholders in medical disputes, from physicians with specific clinical specialties to local officials and security personnel. I am grateful to both JHI and their partner hospital for this opportunity, and many of my future contacts and experiences grew from this initial set of interviews.

The goal of these interviews was to understand how certain groups approached and identified with medical disputes, patient-doctor relationships, adverse events, and of course, *yinao*. Clinicians I interviewed were from the following departments: ICU,

Gynecology and Obstetrics, Emergency Medicine, and Otolaryngology (aka ENT). I chose these clinical departments because they are high-risk departments for *yinao* in China (and for malpractice disputes most everywhere else, except ENT – see Chapter 5 for discussion about high-risk departments).

I also conducted group interviews with hospital administrators and local officials. One interview conducted with hospital administrators from both the hospital's Medical Affairs Department and Party Department<sup>158</sup> focused on recording adverse events, medical dispute management, and training medical personnel on doctor-patient communication. Another group interview was with stakeholders in resolving *yinao* in the hospital and local government, including an official from the local district's Health and Family Planning Bureau, director of the local MDMC, and police stationed at the hospital.

The interviews were semi-structured: prior to conducting them, I had a list of prepared questions, but I kept them open-ended and allowed the conversations to flow because I wanted to ensure I had not missed any hidden elements to the topics of study. While I had to tailor questions for each group I interviewed, generally the interviews began by having the participants discuss the nature and scope of their work broadly in their own words, their experiences with complaints, disputes, and *yinao*, sources of tension between doctors and patients, and their views on recent hospital and government policy initiatives to address these issues. I would also use these interviews to verify information I had gathered from other interviews and media reports.

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<sup>158</sup> Under the Medical Affairs Department, this primarily included personnel from the Doctor Patient Communication Office. Under the Party Department, participants were from the Office of Complaints (*Xinfang Ban*, 信访办) and the Office of Work Morality (*Hangfeng Ban*, 行风办 – monitors behavior of hospital personnel).

### *Individual Interviews*

Individual interviews by design were quite different from group interviews, and there are several important strengths and weaknesses to both. Individual interviews allowed for depth and greater confidentiality. I had several individual interviews with the same individuals, and being able to interview the same person twice or more over a period of time I discovered was extremely important for building trust and obtaining more precise information as a result.

Yet individual interviews are not as strong for understanding general trends and risks overemphasizing opinions of single individuals (called by Kapiszewski et al. “specificity of viewpoints”<sup>159</sup>). For example, there was group consensus consistently across all clinicians that the city-government phone call complaint system seriously interrupted their work, but if I had only done a single-physician interview, I would not have understood its degree of importance. While individual interviews have the potential to allow for greater accuracy and greater depth, the tradeoff is that more has to be done to calibrate the claims made by individuals in order to understand whether they are just individual points-of-views or part of a broader social consensus about a certain set of issues.

### Site-Intensive Method: Participant Observation

In addition to interviewing, this study also employed the “site-intensive method” in which the researcher observes and interacts with the setting she studies.<sup>160</sup> I used this method in several settings, most prominently in the medical dispute mediation committee (MDMC) over the course of several months. I also did this for shorter periods of time

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<sup>159</sup> Diana Kapiszewski, Lauren M MacLean, and Benjamin L Read, *Field Research in Political Science: Practices and Principles* (Cambridge University Press, 2015), 194.

<sup>160</sup> Kapiszewski, MacLean, and Read, 237–38.

within hospitals - I shadowed a physician during his morning clinic hours and sat in a hospital complaints office, watching people come in and out to make complaints. In the complaint office, generally I was not allowed to be involved when situations were more chaotic or serious. When shadowing the physician, I was sometimes introduced, and I suspect the patients thought I was a medical student from abroad, since I was sitting with the doctor, wearing a mask, and he was explaining the interactions to me. No one in either setting contested my presence in the room. In chapter 8 on mediation, I launch into more specifics about shadowing the MDMC over an extended period of time, but here I outline information about my access to and how I approached observing this particular field site.

#### *Access*

I initially met the director of the MDMC during one of the group interviews at a local hospital and asked if there would be any way to volunteer at the committee to learn more about it. He consulted his superiors in the city-district's justice department, and they welcomed me to observe the committee whenever I wanted, but could not offer me a formal volunteering role. I observed this MDMC on and off over the course of eight months since I was traveling to other parts of China for my fieldwork during this period of time as well.

Even though I had full access, I also had to gauge the dynamics surrounding my presence at the committee as an observer. In the beginning, I took their warm welcome literally and would spend entire days there, but I soon realized that this may have been an imposition on them, and so eventually, I decided that on the days I wanted to go in, I would send them a message the morning of the day I planned to be there. There were no

problems in obtaining access. Having this access was a luxury because it enabled me to see random cases – none of them pre-chosen for me specifically to watch at a certain time.

### *My Role, Interaction, and Potential Influence on the MDMC*

As implied above, my role was purely observational. I did not really interact with parties to disputes or facilitate the mediation in any way, though during breaks and pauses, I was sometimes able to clarify information with mediators or quickly ask the participants a question – but this was rare. Due to concerns of confidentiality, I was not allowed to follow up with participants in the process. The MDMC operated in pre-lunch (9:00am-11:30am) and post-lunch sessions (2:30pm-5:00pm) for a total of about 5 working hours per day (depending on schedules of parties to mediation, they would extend these hours). Some days I would go to all or both working sessions. Some days were empty and I would sit and chat with the staff. I do not classify these group interactions with the staff in the group interviews I discussed above because they were almost completely unstructured as people filed in and out. Below I discuss the primary types of interaction I had with the committee: 1) mediation observation; 2) consultation observation; 3) downtime with the staff. I recorded notes from these experiences by hand in a notebook.

#### MEDIATION OBSERVATION

During mediations I would sit around an often-crowded conference table with a notebook, taking almost verbatim notes about the interactions. If I were notified about a mediation case beforehand, I would arrive early if possible to learn more about the case before it began. The mediation director would introduce me as a PhD from Johns

Hopkins University or the United States who wanted to study China's mediation. It was something he said very proudly – that now even foreigners were paying attention to China's mediation and specifically, their MDMC. No one ever questioned or opposed my presence.

Mediation sessions would last for about 1-2 hours each. After the sessions, I would transcribe my notes onto a computer and then the next day or sometimes the day of, depending on the circumstances, I would double-check the information I had recorded with the MDMC staff to ensure I had not misunderstood any information about the cases. Later, once I had this data processed, I evaluated it based on several criteria: basic conditions of the cases, procedures, and outcomes to evaluate the performance of the institutions, the analysis of which is in Chapter 8 on the work of the MDMCs.

#### DOWNTIME: CONSULTATIONS & BUILDING RELATIONSHIPS

Mediation committees are not always mediating and often there can be a fair amount of downtime, especially during the weeks surrounding major holidays like the Chinese New Year and National Holiday. During this downtime, I discovered another crucial function mediation committees serve, which is providing consultation services for walk-ins or consultation appointments with people who may potentially be parties to disputes. These consultations were important because I was able to listen to people's stories and questions about the dispute resolution process. It was a fantastic opportunity because existing data on mediation focuses on the mediations themselves and omits other potential hidden functions the committee has, such as providing advocacy, albeit limited, for patients.

Mediators would introduce me in these situations as well, and no one ever protested my presence, though it is important to note that they were never directly asked whether or not they would prefer me to leave. I believe this reflects a larger issue of more lax attitudes and awareness about confidentiality in China than patients feeling forced or afraid to protest my presence. Moreover, in China, ethnically non-Chinese foreigners such as myself often receive a lot of attention, but the work of this committee was so serious that people seemed to often forget that I was there, which was a relief since I did not want my presence to drastically affect the interactions I was trying to observe.

Additionally, downtime with the staff was incredibly useful for building relationships with the mediators and finding out additional information about their backgrounds, work environment, and other opinions related to medical disputes, *yinao*, and mediation. Again this also helped with the hidden data issue. For example, they advised me to pay attention to broader issues of social trust in Chinese society like *pengci* (the phenomenon in which people purposely cause accidents to claim compensation), which I ended up researching and writing about as a social context surrounding *yinao*.

#### Other Sources: Primary and Secondary Documents and Data

I also rely on primary documents, such as laws and other types of government documents, as well as secondary documents, such as Chinese academic articles, to sharpen my analysis. I especially depend on primary policy documents in chapter 7 on state responses to *yinao* for developing my argument about institutional adaptation through the evolution of policies over time. Throughout the entire dissertation I include arguments and data from Chinese scholarly research in order to incorporate viewpoints

from China and also because Chinese scholars often have better data access and use these data in their writings.

I also use official data even though access to them is uneven over time, and they often seem inaccurate. I dedicate Chapter 5 entirely to analyzing official data on *yinao*. I tend to use data from the National Health and Family Planning Commission for *yinao* and other dispute resolution information and from the Ministry of Public Security for information on NGOs. I bolster official NGO data with other data from the China Development Brief (also an NGO).

### **Methods for Data Analysis**

Once I gathered the types of data above, I analyzed them according to several different methods depending on what was the best fit and goal of the chapter. I describe each of these methods below.

#### Evaluation of Policy and Social Variables

An important aspect of this dissertation, which, to my understanding, remains nameless in the world of academic language around methods, is tracking the adaptation (or lack thereof) of policies and social actors in their responses to *yinao* and its sources. I call this “evaluation of policy and social variables” because I am evaluating whether or not changes in a group of relevant variables reflect progress in adaptation or not. In chapter 7 on state responses to *yinao*, I identify the population of relevant policies to *yinao* and then I identify the variables whose changes would signify whether progress was being made on adaptation. These variables include changes in basic characteristics of policy documents as well as the evolution of their content. As I explain in more detail in chapter 7, if over time there are only weak policy documents supported by one ministry

responding to *yinao*, then this does not imply adaptation; but if over time policies become stronger, have authors from multiple relevant ministries, and cover a range of relevant issues contributing to *yinao*, then there is an increase in policy adaptation and sophistication over time. This method is important for understanding how and on what dimensions adaptation is occurring. Of course, policy inputs only represent one aspect of adaptation – implementation is also important, which I also include based on interviews and observations, as discussed above.

I also use this method in Chapter 9 in order to understand whether society is responding to *yinao* and its sources in ways that would signal adaptation. For example, there are many mobile applications pertaining to medicine, and I evaluate whether or not their services tackle factors related to the sources of *yinao*. By using a standard set of criteria that contribute to a social phenomenon, I am able to evaluate progress on how state and society respond and adapt to it.

#### Process Tracing & Shadow Case Studies

Process tracing seeks to track how several independent variables may potentially influence a changing dependent variable. This is the main method I rely on in chapter 6 on sources and development of *yinao*. I consider many variables potentially related to *yinao* and trace them over time as *yinao* incidents continue to rise and identify the variables that are most likely associated with the proliferation of *yinao* in the early 2000s.

#### Shadow Comparative Case Studies to Test Hypotheses and for Future Research Agenda

In Chapters 5 and 6, I provide some shadow case studies to better understand why some countries (India, Vietnam, and possibly Mexico and Venezuela) have experienced more routine violence against health care workers while other countries have not. The

purpose of these comparisons is to begin the conversation on how factors like Internet access, rule of law, and government type may or may not influence the proliferation of violence against health care workers across countries. There are some clear limitations to this research as presented in this study, such as access to comparable data across countries on medical violence and my own ability to conduct research in the native languages of all of the countries analyzed. Further the types of medical violence may have important differences – violence in Latin American hospitals, for example, may in part be a spillover of general social disorder and violence over drugs into hospital settings.

However, the analysis is still worthwhile because it enables testing of my argument on how *yinao* developed. I have not seen similar types of research for other countries, so I also hope the process leading to *yinao* and variables I have identified can provide a starting point for other researchers examining other countries to test and refine my argument in order to understand this problem in other contexts. Further, if *yinao* is a problem that occurs internationally, conducting cross-country comparisons may be informative in identifying the policy areas that are important to preventing and addressing this type of violence worldwide. Throughout chapter 9 on society's response to *yinao* and its sources, I also draw comparisons both domestically and internationally to contextualize and evaluate the development of civil society in China.

### **Limitations and Clarifications for this Study**

There are some important methodological limitations to this study, which I group into the following two categories: 1) issues in generalizability and sample bias; and 2)

issues of cause and effect around defining state and society responsiveness. I explain these limitations in detail below.

### Generalizability and Sample Bias

As implied by the discussion above, the sample of interviewees was drawn primarily from eastern, urban cities and is biased toward hospital personnel working in 3A public hospitals (62% of interviewees were employed by hospitals). On the geographic front, there should thus be caution in extending the conclusions of this study to western and more rural parts of China. Additionally, the conclusions also do not necessarily apply to primary and secondary care facilities and to private hospitals, which in contrast to the US only provide a small fraction of advanced care in China.<sup>161</sup> I do, however, briefly discuss *yinao* in these other regional and hospital settings in chapter 5.

While hospital personnel are well represented in the sample, there is an obvious lack of patient perspective. I only directly spoke with a small handful of patients and families with disputes. I was able to observe them in mediation and also in a hospital complaints office, but actual interviews were difficult to arrange since there are protocols around interviewing patients and families (this is not just China, but everywhere). I was also unable to have any interaction with those conducting *yinao* – both paid and unpaid. This is an obvious limitation for answering my question on why people resort to *yinao*. It would have been ideal to access the subset of people who have resorted to *yinao* to better understand their perspective and rationale, but it was not possible for a few reasons. The illegal nature of *yinao* in addition to my obvious identity as a non-Chinese foreign person made studying acts of *yinao* in person extremely difficult. I had considered hiring a

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<sup>161</sup> Though this is also changing with more private health care centers in China. See Chapter 5 on *yinao* for more information on different types of hospitals in China.

Chinese research assistant to interview professional *yinao* outside of hospitals; however, I was too concerned about endangering the career and safety of a potential research assistant because even though he or she would blend in, professional *yinao* are still potentially dangerous gang members. I supplement this lack of data with some undercover interviews from Chinese newspapers, but studying professional *yinao* remains an important albeit challenging and risky area for further future research.

### Identifying and Defining Responsiveness and Causality

One of the greatest challenges in analyzing “responsiveness” is that it is difficult to ascertain what exactly initiates the phenomenon being studied. For example, how do we know that certain policies were in response to particular *yinao* events? It is almost impossible to disentangle all of the potential factors that influence policymaking, and so the primary concern of this study is not about ascertaining absolute causality in this regard; rather the goal is to understand the complexity and context around policies that address both *yinao* and its sources.

I include not just direct responses to manage *yinao*, but also responses that address the sources of *yinao*, such as high out-of-pocket costs, poor health care access, poor patient-doctor communication, etc. Even though policy and business initiatives addressing this broader set of issues are not necessarily directly responding to *yinao*, I include them because adaptation is about changing underlying institutions to create lasting change, and so adaptation cannot be evaluated if the root causes of a problem are not being considered. In sum, when I use the word “responsiveness” in this study, I am not only using it to characterize a direct response to *yinao*, but also the context within which it occurs and based on the many factors that contribute to it.

## **Conclusion**

This primarily qualitative study employs several different research methods for data collection and analysis. Most of the chapters of this dissertation use a combination of these different methods. While there are limitations to the methods used, I have done my best to temper my conclusions accordingly throughout the dissertation. Even though I cannot make broad generalizations about how *yinao* occurs and is managed across China, the concepts derived from analyzing state and society responsiveness to *yinao* – tetheredness and slack – can potentially inform analysis of institutional adaptation across other parts of China as well as governing systems worldwide.

**PART II**  
**THE ROAD TO *YINAO***

## CHAPTER 4: COMPLAINT AND DISPUTE RESOLUTION IN CHINA'S HEALTH CARE SYSTEM

Medical dispute resolution is difficult everywhere. Many countries, including the US, struggle with how to resolve medical disputes due to the high degree of technical medical knowledge needed to evaluate them, the emotional nature of the cases, and the difficult task of trying to monetize physical and emotional damages. However, despite the controversy around how to manage medical disputes, most countries do not experience issues similar to China's *yinao* phenomenon. If Chinese patients and their families resort to *yinao*, then presumably something in the available official channels for dispute resolution fails to deter it or even may encourage it. While existing literature has identified many of the main sources of medical disputes, to my knowledge, current research has not yet mapped out the entire medical complaint and dispute resolution process in China. This chapter lays out this process, beginning with complaints that originate in clinical departments and ending with the resolution of a dispute either through adjudication or mediation. Where useful, this chapter also provides some comparison to the US system for handling disputes in order to contextualize China's case.



Figure 2: Disputing Pyramid (adapted)

Understanding complaint and dispute management is important because they are related to each other: grievances escalate to complaints, which escalate to disputes.

Diamant, Lubman, and O'Brien illustrate this well in their disputing pyramid (Figure 2).<sup>162</sup> A complaint as defined by this study is a grievance that has been expressed either formally through documentation or informally. In the health care setting, it can include anything from dissatisfaction with the "service attitude" of a health care worker to an accusation of malpractice. A dispute occurs when a complaint could not be resolved through additional explanation from the hospital and requires negotiation, mediation, or adjudication.

Understanding how the management of both complaints and disputes fit together enables us to analyze the system as a whole. I use the word "system" here loosely to describe the institutions available for addressing complaints and disputes and how they coordinate with each other. When I asked a group of physicians how they would change the system in place, they felt there was not a really a "system,"<sup>163</sup> suggesting that the idea of a coherent system may not be how people in China view the set of institutions involved in medical dispute resolution.

While there is no single path that all patients take, this chapter details the steps in the process level by level, from making a complaint via a government-run complaint hotline to suing the hospital in court. Of course some patients go directly to court, bypassing all first-stop complaint avenues, while others are satisfied with an explanation by the hospital or end up somewhere in the middle of the system. The choices patients

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<sup>162</sup> Neil Jeffrey Diamant, Stanley B. Lubman, and Kevin J. O'Brien, *Engaging The Law In China: State, Society, And Possibilities For Justice* (Stanford University Press, 2005), 7.

<sup>163</sup> ICU Group Interview, Interview No. 017, 2015.

make can depend on the severity of the complaint; for example, a complaint about a nurse's attitude would not go to court, whereas a potentially serious case of malpractice may go directly to court. The vast majority of cases, "generally more than 90%" according to Benjamin Liebman, are still resolved within hospitals.<sup>164</sup> Liebman notes that this is not unusual as most civil cases in China (and all over the world) are resolved outside the court system, though he notes that the degree to which protests influence the dispute resolution process in China makes it more unusual.<sup>165</sup> Figure 3 "Complaint and Dispute Resolution System in Place" on page 62 shows the entire complaint and dispute process.

### **A Note on Methodology**

The information in this chapter builds on the work of Benjamin Liebman and other scholars who have provided thorough analysis of the Chinese medical malpractice system. It adds and updates these analyses based on recent policy developments as well as interviews conducted from 2015-2016 with health care workers and administrators in two urban, public 3A<sup>166</sup> hospitals in Nanjing and Guangzhou. Because I conducted most of the interviews with health care workers due to a higher level of access to them, it provides a particularly nuanced understanding of the hospital's perspective. While I try to anticipate hurdles patients and their families might face throughout the dispute resolution process, some of their struggles may be omitted due to lack of access to patients. At the

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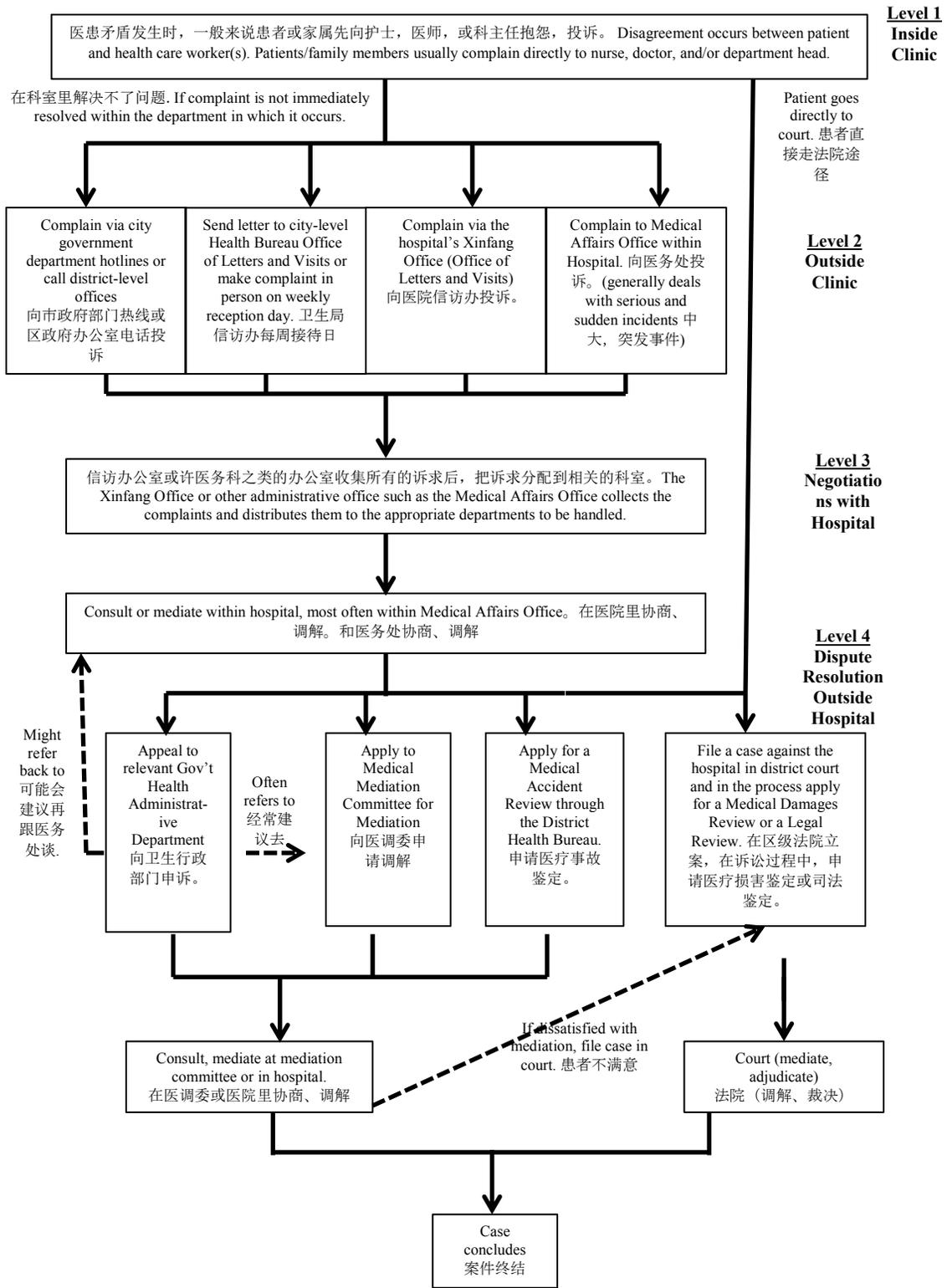
<sup>164</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 237.

<sup>165</sup> Liebman, 237-38.

<sup>166</sup> China has a tiered and graded hospital system. Depending on their size and capabilities, hospitals are ranked as level one, level two, or level three facilities. This ranking is similar to that used in the US, where primary facilities (level one) are smaller and provide more basic services and tertiary facilities (level three) are larger and provide more advanced procedures. Grades are also given based on the quality of the hospital, with A being the best, B being passing, and anything below being substandard. Private hospitals are not consistently given tiers and grades. As noted in the previous chapter, due to high patient volumes at 3A hospitals and handling riskier cases as advanced-level facilities, they are places that face higher numbers of health care disputes.

end of the chapter, I briefly include the perspective of one plaintiff in a medical malpractice case to provide a more balanced perspective.

**Figure 3: Medical Complaint and Dispute Resolution System in Place**



## Making the initial complaint inside the clinical department (Level 1)

Though how patients and their families choose to complain often depends on personal preferences and the nature of the complaint, in China as well as in health care systems worldwide, the first stop for complaints logically tends to be within the clinical department where it occurs. Nurses everywhere frequently receive these complaints because they interact with patients the most. In China nurses and doctors interviewed for this study both stated that patients do not generally respect nurses, with one head nurse stating that patients treat nurses like waitresses.<sup>171</sup> The head of a clinical department at

Table 2: Examples of Typical Complaints in China
<ul style="list-style-type: none"> <li>• IV fluids received [吊的补液]</li> <li>• Nurses not coming fast enough when called [没有及时出现]</li> <li>• Poor needle skills of nurses [技术]</li> <li>• Bad attitudes of both nurses and doctors [态度不好]</li> <li>• Doubts about doctors' intentions and abilities</li> <li>• Not changing bandages and medicine quickly enough [换药]<sup>167</sup></li> <li>• Costs [收费] (also complain about costs indirectly by saying health care workers have bad attitudes [因为收费, 会说态度不好]<sup>168</sup>)</li> <li>• Not understanding the medical treatment [医疗的情况不懂]</li> <li>• Employee service attitudes [会投诉到服务人员的态度]</li> <li>• Time spent waiting to see the doctor (esp. in ER/outpatient clinics)</li> <li>• The sequence of steps patients need to go through in order to see a doctor [看病的流程]</li> <li>• Not enough hospital beds [床位不够]<sup>169</sup></li> <li>• Not satisfied with treatment [对治疗不满意]<sup>170</sup></li> </ul>

one hospital commented that patients do not respect nurses, often complaining about the nurses' service attitudes more than the doctors' abilities, and that people get upset with nurses very easily.<sup>172</sup> One head nurse

reported that even though patients at times doubt doctors, they still respect them more than nurses, so they will complain to the nurses instead.<sup>173</sup>

<sup>167</sup> Head Nurse, Surgery, Interview No. 050, 2016.

<sup>168</sup> Midwives Group, Interview No. 053, 2016.

<sup>169</sup> Clinic Walk-through, Interview No. 012, 2015.

<sup>170</sup> ENT Group Interview, Interview No. 016, 2015. Interview notes do not specify specifically whether treatment process or outcomes, but implied both – patients are sometimes not satisfied with either the treatment process or the outcomes from that process.

<sup>171</sup> ENT Group Interview; Head Nurse, Surgery, Interview No. 050.

<sup>172</sup> ENT Group Interview, Interview No. 016.

<sup>173</sup> Head Nurse, Surgery, Interview No. 050.

Table 2 shows examples of typical and relatively minor complaints by patients in hospitals in China (they are also likely typical in hospitals everywhere). When patients complain, departments try to resolve the complaint directly. If it concerns the nurse's IV skills, the department might assign a new nurse to the patient. If the patient cannot understand his or her physician's explanation about the treatment of an illness, the head of the department might step in to address the patient's concerns. However, if the patient remains dissatisfied, then he or she can choose from a variety of offices both inside and outside the hospital to make a complaint.

### **Making a Complaint outside the Department (Level 2)**

Some of the more striking aspects of the Chinese system for health care complaints are the involvement of the Chinese government in even minor complaints (such as those in Table 2) and the numerous options patients have to channel their complaints. Once the patient and/or his or her family decides to complain outside the relevant clinical department, they can call government hotlines for real-time assistance or they can directly complain to higher administrative levels of the hospital, or a combination of both. The director of one hospital's administration said that there are too many avenues for complaints and no restrictions on how many patients can make, so patients will repeat them in multiple places.<sup>174</sup>

#### City-level Citizen Hotline 12345 [12345 市民热线]

In many large cities in China, citizens can dial 12345 to immediately speak to a representative about almost any issue or they can submit their request online through the 12345 website. City governments established 12345 in order to consolidate the collection

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<sup>174</sup> Hospital Office of Letters and Visits (Xinfang Ban), Interview No. 067, 2016.

of complaints in one place and to provide a user-friendly, easy-to-remember platform for citizens to obtain information or make a complaint.<sup>175</sup> Cities across China have set up these hotlines over the last several years, Nanjing establishing its own in 2010<sup>176</sup> and Shanghai in 2012.<sup>177</sup> Though not explicitly listed as a reason for establishing this hotline, this hotline also enables cities to collect data on various areas of concern for citizens. Shanghai's hotline website publishes these data regularly.<sup>178</sup> According to Shanghai's Citizen Hotline website, the most commonly received calls by Shanghai's hotline center concern public security, housing, labor security, industry and commerce, urban and rural construction, traffic and ports, health and family planning, organizational affairs management, greenification, environmental protection, and the postal service.<sup>179</sup> Hotlines often receive thousands of phone calls a day, with Shanghai frequently receiving around 10,000 calls per day at its 24-hour service center.<sup>180</sup>

Patients and families also use 12345 to complain about issues they encounter within hospitals. For example, patients often call about waiting too long in the ER or about the availability of hospital beds, which are in high demand not necessarily due to need, but because national insurance plans tend to cover inpatient care at a higher rate

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<sup>175</sup> "Citizen Hotline 12345 [12345 市民热线]," Baidu Encyclopedia [百度百科], accessed January 23, 2016, [http://baike.baidu.com/link?url=RA3RAqrC2eyv92XsssY7VOWZdZVM1yQY\\_v9p1KImplK1Ofb9dX9yvPZ8TkKPIHO4P-6mYs8IvvyTU4\\_gsyFUhK](http://baike.baidu.com/link?url=RA3RAqrC2eyv92XsssY7VOWZdZVM1yQY_v9p1KImplK1Ofb9dX9yvPZ8TkKPIHO4P-6mYs8IvvyTU4_gsyFUhK).

<sup>176</sup> "Simple Introduction about the City of Nanjing's 12345 Government Service Hotline [南京市 12345 政务热线简介]," China Nanjing, May 9, 2014, [http://www.nanjing.gov.cn/njszf/bm/zwb/201501/t20150116\\_3168735.html](http://www.nanjing.gov.cn/njszf/bm/zwb/201501/t20150116_3168735.html).

<sup>177</sup> "Shanghai City 12345 Citizens Service Hotline Opens [上海市'12345'市民服务热线电话开通试运行]," The Central Government of the People's Republic of China, October 8, 2012, [http://www.gov.cn/fwxx/sh/2012-10/08/content\\_2238913.htm](http://www.gov.cn/fwxx/sh/2012-10/08/content_2238913.htm).

<sup>178</sup> See <http://www.sh12345.gov.cn/>.

<sup>179</sup> Shanghai public service hotline, <http://www.sh12345.gov.cn/>.

<sup>180</sup> See <http://www.sh12345.gov.cn/> for daily data statistics.

than outpatient care.<sup>181</sup> Even if the complaint is unreasonable and the hospital is overwhelmed with other responsibilities, the hospital, whether private or public, still must address the complaint in a timely manner.<sup>182</sup> Administrative regulations dictate that within 24 hours, the office in the hospital responsible for receiving the complaint (such as the Office of Letters and Visits or the Office of Medical Affairs) must contact the patient and/or the patient's family, and within four working days, the issue must be resolved, which means that the hospital must provide an answer or a next step to the patient.<sup>183</sup> When I asked a group of physicians and nurses from an obstetrics department their opinions on this hotline, one physician said it was "a very vicious thing," and it was for patients to vent.<sup>184</sup> A nurse felt that it was unfair, saying that one patient had called 12345 and made up stories about her, so she had to prove her innocence even though she did nothing wrong.<sup>185</sup>

#### Other City-level Government Bureau Hotlines

In addition to the city government's 12345 hotline, citizens can also make complaints through the city-level Health and Family Planning Commission hotline (usually 12320) and the hotline for consumer complaints (usually 12315), which is

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<sup>181</sup> Clinic Walk-through, Interview No. 012. Policies on national health insurance have tended to emphasize coverage of inpatient costs. Most recently on January 1, 2016, the State Council's "Opinions on integrating urban and rural residents basic health insurance system" stated "its goal to unify insurance benefits: "Gradually unifying insurance scope and payment standards, [and] within the scope of the policy, ensure the proportion of payment for inpatient hospital fees at around 75%, [and] gradually increasing the level of outpatient insurance guarantee." See: "State Council Publishes 'Opinions on Integrating Urban and Rural Basic Health Insurance Systems' 国务院印发《关于整合城乡居民基本医疗保险制度的意见》," January 12, 2016, [http://www.gov.cn/xinwen/2016-01/12/content\\_5032319.htm](http://www.gov.cn/xinwen/2016-01/12/content_5032319.htm).

<sup>182</sup> Hospital Office of Letters and Visits (Xinfang Ban), Interview No. 067; Consultation with Private Hospital on Case, Interview No. 32, 2015.

<sup>183</sup> 2016.3.4, p. 1. This is part of administrative regulations, which according to an interviewee are internal and not published openly for the public. There are however, general guidelines that have nationally been established for managing medical complaints – the 2009 national-level "Hospital Complaint Management Measures (Implementation)." Provinces also have their own measures as well, such as 2010 "Jiangsu Province Detailed Implementation Measures for Hospital Complaint Management."

<sup>184</sup> OBGYN Group, Interview No. 014, 2015. "很恶性的事" and "为了出一口气," p.3.

<sup>185</sup> OBGYN Group.

administered by the State Administration for Industry and Commerce.<sup>186</sup> The impetus for the health hotline 12320 came from an official notice by the National Ministry of Health in 2005 (now the Health and Family Planning Commission) to provide support for the implementation of the PRC Law for the Prevention of Infectious Diseases and the Regulations for Emergency Response to Sudden Public Health Incidents.<sup>187</sup> It was also established to better address major public health concerns, and to meet the growing health demands of the Chinese populace.<sup>188</sup> In 2012 the Ministry of Health required all health administrative bureaus to establish a hotline service.<sup>189</sup> While the hotlines 12345 and 12320 tend to be the main sources of health care-related complaints in cities, in Guangzhou one hospital also mentioned that patients use the Consumer Hotline 12315,<sup>190</sup> which is intended for consumer disputes, like complaints over counterfeit products.<sup>191</sup> In Nanjing, however, hospital representatives said patients did not use this hotline for the purpose of making health care-related complaints.<sup>192</sup>

#### District-level and Higher Level Government Departments (上面的部门)

Additionally, patients can go in person to the city-level Health and Family Planning Commission to make a complaint during its designated reception day(s), an option for patients that the former Ministry of Health advised for all health bureaucracies at the county level and above to establish in 2007.<sup>193</sup> For example, once per week in

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<sup>186</sup> Interview Transcript GLWSJ.

<sup>187</sup> “Brief Introduction to the Hotline,” 12320 Health Hotline, November 17, 2012, <http://www.12320.gov.cn/qg12320wz/rxjj/201211/a8f09272302846ac865b1f3e53edf8f6.shtml>.

<sup>188</sup> “Brief Introduction to the Hotline.”

<sup>189</sup> “Brief Introduction to the Hotline.”

<sup>190</sup> Interview Transcripts, YWK, p.2.

<sup>191</sup> “State Administration for Industry and Commerce of the People’s Republic of China [中华人民共和国国家工商行政管理总局],” accessed February 19, 2016, <http://www.saic.gov.cn/>.

<sup>192</sup> Interview Notes

<sup>193</sup> “Health Petitioning Work Measures 卫生信访工作办法（卫生部令第 54 号）” (Ministry of Health, February 16, 2007),

Nanjing on Wednesday mornings (at the time of this writing), the city-level Health and Family Planning Commission holds its reception day [市卫生局接待日], during which patients and family members can make a complaint at these offices. Patients can also write letters to this office. This office then passes the complaints they receive to the appropriate hospital.<sup>194</sup> Patients can also call district-level health bureaus, which will redirect the concern to appropriate hospital.

#### The Hospital *Xinfang* Office (The Office of Letters and Visits)

The *Xinfang* Office or Office of Letters and Visits (“xin” 信 means letters and “fang” 访 means visits) within the hospital receives complaints from all of these different avenues. It is important to note that *Xinfang* offices are not unique to hospitals. They are distributed throughout nearly all Chinese government organs<sup>195</sup> and have historical roots dating back to China’s imperial era.<sup>196</sup> In hospitals, the *Xinfang* Office typically falls under the Party Department. While it may seem odd to those outside of China for Party departments to be involved in a hospital, in China, Party offices commonly exist in public institutions (事业单位) like schools and hospitals, as well as in state-owned enterprises and even in private companies.<sup>197</sup> In hospitals, the Party Office primarily manages

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<http://www.moh.gov.cn/mohzcfgs/pgz/201207/7858fe06203746cd8625bc36026b361f.shtml>. \*\*\*according to PKU law it has lost effect \*check this.

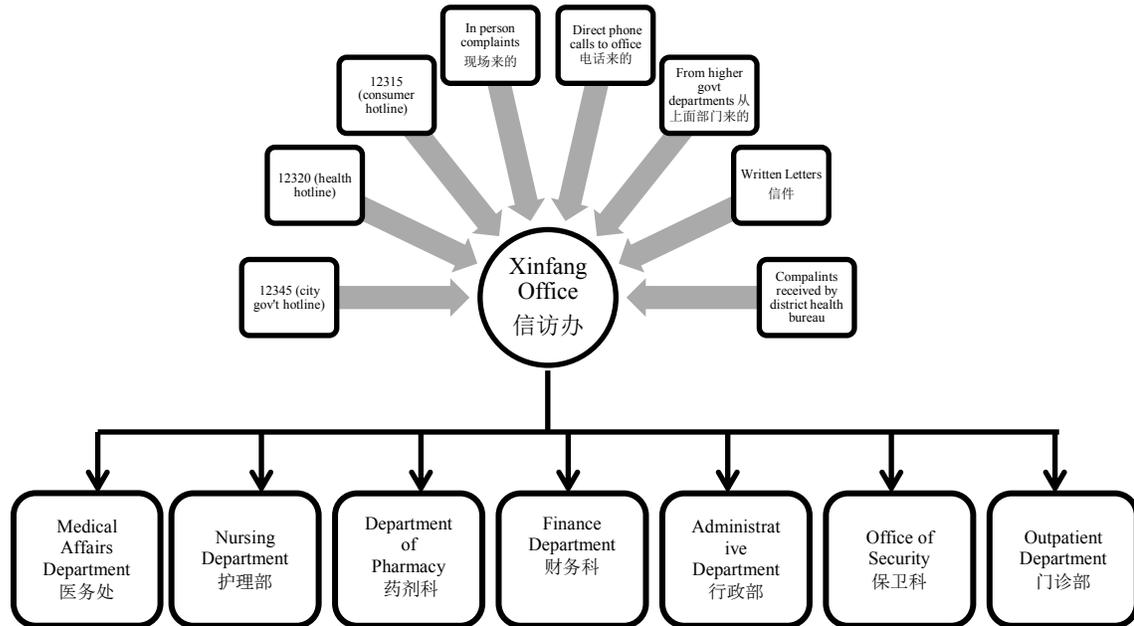
<sup>194</sup> Interview No. 67, 2016, hospital administrator.

<sup>195</sup> Minzer, “Xinfang: An Alternative to Formal Chinese Institutions,” 116.

<sup>196</sup> For a more detailed discussion of the history of China’s xinfang system, see: Minzer, 110–20.

<sup>197</sup> Interview with Chinese lawyer 2015. Also see: 19th Party Congress National Party Congress, “The Party Constitution of the Chinese Communist Party [中国共产党章程],” Communist Party Member Website [共产党员网], amended 2017, especially Chapter 5, <http://www.12371.cn/special/zggcdzc/zggcdzcqw/>; National People’s Congress, “Company Law of the People’s Republic of China [中华人民共和国公司法],” last amended 2013, Article 19, <http://www.pkulaw.cn/bzk/compare.aspx?cid=665>.

education, personnel selection, and discipline for corruption.<sup>198</sup>



**Figure 4: Example of Xinfang Office Reception and Distribution of Complaints**

At the hospital-level, the Xinfang Office has the primary role of collecting information about health care complaints and distributing them to the appropriate departments to address them. Patients (病人), family members (家属), and hospital employees (员工) all can make complaints at the Xinfang Office, but most complaints come from patients and their families and very few tend to come from the workers at the hospital.<sup>199</sup> The diagram above (Figure 4) shows how the Xinfang Office in one of the hospitals interviewed for this study receives and distributes patient complaints.

The Xinfang Office receives complaints submitted to hotlines through an online platform. Once the Xinfang Office receives complaints from 12345 or the other aforementioned sources, they distribute them (分配) in a timely manner to the

<sup>198</sup> Medical Professor from Guangzhou, Interview No. 49, 2016, 4.

<sup>199</sup> Interview Transcripts XFB, p. 1.

appropriate office.<sup>200</sup> Mostly complaints are funneled to one of the following offices: Medical Affairs Office 医务处 (for complaints concerning medical care and treatment), Nursing Department 护理部 (concerning nurses), the Department of Pharmacy 药剂科 (concerning medications), Finance 财务科 (concerning payments and fees), and Administrative Department 行政部 (concerning logistics, dining, sanitation, and other services).<sup>201</sup> It is important to note that not all hospitals handle complaints in the same way. At another hospital, these complaints are directed to the Medical Affairs Office instead of the Xinfang Office.<sup>202</sup>

A *Xinfang* Office employee said the hospital received a wide variety of complaints (“五花八门”<sup>203</sup>). The most common complaint is “disapproval of the medical care received” (“对医疗不认可”<sup>204</sup>). This means that patients are dissatisfied with their outcomes, often because their initial expectations were too high or perhaps due to a complication.<sup>205</sup> It can also mean that medical fees were higher than originally anticipated. For example, initially a procedure was said to cost RMB 10,000 (\$1,453), but the final total was RMB 10,200 (\$1,481).<sup>206</sup> The second most common type of complaint centers around the doctors and nurses having “bad service attitudes” (服务态度不好<sup>207</sup>). According to a *Xinfang* Office employee, most of these service-type complaints concern the Outpatient Clinic (门诊部) because outpatient departments are overwhelmed, making it difficult to provide good service; some health care workers truly do have “bad service

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<sup>200</sup> Xinfang Office, Interview No. 026, 2015.

<sup>201</sup> Ibid.

<sup>202</sup> Head of Medical Affairs Office, Interview No. 048, 2016.

<sup>203</sup> Xinfang Office, Interview No. 026.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

<sup>206</sup> Xinfang Office, Interview No. 062, 2016.

<sup>207</sup> Interview Transcripts, XFB, p.2.

attitudes.”<sup>208</sup> However, the employee noted that some of the “bad service attitude” complaints were questionable, such as complaints about doctors who refuse to fill out a sick leave form for a patient healthy enough to work.<sup>209</sup>

Hospitals collect data on complaints, but one of the hospitals said it does not make this data available either publicly or via application.<sup>210</sup> According to the hospital’s Xinfang Office director, the hospital uses the data internally and typically does not pass them beyond the hospital.<sup>211</sup> One Xinfang Office holds quarterly meetings with all of the departments, showing the number of complaints received for each department and the satisfaction rate for the resolution of the complaint.<sup>212</sup> The government hotlines that received the complaint collect data on caller satisfaction, calling back complainants to ask whether or not they were satisfied with the way the complaint was handled.<sup>213</sup> In past years in Nanjing, the Health Bureau would assess how hospital offices manage complaints, give hospitals complaint management scores, and release the rankings of all the hospitals in the city based on these scores. However, due to recent changes in health administration in the city, these types of assessments and rankings have stopped at the time of this writing.<sup>214</sup>

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<sup>208</sup> In the outpatient clinic, physicians often have too many patients who take their numbers during their outpatient hours. For example, for the 8am-12pm time slot on a particular day, the time to take the physician’s number begins at 7:30am and ends at 11am. The doctor must finish seeing all of the patients who took his or her number for the morning clinic session, and so they often see patients beyond 12pm.

<sup>209</sup> Hospital Office of Letters and Visits (Xinfang Ban), Interview No. 067, 2.

<sup>210</sup> Hospital Office of Letters and Visits (Xinfang Ban), Interview No. 067.

<sup>211</sup> Hospital Office of Letters and Visits (Xinfang Ban).

<sup>212</sup> Hospital Office of Letters and Visits (Xinfang Ban), 2.

<sup>213</sup> Hospital Office of Letters and Visits (Xinfang Ban), Interview No. 067.

<sup>214</sup> Xinfang Office, Interview No. 062, 1; Xinfang Office, Interview No. 026, 1.

### **The Medical Affairs Office 医务处 or 医务科 (Levels 2 and 3)**

The Medical Affairs Office handles complaints about medical issues (not service, fees, corruption, etc.), and also oversees a number of different offices, often including the Office of Quality Management, Office of Doctor-Patient Communication, and the Office of Emergency Response, which is in charge of responding to infections and disasters. Former doctors and lawyers typically staff Medical Affairs Offices.<sup>215</sup> The Office of Doctor-Patient Communication (or a variation of this office) handles complaints and manages disputes at every stage of the process, from the initial complaint to going to court. This office also has other responsibilities including adverse event reporting and patient safety.<sup>216</sup>

There are two notable points about the role of the Medical Affairs Office. First, this is the office where complaints turn into disputes. If a patient makes a complaint accusing a doctor of malpractice and the doctor cannot provide a satisfactory explanation, then it turns into a dispute and this office manages it and continues to be the central office throughout the entire dispute resolution process. If the case ends up going to court, this office is also responsible for responding to court subpoenas, compiling and providing required materials, organizing personnel to investigate the case, and attending hearings.<sup>217</sup>

The second notable aspect of this office is that because this is where discussions and negotiations take place with patients, it is often here at this point in the dispute resolution process where patients and families resort to *yinao* to pressure hospitals into

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<sup>215</sup> Observed through fieldwork in two hospitals.

<sup>216</sup> Presentation made by the Doctor-Patient Communications Office, 2015.

<sup>217</sup> Presentation made by the Doctor-Patient Communications Office, 2015; Medical Affairs Office Employee, Interview No. 063, 2016.

settling for a desired amount of compensation. The decisions of hospital administrators have arguably been critical for shaping the development of *yinao*, since as Liebman's research reveals, hospital administrators often feel forced to compensate those who resort to *yinao*,<sup>218</sup> creating a vicious cycle that rewards and encourages this behavior.<sup>219</sup>

#### **Dispute Resolution Outside the Hospital (Level 4)**

Liebman notes, "The legal framework governing medical disputes is characterized by confusion and controversy."<sup>220</sup> As Figure 3 shows, at Level 4 the patients have several options outside the hospital: they can go to the relevant government Health Administrative body that oversees the hospital (such as a city-level Health and Family Commission), file for a Medical Accident Review as provisioned by the 2002 Medical Accident Regulations, go to the local Medical Mediation Committee for mediation, or sue the hospital in court.<sup>221</sup> Patients can take all or a combination of these steps. For example a patient might attempt mediation, but then go to court. The patient might apply for a Medical Accident Review and then try to negotiate again with the hospital once they receive the results. The next few sections detail the processes of these different institutions and clarify their roles.

#### **Medical Accident Review by the Health Bureau**

To apply for a medical accident review, which is a formal evaluation and investigation of the case by the Chinese Medical Association, the patients or hospital must go to the district-level health bureau in the district where the hospital is located. The 2002 Regulations on Handling Medical Accidents (from here on, referred to as the

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<sup>218</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 237.

<sup>219</sup> Liebman, 253.

<sup>220</sup> Liebman, 193.

<sup>221</sup> The paths in this diagram were adapted from a similar diagram that hung in a hospital lobby. However, I had to adjust the diagram significantly based on the realities of the cases.

Regulations),<sup>222</sup> which sought to better define and manage medical accidents, established the medical accident review process.<sup>223</sup> The Regulations separate accidents into four levels (in order of decreasing severity): 1) causing death or serious disability to the patient; 2) causing moderate disability, severe functional obstruction caused by organ damage; 3) causing light disability to the patient, moderate functional obstruction caused by organ damage; and 4) other results causing obvious harm to the patient.<sup>224</sup> The Regulations also entrust the Chinese Medical Association to conduct these reviews.<sup>225</sup> No matter the official rank of the hospital (some are provincial-level, while others might be city- or district-level), this process starts at the district-level health bureau in the district where the hospital is located.<sup>226</sup> Below is the basic process for application for a medical review.

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<sup>222</sup> I use the translations and shortened titles based on those used by Benjamin Liebman for consistency.

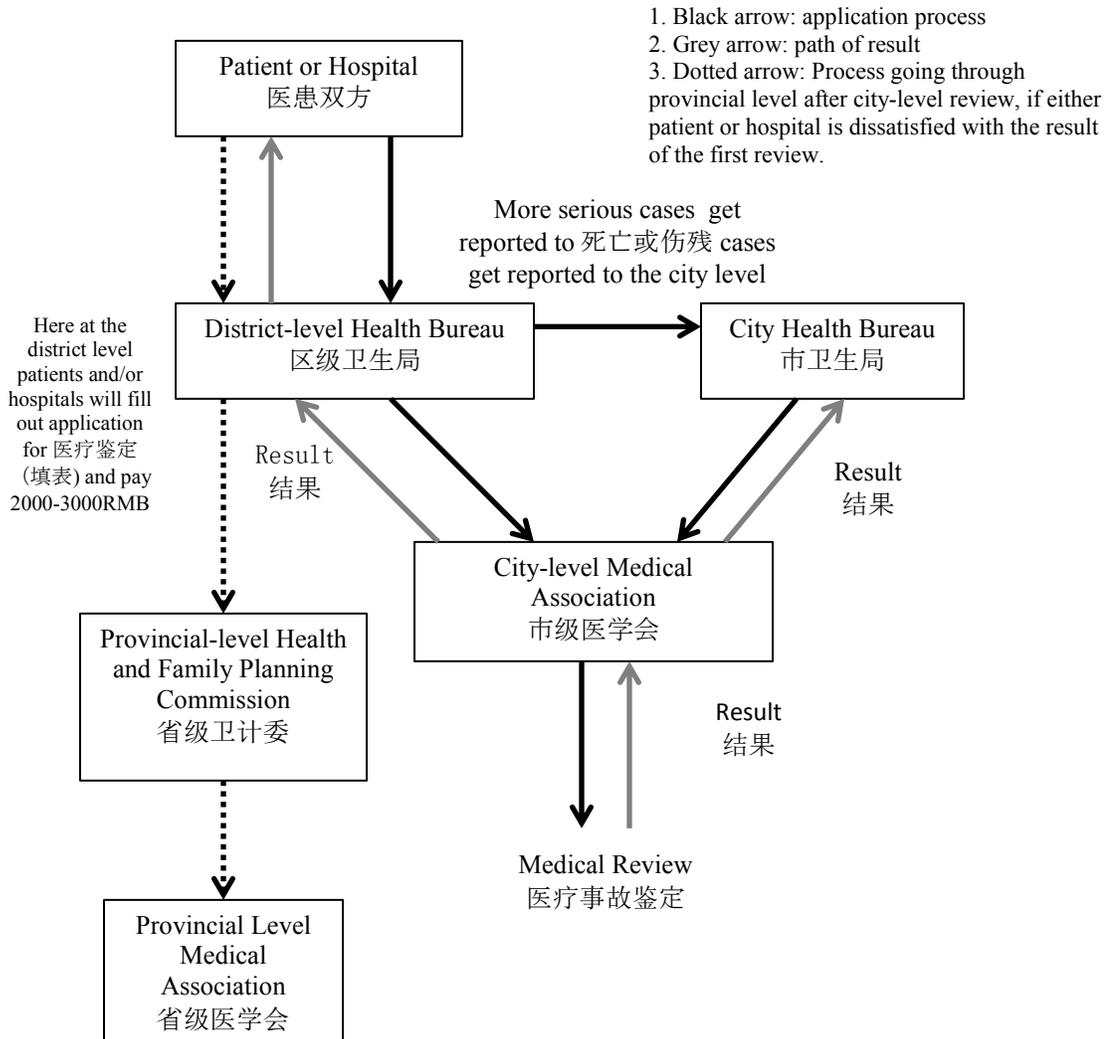
<sup>223</sup> “Regulations for Handling Medical Accidents [医疗事故处理条例（2002年4月4日国务院令 第351号公布）],” Jiangsu Provincial Commission of Health and Family Planning, August 25, 2003, <http://www.jsbst.gov.cn/jsswshjhsywyh/ywgl/yzyg/zcwj/2003/08/2500000066524.html>.

<sup>224</sup> “Regulations for Handling Medical Accidents [医疗事故处理条例（2002年4月4日国务院令 第351号公布）],” Article 4.

<sup>225</sup> “Regulations for Handling Medical Accidents [医疗事故处理条例（2002年4月4日国务院令 第351号公布）],” Article 20.

<sup>226</sup> District-level health and family planning official, Interview No. 060, 2016.

**Figure 5: Medical Accident Review Process (医疗事故鉴定流程)**



According to a Nanjing health official, medical reviews cost between RMB 2,000 (\$294.98) and RMB 3,000 (\$442.47),<sup>227</sup> and the fee for this is either fully covered by the patient, shared between the hospital and the patient, or sometimes the hospital may completely cover the cost.<sup>228</sup> The Regulations leave the cost of reviews for the provinces to decide, and states that if it is decided that a medical accident occurred, hospitals should

<sup>227</sup> District-level health and family planning official.

<sup>228</sup> District-level health and family planning official.

absorb the cost for the review and if it did not occur, the party who applied for the review should assume the cost.<sup>229</sup> According to a district level official, both patients and hospitals will apply for these reviews. About 90% of applicants are patients and 10% are hospitals.<sup>230</sup> According to this same official, hospitals sometimes apply if patients or families begin to make disturbances in order to provide them with proof that the hospital is clear of fault.<sup>231</sup> The Health Bureau then passes the case to the city-level chapter of the Chinese Medical Association and will also notify the city-level health bureau in particularly serious cases of disability or death. The Chinese Medical Association, according to its website, “is a nonprofit, academic association established for the public good. It is the bridge between the Party, government, and the medical community.”<sup>232</sup> It is described on its website as a voluntarily established association by the medical community,<sup>233</sup> but characterized by interviewees as associated with the government or “a civil organization with official background” (有官方背景的民间组织).<sup>234</sup>

Once the city-level Medical Association receives a case, it selects specialists to conduct a review of the case, and after the review, it submits the results back to the relevant district-level bureau, which then distributes the results to the parties involved (see gray arrows in Figure 5). The district-level bureau must report cases to the city-level health bureau if the case is particularly serious (death or serious disability).<sup>235</sup> The results of this review can be used within the hospital for more discussions and negotiations in the

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<sup>229</sup> “Regulations for Handling Medical Accidents [医疗事故处理条例（2002年4月4日国务院令 第351号公布）],” Article 34.

<sup>230</sup> District-level health and family planning official, Interview No. 064, 2016..

<sup>231</sup> Interview Transcripts QWSJ, 2.

<sup>232</sup> “Brief Introduction to the Chinese Medical Association [中华医学会简介],” Chinese Medical Association, October 26, 2010, [http://www.cma.org.cn/gyxh/xhjj/20101115/1289827466990\\_1.html](http://www.cma.org.cn/gyxh/xhjj/20101115/1289827466990_1.html).

<sup>233</sup> “Brief Introduction to the Chinese Medical Association [中华医学会简介].”

<sup>234</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>235</sup> District-level health and family planning official, Interview No. 064.

hospital or it can also be admitted as evidence in court should a lawsuit be filed.<sup>236</sup> If the patient is dissatisfied with the review process from the city-level Medical Review Board, he can then apply for another review from the provincial-level chapter of the Chinese Medical Association.<sup>237</sup> Figure 5 shows how this process works (dotted arrow).

There have been a few issues with the Medical Accident Reviews. Just before the Medical Accident Regulations that established them went into effect in September 2002, the Supreme People's Court issued a Judicial Interpretation in April 2002 that reversed the burden of proof from plaintiffs in malpractice cases (as it is in the US<sup>238</sup>) to defendants (doctors and medical institutions),<sup>239</sup> which has been a source of frustration for doctors. While the new Tort Liability Law (EIF 2010) places the burden of proof primarily back on the plaintiff, from roughly 2002-2010 the burden of proof was on defendants. Interestingly, during these years *yinao* began to develop into a common social phenomenon, and physicians have cited the "reverse burden of proof" as one of the factors contributing to *yinao*.<sup>240</sup> Even though today the burden of proof is on the plaintiff,<sup>241</sup> the period of time when it was on the defendant may have helped to establish a culture that has haunted health care workers and emboldened patients. The following chapter further explores the relationship between this issue and *yinao*.

Despite the burden of proof issue, Liebman highlights that the Regulations actually favored defendants (hospitals) for two reasons. The first is that rewards available

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<sup>236</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>237</sup> District-level health and family planning official, Interview No. 060.

<sup>238</sup> Beth Walston-Dunham, *Medical Malpractice Law and Litigation* (Clifton Park, New York: Thomson Delmar Learning West Legal Studies, 2006), 333.

<sup>239</sup> Zhu Wang and Ken Oliphant, "Yangge Dance: The Rhythm of Liability for Medical Malpractice in the People's Republic of China," *Chi.-Kent L. Rev.* 87 (2012): 37.

<sup>240</sup> Hospital official and former hospital affairs office head, Interview No. 072, 2016; Prominent Professor of Medicine in Large Guangzhou Hospital, Interview No. 051, 2016.

<sup>241</sup> Wang and Oliphant, "Yangge Dance," 47.

for damages in malpractice cases brought under the Regulations are significantly lower than in ordinary tort cases.<sup>242</sup> In regular tort cases (discussed in the next section) plaintiffs can receive twenty times the average income in their jurisdiction for a wrongful death.<sup>243</sup> While the Regulations outline how plaintiffs should be compensated under a number of specific categories (such as medical fees, lost income, and disability subsidies),<sup>244</sup> they do not include damages for death. As a result, plaintiffs pursuing a case for wrongful death receive hundreds of thousands of RMB fewer under the Regulations than they would under an ordinary tort case (discussed more in the next section).<sup>245</sup>

Another reason the Regulations tend to favor medical institutions is that local medical review boards composed of local doctors make decisions favoring doctors in their community, a point confirmed by a district-level health official interviewed for this study.<sup>246</sup> As a result these reviews, patients believe that the reviews lack credibility (公信力).<sup>247</sup> One former doctor and hospital administrator noted that there is little advantage for physicians to participate in these types of reviews: “The compensation is low, it takes a lot of time, you need to take responsibility, and it is bad for professional relationships.”<sup>248</sup> He likened the process to “muddy water” (浑水): “If you decide against the patient side, they might come looking for you. If you decide against the hospital’s

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<sup>242</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 194.

<sup>243</sup> Supreme People’s Court, “Interpretation of the Supreme People’s Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury [最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释],” pkulaw.cn, 2003, Article 29, [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=51002](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=51002).

<sup>244</sup> “Regulations for Handling Medical Accidents [医疗事故处理条例 (2002年4月4日国务院令 第351号公布)],” Article 50.

<sup>245</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 195.

<sup>246</sup> Liebman, 195; District-level health and family planning official, Interview No. 060, 60.

<sup>247</sup> Hospital Administrators, District-level Health Official, District-level Medical Mediation Official Group Interview, Interview No. 015, 2015.

<sup>248</sup> Hospital official and former hospital affairs office head, Interview No. 072.

side, when your hospital has a problem in the future, it might affect how well the accused hospital will treat you [if they are selected to review you]. It is also not a good feeling to rule against someone else in your same profession.”<sup>249</sup> Physicians are not required to do the reviews if they are drawn for the job.<sup>250</sup> Reviews by the provincial-level chapter of the China Medical Association tend to be more thorough than the city-level ones because they can draw from the entire provincial pool of doctors.<sup>251</sup>

From a broader institutional standpoint, the way leadership appointments work in the health care bureaucracy would also naturally cast doubt on the reviews. The leaders of top hospitals, health bureaus, and local chapters of the Chinese Medical Association tend to come from the same institutions. For example, the current leaders of the Nanjing Medical Association are almost all from top hospitals in Nanjing (see Table 3).<sup>252</sup> The heads of city-level and higher hospitals and the head of the city-level Health and Family Planning Commission both have provincial-level government ranks (*ting zhang* or *futing zhang* - see Figure 6 on page 81), so they regularly participate in high-level meetings at the provincial level with each other and other government leaders outside the health care bureaucracy.<sup>253</sup> While not a perfect analogy, this would be like the president of the UCLA Hospital System being a cabinet-level official in the California state government; hospitals have direct access to state power. This creates a web of connections between the city and provincial governments, health bureaus, and public hospitals that make it seemingly difficult to produce an unbiased evaluation of medical malpractice cases.

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<sup>249</sup> Hospital official and former hospital affairs office head.

<sup>250</sup> Hospital official and former hospital affairs office head.

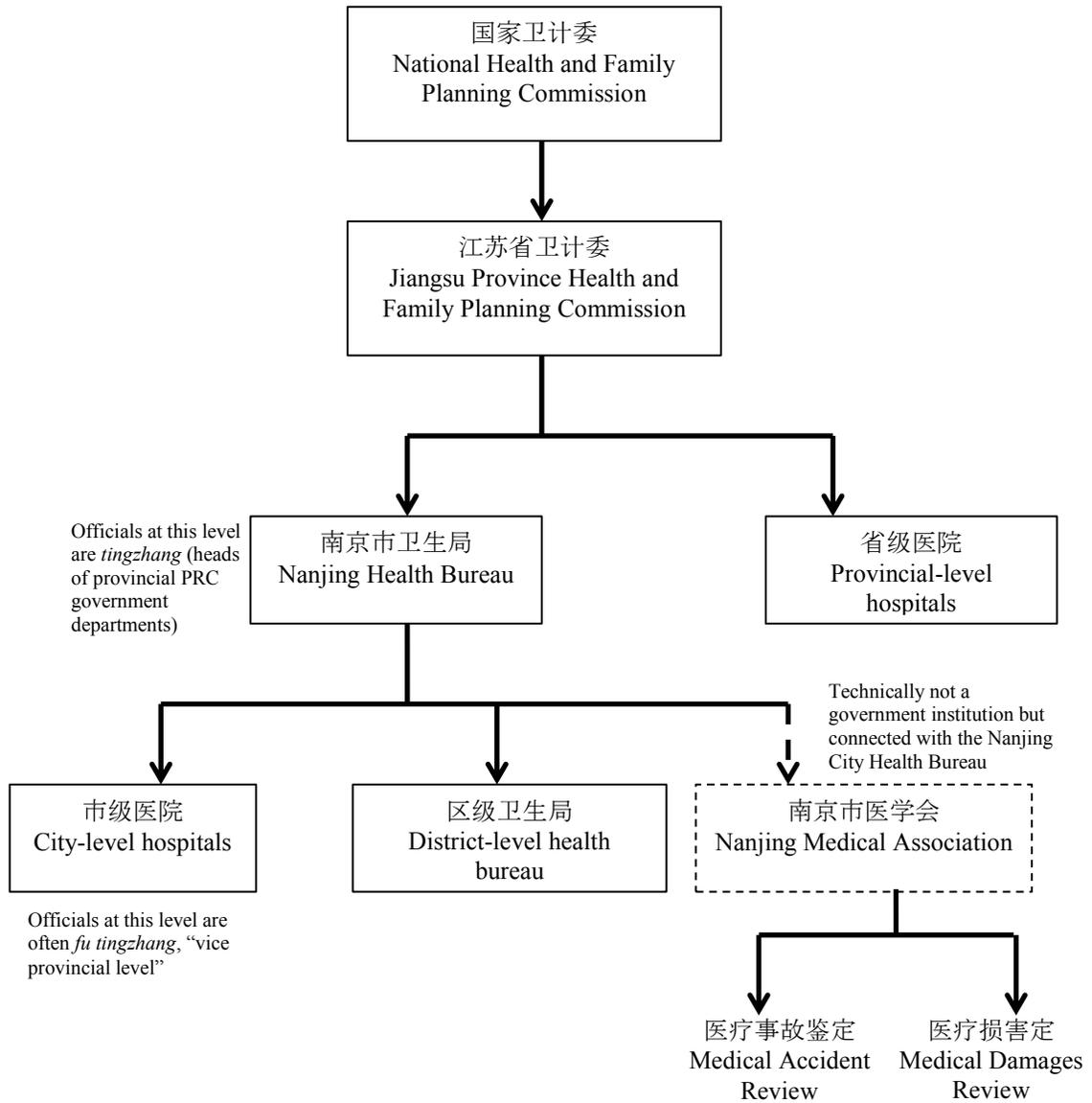
<sup>251</sup> Hospital official and former hospital affairs office head, 72.

<sup>252</sup> This is last year’s but still some of same people and gives info on their backgrounds. “Nanjing Medical Doctors Association Current Leaders [南京医师协会现任会领导],” Yixue Jiaoxue Wang (Medicine Education Web), April 3, 2015, <http://www.med66.com/yishixiehui/nanjingcmda/lm1504035341.shtml>.

<sup>253</sup> Media Official, Interview No. 065, 2016.

<b>NMA Position</b>	<b>Current Employment outside of NMA</b>	<b>Major hospital background?</b>
Council Head	Vice Mayor of Nanjing, former Gulou physician	Yes
Vice-head	Professor at Nanjing University, former President of Gulou Hospital	Yes
Vice-head	Party Secretary at Jiangsu Provincial Hospital	Yes
Vice-head	President of Nanjing Military Region General Hospital	Yes
Vice-head	Southeastern University Zhongda Hospital President	Yes
Vice-head	President of Nanjing No. 1 Hospital	Yes
Vice-head	Nanjing Medical University Party Secretary	Yes
Vice-head	Party Secretary at Gulou Hospital	Yes
Vice-head/secretary	Nanjing Medical Doctors Association	(uncertain)

**Figure 6: Health Bureaucracy (Jiangsu Province as Example)**



### Mediation

When patients go to their local health bureau to raise a dispute, either at the district or city level, they may be directed to the local medical dispute mediation committee (MDMC).<sup>254</sup> MDMCs are bodies that have been created gradually over the past decade for the specific purpose of resolving medical disputes – they are an example

<sup>254</sup> Interview Transcripts QYTW, p. 1.

of a “responsive” institution to address issues in medical dispute resolution, and I delve into detail about them in Chapter 8. Shanghai’s Putuo district’s MDMC is often cited as the first of these bodies, created in 2006.<sup>255</sup> By the end of 2014 most provincial capitals had established MDMCs.<sup>256</sup> By the spring of 2015, all prefectural-level cities had established them and there are plans to establish them nationwide at the county-level in the future.<sup>257</sup> These committees are “public institutions” (事业单位) and are independent in their work, though organized and financially supported by the Ministry of Justice and its affiliated local bureaus<sup>258</sup> and expected to carry out the principles of the People’s Mediation Law.<sup>259</sup>

Prior to the establishment of these committees, after attempting to negotiate with hospitals, patients had the options of applying for medical accident reviews, administrative mediation by the health bureau,<sup>260</sup> and suing in court.<sup>261</sup> Mediation offers the opportunity for dispute resolution in a third-party forum, and unlike the court process, its services are free<sup>262</sup> and faster.<sup>263</sup> An article about the success of Guangdong’s committee highlighted that while on average it takes two years for lawsuits, the Guangdong provincial mediation committee mediates an average of five cases per day, an

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<sup>255</sup> Chen Xianxin and Jiang Zehong, “Analysis on Third-Party Mechanism in Medical Disputes Resolve [国内外医疗纠纷第三方调解机制述评],” *Chinese Hospitals* 14, no. 5 (2010): 43.

<sup>256</sup> National Health and Family Planning Commission Official, Interview No. 001, 2014.

<sup>257</sup> National Health and Family Planning Commission Official, Interview No. 069, 2016, 69.

<sup>258</sup> Interview Transcripts, 1.23.2016 Notes on Justice System Hierarchy.

<sup>259</sup> Transcript of case provided by YTW (in clear tabs, no date).

<sup>260</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 194 (footnote 66).

<sup>261</sup> These choices are not mutually exclusive and medical accident review results can be used to bolster one’s case in negotiations with again with the hospital or in any of the other dispute resolution channels, including mediation.

<sup>262</sup> “The People’s Republic of China People’s Mediation Law [中华人民共和国人民调解法],” The National People’s Congress of the People’s Republic of China, October 28, 2010, Article 4, [http://www.npc.gov.cn/npc/xinwen/2010-08/28/content\\_1593344.htm](http://www.npc.gov.cn/npc/xinwen/2010-08/28/content_1593344.htm).

<sup>263</sup> National Health and Family Planning Commission Official, Interview No. 069.

“astonishing” efficiency rate.<sup>264</sup> Despite the advantages of mediation, as one official noted, it does not resolve all issues in medical malpractice dispute resolution.<sup>265</sup> Chapter 8 will further analyze some of the challenges of mediation and detail the procedures of an MDMC in an eastern provincial capital.

### Court process 司法途径

As in many places, in China the court is generally seen as a last resort for patients given the time and expense of pursuing a case. However, on rare occasions patients go directly to court without first raising the dispute directly with the hospital.<sup>266</sup> This section traces the steps of a legal case according to an interview with the public 3A hospital in Nanjing. It is important to note that this process likely varies in different places, and that this is the perspective from the hospital, not the patient. At the end of this analysis, I include the perspective of a deceased patient’s family member about his experience with the medical dispute resolution process and also discuss other issues of patient concern.

In order to file a lawsuit, the patient and/or his family first goes to the basic people’s court<sup>267</sup> at the city-district level to file a case. Cases must pass through this level of court before going to an intermediate court at the city level, unless the requested compensation amount is over 30,000,000 RMB (\$4.44 million), but it is rare for plaintiffs

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<sup>264</sup> Qiuling Li, “Guangdong Province Medical Mediation Has Been Established for Four Years, Unique Strengths Gradually Becoming Evident 广东省医调委成立四年 独特优势渐显现--广东频道--人民网,” People’s Daily Website, Guangdong Channel, May 5, 2015, <http://gd.people.com.cn/n/2015/0505/c123932-24742443.html>.

<sup>265</sup> District-level health and family planning official, Interview No. 060.

<sup>266</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>267</sup> “The judiciary of the PRC is composed of three types of courts, that is, different levels of local people’s courts, military court and other special People’s Courts, and the SPC. The local people’s courts has three levels: basic, intermediate, and higher people’s courts.” (Article 124, Constitution of the PRC.; Article 3, Organic Law of the People’s Court of PRC.) See: Chuan Feng, Leyton P. Nelson, and Thomas W. Simon, *China’s Changing Legal System* (New York, NY: Palgrave Macmillan, 2016).

to request such a high amount.<sup>268</sup> The case is processed through the registration office (立案庭) and then passed to one of the offices for civil cases (民庭).<sup>269</sup> In accordance to the timelines outlined in the Civil Procedure Law,<sup>270</sup> the relevant court issues a subpoena to the hospital usually within 15 to 20 days after registration of the case.<sup>271</sup> The hospital then must provide requested materials, most importantly the medical records. After receiving the subpoena, the hospital organizes physicians and lawyers to assess and make presentations on the case. Then according to the date on the subpoena, all parties involved attend the first hearing, which usually lasts at most half a working day (about two to two and a half hours in China). If the hearing goes for three or four hours, it is considered to be an especially long case.<sup>272</sup> A lawyer from the accused hospital and one or two doctors, one of whom is usually the implicated party, attend the hearing.<sup>273</sup> A representative from the hospital's Medical Affairs Office usually also attends the hearing as a representative or in the audience to keep track of the case's progress. One director of Obstetrics at a hospital said that she does not allow her accused younger doctors go to court; she goes for them: "I protect the people under me."<sup>274</sup> She does this in order to

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<sup>268</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>269</sup> Medical Affairs Office Employee.

<sup>270</sup> See Section 2, Chapter 12 for trial procedures of the Civil Procedure Law of the People's Republic of China: "Civil Procedure Law of the People's Republic of China" (The Supreme People's Procuratorate of the People's Republic of China, August 31, 2012), [http://www.spp.gov.cn/sscx/201502/t20150217\\_91465.shtml](http://www.spp.gov.cn/sscx/201502/t20150217_91465.shtml). For English translation see: Standing Committee of the National People's Congress, "Civil Procedure Law of the People's Republic of China (2012 Amendment)," [www.lawinfochina.com](http://www.lawinfochina.com), August 31, 2012, <http://www.lawinfochina.com/display.aspx?id=11161&lib=law&SearchKeyword=civil%20procedure&SearchCKeyword=#menu19>.

<sup>271</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>272</sup> Medical Affairs Office Employee.

<sup>273</sup> Medical Affairs Office Employee; ICU Director, Interview No. 047, 2016.

<sup>274</sup> Director of Obstetrics, Interview No. 059, 2016, 2.

prevent physicians from quitting since they are already scarce and “fewer and fewer students from good economic backgrounds want to become doctors.”<sup>275</sup>

After the first hearing, the judge makes a decision on the next step for the case. If the case is straightforward, not requiring any technical medical advice, he will offer the option to either make a decision or to mediate the conflict.<sup>276</sup> In China, the court can also facilitate mediation, and judges are encouraged to offer this option throughout the court process.<sup>277</sup> If the case requires further investigation, the judge will typically order a Medical Damages Review, a newer type of review based on China’s new Tort Liability Law, which entered into force in 2010.<sup>278</sup> Prior to the new Tort Liability Law, cases could be evaluated using the Regulations on Handling Medical Accidents (mentioned above) or by using ordinary tort claims, which are based on the General Principles of the Civil Law and the Supreme People’s Court’s related interpretation.<sup>279</sup> This was known as the “two-track system” because it allowed evaluation of health care disputes to go through either of these paths, without any real clarity on which types of cases should go in which direction.<sup>280</sup> In ordinary tort claims, determinations about negligence are made by judicial inspection agencies, which are “quasi-private entities’ retained by parties to litigation.”<sup>281</sup> The legal medical experts who conduct these inspections are not practicing clinicians, so physicians often feel they neglect to consider whether a physician followed the standard of care, regardless of the patient’s outcome. Because this type of inspection

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<sup>275</sup> Ibid.

<sup>276</sup> Medical Affairs Office Employee, Interview No. 063, 2.

<sup>277</sup> Medical Affairs Office Employee, 063.

<sup>278</sup> The Standing Committee of the 11th National People’s Congress [第十一届全国人民代表大会常务委  
员会], “The People’s Republic of China Tort Liability Law 中华人民共和国侵权责任法,” December 26,  
2009, [http://www.gov.cn/flfg/2009-12/26/content\\_1497435.htm](http://www.gov.cn/flfg/2009-12/26/content_1497435.htm).

<sup>279</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 194.

<sup>280</sup> Liebman, 198.

<sup>281</sup> Liebman, 197.

emphasizes whether there was a cause-effect relationship between the medical activity and the outcome, it more easily finds fault with physicians. As one physician put it:

“Because they [the Judicial Review Boards] consider [the case] more from a judicial angle, [using the] cause-effect relationship to evaluate whether or not you [the doctor] have a problem. [For example], this patient in the end died, and you did the surgery, and there was a complication, does it have a cause-effect relationship with this person’s death? If this cause-effect relationship is established, then you have a responsibility. Whether or not the way I handled the complication correctly, this is not in the [Judicial Review’s] consideration. [It] is more about using the cause-effect relationship to make a judgment. So this type of ruling will tend toward the patient’s favor. If you give us [hospitals] a choice, we probably would not be as willing to do this type. But if you give the option to the relatives, the relatives might select Judicial Review. They [relatives/patient] feel the Chinese Medical Association, all the people in it, know each other.”<sup>282</sup>

In addition to the difference in the way the two different tracks evaluate the cases, there are also differences in compensation. For example, a case involving death brought under ordinary tort law allows for twenty times the annual salary in compensation,<sup>283</sup> which the Regulations does not allow. As a result, patients often prefer to pursue this course of action because of this higher compensation standard, whereas doctors prefer the Medical Accident Reviews.<sup>284</sup>

The new Tort Liability Law in 2010 led to the establishment of Medical Damages Reviews.<sup>285</sup> These reviews are ordered by the courts and conducted by the Chinese Medical Association, which still arguably has some of the same issues of protecting the interests of the medical community as in Medical Accident Reviews. However, plaintiffs receive compensation according to the Tort Liability Law, not the Medical Accident

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<sup>282</sup> Interview Transcripts, ICU, 14.

<sup>283</sup> Supreme People’s Court, “Interpretation of the Supreme People’s Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury [最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释],” Article 29.

<sup>284</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 193–98.

<sup>285</sup> The Ministry of Health followed up with an Notice to the Tort Liability Law, clarifying Medical Accident Reviews and Medical Damage Reviews. Ministry of Health, “Ministry of Health On Completing the Implementation Work for the Tort Liability Law [卫生部关于做好《侵权责任法》贯彻实施工作的通知],” <http://fagui.51.wf.com>, June 28, 2010, <http://www.51wf.com/law/135666.html>.

Regulations, and cases are evaluated based on degree of responsibility,<sup>286</sup> not cause and effect. The new Tort Liability Law also, as mentioned before, shifted the burden of proof to the plaintiff (innocent until proven guilty).<sup>287</sup> If the patient or hospital disagrees with the assessment, they can apply to the provincial-level Chinese Medical Association for another review.<sup>288</sup> Otherwise the judge will ask them whether or not they want to mediate. Mediation might take place during this hearing or another time will be arranged.<sup>289</sup> Whether or not a hospital decides to settle during mediation can depend on its financial status, and the difference between the desired amounts of the two parties. For example, if the plaintiff demands RMB 100,000, and the hospital is only willing to give RMB 50,000, it is harder to come to an agreement because the gap is so large. However, powerful and wealthier hospitals, such as provincial-level hospitals, sometimes agree to mediate in these types of cases and will agree to pay out as much as RMB 70,000 or RMB 80,000 since they have more money.<sup>290</sup> Other hospitals are usually not inclined to do so and will request that the judge decide the case instead.<sup>291</sup>

If the parties cannot come to an agreement in mediation, the court will send its final decision within a month's time about the result and compensation amount.<sup>292</sup> If either side wants to challenge the ruling, they have 15 days to appeal to a higher court,<sup>293</sup> the next level being an intermediate court at the city level, and then a higher-level court at

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<sup>286</sup> Medical Affairs Office Employee, Interview No. 063, 4. For the different degrees of responsibility, see "The People's Republic of China Tort Liability Law (Order of the President of the People's Republic of China No. 21) [中华人民共和国侵权责任法 (主席令第二十一号)]," The Central Government of the People's Republic of China, December 26, 2009, [http://www.gov.cn/flfg/2009-12/26/content\\_1497435.htm](http://www.gov.cn/flfg/2009-12/26/content_1497435.htm).

<sup>287</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 201.

<sup>288</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>289</sup> 3.11, p. 5

<sup>290</sup> Medical Affairs Office Employee, Interview No. 063, 3.

<sup>291</sup> 3.11, p. 5

<sup>292</sup> 3.11, p. 5

<sup>293</sup> "Civil Procedure Law of the People's Republic of China," See Chapter 14, Article 164.

the provincial level, and then the national-level Supreme People's Court. Plaintiffs may also have their cases heard by another court or request for the removal of judges under special circumstances.<sup>294</sup> For example, one case in Guangzhou against a famous doctor in the city was tried in Shanghai because the patient thought the doctor's powerful influence in Guangzhou would influence the outcome of the case.<sup>295</sup>

*Differences between the different types of reviews and current enforcement*

There had been some discussion that with the passage of the new Tort Liability Law in 2009 that there would no longer be a two-track system for medical disputes, and all tracks would be merged into one.<sup>296</sup> However, fieldwork in the spring of 2016 revealed that Medical Damages Reviews (from the 2010 Tort Liability Law), Medical Accident Reviews (from the 2002 Medical Accident Regulations), and judicial inspections for ordinary torts were all still possible avenues for medical disputes. In Nanjing, Medical Damages Reviews and judicial inspections are under the purview of the courts, whereas the Medical Accident Review can only be applied for through the health bureaucracy. However, courts can admit the results of a Medical Accident Review as evidence.<sup>297</sup> In Nanjing, it is rare for a judicial inspection to be used in a medical case because Jiangsu province requires that both sides agree to this type of review,<sup>298</sup> and hospitals usually refuse it.<sup>299</sup> Courts in Jiangsu Province, regardless of opposition by the

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<sup>294</sup> "Civil Procedure Law of the People's Republic of China," See Section 3 Jurisdiction by Transfer and Jurisdiction by Designation; Chapter 4 Recusal of Adjudicating Personnel.

<sup>295</sup> Interview Transcripts, ICU, 16.

<sup>296</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 201.

<sup>297</sup> Medical Affairs Office Employee, Interview No. 063, 7.

<sup>298</sup> "Judicial Review Service Guide," Jiangsu Judicial Administration Website, May 8, 2015, [http://www.jssf.gov.cn/ggfw/rdfw/flfwzn/201505/t20150508\\_74133.html](http://www.jssf.gov.cn/ggfw/rdfw/flfwzn/201505/t20150508_74133.html).

<sup>299</sup> Medical Affairs Office Employee, Interview No. 063, 4.

plaintiff or defendant, can order a medical damages review,<sup>300</sup> and there is rarely an objection to conducting this review.<sup>301</sup>

In Guangzhou, some aspects of this process were reported differently. According to a physician in Guangzhou who frequently appears in court on behalf of his hospital, patients have the choice between the medical damages review or judicial inspection, most often choosing the Judicial Inspection because it tends to be more in the patient's favor.<sup>302</sup> It is unclear from my current research if hospitals can refuse this in Guangzhou, but based on the interview with this physician, it seemed that his hospital had to go through this process if the patient desired. However, despite the perceived unfairness of judicial inspections by hospitals in Guangzhou, in Guangdong province (the capital of which is Guangzhou) patients reportedly only win 7.59% of medical disputes in court.<sup>303</sup>

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<sup>300</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>301</sup> Medical Affairs Office Employee, 3–4.

<sup>302</sup> Interview Transcripts, ICU, 15.

<sup>303</sup> Liyang Shang, Yao Huo, and Weiwei Liang, “Media Statistics Guangdong Medical Dispute Cases: Patients Only Win 7.59% of Cases [媒体统计广东医疗纠纷案:患者胜诉仅占 7.59%],” May 7, 2015, [http://news.cnr.cn/native/gd/20150707/t20150707\\_519098727.shtml](http://news.cnr.cn/native/gd/20150707/t20150707_519098727.shtml).

*A note on resources for the poor to pursue cases*

China has shown increasing attention to enabling poorer and disadvantaged groups in society to have better access to legal information and lawyers through its legal aid program, established in 2003 nationwide by the State Council,<sup>304</sup> though the implementation of this program varies throughout China in scope and quality of services provided.<sup>305</sup> The program provides lawyers those from difficult economic backgrounds.<sup>306</sup> These plaintiffs are evaluated for eligibility according to the economic circumstances of the provincial-level areas they are from.<sup>307</sup> In June 2015, the Ministry of Justice published “Opinions on Perfecting the Legal Aid System,”<sup>308</sup> which aims to improve the system in several important ways: making it available to additional disadvantaged groups (women, migrant workers, disabled persons, etc.), establishing legal aid for appeals and full coverage of legal aid counsel services, and restructuring the budget for the program at city and county levels.<sup>309</sup> This program is important because, as discussed in the next chapter, there is some analysis that being poor can contribute to resorting to *yinao*, even though it eventually became a tool used beyond the poor. It seems that the Chinese government is trying to make legal avenues more available.

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<sup>304</sup> “Legal Aid Regulations,” The Central People’s Government of the People’s Republic of China, July 16, 2003, [http://www.gov.cn/banshi/2005-07/12/content\\_14080.htm](http://www.gov.cn/banshi/2005-07/12/content_14080.htm).

<sup>305</sup> Lin Wang, “Perfecting Two Dimensions of the Legal Aid System,” China Legal Aid Web, May 11, 2015, [http://www.chinalegalaid.gov.cn/China\\_legalaid/content/2015-05/11/content\\_6077258.htm?node=40883](http://www.chinalegalaid.gov.cn/China_legalaid/content/2015-05/11/content_6077258.htm?node=40883).

<sup>306</sup> “Legal Aid Regulations.”

<sup>307</sup> “Legal Aid Regulations,” Article 13.

<sup>308</sup> “Office of the State Council Publishes ‘Opinions on Perfecting Legal Aid System,’” Ministry of Justice P.R.C, June 30, 2015, [http://www.moj.gov.cn/zt/content/2015-06/30/content\\_6160196.htm?node=77137](http://www.moj.gov.cn/zt/content/2015-06/30/content_6160196.htm?node=77137).

<sup>309</sup> “Latest Explanation of ‘Opinions on Perfecting the Legal Aid System,’” Ministry of Justice, accessed November 8, 2016, [http://www.moj.gov.cn/zt/node\\_77110.htm?node=40168](http://www.moj.gov.cn/zt/node_77110.htm?node=40168).

*A plaintiff's perspective in a medical malpractice dispute*

While it was difficult to obtain access to plaintiffs or patients with disputes, I had an in-depth conversation with a plaintiff whose mother had passed away from a medication error. This plaintiff also happened to be a physician in a hospital department at one of the city's most reputable hospitals and deals with malpractice cases for his own hospital, so unlike the average Chinese citizen, he not only understands the legal process, but as a doctor, he can evaluate the error in the dispute. The dispute occurred at a hospital where his mother had cataracts removed. While cataract removal is normally an outpatient procedure, because she had public government insurance (公费医疗), she was able to stay in the hospital with full coverage (staying in a hospital tends to be desirable in China). Her physician gave her aspirin, despite the fact that aspirin should not be administered after cataract surgery due to the risk of bleeding<sup>310</sup> in addition to, according to her son (the plaintiff), her clearly documented history of an aspirin allergy. The patient died following a reaction to the medication.<sup>311</sup>

As this plaintiff pursued this case, he reported that thugs from the hospital's Medical Affairs Office beat him up to deter him from pursuing this case any further since it could escalate to a high-profile issue for this hospital.<sup>312</sup> He also accuses the hospital of tampering with and destroying evidence, which are prohibited by the Tort Liability Law.<sup>313</sup> He went to the police to make a report of his injuries from assault and retains proof of it. None of the main media outlets have covered his story. While this study has so far portrayed patients as the parties more often resorting to violence, this brief

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<sup>310</sup> Comment by US Physician, December 28, 2016.

<sup>311</sup> Plaintiff, Interview No. 80, 2016.

<sup>312</sup> Plaintiff.

<sup>313</sup> The Standing Committee of the 11th National People's Congress [第十一届全国人民代表大会常务委员会], "The People's Republic of China Tort Liability Law 中华人民共和国侵权责任法," Article 58.

summary of one man's case suggests that hospitals may also resort to violence and illegal behaviors during malpractice disputes. However, the influence of powerful hospitals and government media control makes it difficult to understand the extent of this issue.

### **Analysis of the Complaint and Dispute Resolution Process from Start to Finish**

This analysis of the complaint and dispute resolution process reveals several important aspects of it. This section identifies some of these points and where appropriate, draws a comparison with the United States to provide context to the Chinese system.

**1. Strong advocacy for complaints and little to no advocacy in disputes.** In the complaint system, the government advocates for patients as they encounter issues, both trivial and serious, with the hospital. There are numerous avenues for complaining, there is no cost to do so, and further, the hospital is obliged by administrative regulations to handle all complaints in a timely manner, so patients are guaranteed to be heard. This gives patients the upper hand against health care workers and emboldens them to advocate for their rights while seeking medical care. Americans would be in awe if while waiting for hours in the ER, they could call the city government to put pressure on the ER to address their concerns in real time.

However, advocacy stops almost completely for patients once complaints become disputes. During negotiations with the hospitals (Level 3) and mediation (Level 4), patients rarely have representation by lawyers,<sup>314</sup> whereas doctors have an entire army of lawyers and a powerful hospital institution behind them. Like China, in the United States,

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<sup>314</sup> Text message from hospital administrator, November 9, 2016.

the vast majority of malpractice cases are also settled out of court,<sup>315</sup> but patients in the US usually seek legal counsel to begin with as they contemplate taking their cases to court; both sides have legal representation. When asked why patients and families do not come with legal counsel, one hospital administrator said, “In China if something happens to you, you help yourself.”<sup>316</sup> While this may be true for some people, there are likely other reasons for patients not hiring lawyers, such as lack of awareness or knowledge about how to choose them and costs.

## **2. The challenge of recruiting medical expertise to objectively evaluate cases.**

Another point, which has been made elsewhere,<sup>317</sup> is that placing the responsibility of medical reviews within health bureaucracies on the local level automatically decreases the credibility of these evaluations. The system has been built in a way that creates incentives for doctors to not rule against their counterparts in the same city. In the United States, expert witnesses must show they have no conflict of interest,<sup>318</sup> but in China, conflicts of interests are built into the system. In the relatively new medical mediation committees, the primary roles of the government health bureaucracy and the Chinese Medical Association have been removed. Even though creating a third-party mediation committee addresses concerns about bias in favor of doctors, committees that do not use expert witnesses carry the potential problem of not being able to evaluate whether a mistake occurred and the degree of severity of the mistake. The chapter dedicated to mediation further explores these issues.

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<sup>315</sup> “Study Finds Settling Is Better Than Going to Trial - The New York Times,” accessed November 9, 2016, <http://www.nytimes.com/2008/08/08/business/08law.html>.

<sup>316</sup> Hospital official and former hospital affairs office head, Interview No. 072.

<sup>317</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China.”

<sup>318</sup> “How Are Expert Witnesses Selected in Personal Injury Cases?,” Staver Law Group PC, June 27, 2014, <http://www.chicagolawyer.com/how-are-expert-witnesses-selected-in-personal-injury-cases/>.

Controversy over choosing expert witnesses in medical malpractice cases is not unique to China. As Johnston et al. describe the issue in the US: “Despite ethics codes, expert witness guidelines, and platitudes by the thousands about trials being the pursuit of truth and justice, a great many judges, jurors and lawyers perceive expert witnesses on both sides as biased partisans.”<sup>319</sup> In a medical malpractice trial in the US, both plaintiff and defendant lawyers usually hire expert witnesses to provide their opinions on the case at hand; some states require expert opinions by statute in order for malpractice cases to succeed.<sup>320</sup> In the United States juries decide the verdict when malpractice cases go to trial and because both sides will have expert witnesses supporting each of their respective opinions, it comes down to which side has the most credible opinion,<sup>321</sup> which can be difficult for juries to decide. Interestingly, in theory the Chinese model of having an independent organization assign experts to the case not hired by the plaintiff or defendant seems like it would actually yield more impartial results than the US system.

**3. Length of court time is not comparatively long, but arguably has more dramatic effects on certain classes of people.**

In China people frequently say the court system is too lengthy and arduous, but it seems that the Chinese judicial system handles cases in quite a timely manner – the subpoena is issued within a few weeks from the initial filing as is the final decision once the results of the Medical Damages Review are considered. The length of time for cases accrues primarily in waiting for the Medical Damages Review to be processed by the Chinese Medical Association.<sup>322</sup> Time can also add up with admission of evidence to

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<sup>319</sup> J. C. Johnston and T. P. Sartwelle, “The Expert Witness in Medical Malpractice Litigation: Through the Looking Glass,” *Journal of Child Neurology* 28, no. 4 (April 1, 2013): 484, <https://doi.org/10.1177/0883073813479669>.

<sup>320</sup> Walston-Dunham, *Medical Malpractice Law and Litigation*, 285.

<sup>321</sup> Walston-Dunham, 285.

<sup>322</sup> Medical Affairs Office Employee, Interview No. 063, 5.

court. Each time a new piece of evidence is contributed to the case, both parties have to attend a hearing to approve it.<sup>323</sup> In total there are generally three or more hearings per case, though some have five or six if new evidence needs to be admitted several times.<sup>324</sup>

The average time frame for the entire case according to a media source citing a Guangzhou government official is two years.<sup>325</sup> An administrator in the Medical Affairs Office in Nanjing echoed a similar figure, saying it takes 1-2 years.<sup>326</sup> If the average is two years, this is not very different than the American system, where according to a survey by Medscape, out of the physicians who had been involved in a lawsuit, 19% reported the entire process took less than a year, 36% reported from 1-2 years, 33% reported 3-5 years, and 12% reported more than five years.<sup>327</sup> If cases in China typically average around two years, it is not abnormally long. Although the United States and China have significant differences in their legal systems, the time to process a malpractice case is similar.

While comparatively the length of time for a case in China is not that long, the perception of this length may vary depending on the residence and socioeconomic statuses of the plaintiff. For a city resident, one to two years is arguably more palpable because they do not have to pay for travel. But for a poor rural family, traveling back and forth for one to two years would be expensive, and a huge loss of money especially if they lost their case. The analysis above also shows that the court process is difficult to understand and evolving, as there are still several different types of reviews that courts

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<sup>323</sup> Medical Affairs Office Employee, 4.

<sup>324</sup> Medical Affairs Office Employee, 6.

<sup>325</sup> Li, "Guangdong Province Medical Mediation Has Been Established for Four Years, Unique Strengths Gradually Becoming Evident 广东省医调委成立四年 独特优势渐显现--广东频道--人民网"

<sup>326</sup> Xinfang Office, Interview No. 062, 062.

<sup>327</sup> Carol Peckham, "Medscape Malpractice Report 2015: Why Most Doctors Get Sued," Medscape, December 9, 2015, Length of Entire Lawsuit Process, <http://www.medscape.com/features/slideshow/public/malpractice-report-2015>.

can order, and it is implemented differently in different areas. For wealthy, educated people, this might be easier to figure out, but again, for poorer, rural people pursuing cases, this would presumably be difficult, though China's legal aid may offer some guidance. Of course, in most places poorer people face challenges in using their country's legal system when compared to the wealthy. In China until advocacy becomes stronger and the court process more accessible, *yinao* might still offer a faster, more effective way to obtain compensation.

**4. While there are some unique aspects to China's political system that favor mediation,<sup>328</sup> there is also consensus in academic research that alternative dispute resolution (ADR) methods like mediation are often more favorable than adjudication for resolving medical disputes everywhere.**

Within the medical dispute resolution system (and in dispute resolution more generally), mediation is pushed at every step of the way – this is actually the official policy for medical disputes in China, it is called the “three mediations and one insurance.”<sup>329</sup> The “three mediations” means first mediating at the hospital, then at the mediation committee, and then in court. In the last decade, there has been a general trend in the Chinese justice system that has favored mediation of conflicts over litigation for various political and social reasons,<sup>330</sup> however, the Party-state's choice to favor mediation for medical practice disputes also reflects consensus in the general literature

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<sup>328</sup> See Chapter 8 for a more in-depth discussion of mediation in China.

<sup>329</sup> National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知],” June 30, 2016, <http://www.nhfpc.gov.cn/yzygj/s3589/201607/36d5fdfa42b1499d88503c25ac879ad1.shtml>.

<sup>330</sup> Wu Yingzi, “The Abilities and Limitations of ‘Big Mediation’: The Social Autonomy and Systemic Provisions of Dispute Resolution [‘大调解’的功能及限度, 纠纷解决的制度供给与社会自治]”; Fu Hualing and Richard Cullen, “From Mediator to Adjudicator: The Limits of Civil Justice Reform in China.”

about medical malpractice that methods of alternative dispute resolution (ADR) like mediation are more effective in resolving malpractice cases.<sup>331</sup>

In the United States, litigation for medical malpractice cases is seen by some to be “costly and irrational.”<sup>332</sup> The US Department of Health and Human Services reports that the Federal Government spends \$33.7-\$56.2 billion per year for malpractice coverage and the costs of defensive medicine, which doctors practice out of fear of unlimited and unpredictable liability awards.<sup>333</sup> Studies have shown that only 15% of malpractice cases actually involve medical negligence and in 80% of those cases, the patients or families leave the process without compensation.<sup>334</sup> This means that more often than not, the uninjured sue, and when the injured sue, most of the time they are not compensated. Because both parties agree on the outcome of the case in mediation, there is the “greatest durability and satisfaction”<sup>335</sup> of all the ADR methods. According to a study by Szmania et al. on the US, private mediators estimated that their cases were closed in 85 to 165 days, with the actual meetings for mediation only lasting between one and three days,<sup>336</sup> whereas litigated cases can typically take years to resolve.<sup>337</sup>

Many of the issues in the US legal system are echoed in the Chinese system, where pursuing legal cases is often seen as “strenuous and unrewarding” (费力不讨好)

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<sup>331</sup> Sohn and Bal, “Medical Malpractice Reform: The Role of Alternative Dispute Resolution.”

<sup>332</sup> Sohn and Bal, 1371.

<sup>333</sup> U.S. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, “Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care,” March 3, 2003, <https://aspe.hhs.gov/basic-report/addressing-new-health-care-crisis-reforming-medical-litigation-system-improve-quality-health-care>.

<sup>334</sup> “10 Things You Want To Know About Medical Malpractice,” Forbes, May 15, 2013, <http://www.forbes.com/sites/learnvest/2013/05/16/10-things-you-want-to-know-about-medical-malpractice/>.

<sup>335</sup> Sohn and Bal, “Medical Malpractice Reform: The Role of Alternative Dispute Resolution,” 1372.

<sup>336</sup> Szmania, Johnson, and Mulligan, “Alternative Dispute Resolution in Medical Malpractice,” 81.

<sup>337</sup> Peckham, “Medscape Malpractice Report 2015: Why Most Doctors Get Sued”; Sohn and Bal, “Medical Malpractice Reform: The Role of Alternative Dispute Resolution.”

for patients.<sup>338</sup> Therefore, the Chinese system's emphasis on mediation may be good for medical dispute resolution; however, as will be discussed in the chapter on mediation, it still faces a number of challenges and has important differences from mediation in the US.

### **5. Abuses by hospitals during medical malpractice cases can trigger a sense of injustice and frustration.**

As the sample plaintiff case demonstrates, hospitals can also be guilty of illegal behavior and violence in the complaint and dispute resolution process. Outside this case, doctors have developed a reputation for being corrupt (discussed further in Chapter 6) and have been known to tamper with evidence, such as editing medical records.<sup>339</sup> It is difficult, however, to study this issue because empirically it is hard to see and the lack of free media reporting makes it difficult to understand the scope of how often hospitals resort to these behaviors.<sup>340</sup> It is also easier for doctors to speak out against patient violence because they are fixed, organized groups of people. Even though patients can use social media to elicit sympathy for their cases, they are neither fixed nor organized groups of people, and there are few advocacy organizations for patients in China.<sup>341</sup>

**6. Where are the insurance companies?** Like in China, the vast majority of malpractice cases are settled out of court in the United States – the analysis of 58,000 medical malpractice cases resulting in paid claims showed that 96.9% of paid claims

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<sup>338</sup> “Only One Guangdong Medical Dispute Has Been Deemed by Court as a Medical Accident [广东医疗纠纷仅一成被法院定为事故],” qiuyi.cn, August 15, 2013, <http://news.qiuyi.cn/qwfb/2013/0815/19618.html>.

<sup>339</sup> This has been a common issue. The Tort Liability Law addresses it directly. One of the scenes in a hit show about the patient-doctor relationship *Xinshu* shows a doctor in the ER panicking about an emergency changing a medical record. “‘Xinshu’ Opens the Emotional Drama behind Medicine,” Southeastern Weekly, May 9, 2012, <http://www.smweekly.com/appraise/201205/29881.aspx>.

<sup>340</sup> This point would be very much challenged by doctors who feel the media has targeted them as being corrupt and have damaged their reputations. There is more on this on the chapter on state responses.

<sup>341</sup> See Chapter 9 for an in-depth look into patient-related organizations in China. In my entire year of fieldwork, not one was mentioned. When I gave a talk to hospital administrators from China at Johns Hopkins University, one official from Beijing said that the idea of patient advocacy was starting there.

were resolved out of court.<sup>342</sup> However, the two countries differ in the role of the medical malpractice insurance companies in the settlement of cases. Physicians in the US typically have medical malpractice insurance, and insurers play a pivotal role in settlement decisions; in some types of plans, insurers have the final word in settlements, and in others, physicians have the right to consent to the settlement before it is finalized.<sup>343</sup>

In China the government is in the process of implementing a nation-wide system of medical malpractice coverage, as part of its “three mediations, one insurance” policy, which seeks to decrease the burden on hospitals to provide compensation in malpractice cases.<sup>344</sup> However, the implementation of this goal varies from place to place. Nationally, the Health and Family Planning Commission set the goal for all 3A hospitals to have medical liability insurance by the end of 2015, but fieldwork and news sources indicate that this has not yet been fully realized throughout China.<sup>345</sup> Hospitals also have mixed views of medical malpractice insurers. A hospital lawyer in Wuhan said, “Hospitals are not very positive about this [medical malpractice insurance], currently the insurance companies’ primary goal is profit, and are [they] fighting to win over the support of the responsible government offices.”<sup>346</sup> The Nanjing hospital also conveyed it was not satisfied with the government-provided medical malpractice insurance, expressing hope

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<sup>342</sup> Jessica B. Rubin and Tara F. Bishop, “Characteristics of Paid Malpractice Claims Settled in and out of Court in the USA: A Retrospective Analysis,” *BMJ Open* 3, no. 6 (2013): e002985.

<sup>343</sup> Carl Horn III, Donald H. Caldwell, Jr, and D. Christopher Osborn, *Law for Physicians: An Overview of Medical Legal Issues* (United States of America: American Medical Association, 2000), 60–61.

<sup>344</sup> “Opinions on Strengthening Medical Liability Insurance Work [关于加强医疗责任保险工作的意见]” (National Health and Family Planning Commission, July 9, 2014), <http://www.nhfp.gov.cn/zygj/s3589/201407/65d55251804c408581a4e58db41f4bc7.shtml>.

<sup>345</sup> Yi Yang, “3A Hospitals Will All Join Medical Liability Insurance [三级医院将全部参保医责险],” *Beijing Morning Post*, April 13, 2016, [http://bjcb.morningpost.com.cn/html/2016-04/13/content\\_394765.htm](http://bjcb.morningpost.com.cn/html/2016-04/13/content_394765.htm).

<sup>346</sup> Hospital Lawyer, “A Letter from Amanda Ke Danying,” 2015.

the insurance provider would one day be able to join in on or share costs of the dispute resolution process.<sup>347</sup> The Nanjing hospital also mentioned it was exploring authorizing the sale of a new type of insurance at its hospital (Surgery Accident Insurance – 手术意外保险) that patients could buy prior to surgeries, so if a complication occurred, the insurer would compensate the patient directly.<sup>348</sup>

## **Conclusion**

This chapter has laid out the complaint and dispute resolution process from start to finish. When looked at in its entirety, the system as a whole has sent Chinese citizens mixed messages about how to pursue justice in the health care system. Institutions created by governments ultimately regulate the interaction between different groups in society, and they teach citizens the acceptable ways to behave and express themselves. A system that hears every medical complaint combined with a burden of proof on accused healthcare workers (during 2002-2010) incentivizes complaining. But as complaints escalate to disputes, the institutions for dispute resolution (prior to medical mediation: health bureaus, courts, hospitals) have taught patients that the system is built in a way that automatically disfavors them. It could be hypothesized that a society of emboldened complainants with no credible channels for further recourse may resort to means outside official channels to settle their disputes, thus paving the way for *yinao*. With this context in mind, the following chapter delves into the data and definitions for *yinao*.

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<sup>347</sup> Hospital Administration Group Interview, Interview No. 011, 2015, 2.

<sup>348</sup> Medical Affairs Office Employee, Interview No. 27, 2015.

## CHAPTER 5: *YINAO* DEFINITIONS AND DATA

The shortcomings of the dispute resolution system described in the previous chapter created an opening for another method to pursue medical dispute resolution outside of the formal system – *yinao*. Recognized by the Ministry of Education as a word in 2006,<sup>349</sup> *yinao* (Chinese: 医闹) can be translated into English as “medical disturbance” or “medical chaos.”<sup>350</sup> The word combines the Chinese character for medicine or medical activity “*yi*” (医) and the Chinese character “*nao*” (闹), which means quarreling, causing a disturbance, or venting.<sup>351</sup> In this chapter, I argue for a broad definition of *yinao* and at the same time recognize that its broad scope makes it a complicated policy problem. I also differentiate the concept of *yinao* from violence against health care workers globally by comparing the experiences of US and India with China’s.

In this chapter, I will also show that available data suggest that over time *yinao* has become an increasingly socially legitimate method for medical dispute resolution. When something becomes socially legitimate, it becomes accepted into the fabric of social rules and standards. One basic indicator of social legitimacy is that something is used with frequency: if many people are using it, then it must be increasingly acceptable to do so. As this chapter will show, available data demonstrates that *yinao* has become increasingly common since the early 2000s. I also show that *yinao* has become an accepted form of dispute resolution by comparing data on *yinao* alongside available data on other forms of dispute resolution. These data show that *yinao* has been used at least as

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<sup>349</sup> “In 2006 Chinese National Language Characters Once Again Has a ‘New Face’ [2006年我国语言文字又有‘新面孔’],” People’s Republic of China Ministry of Education, August 8, 2007, [http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe\\_1551/200708/25472.html](http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe_1551/200708/25472.html).

<sup>350</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 228.

<sup>351</sup> Liang Liu and Jian Huang, “‘Yinao’ Legal Issues Research [‘医闹’法律问题研究],” *Nankai Law Review*, 2012, 152–64.

often as adjudication and mediation in medical dispute resolution, making *yinao* a seemingly viable option for patients and their families.

### **Towards a Definition of *Yinao***

Many existing definitions of *yinao* cast a negative connotation on it, portraying hospitals as victims and patients and families as perpetrators. For example, one such definition of *yinao* provided in a publication for hospitals is as follows: “Behaviors that use the pretext of a medical dispute to interfere with the hospital’s normal order, disparage its reputation, and other illegal means to compel the hospital to agree to irrational demands.”<sup>352</sup> While this has become one of the dominant narratives of *yinao*, *yinao* is far more nuanced than this definition implies and includes a wide range of behaviors, motives, and groups of people subject to scholarly, policy, and media debate.

### The Wide Range of *Yinao* and Violent Behaviors against Health Care Workers

The conversation around *yinao* can include behaviors ranging from innocuous ones like hanging a banner to life-threatening ones such as attempted murder. While official documents do not use the word *yinao*, they commonly use the phrase “disturbing the normal order of medicine” (严重扰乱正常医疗秩序) to characterize behaviors associated with *yinao*.<sup>353</sup> A document released by five central government ministries in

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<sup>352</sup> China Medical Doctor Association (中国医师协会), “Analytical Report of *Yinao* Survey in Several Provinces and Cities Nationwide (在全国部分省市调查‘医闹’的分析报告),” *China Health Industry (中国卫生产业)*, February 2007, 57.

<sup>353</sup> Liping Chen and Lin Zhu, “Medical Order Cannot Only Depend on Criminal Law to Be Maintained [医疗秩序不能只靠刑法来维护],” *Legal Daily via The National People’s Congress of the People’s Republic of China*, September 16, 2015, [http://www.npc.gov.cn/npc/xinwen/lfgz/lfdt/2015-09/16/content\\_1946667.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/lfdt/2015-09/16/content_1946667.htm).

2014 provides a comprehensive list of these types of behaviors, which are shown in Table 4.<sup>354</sup>

However, scholars Liu and Huang argue that violent attacks like stabbings against health care workers should be separated from the term *yinao* since the act of stabbing someone is too serious to be included within the scope of a

<b>Table 4: Behaviors Associated with <i>Yinao</i></b>	
<p>disturbance (<i>nao</i>).<sup>355</sup> The head of a hospital’s Medical Affairs Office (typically where medical disputes are settled in hospitals) interviewed for this study also agreed that the goal of <i>yinao</i> generally is not intended to seriously hurt people; it is about creating a disturbance in order to get compensation.<sup>356</sup> There are other terms that are used to describe more violent behaviors, such as <i>baoli shangyi shijian</i> (暴力伤医事件), which describes “violent incidents against health care workers,” and <i>shayi an</i> (杀医案), which means “murder cases of health care workers.”<sup>357</sup></p>	<ul style="list-style-type: none"> <li>• Assaulting healthcare workers (殴打医务人员)</li> <li>• Deliberate murder of healthcare workers (故意杀害医务人员)</li> <li>• Setting up a funeral memorial in the hospital (在医疗机构私设灵堂)</li> <li>• Placing funeral wreaths at the hospital (在医疗机构摆放花圈)</li> <li>• Burning paper funeral money at the hospital (在医疗机构焚烧纸钱)</li> <li>• Hanging banners (often condemning hospital for killing a patient) (悬挂横幅)</li> <li>• Blocking the main door to the hospital (堵塞大门)</li> <li>• Placing a corpse in public areas of the hospital (在公共开放区域违规停放尸体)</li> <li>• Impinging on the ability of health care workers to leave their workplace and other ways of limiting their personal freedom (以不准离开工作场所等方式非法限制医务人员人身自由)</li> <li>• Public humiliation of healthcare workers (公然侮辱医务人员)</li> <li>• Threatening healthcare workers (恐吓医务人员)</li> <li>• Blackmail and extortion (实施敲诈勒索,寻衅滋事等行为)</li> <li>• Destroying property of the hospital (打砸医疗机构的财产)</li> </ul>

disturbance (*nao*).<sup>355</sup> The head of a hospital’s Medical Affairs Office (typically where medical disputes are settled in hospitals) interviewed for this study also agreed that the goal of *yinao* generally is not intended to seriously hurt people; it is about creating a disturbance in order to get compensation.<sup>356</sup> There are other terms that are used to describe more violent behaviors, such as *baoli shangyi shijian* (暴力伤医事件), which describes “violent incidents against health care workers,” and *shayi an* (杀医案), which means “murder cases of health care workers.”<sup>357</sup>

<sup>354</sup> The Supreme People’s Procuratorate of the PRC [中华人民共和国最高人民检察院], “Five Ministries’ Opinions on Illegal Criminal Activities Involving Medical Institutions and Protecting the Normal Order of Medical Care [五部门关于依法惩处涉医违法犯罪维护正常医疗秩序的意见],” April 28, 2014, [http://www.spp.gov.cn/flfg/201404/t20140428\\_71374.shtml](http://www.spp.gov.cn/flfg/201404/t20140428_71374.shtml).

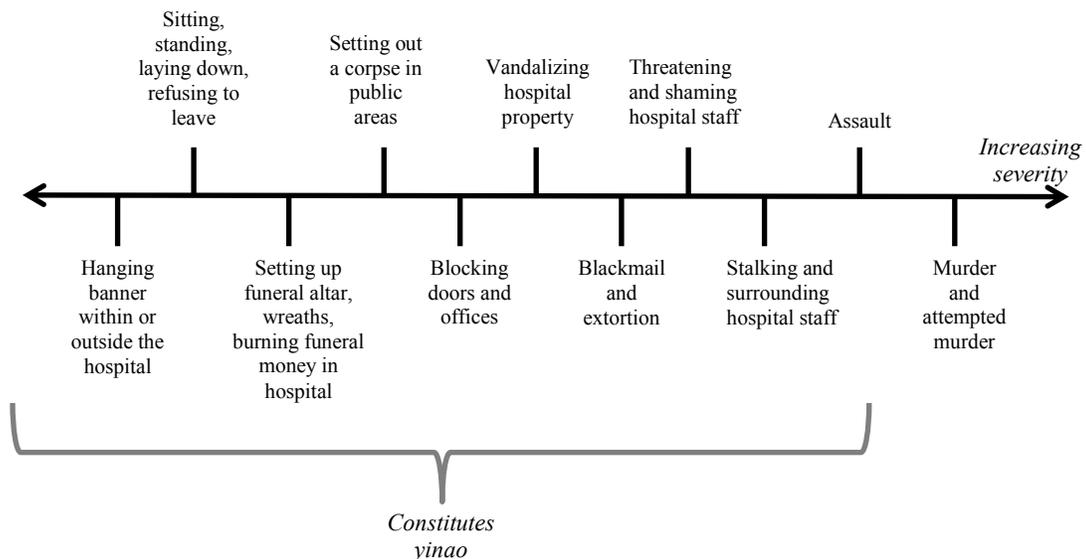
<sup>355</sup> Liu and Huang, “‘Yinao’ Legal Issues Research [‘医闹’法律问题研究],” 153–54.

<sup>356</sup> Head of Medical Affairs Office, Interview No. 048, 2016.

<sup>357</sup> For examples of these terms in media reporting, see: Feng Kan, “Violent Attacks against Health Care Workers Continue Despite Repeated Prohibition: Nationwide in 20 Days There Have Been 12 Successive

In order to reflect the full range of behaviors associated with *yinao*, I place them along a continuum (shown in Figure 7 below) in order of increasing severity. I place murder and attempted murder outside the scope of *yinao* because I agree with scholars Liu and Huang that attempted murder is beyond the scope of creating a disturbance. However, it is important to include murder and attempted murder along the continuum because due to the severe nature of these crimes, they are often the impetus for policy changes and reactions in the media.

**Figure 7: Continuum of *Yinao* and Violent Behaviors in Medical Dispute Resolution**



Motive for *Yinao* and Attempted Murders

With this range of behaviors comes a range of potential motives for them. Yet as highlighted above, existing definitions tend to define *yinao* by its “unreasonable” demands for economic compensation.<sup>358</sup> I choose not to define *yinao* by a single motive

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Attacks on Medical Personnel [暴力伤医事件屡禁不止:全国 20 天连发 12 起伤医案],” Xinhua News, June 18, 2015, [http://news.xinhuanet.com/legal/2015-06/18/c\\_127927895.htm](http://news.xinhuanet.com/legal/2015-06/18/c_127927895.htm); Heyan Wang et al., “The Tragedy of China’s Patient-Doctor Conflicts Behind the Harbin Doctor Murder [哈尔滨杀医案背后中国的医患冲突悲剧],” Tengxun Xinwen, April 5, 2012, <http://news.qq.com/a/20120405/000843.htm>.

<sup>358</sup> Liu and Huang, “‘Yinao’ Legal Issues Research [‘医闹’法律问题研究],” 153.

because there are many possible motives for *yinao*, such as emotional venting, seeking an apology, preservation of face, and revenge.

Perpetrators of the most extreme behaviors at the end of the spectrum like attempted murder or murder are beyond seeking any economic compensation at all because they likely will be arrested, imprisoned, and perhaps sentenced to death for these types of crimes. Revenge is the main motive of these severe crimes, and in medical disputes it is likely driven by mental illness or hopelessness exacerbated by economic hardship or suffering from disease. Studies have often associated poor socioeconomic standing with the decision to take extremely violent measures: one analysis of some of the most high-profile murder cases of doctors in health care disputes observes that in all of the selected cases, patients were from poor, rural families.<sup>359</sup> Another study examining severe incidents in media reports found that 70% of assailants came from poor family backgrounds, were unemployed, laid-off, or were temporary workers.<sup>360</sup> Almost 40% of the assailants had introverted personalities and were reclusive and stubborn.<sup>361</sup> Close to 30% had a history of mental illness.<sup>362</sup>

Unlike murder and attempted murder, *yinao* behaviors allow for the full range of motives, including revenge, economic compensation, the desire for an apology or attention, and emotional venting or grieving. The motives also likely vary as the behaviors become increasingly severe. For example, threatening health care workers and blocking doors are coercive behaviors that likely seek an economic benefit, whereas

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<sup>359</sup> Guo Jingtao, "Lamentable, Who Is Supporting Medical Violence? [可悲, 谁在支持医疗暴力? !]," *Yixue Jie* [医学界网站], May 27, 2015, <http://www.yxj.org.cn/article-46228-1.html>.

<sup>360</sup> Xiaoli Jia et al., "Investigation on Hospital Violence during 2003-2012 in China," *Chinese Hospitals* 18, no. 3 (2014): 3.

<sup>361</sup> Jia et al., 3.

<sup>362</sup> Jia et al., 3.

grieving and expression behaviors may include a combination of the need to vent and obtain an apology or compensation. Empirically it can be difficult to determine which motives are present when people resort to *yinao*. A Chinese pharmaceutical sales representative who frequently visits hospitals observed: A family could be making a scene grieving outside the hospital, demanding that the hospital bring back a child who died. The hospital might offer some money to the family, and some of these families might accept it, but ultimately the amount of money is not that important to the family. Yet in other circumstances, families might use this tragedy to demand an extremely high amount of compensation; it depends on the family and the situation.<sup>363</sup>

There also are also cultural motives that drive *yinao*, such as preserving face for a patient's family. A former hospital administrator described how the issue of preserving face for rural Chinese families influences dispute settlement: "In some Chinese villages, the whole village [may have only] three last names. So maybe the Wang clan last year had an issue with a hospital and were compensated RMB 180,000 (\$25,878). And then the Chen clan has a dispute at the same hospital, and the Chen clan is a more powerful family, so they demand 200,000 (\$28,753) because they want face."<sup>364</sup>

#### Professional v. Non-Professional *Yinao*

Debates about *yinao* also concern whether it only refers to actions by hired professional protesters and the size of the protest activities. In 2006, Ministry of Health spokesperson Mao Qunan emphasized the group and "professional" aspects (in the sense of a paid third party) of *yinao*: "Now inside medical institutions often there are groups

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<sup>363</sup> Pharmaceutical Representative, Interview No. 078, 2016.

<sup>364</sup> Hospital official and former hospital affairs office head, Interview No. 072.

operating, they are not ticket peddlers,<sup>365</sup> but they look for people who have medical disputes or who might encounter a medical accident, and in the name of these issues, go to the hospital and cause trouble to obtain an economic advantage. So, the media has called them ‘*yinao*,’ it is causing trouble.”<sup>366</sup> These “professional” groups charge patients and their families based on the specific services they provide and/or based on a percentage of the final settlement amount if negotiations with hospitals are successful. For example, an *yinao* group in China’s southern province of Guangxi charged RMB 100 (\$14.75) per day to have someone hang a banner and RMB 200 (\$29.51) per day for a person crying and shouting.<sup>367</sup> A professional *yinao* boss outside of Shanghai’s Huashan Hospital told undercover reporters that the standard price is RMB 300 (USD \$44.26) for an elderly person for one full day of “hanging around” the hospital and performing activities like waiting outside the accused doctor’s office door and sleeping at the hospital’s main entrance (price does not include lunch).<sup>368</sup> This same *yinao* boss charges RMB 500 per day (\$73.76) for a young man to threaten doctors and to get into a fight, but

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<sup>365</sup> Ticket peddlers (Chinese: *huangniu* 黄牛 or *piao fanzi* 票贩子) refer to people (often gangs) who purchase many or all available appointment tickets for the day the morning they go on sale. Recent changes in Internet technology and mobile applications that enable purchase of some tickets online has somewhat alleviated this issue. However, it is still a common issue in China: a famous video posted in January 2016 showed a young woman trying to get an appointment screaming at the ticket peddlers and accusing the hospital staff security guards of collaborating with them. The peddlers were selling appointment tickets that normally cost RMB 300 (\$43.71) for RMB 4500 (\$655.58). The video went viral on Chinese twitter (Sina Weibo), receiving over 43,000 comments. For more information see: “Watch: Chinese Woman Screams Down Scammers in a Beijing Hospital,” The Epoch Times, January 26, 2016, <http://www.theepochtimes.com/n3/1950617-watch-chinese-woman-screams-down-scammers-in-a-beijing-hospital/>.

<sup>366</sup> “Ministry of Health: ‘Yinao’ Severely Disrupts the Normal Order of Medicine [卫生部:‘医闹’严重扰乱正常医疗秩序 坚决打击],” Xinhua News, July 11, 2006, [http://news.xinhuanet.com/politics/2006-07/11/content\\_4815714.htm](http://news.xinhuanet.com/politics/2006-07/11/content_4815714.htm).

<sup>367</sup> Medical World Magazine, “The Thunder Sounds: The First Time an Yinao Group Has Been Destroyed in China [雷霆出击 中国首个医闹集团被覆灭],” September 29, 2014, <http://www.bioon.com/trends/news/603927.shtml>.

<sup>368</sup> “Professional ‘Yinao’: However Much Money You Give Me Determines How Big of a Disturbance I Will Make [职业‘医闹’: 你给多少钱我就闹多大事],” Beijing Youth Daily, November 7, 2013, [http://epaper.yinet.com/html/2013-11/07/content\\_22039.htm?div=-1](http://epaper.yinet.com/html/2013-11/07/content_22039.htm?div=-1).

this does not include medical fees if the young man is injured during the process; the patient and/or family who hired him would have to cover medical fees separately.<sup>369</sup>

Other stories describing professional practitioners of *yinao* mention other types of ways the gangs charge patients and families, such as taking a negotiated percentage of the final settlement.<sup>370</sup>

Even though a thriving industry has revolved around *yinao*, *yinao* does not always involve professionals. Scholars Chen and Deng separate *yinao* into professional and nonprofessional *yinao* because families and patients also engage in it without professionals.<sup>371</sup> In Chinese there is also a distinction between *yinao* and professional *yinao*, called *zhiye yinao*(职业医闹).<sup>372</sup>

### The Size of *Yinao* Incidents

Some *yinao* events involve over 100 people,<sup>373</sup> while others involve only a small handful of family members.<sup>374</sup> Most accounts of *yinao* emphasize that groups conduct it, but a hospital security guard interviewed for this study disagreed with this, observing that

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<sup>369</sup> “Professional ‘Yinao’: However Much Money You Give Me Determines How Big of a Disturbance I Will Make [职业‘医闹’: 你给多少钱我就闹多大事].”

<sup>370</sup> Gang Li, “Zhongshan No Longer Allows Hospitals and Yinao to Settle Privately [中山不许医院与医闹私了 (民生调查, 一线新探索)],” September 7, 2016, <http://society.people.com.cn/n1/2016/0907/c1008-28696124.html>; Hao Zhang and Hua Gong, “Hunan Reporters Go Undercover with Professional Yinao, Hospitals Knock Family Memberes [湖南记者卧底职业医闹, 讹完医院敲家属],” *Sanxiang Metropolis Paper*, July 1, 2014, <http://sxdsb.voc.com.cn/article/201407/201407010810481086.html>.

<sup>371</sup> Chen and Deng, “Medical Disturbance and Its Countermeasures [“医闹”事件的产生原因及解决对策],” 253.

<sup>372</sup> Zhang, “Research of Legal Countermeasurers on Hospital Violator Phenomenon [对医闹现象的法律对策研究],” 56; Chen and Deng, “Medical Disturbance and Its Countermeasures [“医闹”事件的产生原因及解决对策],” 253.

<sup>373</sup> This year Peking University Third Affiliated hospital faced an *yinao* incident involving 50 people. Sohu health summarizes high-profile *yinao* events from 2000-2009 shows some events involve over 100 people. See: Xinhua, “Police Bulletin ‘Peking University Third Affiliated Hospital Case of Death of Pregnant Woman’: Family Members Have Been Detained [警方通报‘北医三院孕妇死亡案’: 家属系‘滞留’],” Sohu News, January 21, 2016, <http://news.sohu.com/20160121/n435303846.shtml>.

<sup>374</sup> “Yinao in Suzhou Wearing Mourning Clothes and Laying Out Wreaths, Creating a Scene of Jumping from a Building [苏州现医闹 披麻戴孝放花圈上演跳楼秀],” November 4, 2013, [http://gb.cri.cn/42071/2013/11/04/7291s4308939\\_1.htm](http://gb.cri.cn/42071/2013/11/04/7291s4308939_1.htm).

individuals can also resort to the spectrum of *yinao* behaviors as well.<sup>375</sup> To him, *yinao* included patients or family members who refused to leave the hospital premises and continually harassed the Medical Affairs Office or departments where they received treatment.<sup>376</sup> Similarly, a group of nurses recounted the story of a patient's husband who lay down on the floor of the Obstetrics Department to protest paying NICU fees he could not afford for his premature child.<sup>377</sup>

### **Towards a definition of *Yinao***

Considering these factors of *yinao*, I define *yinao* in the following way:

*Yinao* represents a range of behaviors that can be innocuous or can threaten the operations of a hospital and endanger its staff. These behaviors are used in order to resolve medical disputes. A variety of motives drive *yinao*, including but not limited to revenge, emotional venting, economic compensation, preservation of face, and seeking an apology. Professional gangs, non-professional groups of friends and family, as well as individuals can all engage in *yinao* behaviors. Attempted murder and murder of health care workers do not constitute *yinao*.

This definition differs greatly from the one presented in the beginning of this section and reflects the full range of behaviors, motives, and types of people *yinao* includes. The diversity of factors included under the umbrella of *yinao* increases the likelihood of policies mistakenly addressing it as one issue rather than several nuanced issues. But to address *yinao* effectively, policy responses must understand the complexity the term encompasses. For example, policies must contemplate whether a single person hanging a banner warrants a different response than a hired gang holding a banner in front of a hospital. Policies must also distinguish between dissatisfied family members hovering outside a doctor's office waiting to have a conversation with him and family members harassing and interfering with activities of the hospital on behalf of their case;

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<sup>375</sup> Hospital Security Guard, Interview No. 055, 2016.

<sup>376</sup> Ibid.

<sup>377</sup> Midwives Group, Interview No. 053.

the former is not *yinao* while the latter is. Yet the lack of response to the former feasibly can provoke the latter situation.<sup>378</sup> Therefore policies must not only attempt to define the fine lines between the various behaviors that constitute *yinao* and address them appropriately, but also consider the motives for escalation of behavior along the continuum. The next chapter explores this issue further by delving into the underlying sources of *yinao* in more detail.

### **Assessing the Magnitude of *Yinao* and Serious Violent Assaults**

This section compiles the available data on *yinao* and medical dispute-related violent assaults. Though these data are incomplete, they offer helpful suggestions for understanding the scope, distribution, and possible trends of *yinao* and more violent medical dispute-related assaults. I consider national and local survey data, data gleaned from media coverage of these events, as well as survey data on violence against health care workers more generally.

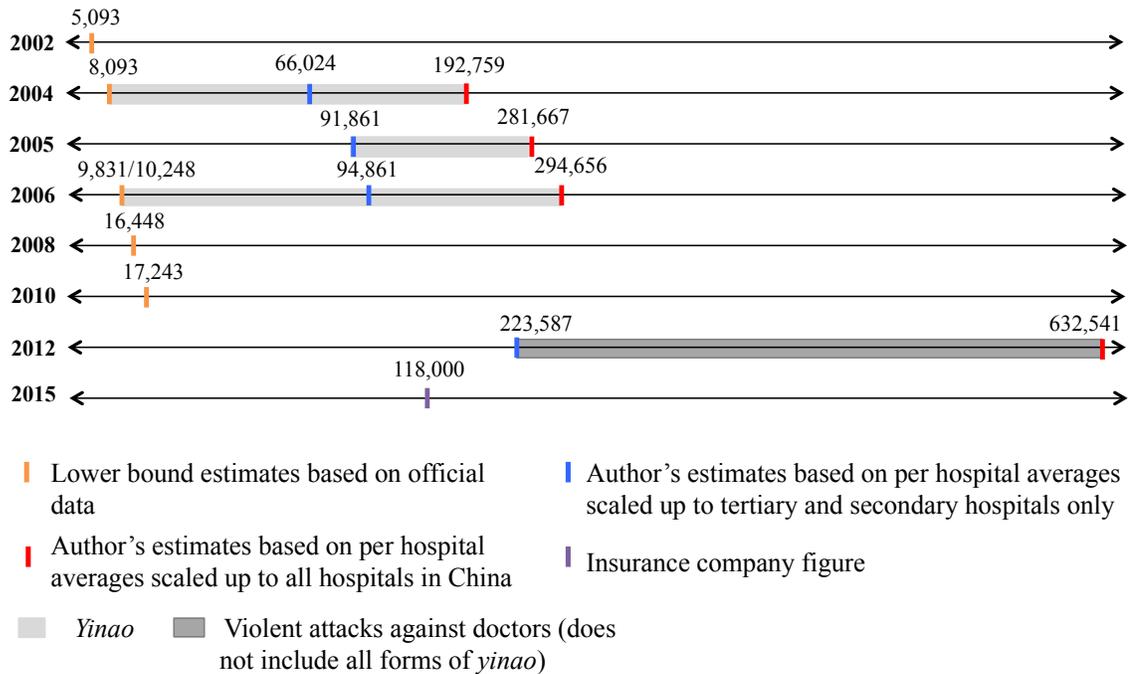
#### Nationwide and Local Data on *Yinao*

Available nationwide data on *yinao* and violent assaults against doctors are incomplete, but by using available data quoted by official and media sources as well as from hospital surveys, I build ranges for the likely number of annual incidents for the years when data are available (Figure 8).

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<sup>378</sup> Thanks to Dr. Charles Wiener for highlighting this nuance.

**Figure 8: Available Nationwide Data on *Yinao***



For the years 2002, 2004, and 2006, one news report states that “according to incomplete statistics,” nationwide there were 5,093 “incidents seriously disturbing medical order” in 2002; 8,093 in 2004; and 9,831 in 2006.<sup>379</sup> A statement by former Minister of Health Gao Qiang in 2007 further corroborates these numbers.<sup>380</sup> Because official statements often use “incidents seriously disturbing medical order” to characterize *yinao* incidents, I use these data to represent the lower bounds for the number of *yinao* incidents for these years (lower bounds are represented in Figure 8 in orange). They are the lower bounds because the data are incomplete, and a Party official

<sup>379</sup> Liming Zeng, “Last Year China Had Close to 10,000 Grave Incidents Affecting the Order of the Health Care System [中国去年发生近万起扰乱医疗秩序事件 伤五千人],” Huashang Wang, April 18, 2007, <http://news.hsw.cn/system/2007/04/18/005230555.shtml>. The original terms in Chinese are: 据不完全统计，二〇〇二年全国发生严重扰乱医疗秩序事件五千零九十三件，打伤医务人员二千六百零四人，医院财产损失六千七百零九万元。

<sup>380</sup> Dong Wei and He Lei, “Harmonious Patient-Physician Relations Are a Basic Requirement of Ensuring Health [医患关系和谐是维护健康的基本条件],” *The China Youth Daily*, March 12, 2007, [http://zqb.cyol.com/content/2007-03/12/content\\_1695936.htm](http://zqb.cyol.com/content/2007-03/12/content_1695936.htm).

interviewed for this study affirmed that official statistics on *yinao* should be interpreted as the least number of incidents for a given time period.<sup>381</sup>

There are also other data points available from 2004 to 2006 specifically on the number of *yinao* incidents per year per hospital for 48 hospitals in China that suggest an increasing trend in the number of incidents for this time period. One survey found that that on average, each hospital experienced 10.48 *yinao* incidents per year in 2004, 15.06 incidents in 2005, and 15.31 incidents in 2006.<sup>382</sup> By 2006, nearly all of the hospitals in the survey reported experiencing *yinao*.<sup>383</sup> If these per-hospital averages were scaled up to represent the total number of hospitals in China for each of these years, then the number of *yinao* incidents would near or surpass 200,000 per year.<sup>384</sup> The red lines in Figure 8 represent this potential maximum of the number of *yinao* incidents.

However, hospitals in China are not all the same and, as will be explained in more detail in the following section, existing data suggest that *yinao* tends to occur more often in secondary and tertiary hospitals. In order to reflect this tendency, I also scale up the per hospital averages using only the number of secondary and tertiary hospitals in China, to provide another point of reference on the range.<sup>385</sup> The blue lines in the figure represent these numbers.

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<sup>381</sup> Hospital official, Interview No. 070, 2016.

<sup>382</sup> China Medical Doctor Association (中国医师协会), “Analytical Report of Yinao Survey in Several Provinces and Cities Nationwide (在全国部分省市调查‘医闹’的分析报告),” 57.

<sup>383</sup> China Medical Doctor Association (中国医师协会), 57.

<sup>384</sup> In 2004, China had a total of 18,393 hospitals. In 2005, China had 18,703 hospitals, and in 2006, China had 19,246 hospitals. Each of these figures was multiplied by the survey averages for each of these years, resulting in the red lines in Figure 8. Data on the total numbers of hospitals per year for each of these years are from the following source: National Health and Family Planning Commission, *China Health and Family Planning Statistics Yearbook 2016* 《中国卫生和计划生育统计年鉴2016》, Table 1-1-1 Number of Medical Institutions.

<sup>385</sup> In 2004, China had 6,300 secondary and tertiary hospitals. In 2005 this number was 6,102 and in 2006, 6,196. For 2004 numbers, see People’s Republic of China Ministry of Health, *2005 China Health Statistics Yearbook* 《中国卫生统计年鉴2005》 (Beijing: Peking Union Medical College Press, 2005), Table 1-3-2

The listed ranges provide a potential picture of the number of incidents that occur nationwide, the lower bounds represented in orange reflecting incomplete official data, the red lines representing a “worst case scenario” for the total number of potential incidents by scaling up per-hospital averages for the total number of hospitals in China, and the blue lines representing a more moderate number that only scales up the per-hospital averages to the total number of secondary and tertiary hospitals in China, which usually represent around a third of the total number of hospitals. From 2004-2006 we see increases in the minimum, maximum, and more moderate numbers (secondary and tertiary hospitals) of *yinao* incidents, implying an upward trend.

This trend likely continued from 2008 to 2010. Even though the only existing data for 2008 and 2010 come from a survey based on 350 hospitals (though the 2010 figure is often reported as a nationwide figure) and can only represent minimums for these years, just by looking at the minimum number of incidents from 2002 to 2010 in orange, we can see an increasing trend. One official noted that while the absolute numbers quoted in official reports may not be accurate, the trends they represent could be.<sup>386</sup>

The next available data are from a 2012 survey by the China Hospital Association of secondary and tertiary general and specialty hospitals nationwide, which found that in 2012 hospitals on average experienced 27.3 violent incidents against health care workers per year (*baoli shangyi shijian*).<sup>387</sup> Further, the proportion of hospitals experiencing

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2004 Hospital Level Situation for Every Region, <http://tongji.cnki.net/kns55/Navi/YearBook.aspx?id=N2009100106&floor=1>; For 2005 and 2006 figures see, People’s Republic of China Ministry of Health, *2012 China Health Statistics Yearbook* 《中国卫生统计年鉴 2012》 (Beijing: Peking Union Medical College Press, 2012), Table 1-2-1 Number of Hospitals, <http://tongji.cnki.net/kns55/Navi/YearBook.aspx?id=N2012090077&floor=1>

<sup>386</sup> Shanghai Legal Expert, Interview No. 87, 2017.

<sup>387</sup> Ran Zhang, “Chinese Hospitals Every Year on Average Experience 27 Violent Incidents Harming Medical Personnel, Doctor-Patient Communication Is Difficult to Achieve [中国医院每年暴力伤医事件

more than 100 of these incidents per year nearly doubled over the past five years from when the survey was taken, amounting to 12.5%.<sup>388</sup> Notably, these figures do not include all of the behaviors that comprise the range of *yinao* behaviors; they only include forms of violence directly harming health care workers, which is implied by a report on the survey to mean both verbal and physical threatening and abuse.<sup>389</sup> Although violence in health care settings can be the result of a number of reasons, the survey found that direct reasons for these violent behaviors were related to differences between patients and physicians,<sup>390</sup> making it appropriate to use these figures to gauge rates of violence stemming from medical disputes.

Scaling up the per hospital averages to the total number of secondary and tertiary facilities as well as the total number of hospitals in China helps to provide potential bounds for the number of violent incidents against health care workers in 2012. In this case, scaling up the average to secondary and tertiary hospitals is especially apt since the hospitals used in the survey were this type. Using this method, the estimated number of violent incidents against health care workers nationwide in 2012 for secondary and tertiary hospitals would be 223,587.<sup>391</sup> The maximum number, which scales up the

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27次医患沟通难到位],” China Daily, August 16, 2013, [http://www.chinadaily.com.cn/dfpd/shehui/2013-08/16/content\\_16898599.htm](http://www.chinadaily.com.cn/dfpd/shehui/2013-08/16/content_16898599.htm).

<sup>388</sup> These differences include differences in expectations between patients and doctors, poor doctor-patient communication, high fees, and poor service attitudes of health care workers. See Zhang.

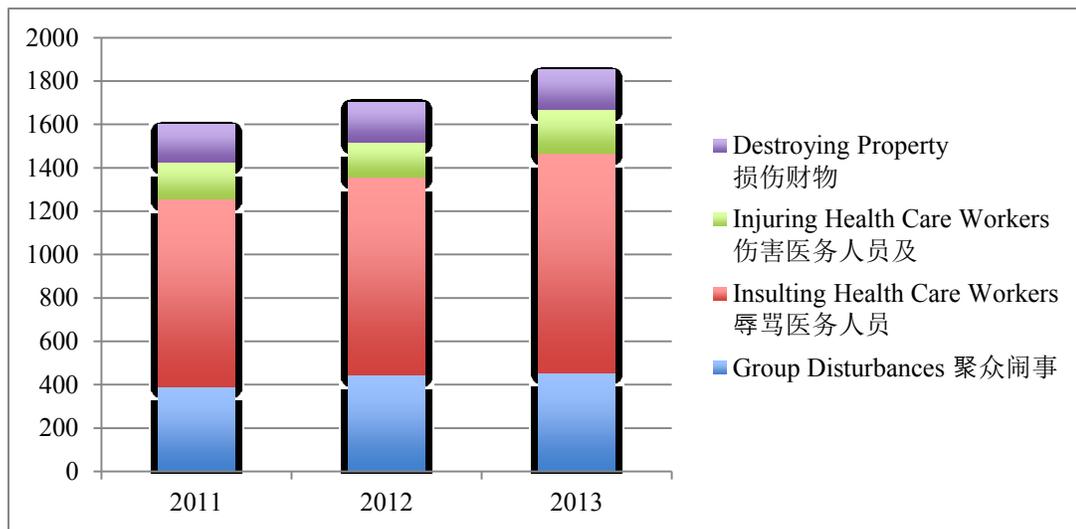
<sup>389</sup> Zhang.

<sup>390</sup> Zhang.

<sup>391</sup> There were 8,190 secondary and tertiary hospitals in China in 2012. This number multiplied by 27.3 is 223,587. For total number of secondary and tertiary hospitals in 2012, see: National Health and Family Planning Commission, *China Health and Family Planning Statistics Yearbook 2016* 《中国卫生和计划生育统计年鉴2016》 (Beijing: Peking Union Medical College Press, 2016), Table 1-2-1 Number of Hospitals, <http://tongji.cnki.net/kns55/Navi/YearBook.aspx?id=N2017010032&floor=1>

average to all hospitals in China in 2012,<sup>392</sup> would be over 600,000, but because the average is already skewed toward facilities that have a higher number of incidents anyway, this 600,000 figure is likely exceedingly high.

While data were unavailable during 2011 and 2013 nationally, data from tertiary and secondary hospitals from one anonymous province also help illuminate possible trends for *yinao* from 2011-2013. The study shows that there was a steady increase of *yinao* incidents for the 97 hospitals in this province during these years (see Figure 9 below).<sup>393</sup>



**Figure 9: Yinao Incidents by Type for 97 Tertiary and Secondary Hospitals in One Province<sup>394</sup>**

In 2016, Zhang Weiqun, the chairman Hangzhou’s Junwang Jiankang, purportedly China’s first company to specialize in medical malpractice insurance,

<sup>392</sup> In 2012, there were 23,170 hospitals in China. See: National Health and Family Planning Commission, *China Health and Family Planning Statistics Yearbook 2016* 《中国卫生和计划生育统计年鉴2016》, Table 1-1-1 Number of Medical Institutions.

<sup>393</sup> Yang Li, Gu Jiadong, and Jiang Baisheng, “2011-2013 Nian Mousheng Yihuan Jiufen Zhuangkuang Fenxi Ji Duice Yanjiu (2011-2013 年谋生医患纠纷状况分析及对策研究) [Analysis about Situation of Medical Disputes in a Province from 2011 to 2013 and Research on Countermeasures],” *ACTA Universitatis Medicinalis Nanjing (Social Sciences)* 5, no. 70 (October 2015): 344–48.

<sup>394</sup> Adapted from Yang Li, Gu Jiadong, and Jiang Baisheng.

reported that in 2015 nationwide China saw 118,000 *yinao* incidents.<sup>395</sup> The report implies that this figure includes both activities vandalizing hospital property and harming personnel.<sup>396</sup> I represent this private company figure in purple in Figure 8.

Although data have been unavailable for the past few years, official reports and interviews conducted in eastern Chinese cities concur that the number of *yinao* incidents decreased in 2015 and 2016. In 2016, NHFPC Medical Affairs and Governance Deputy Bureau Chief Jiao Yahui during a press conference said, “Serious incidents harming physicians and *yinao* in total have decreased.”<sup>397</sup> Interviews with hospital administrators at 3A hospitals in Beijing, Guangzhou, and Nanjing all confirmed that there has been a decrease in *yinao* in 2015 and 2016.<sup>398</sup>

#### Data on Health Care Workers Experiencing Assault

Surveys of health care workers indicate the pervasiveness of violence in hospital settings as well as the likely trend that it has been growing over the past decade. It is important to note that data on violence do not necessarily represent violent incidents exclusively incited by medical disputes (other reasons can include medication side effects, pain, and drunkenness); however, most of these Chinese surveys frame their data within

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<sup>395</sup> Shan Lu and Yu Liu, “10 Years of *Yinao* Compensation over 10 Times Mutual Medical Insurance Market, On the Verge [医闹赔付十年翻十余倍相互医疗险市场一触即发],” *21st Century Business Herald*, October 19, 2016, sec. First, [http://epaper.21jingji.com/html/2016-10/19/content\\_48641.htm](http://epaper.21jingji.com/html/2016-10/19/content_48641.htm).

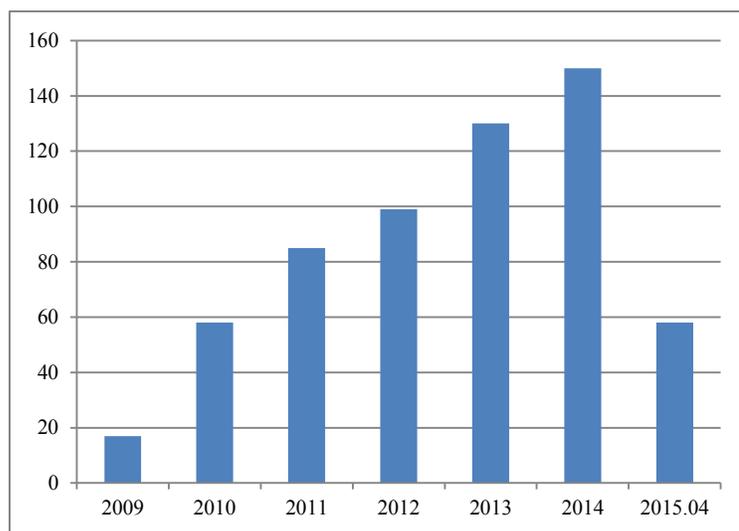
<sup>396</sup> Lu and Liu.

<sup>397</sup> National Health and Family Planning Commission, “2016年2月24日国家卫生计生委例行新闻发布会文字实录 - 中华人民共和国国家卫生和计划生育委员会 [February 24, 2016 National Health and Family Planning Commission Routine Press Conference Transcript],” National Health and Family Planning Commission, February 24, 2016, <http://www.nhfpc.gov.cn/zhuz/xwfb/201602/72885a2c88e14b53b25f31cedb76eb80.shtml>.

<sup>398</sup> Head of Medical Affairs Office, Interview No. 048, 2016; Hospital official and former hospital affairs office head, Interview No. 072; Hospital official, Interview No. 070, 70.

the contexts of medical disputes and tense patient-doctor relationships as important causes of the increase in violence towards health care workers.<sup>399</sup>

According to the Chinese official press agency *Xinhua*, from 2008 to 2011, the percentage of physicians (does include not all health care workers) experiencing a violent attack rose from 3.7% to 4.5% and from 22.1% to 27.3% for verbal humiliation.<sup>400</sup> A survey by Shi et al. conducted in 2013 with participants from 123 public hospitals in Shanghai, Hubei Province, and Gansu Province found high rates of exposure to workplace verbal and physical abuse. The rate of exposure (either directly to respondent



or indirectly to a respondent's colleague) of physicians to verbal abuse (VA) was 92.75%, threat of assault (TA) was 88.10%, and physical assault (PA) was 81.04% in the previous 12 months.<sup>401</sup>

**Figure 10: Number of Doctors in CMDA Survey Who Experienced Assault that Resulted in Physical Harm**

<sup>399</sup> Jia et al., "Investigation on Hospital Violence during 2003-2012 in China," 1; China Medical Doctor Association (中国医师协会), "White Paper on the State of the Medical Profession in China 《中国医师执业状况白皮书》," May 28, 2015, Part 7 Medical Violence, <http://www.cmda.net/xiehuixiangmu/falvshiwubu/tongzhigonggao/2015-05-28/14587.html>; Jianwei Shi et al., "The Frequency of Patient-Initiated Violence and Its Psychological Impact on Physicians in China: A Cross-Sectional Study," *PLoS ONE* 10, no. 6 (2015): 1, <https://doi.org/10.1371/journal.pone.0128394>.

<sup>400</sup> "China Medical Association Party Secretary: 54% of Physicians Take Pharmaceutical Bribes [中华医学会党委书记: 54%医生表示曾接受药品回扣]," November 3, 2012, [http://news.xinhuanet.com/politics/2012-11/03/c\\_113592800.htm](http://news.xinhuanet.com/politics/2012-11/03/c_113592800.htm). The article does not specify who the perpetrators of the assaults and verbal humiliation are but from the context of the article it seems to be patients/families.

<sup>401</sup> Shi et al., "The Frequency of Patient-Initiated Violence and Its Psychological Impact on Physicians in China: A Cross-Sectional Study."

According to the China Medical Doctor's Association's (CMDA) "White Paper on the State of the Medical Profession in China," in 2014 59.79% of surveyed health care workers experienced verbal abuse, 13.07% suffered physical injuries, and only 27.14% of health care workers reported to have never encountered a violent incident.<sup>402</sup> Based on CMDA's survey statistics from 2009 to April 2015, the number of physicians reporting violent incidents has been rising every year since 2009 (see Figure 10). If the monthly average for the first four months of 2015 continued until the end of the year, then there would have been around 174 incidents by the end of 2015, indicating growth in the total number from the previous year.

#### Yinao and Violent Incidents in the Media

While the survey data reported above generally suggest increasing trends in *yinao* and assaults against health care workers, data on media coverage of these events show more dramatic ebbs and flows in reporting on the incidents. Studies by both the *China Youth Daily* and by Zhao et al. compiled news reports and found similar trends in media reporting on violence against doctors (see Figure 11 below).<sup>403</sup>

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<sup>402</sup> China Medical Doctor Association (中国医师协会), "White Paper on the State of the Medical Profession in China 《中国医师执业状况白皮书》."

<sup>403</sup> Yijie Lu and Yu Zhang, "The Systemic Predicament behind Doctor-Patient Murder Cases [医患血案背后的制度困局]," *China Youth Daily*, February 26, 2014, [http://zqb.cyol.com/html/2014-02/26/nw.D110000zgqnb\\_20140226\\_1-07.htm](http://zqb.cyol.com/html/2014-02/26/nw.D110000zgqnb_20140226_1-07.htm); Zhao Min et al., "Baoli Shangyi Shijian Da Shuju Yanjiu: Jiyu 2000 Nian ~ 2015 Nian Meiti Baodao (暴力伤医事件大数据研究 - 基于 2000 年~2015 年媒体报道) The Big Data Research on Violence against Doctors: Based on the Media Reports from 2000 to 2015," *Medicine and Philosophy [医学与哲学]* 38, no. 1A (January 2017), [https://mp.weixin.qq.com/s?\\_\\_biz=MjM5NDg4OTEwMQ==&mid=2668703184&idx=1&sn=a0efd801f7e4e8b6943ed24c2d7cd9a0&chksm=bc6561328b12e82459b00dfa980e0f81ddf6da32404c5552da4a53af71f3171fdd428dd1cebc&mpshare=1&scene=5&srcid=0223oPBu7CMQJQx2VGtOTcHg#rd](https://mp.weixin.qq.com/s?__biz=MjM5NDg4OTEwMQ==&mid=2668703184&idx=1&sn=a0efd801f7e4e8b6943ed24c2d7cd9a0&chksm=bc6561328b12e82459b00dfa980e0f81ddf6da32404c5552da4a53af71f3171fdd428dd1cebc&mpshare=1&scene=5&srcid=0223oPBu7CMQJQx2VGtOTcHg#rd).

**Figure 11: Reports of Violent Incidents against Health Care Workers**

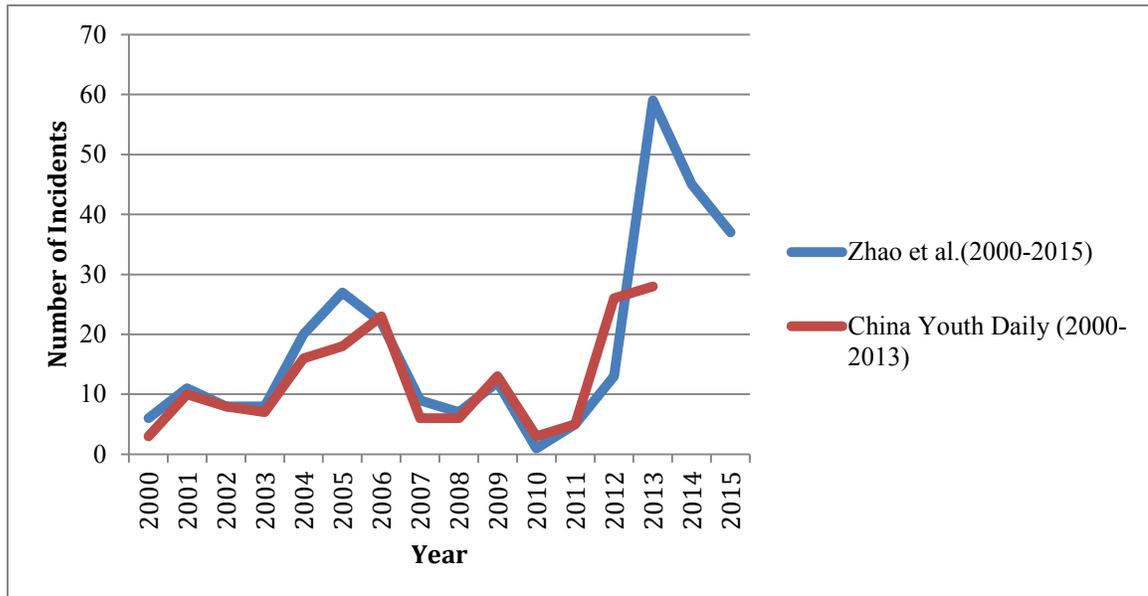


Figure 11 shows peaks in reporting during 2005-2006 and 2009, and an upward trend in reporting beginning in 2011. Zhao et al.'s data provide the highest peak on the figure in 2013 and show a decreasing trend since. Despite the ebbs and flows, the total number of media reports based on these studies has overall risen from 2000 to 2015. These ebbs and flows of media coverage are important not because they reflect the reality of trends in the actual number of *yinao* incidents, but because, as one official explained, the more news about *yinao* and medical order in the official media, the more it indicates that authorities are giving more attention to *yinao* and are more decisive about implementing policies related to *yinao*.<sup>404</sup>

### **Distribution of *Yinao* Incidents Throughout China**

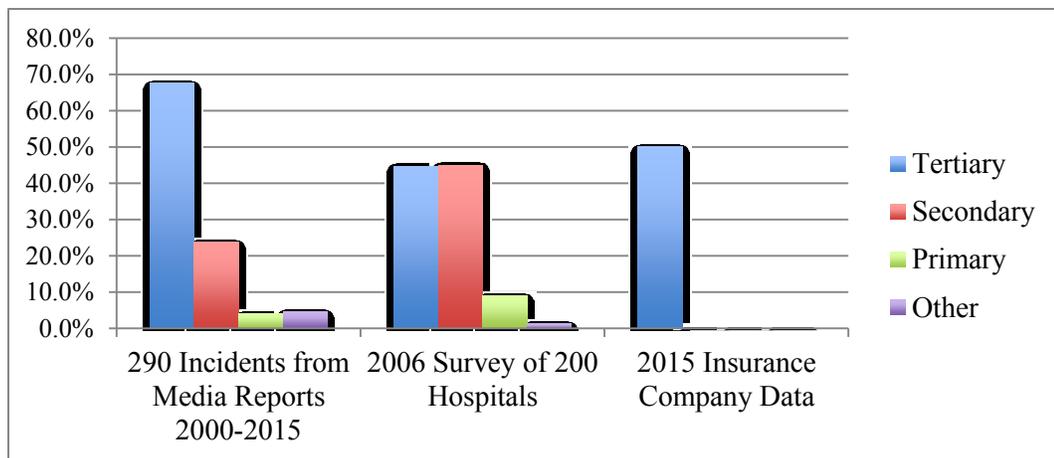
This section examines available information on the distribution of *yinao* across different hospital levels, clinical departments, and geographic settings throughout China.

<sup>404</sup> Shanghai Legal Expert, Interview No. 87.

## Yinao Distribution among Different Types of Hospitals

Existing data, shown in Figure 12, suggest that *yinao* tends to occur most often at public secondary and tertiary hospitals.<sup>405</sup> This is because these facilities face higher patient volumes due to their reputations for offering the best quality of care and because they handle riskier cases.<sup>406</sup> Because they have such high patient volumes, by sheer numbers alone, they would have a greater opportunity for *yinao*.

**Figure 12: Percentage of *Yinao* Incidents Based on Hospital Type**



<sup>405</sup> China has a tiered and graded hospital system. Depending on their size and capabilities, hospitals are labeled as primary, secondary, or tertiary. This ranking is similar to that used in the United States and other countries, where primary facilities are smaller and provide basic services and tertiary facilities are larger and provide more advanced procedures. In China hospitals also receive grades based on quality, with A being the best, B being passing, and anything below being substandard. Private hospitals are not consistently given tiers and grades across China. Until recently, the vast majority of hospitals in China were public: in 2005, private hospitals only accounted for 17.2% of all hospitals, but by 2015 they accounted for 52.6% of all hospitals in China. This increase reflects the policies of the Chinese government to increase private investment in the health care sector. However, the vast majority of private hospitals are still primary care or unlabeled facilities. Despite this increase in private facilities, most people in China still prefer to seek care at public, tertiary, grade A facilities (known as 3A or *sanjia* hospitals), regardless of the seriousness of their illnesses, because these hospitals attract the best physicians and tend to have the best quality of care. Even as China's health care reform attempts to push more patient volume down to lower-level facilities by improving the quality of care at those levels, NHFPC's explanation of its 2015 statistical report reveals that there was an increase in the proportion of patients seeking care at tertiary facilities, showing that patients still prefer them.

<sup>406</sup> "Bluebook: Secondary and Tertiary Hospitals Are More Prone to Medica Disputes, Ob/Gyn Has the Most [蓝皮书: 二三级医院更易发生医疗纠纷 妇产科最多]--时政--人民网," accessed October 30, 2016, <http://politics.people.com.cn/n/2014/1209/c70731-26176353.html>.

## Yinao Distribution among Clinical Specialties

Some clinical specialties and certain physical spaces of the hospital tend to face more *yinao* incidents and medical disputes than others. Data from media reports about these incidents suggest that they are most likely to occur in the emergency department (24.1% of media reports in the sample), outpatient reception area (21.4%), internal medicine (7.6%), administrative offices (6.2%), surgery (5.8%), and obstetrics and gynecology (3.1).<sup>407</sup> Based on data from courts and medical mediation committees in Beijing, the *Blue Book of China's Medical Reform (2014-2015)* observed that the departments with the most disputes are the following (in descending order): obstetrics and gynecology, orthopedic surgery, general surgery, and emergency medicine.<sup>408</sup> Cardiology and cardiovascular surgery as well as neurosurgery are also departments that encounter high numbers of medical disputes.<sup>409</sup> These patterns for medical disputes are not unique to China as these clinical specialties are generally high-risk.<sup>410</sup>

Although not generally listed as a high-risk department for medical disputes, in China otolaryngology (ENT) has seen some of the most high-profile murder cases against

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<sup>407</sup> Min Zhao et al., "The Pain of an Era: Big Data Records the Trajectory of 16 Years of Violence against Doctors [时代之痛! 大数据记录 16 年暴力伤医轨迹]," Weixin Jiankangbao, February 23, 2017, [http://mp.weixin.qq.com/s?\\_\\_biz=MjM5NDg4OTEwMQ==&mid=2668703184&idx=1&sn=a0efd801f7e4e8b6943ed24c2d7cd9a0&chksm=bc6561328b12e82459b00dfa980e0f81ddf6da32404c5552da4a53af71f3171fdd428dd1cebc&mpshare=1&scene=5&srcid=0223oPBu7CMQJQx2VGtOTcHg#rd](http://mp.weixin.qq.com/s?__biz=MjM5NDg4OTEwMQ==&mid=2668703184&idx=1&sn=a0efd801f7e4e8b6943ed24c2d7cd9a0&chksm=bc6561328b12e82459b00dfa980e0f81ddf6da32404c5552da4a53af71f3171fdd428dd1cebc&mpshare=1&scene=5&srcid=0223oPBu7CMQJQx2VGtOTcHg#rd).

<sup>408</sup> "Bluebook: Secondary and Tertiary Hospitals Are More Prone to Medical Disputes, Ob/Gyn Has the Most [蓝皮书: 二三级医院更易发生医疗纠纷 妇产科最多]--时政--人民网."

<sup>409</sup> "Bluebook: Secondary and Tertiary Hospitals Are More Prone to Medical Disputes, Ob/Gyn Has the Most [蓝皮书: 二三级医院更易发生医疗纠纷 妇产科最多]--时政--人民网."

<sup>410</sup> The United States, for example, shows similar trends. Data analysis from Jena et al. show that in the United States, 80% of physicians in surgical specialties (including general surgery) and 74% of physicians in obstetrics and gynecology are projected to face a malpractice claim by the age of 45. The specialties with the highest proportion of physicians facing a malpractice claim annually in descending order are neurosurgery, thoracic-cardiovascular surgery, general surgery, orthopedic surgery, and plastic surgery. In Medscape's 2015 survey of 3,985 physicians, 85% of OB/GYNs, 83% of general surgeons, and 79% of orthopedists reported having been sued. See: Anupam B. Jena et al., "Malpractice Risk According to Physician Specialty," *New England Journal of Medicine* 365, no. 7 (August 17, 2011): 629–36, <https://doi.org/10.1056/NEJMSa1012370>; Peckham, "Medscape Malpractice Report 2015: Why Most Doctors Get Sued."

physicians, and has been dubbed a “high-risk zone.”<sup>411</sup> One of these high-profile cases occurred in Wenling, Zhejiang Province in October 2012 when a man who had complained several times about the outcome of his sinus surgery stabbed three doctors, killing one.<sup>412</sup> In Qiqihaer, Heilongjiang Province, a dissatisfied 19-year-old patient beat an ENT physician to death with an iron rod.<sup>413</sup>

Chinese ENT physicians have offered several reasons for why their specialty may attract more violence. In a group interview with ENT physicians conducted for this study, the head of a 3A hospital’s ENT department also felt puzzled by ENT becoming an epicenter for conflict, especially because her own department at the most has ever had three disputes per year.<sup>414</sup> She hypothesized that the reason for it becoming an issue elsewhere had to do with the clinical approach to treatment, conjecturing that other ENT departments likely performed unnecessary surgeries on patients, whereas her department was more conservative in decisions to perform surgery.<sup>415</sup>

In an interview with *Xinhua News*, Director Xu Ping of the ENT Department of the Fourth Affiliated Hospital of Harbin Medical University offered several additional reasons to explain why ENT may encounter more violence. One reason is that the nasal area is a relatively sensitive part of the body – when comparing it to other parts of the body, the nerves on the face are more sensitive and developed, and so even slight discomfort can have significant impact on someone’s daily life and can cause a patient’s

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<sup>411</sup> “Taking Stock of High Risk Clinics for Medical Disputes [医疗纠纷高危科室大盘点],” Sina Health, February 26, 2014, <http://health.sina.com.cn/news/2014-02-26/1705126241.shtml>.

<sup>412</sup> Zhuoya Liu, “Wenling Killing Doctor Incident: Don’t Let Doctors Be the Scapegoats for the System [温州杀医事件：别再让医生为体制背黑锅],” October 30, 2013, <http://news.ifeng.com/opinion/special/wenlingshayi/>.

<sup>413</sup> Yijie Lu and Shiyun Wang, “Murder of Physician Occurs in Qiqihaer [齐齐哈尔发生医患血案],” *China Youth Daily*, February 19, 2014, sec. 7, [http://zqb.cyol.com/html/2014-02/19/nw.D110000zgqnb\\_20140219\\_1-07.htm](http://zqb.cyol.com/html/2014-02/19/nw.D110000zgqnb_20140219_1-07.htm).

<sup>414</sup> ENT Group Interview, Interview No. 016, 016.

<sup>415</sup> ENT Group Interview, Interview No. 016.

mood to change. Dr. Xu also said that many ENT patients tend to be younger men, and that because men in the 20- to 30-year-old age group tend to become more easily agitated, it increases the danger for ENT clinicians. Another reason involves the gap between successful outcomes from a clinical standpoint versus success from the patient's standpoint. He said that many patients still feel that their nose is obstructed after surgery, even though the surgery was successful and even after third-party instrumental testing shows no problem.<sup>416</sup>

### *Yiniao* in Urban v. Rural Areas

*Yiniao* occurs in both urban and rural areas. Professional *yiniao* protesters, however, tend to operate in larger urban areas because in smaller areas gangs are more easily recognizable to local authorities.<sup>417</sup> Considering the data above suggesting that secondary and tertiary hospitals experience more of these incidents and that these types of hospitals tend to be located in urban areas<sup>418</sup>, urban areas likely experience more *yiniao* than rural areas. However, these patterns may also have changed over the past few years. For example, a Nanjing hospital official noted in 2015 that even though his hospital still sees *yiniao* every month, there have been fewer incidents in the past couple of years, and areas outside of the city see more professional *yiniao* protesters.<sup>419</sup> A report from 2013 on *yiniao*

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<sup>416</sup> Lin Xiong and Dong Liang, "Why Has ENT Become a High-Risk Zone for Attacks against Physicians? [耳鼻喉科缘何成为伤医案件的‘高危区’?]," February 18, 2014, [http://news.xinhuanet.com/legal/2014-02/18/c\\_119385030.htm](http://news.xinhuanet.com/legal/2014-02/18/c_119385030.htm).

<sup>417</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 205.

<sup>418</sup> The urban-rural divide between access to medical resources is a well-known issue in the Chinese health care system. See: "Renmin Ribao: Da Chengshi Yiliao Ziyuan Neng 'Ban' Dao Jicheng Ma? (人民日报: 大城市医疗资源能‘搬’到基层吗? ) [The People's Daily: Can Big-City Medical Resources 'Move' to the Grassroots?]," Sohu, June 8, 2017, [www.sohu.com/a/147253077\\_456049](http://www.sohu.com/a/147253077_456049).

<sup>419</sup> Medical Affairs Office Employee, Interview No. 27.

in clinics in rural Shandong Province highlights that *yinao* has “gone to the countryside,” resulting in the closing down of several clinics in rural areas.<sup>420</sup>

#### Geographic Distribution of *Yinao* across China

*Yinao* occurs nationwide and likely more often in Eastern China. This is because as inferred above, if *yinao* events tend to occur in secondary and tertiary hospitals and these facilities tend to be more concentrated in Eastern China, Eastern China presumably experiences more *yinao*. Data on media reporting on violent incidents against health care workers support this hypothesis, showing that the provinces with the greatest number of media reports on these incidents are Guangdong, Jiangsu, Sichuan, Zhejiang, and Beijing.<sup>421</sup> A map of the density of 3A hospitals (Figure 13) throughout China’s provinces corresponds closely with these results, with these five provinces showing the highest density of 3A facilities. Therefore, the figure below provides a possible picture of what the distribution of *yinao* incidents may look like across China.

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<sup>420</sup> “Yinao ‘Xiangang’, Cunyi Zhihu Shoubuliao (医闹‘下乡’,村医直呼受不了) Yinao Has ‘Gone to the Countryside,’ Rural Doctors Can’t Stand It,” *Nongcun Dazhong*, March 27, 2013, sec. A2, <http://paper.dzwww.com/ncdz/content/20130327/Article01002MT.htm>.

<sup>421</sup> Zhao et al., “The Pain of an Era: Big Data Records the Trajectory of 16 Years of Violence against Doctors [时代之痛! 大数据记录 16 年暴力伤医轨迹].”



**Figure 13: 3A Hospital Density**

There are very few publications on *yinao* on the western Chinese provinces of Xinjiang and Tibet.<sup>422</sup> While this in part may be because reporting and research in these areas are limited due to their political sensitivity, there may be other reasons why they are experiencing fewer *yinao* incidents. A Chinese surgeon volunteering in Xinjiang observed that Xinjiang’s lack of *yinao* may be due to a lower level of overall development, religious beliefs, the level of media reporting on these incidents, and stronger police presence and control in Xinjiang than in other places in China.<sup>423</sup>

<sup>422</sup> In a Baidu news search with no time restrictions, there were 137 search results for *yinao* and Xinjiang, only one of which references an actual *yinao* event in Xinjiang’s Urumqi, though a Xinjiang CPPCC (China’s People’s Political Consultative Conference Meeting) discussed the patient doctor relationship as a topic of interest in 2013. The same search conducted with Xizang instead of Xinjiang produced five results, none of which had information on *yinao* events occurring in Xizang.

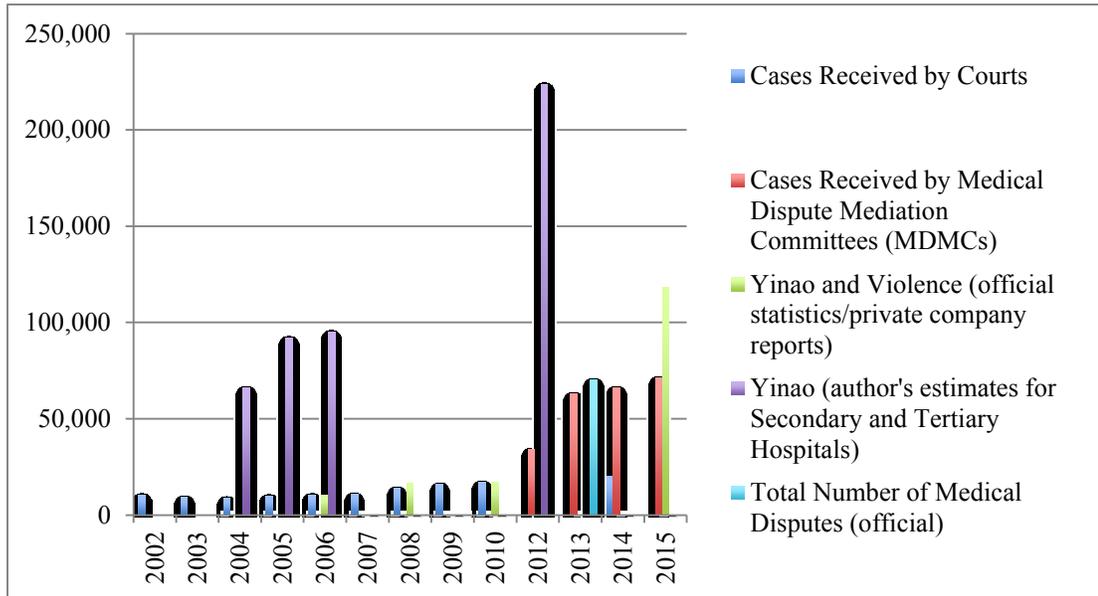
<sup>423</sup> Assistant Attending Surgeon from Zhejiang Providing Aid in Xinjiang, “In Xinjiang, Why Do so Few *Yinao* Incidents Occur?[在新疆，为什么极少伤医事件发生?],” Microblogging, *Sina Weibo* (blog), October 19, 2016, <http://weibo.com/ttarticle/p/show?id=2309404032183223367707>.

## ***Yinao* Compared to Other Dispute Resolution Institutions**

Not only has *yinao* become a national phenomenon, but also it has become a viable dispute resolution institution when compared to other options. Just as data on *yinao* are incomplete, so are the data on other dispute resolution methods. But comparing the available *yinao* data to available data on adjudication and mediation of medical disputes suggests that *yinao* is a viable dispute resolution method against these other options. Figure 14 combines data on medical cases received by courts and medical dispute mediation committees as well as *yinao* data from official and media sources and the author's own calculations for *yinao* (explained in the first section of this chapter).

Regardless of whether the incomplete official figures or the author's hypothesized estimates are used for *yinao*, the data suggest that when compared to the other dispute resolution methods, *yinao* has been used just as often, if not more often than the other dispute resolution methods. The data suggest that from 2004-2006, resorting to *yinao* far outweighed using the court system. Comparing the official figure on *yinao* for 2006 to the official figure for medical dispute cases received by courts implies that *yinao* was used as often as the courts, and 2008 data suggest a similar conclusion. Beginning in 2012, mediation begins to appear as another possible dispute resolution method next to the other options. However, if we compare mediation figures to available 2015 figures on *yinao*, *yinao* still represents a viable option for medical dispute resolution.

**Figure 14: Use of *Yinao* Compared to Other Medical Dispute Resolution Methods**



A counterargument might oppose using this method of assessing *yinao* because it does not include figures on the total numbers of medical disputes, especially privately settled disputes with hospitals, which as stated above, make up the vast majority of medical disputes. Therefore, if this analysis were to consider the total number of medical disputes (the data are not available), *yinao* only may constitute a small fraction of the entire population of medical disputes and thus does not represent such a disproportionately popular form of dispute resolution method as the data I have provided in the figure above imply. This is an important point. Although nationwide data for the total number of medical disputes are unavailable except for 2013, and that data point is extremely vague, one of the 3A hospitals in this study gave some helpful figures to clarify the proportion of *yinao* to the total number of medical disputes. The Medical Affairs Office in one of the hospitals for this study reported that there are about 100 to

200 medical disputes per year and about half of these disputes seeks compensation.<sup>424</sup> In 2015, the Medical Affairs Office reported that there were 10 to 20 *yinao* incidents per year or around one to two incidents per month.<sup>425</sup> These numbers suggest that somewhere between a minimum of 5% (10/200) and a maximum of 20% (20/100) of medical disputes facing this hospital resorted to *yinao* in 2015.

At the height of this hospital's experience with *yinao* in 2010, it saw an estimated 20 to 30 *yinao* incidents per year, suggesting that a minimum of 10% (20/200) to a maximum of 30% (30/100) of medical disputes used *yinao*. These ranges are wide, but regardless, they indicate even in the worst of times for *yinao*, the majority of complainants did not resort to it; however, for a portion of complainants *yinao* has been an important method in the dispute resolution process. Further, regardless of absolute numbers and proportions, *yinao* has had a larger social impact on the medical field and on society more generally, as Chapter 9 later discusses.

### ***Yinao* and Violence against Health Care Workers Globally**

It would be inaccurate to pinpoint China's health care system as uniquely violent; violence and aggression characterize health care settings worldwide, including both developed and developing countries.<sup>426</sup> According to WHO statistics, between 8% and 38% of health care workers globally experience physical violence at some point in their careers and even more are threatened or exposed to verbal aggression.<sup>427</sup> Spector et al.

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<sup>424</sup> Medical Affairs Office Employee, Interview No. 27.

<sup>425</sup> Medical Affairs Office Employee.

<sup>426</sup> Roxanne Nelson, "Tackling Violence against Health-Care Workers," *The Lancet* 383, no. 9926 (April 2014): 1373–74, [https://doi.org/10.1016/S0140-6736\(14\)60658-9](https://doi.org/10.1016/S0140-6736(14)60658-9).

<sup>427</sup> WHO, "Violence against Health Workers," WHO, accessed October 13, 2016, [http://www.who.int/violence\\_injury\\_prevention/violence/workplace/en/](http://www.who.int/violence_injury_prevention/violence/workplace/en/).

estimate overall exposure rates of nurses worldwide to be 36.4% for physical violence, 66.9% for nonphysical violence, 39.7% for bullying, and 25% for sexual harassment.<sup>428</sup>

This section explores violence against health care workers in both the United States and in India to compare violent behaviors in these contexts to highlight some unique aspects of the Chinese case. I chose the United States because it is often a point of reference for China as it develops both its health care and legal systems, even though the two systems differ greatly between the two countries. I chose India because the Indian health care system faces many of the same challenges that Chinese hospitals face, such as overcrowding of hospitals, uneven development between urban and rural areas, and the predominance of violent incidents occurring at public hospitals.

#### United States of America: Health Care Violence but No *Yiniao*

In the United States, employees in health care experience relatively high rates of violence compared to other occupations: The most recent data from the United States Bureau of Labor Statistics reveal the rate of injuries and illness from violence in the health care and social assistance industry “was more than three times greater than the violence rate for all private industries,”<sup>429</sup> with an incidence rate of 14.4 per 10,000 full time workers.<sup>430</sup> The U.S. Occupational Safety and Health Administration (OSHA) 2015 *Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers* reported, “While under 20% of all workplace injuries happen to health care

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<sup>428</sup> Paul E. Spector, Zhiqing E. Zhou, and Xin Xuan Che, “Nurse Exposure to Physical and Nonphysical Violence, Bullying, and Sexual Harassment: A Quantitative Review,” *International Journal of Nursing Studies* 51, no. 1 (January 2014): 72, <https://doi.org/10.1016/j.ijnurstu.2013.01.010>.

<sup>429</sup> Bureau of Labor Statistics, U.S. Department of Labor, “Nonfatal Occupational Injuries and Illnesses Requiring Days Away from Work, 2014,” November 19, 2015, 4–5, <http://www.bls.gov/news.release/osh2.nr0.htm>.

<sup>430</sup> Bureau of Labor Statistics, U.S. Department of Labor, 5.

workers, healthcare workers suffer 50% of all assaults.”<sup>431</sup> The International Healthcare Security and Safety Foundation’s (IHSSF) 2015 Crime Survey found that patient/client-on-staff crime in hospitals accounted for 75% of aggravated assaults<sup>432</sup> and 90% of all assaults<sup>433</sup> at US hospitals.<sup>434</sup> A unique aspect to the US context is the presence of guns in hospital violence. A 2012 study identified 154 hospital-related shootings from 2000-2011.<sup>435</sup> The most common victims of these incidents were the perpetrators (45%), while hospital employees accounted for 20% of the victims, physicians for 3%, and nurses for 5%. However, shootings are a relatively rare form of hospital workplace violence when compared to other forms.<sup>436</sup>

Research about hospital-based assault against health care workers in the US often focuses on nurses and physicians in emergency departments and psychiatric settings because they practice in high-risk environments.<sup>437</sup> There is a general lack of research on violence against health care workers in the US,<sup>438</sup> with much of the available data not being from within the past decade.<sup>439</sup> The Minnesota Nurses’ Study shows that nurses

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<sup>431</sup> U.S. Department of Labor Occupational Safety and Health Administration, “Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers,” 2015, 3.

<sup>432</sup> “An aggravated assault as defined by the FBI are committed by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm.” See: Karim H. Vellani, “Healthcare Crime Survey” (International Healthcare Security and Safety Foundation (IHSSF), 2015).

<sup>433</sup> “Other Assaults - An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness. To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack (e.g., intimidation).” See: Karim H. Vellani.

<sup>434</sup> Karim H. Vellani, 10.

<sup>435</sup> Gabor D. Kelen et al., “Hospital-Based Shootings in the United States: 2000 to 2011,” *Annals of Emergency Medicine* 60, no. 6 (n.d.): 790, <https://doi.org/10.1016/j.annemergmed.2012.08.012>.

<sup>436</sup> Kelen et al., “Hospital-Based Shootings in the United States: 2000 to 2011.”

<sup>437</sup> James P. Phillips, “Workplace Violence against Health Care Workers in the United States,” ed. Dan L. Longo, *New England Journal of Medicine* 374, no. 17 (April 28, 2016): 1663, <https://doi.org/10.1056/NEJMra1501998>.

<sup>438</sup> Phillips, 1663.

<sup>439</sup> The statistics on nurses for example are published no later than 2004.

face an annual incidence rate of 39% for verbal assaults and 13% for physical assaults.<sup>440</sup> Another study reports that 46% of nurses reported some type of workplace violence during their five most recent shifts and of these nurses one third were physically assaulted.<sup>441</sup> Emergency nurses have reported experiencing verbal assault at a rate of 100% and physical assault at a rate of 82.1% during the previous year.<sup>442</sup> In a 2011 survey of ED physicians, 78% reported a violent incident in the past 12 months.<sup>443</sup> In another study 40% of psychiatrists reported having experienced assault.<sup>444</sup>

No single factor determines violence in the workplace: the U.S. Occupational Safety and Health Administration (OSHA) reports that among the riskiest settings for work-related assault for healthcare and social workers include inpatient and acute psychiatric services, geriatric long-term care settings, high-volume emergency departments, and residential and day social services.<sup>445</sup> Other factors of violence include pain, devastating prognoses, unfamiliar surroundings, mind and mood altering drugs, and disease progression.<sup>446</sup> Through a review of the literature on the topic, James P. Phillips finds that the most common characteristic among perpetrators of workplace violence in

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<sup>440</sup> S. Gerberich et al., "An Epidemiological Study of the Magnitude and Consequences of Work Related Violence: The Minnesota Nurses' Study," *Occup Environ Med* 61 (2004), <https://doi.org/10.1136/oem.2003.007294>.

<sup>441</sup> S Duncan, Carole A Estabrooks, and M Reimer, "Violence against Nurses.," *Alberta RN/Alberta Association of Registered Nurses* 56, no. 2 (2000): 13.

<sup>442</sup> Deborah D May and Laurie M Grubbs, "The Extent, Nature, and Precipitating Factors of Nurse Assault among Three Groups of Registered Nurses in a Regional Medical Center," *Journal of Emergency Nursing* 28, no. 1 (2002): 11–17.

<sup>443</sup> Marcelina Behnam et al., "Violence in the Emergency Department: A National Survey of Emergency Medicine Residents and Attending Physicians," *The Journal of Emergency Medicine* 40, no. 5 (May 2011): 565–79, <https://doi.org/10.1016/j.jemermed.2009.11.007>.

<sup>444</sup> Michael Privitera et al., "Violence toward Mental Health Staff and Safety in the Work Environment," *Occupational Medicine* 55, no. 6 (2005): 480–86.

<sup>445</sup> U.S. Department of Labor Occupational Safety and Health Administration, "Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers," 3–4.

<sup>446</sup> U.S. Department of Labor Occupational Safety and Health Administration, 3–4.

health care settings is “altered mental status associated with dementia, delirium, substance intoxication, or decompensated mental illness.”<sup>447</sup>

While US health care settings are relatively violent when compared to other workplace settings, research and data do not show that using violence for reasons of dispute resolution is common; in other words *yinao* does not exist and is not seen as a viable way to resolve disputes with hospitals in the US. Of course in the US, questionable practices certainly occur within medical malpractice litigation, such as the phenomenon of “ambulance chasers.” Even though *yinao* is not a social phenomenon in the US, in recent years there has been a small handful of murders of physicians by patients or family members of patients who have had disputes with doctors. One of the most well-known of these incidents occurred in January 2015 when a man who blamed a surgeon at Brigham and Women’s Hospital in Boston for his mother’s death shot and killed the surgeon at the hospital and then killed himself.<sup>448</sup> This incident has led to increased discussion about violence against physicians in the American medical community, with the American Medical Association in 2015 calling for more research on violence against physicians.<sup>449</sup> But as Phillips notes, even though this incident received a lot of media attention, the murder of a physician is still rare.<sup>450</sup>

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<sup>447</sup> Phillips, “Workplace Violence against Health Care Workers in the United States,” 1664.

<sup>448</sup> Evan Allan, “Fury Entered Here: What Led to the Shooting of a Brigham and Women’s Doctor on Jan. 20 - The Boston Globe,” BostonGlobe.com, March 8, 2015, <https://www.bostonglobe.com/metro/2015/03/08/fury-entered-here-what-led-shooting-brigham-and-women-doctor-jan/14mg6ma0UcTQ4nQXAzuU5I/story.html>.

<sup>449</sup> “AMA Wire®: New AMA Policy Calls for Research on Violence against Physicians,” AMA Wire®, June 9, 2015, <http://www.ama-assn.org/ama/pub/ama-wire/ama-wire/post/new-ama-policy-calls-research-violence-against-physicians>.

<sup>450</sup> Phillips, “Workplace Violence against Health Care Workers in the United States,” 1661.

## India: Burgeoning *yinao*?

In the last couple of years, there have been increasing reports of patients and their families becoming violent in Indian health care settings. According to a study by the Indian Medical Association, three out of four doctors in India report that they have been attacked at work by disgruntled attendants (usually referring to family members of patients).<sup>451</sup> Many of the stories of violence in India read like the ones in China. In September 2015, three resident doctors were assaulted at a hospital in Mumbai following the death of a three-year-old child from dengue fever. Family members proceeded to beat three doctors with wooden sticks and hospital chairs, and as a result, 4,500 resident doctors across Maharashtra state went on strike with a list of demands for better security at hospitals.<sup>452</sup> Less than a month later, a mob of 250 people attacked a hospital following the death of a patient who had been admitted after a road accident.<sup>453</sup> A doctor of the hospital under attack said: “The incidents of attacks on doctors are increasing at an alarming rate. This must stop or else the doctors would lose confidence in treating patients. No doctor would take risk to treat critically ill patients.”<sup>454</sup>

The factors attributed to this violence are similar to those in China. According to a *Times of India* article, doctors say government hospitals suffer the majority of attacks because they deal with high volumes of patients who typically come from poverty and

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<sup>451</sup> Shobita Dhar, “75 per Cent of Doctors Have Been Attacked at Work by Disgruntled Attendants, Study Says - Times of India,” *The Times of India*, October 26, 2015, <http://timesofindia.indiatimes.com/india/75-per-cent-of-doctors-have-been-attacked-at-work-by-disgruntled-attendants-study-says/articleshow/49533759.cms>.

<sup>452</sup> Tabassum Barnagarwala, “Maharashtra: 4,500 Doctors Go on Strike Today, Want More CCTV Cameras, Better Security | *The Indian Express*,” *The Indian Express*, September 27, 2015, <http://indianexpress.com/article/cities/mumbai/attack-on-kem-doctors-4500-doctors-go-on-strike-today-want-more-cctv-cameras-better-security/>.

<sup>453</sup> “Surat Doctors to Strike Work against Mob Attack - Times of India,” October 12, 2015, <http://timesofindia.indiatimes.com/city/surat/Surat-doctors-to-strike-work-against-mob-attack/articleshow/49319881.cms>.

<sup>454</sup> “Surat Doctors to Strike Work against Mob Attack - Times of India.”

have little or no knowledge of health care.<sup>455</sup> One doctor recounts: “They feel that if their patient has been admitted to the ICU, then no matter what the condition, the doctors will cure him or her.”<sup>456</sup> Another reason is corporatization of health care. According to a spokesperson from the Indian Medical Association: “People have now started equating money with good medical care. They get agitated if their patient doesn’t survive or improve despite spending on treatment.”<sup>457</sup> Additionally doctors are overworked from high patient volumes and are admitted to medical school via entrance examination only; attitude and ethics are not part of the process.<sup>458</sup> The lack of security personnel, corrupt police force, lack of faith in the judicial system, and no laws to protect the medical community are also seen as contributing factors.<sup>459</sup>

While the Indian health care system<sup>460</sup> differs substantially from China’s, the two cases share some similar challenges: rural patients with little education and high expectations for health care,<sup>461</sup> unbalanced distribution of and access to quality health care facilities between urban and rural areas,<sup>462</sup> lack of emphasis on ethics education for

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<sup>455</sup> Dhar, “75 per Cent of Doctors Have Been Attacked at Work by Disgruntled Attendants, Study Says - Times of India.”

<sup>456</sup> Dhar.

<sup>457</sup> Dhar.

<sup>458</sup> Himmatrao Saluba Bawaskar, “Violence against Doctors in India,” *The Lancet* 384, no. 9947 (September 2014): 955, [https://doi.org/10.1016/S0140-6736\(14\)61629-9](https://doi.org/10.1016/S0140-6736(14)61629-9).

<sup>459</sup> Paurush Ambesh, “Violence against Doctors in the Indian Subcontinent: A Rising Bane,” *Indian Heart Journal*, August 2016, 2, <https://doi.org/10.1016/j.ihj.2016.07.023>.

<sup>460</sup> Unlike China, in India the private sector has been more dominant in the health care system. The creation of the public health care system in India was intended to provide comprehensive coverage of the Indian population, but surveys have found it has been largely abandoned by the poor and suffers from high rates of absenteeism. For more information on the development and potential reform of health care in India, see: Abhijit V. Banerjee, Esther Duflo, and Rachel Glennerster, “Putting a Band-Aid on a Corpse: Incentives for Nurses in the Indian Public Health Care System,” *Journal of the European Economic Association* 6, no. 2–3 (April 2008): 487–500, <https://doi.org/10.1162/JEEA.2008.6.2-3.487>; K. Srinath Reddy et al., “Towards Achievement of Universal Health Care in India by 2020: A Call to Action,” *The Lancet* 377, no. 9767 (2011): 760–768.

<sup>461</sup> Dhar, “75 per Cent of Doctors Have Been Attacked at Work by Disgruntled Attendants, Study Says - Times of India.”

<sup>462</sup> Reddy et al., “Towards Achievement of Universal Health Care in India by 2020,” 762.

physicians,<sup>463</sup> high out-of-pocket expenditures,<sup>464</sup> and low public investment.<sup>465</sup> There are also similar patterns for violence – it often follows the death of a patient. It is unclear from the stories above whether this is about momentary anger or if families actually see violence as a viable way for dispute resolution. Dr. Paurush Ambesh’s analysis implies a combination of both: “The common public has complete lack of faith in the judicial system and feels it is only the rich who obtain justice. Thus in instances of patient death, people believe that exacting immediate revenge, seeking their pound of flesh using physical means rather than filing a case in court.”<sup>466</sup> If this analysis is true there is a slight difference between *yinao* and the violence in India – Ambesh implies in India patients and families use violence for the purpose of revenge, but in China violent behaviors also represent an effective means for soliciting payment from hospitals. This study so far has not found any Indian cases using other forms of *yinao* aside from assault and has found no evidence of professional third-party groups resorting to violence on behalf of families.

## **Conclusion**

In this chapter, I argue that *yinao* encompasses a broad range of both disruptive and non-disruptive behaviors, stemming from many possible motives, and committed by different groups of people. I argue against the simple definition often used officially that portrays *yinao* as destructive groups using medical disputes as excuses to obtain unrealistic amounts of money because empirically it is not evident that this is always the case. This point is particularly important because adaptive policies addressing *yinao* must respond to the spectrum of nuances it encompasses.

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<sup>463</sup> Bawaskar, “Violence against Doctors in India.”

<sup>464</sup> Reddy et al., “Towards Achievement of Universal Health Care in India by 2020,” 760.

<sup>465</sup> Reddy et al., 761.

<sup>466</sup> Ambesh, “Violence against Doctors in the Indian Subcontinent,” 2.

By using available data, this chapter also suggests that *yinao* has seen rising trends over the past two decades and that it represents a viable option in the medical dispute resolution process compared to the other options available. This bolsters the idea that *yinao* has become an increasingly socially legitimate dispute resolution option. Lastly, in this chapter I showed that while violence against health care workers occurs worldwide, the violence is not necessarily within the context of dispute resolution, though some countries like India are showing similar trends to China; however, many of the ways in which *yinao* are carried out in China are unique. The following chapter delves further into the deeper sources of *yinao* that policies to address it must further contemplate and also builds on the comparative analysis in this chapter to include other countries.

## CHAPTER 6: *YINAO*'S DEVELOPMENT INTO A SOCIAL PHENOMENON

The previous chapters have provided the foundation for the central question asked by this chapter: why and how did *yinao* become a social phenomenon nationwide? Chapter 5 documented *yinao*'s growth over time using available data, showing that it has become a large-scale social phenomenon and is used at least as often as other channels for medical dispute resolution. Chapter 4 revealed the many issues within China's medical complaint and dispute resolution systems, hypothesizing that in a society that breeds its citizenry to complain ("emboldened complainants") yet at the same offers no credible channels for further recourse, people may be more inclined to resort to means outside of official channels (like *yinao*) to settle their disputes.

However, only examining the dispute resolution system fails to consider important social, cultural, health, economic, and development factors that have arguably contributed to *yinao*. This chapter identifies and evaluates these factors in order to explore their possible relationship to *yinao* as it developed into a nationwide social phenomenon over time. It argues that while there are multiple variables that contribute to *yinao*, the increase of Internet usage in China beginning in the 2000s is one of the main reasons for *yinao*'s development into a social phenomenon because Internet access enabled increased awareness of *yinao* as potentially legitimate and effective means for medical dispute resolution.

In order to make this argument, I first identify, analyze, and untangle the many social, cultural, health, law enforcement, and development variables that have been associated with *yinao*. As I analyze these variables, I place them in a process that I argue leads to *yinao* (see below). This model shows that while health care variables foment

disputes and frustration, other variables intervene to influence the choice of how patients and families may choose to settle those disputes. I build my argument by first defining the period of time when *yinao* become a social phenomenon. I then proceed to analyze the following sets of variables: health care system factors, law enforcement, Chinese traditional and political culture, Internet, and media. After analyzing these variables and developing their relationship to *yinao*, I draw some cross-national comparisons and do a counterfactual analysis to test the process I have developed.

### ***Yinao's Development as a Social Phenomenon Over Time***

In order to assess how different variables may have impacted the development of *yinao* over time, it is important to identify when *yinao* roughly began and when it started to become a social phenomenon. I define a social phenomenon as a behavior occurring frequently nationwide to the point it has become officially recognized and widely known (see the previous chapter for trends in data over time). Though not officially called *yinao* in the 1980s, existing evidence shows that *yinao* was a cross-province phenomenon as early as 1986. An excerpt from a *People's Daily* article from 1986 reads:

“Recently reporters have received many letters from readers, reacting to events of disorderly behavior, vandalism in hospitals, shaming and assault of health care workers repeatedly occurring. Through investigation, we have found that this year from February through July, Beijing, Hubei, Henan, Hunan, Yunnan, Shandong, etc. have seen 31 of these incidents, both large and small. The city of Wuhan within the last month has seen 18 incidents, seriously disrupting hospitals’ normal work order. The physical security of medical personnel has been seriously threatened. According to current understanding, these incidents are mostly dealt with inappropriately, sometimes there are no questions asked.”<sup>467</sup>

Despite the existence of *yinao* in 1986, between 1986 and 2004, online archive searches of China’s leading Party newspaper, the *People's Daily*, for the term *yinao* and

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<sup>467</sup> Huang, “These Past Few Years Some Places Have Seen Doctor-Patient Conflicts Become Extreme, Vandalizing Hospitals Repeatedly Occur, after the Event Occurs No Questions Asked [进来一些地方医患矛盾激化 打砸医院率发生 事发之后无人问].”

other terms associated with it<sup>468</sup> produce no results; it is unclear whether this is because *yinao* behaviors decreased, stopped, or if they were not being reported on. Stories about *yinao* resumed in the *People's Daily* in 2004<sup>469</sup> and the Ministry of Education recognized *yinao* as a word in 2006.<sup>470</sup> The resurgence of *yinao* in the early 2000s is somewhat surprising given the silence about it in the *People's Daily* for almost two decades. Of course, this is only one national media outlet, and there may have been local news about these incidents; however, because I am interested in *yinao*'s emergence as a national phenomenon, focusing on the *People's Daily* coverage of it is appropriate.

Further, fieldwork interviews repeatedly demonstrated the view that *yinao* is a more recent phenomenon developing around the early 2000s, though perhaps with some variation from region to region. For example, when asked about when *yinao* began, a hospital administrator in Beijing approximated that it began around 1997-1998, recalling that when he went to study abroad in 1992, *yinao* did not exist, but when he came back in 1997, it existed.<sup>471</sup> A hospital administrator in Nanjing reported that around 2002-2003, *yinao* incidents began to accelerate.<sup>472</sup> A nurse recalled that when she began her internship in 2001 in the northeastern province of Jilin, the doctor-patient relationship was not tense and patients respected doctors.<sup>473</sup> A daughter of a physician in Guangzhou

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<sup>468</sup> These additional, related terms include: 摆放花圈 (*baifang huaquan*, setting up wreaths), 停放尸体 (*tingfang shiti*, placing corpses), 焚烧纸钱 (*fenshao zhiqian*, burning paper money), 摆设灵堂 (*baishe lingtang*, setting up funeral altar), 打砸医院 (*daza yiyuan*, vandalize hospital).

<sup>469</sup> Bai Jianfeng, "Beijing Will Fully Carry Out Medical Liability Insurance [北京将全面推行医疗责任保险]," *People's Daily*, December 27, 2004,

<http://58.68.146.102.proxy1.library.jhu.edu/sc/detail?articleId=40684ee4fedf48898e1eb45b12b7780f>.

<sup>470</sup> Chinese Ministry of Education, "Report on the State of China's Language Life (2006) 中国语言生活状况报告(2006)," August 16, 2007, See entry under Y,

[http://wenku.baidu.com/link?url=R1ladci1znX16L7jEMRCgvnRkeno757134c7rtjdxp-UjDXaEvpNXlsRWf-ZVIGQCaPn3AP4x\\_jWCQ8Rzgyt0GgzxxAZc-KIH0gtp1Txva](http://wenku.baidu.com/link?url=R1ladci1znX16L7jEMRCgvnRkeno757134c7rtjdxp-UjDXaEvpNXlsRWf-ZVIGQCaPn3AP4x_jWCQ8Rzgyt0GgzxxAZc-KIH0gtp1Txva).

<sup>471</sup> Hospital official, Interview No. 070, 70.

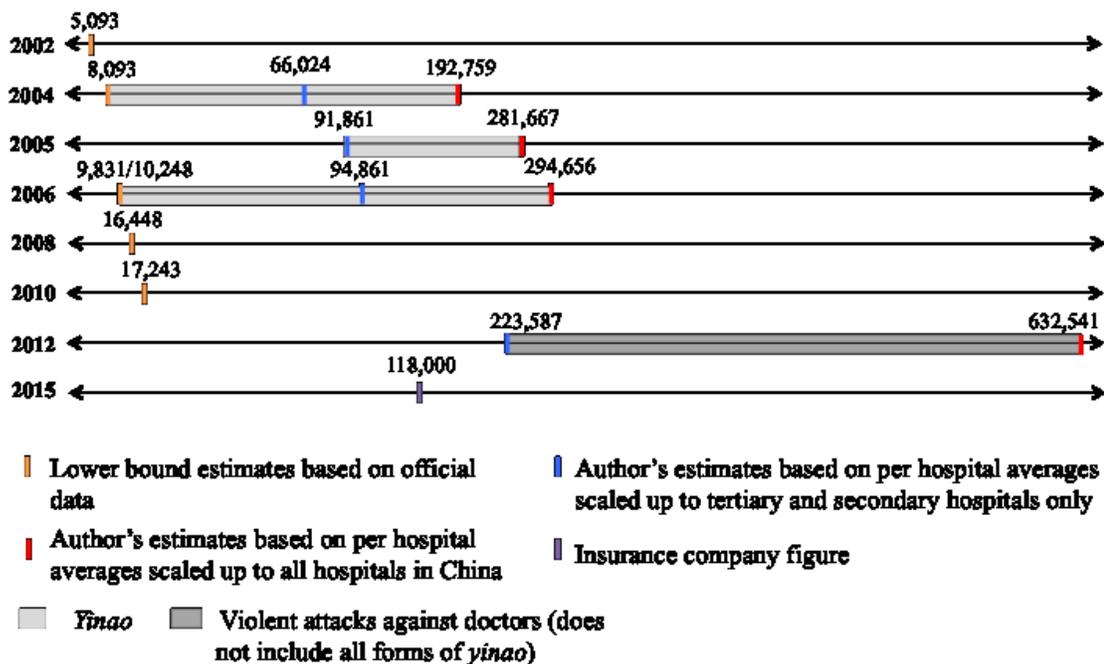
<sup>472</sup> Hospital official and former hospital affairs office head, Interview No. 072, 72.

<sup>473</sup> Head Nurse, Surgery, Interview No. 050.

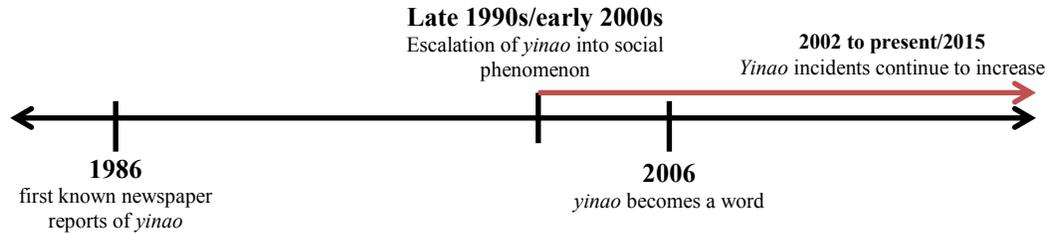
recalled frequently spending time in a hospital as a young child with her father in the 1980s and 1990s, noting that during those years, the hospital was a safe place where people listened and respected doctors<sup>474</sup>; it was not a place to fear patient violence.

Based on the evidence above, the timeline for the development of *yinao* can be sketched out as follows: *yinao* began to emerge in the 1980s and to take off as a social phenomenon around the early 2000s, to eventually become coined as a term in 2006. Incomplete official and survey data from the previous chapter suggest that since early 2002 (when data is first available for *yinao*), the number of *yinao* incidents has continued to climb (see figure below developed based on analysis in Chapter 5). This chapter is thus interested in understanding what happened in the early 2000s that turned *yinao* into a social phenomenon and what made *yinao* incidents continue to increase.

Figure 8: Available Nationwide Data on *Yinao*



<sup>474</sup> Physician Daugther, Interview No. 82, 2016.



**Figure 15: Development of *Yinao* Over Time**

With the above timeline in mind, I proceed to assess a number of potential causal variables – both for *yinao* and its proliferation. I use “process tracing” in this chapter, meaning I analyze how variables change over time. I do not use quantitative data analysis because I do not have adequate data on the dependent variable (*yinao*) to do so (see chapter 5 for more information about available data on *yinao*).

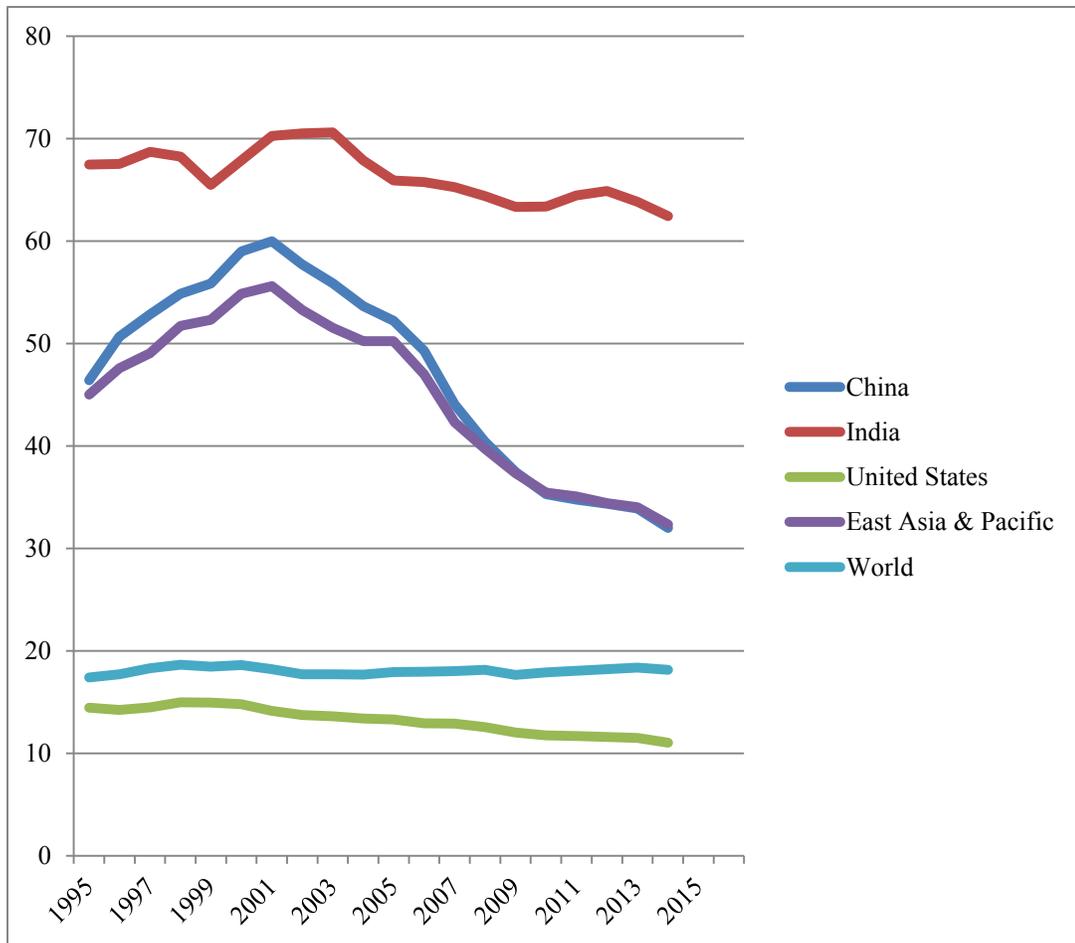
### **Health Care System Variables**

Issues in China’s health care system are undoubtedly responsible for the development of *yinao*; without issues in China’s health care system, there would not be any medical disputes at all since this is their place of origin. This section explores four important variables that have contributed to *yinao*: 1) high out-of-pocket costs; 2) corruption due to public hospital financing; 3) healthcare workers’ weak interpersonal communication skills; and 4) patient health education and awareness.

### High Out-of-Pocket Costs for Healthcare

High out-of-pocket costs for healthcare in China correspond with the beginning of *yinao* as a social phenomenon in the early 2000s when average out-of-pocket costs as a percentage of total health care expenditure reached its peak at nearly 60%.<sup>475</sup>

<sup>475</sup> “Out-of-Pocket Health Expenditure (% of Total Expenditure on Health): China,” The World Bank: Data, accessed December 12, 2017, <https://data.worldbank.org/indicator/SH.XPD.OOPC.TO.ZS?locations=CN>.



**Figure 16: Out-of-Pocket Health Expenditure (% of total expenditure on health)**

Source: The World Bank

China’s high-out-of-pocket costs are due to changes in China’s health care insurance coverage over time and the financing of public hospitals. In the first few years of the fledgling People’s Republic of China (PRC), the Chinese Communist Party (CCP) sought to establish health care coverage for both urban and rural residents, though coverage varied widely between these two groups. In 1952 the State Council introduced the Labor Insurance System<sup>476</sup> and the Government Insurance System,<sup>477</sup> which covered

<sup>476</sup> “The People’s Republic of China Labor Insurance Regulations [中华人民共和国劳动保险条例] (1952), [http://www.law-lib.com/law/law\\_view.asp?id=686](http://www.law-lib.com/law/law_view.asp?id=686).

China's small but growing urban population.<sup>478</sup> Health insurance programs for urban residents combined contributions from work units (called *danwei*) and the central government.<sup>479</sup> Towards the end of the 1950s, the nation's vast countryside launched health campaigns,<sup>480</sup> establishing cooperative medical schemes managed by agricultural communes that provided basic health care services.<sup>481</sup> Although the agricultural collectives during the Mao era (1949-1976) are notorious for creating famine and inefficiency, they also were fundamental units for delivering health care services, providing training to millions of midwives, barefoot doctors, and medics.<sup>482</sup> Eggleston notes that even though barefoot doctors were not well educated, "the widespread availability and use of basic medicines, including traditional Chinese medicines, and active emphasis on control of infectious diseases contributed to dramatic health improvements."<sup>483</sup>

As China opened its economy to the world and began market reforms in the late 1970s and early 1980s, the government largely withdrew its investment from the health care sector. In urban areas, as public funding declined, urban residents saw the implementation of user fees for health care.<sup>484</sup> In rural areas, the implementation of the new household responsibility system, which organized farms around families instead of

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<sup>477</sup> "State Council Directive on Implementing Public Health Care and Prevention for the Country's Employees at Every Level of the People's Government, the Party, Organizations, and Affiliated Work Units [政务院关于全国各级人民政府、党派、团体及所属事业单位的国家工作人员实行公费医疗预防的指示]," June 27, 1952, [http://www.law-lib.com/law/law\\_view.asp?id=99137](http://www.law-lib.com/law/law_view.asp?id=99137).

<sup>478</sup> Karen Eggleston, *Prescribing Cultures and Pharmaceutical Policy in the Asia-Pacific* (Walter H. Shorenstein Asia-Pacific Research Center, 2009), 2.

<sup>479</sup> Jane Duckett, "Bureaucratic Interests and Institutions in the Making of China's Social Policy," *Public Administration Quarterly* 27, no.1/2 (2003): 214.

<sup>480</sup> Lin Zhang and Minsheng Fan, "Health Care Policy and the Patient Doctor Relationship [医疗保健政策与医患关系]," *Medicine and Philosophy [医学与哲学]* 25, no. 9 (2004): 9.

<sup>481</sup> Eggleston, "Health Care for 1.3 Billion," 2.

<sup>482</sup> Barry Naughton, *The Chinese Economy: Transitions and Growth* (Cambridge, MA: The MIT Press, 2007), 243-245.

<sup>483</sup> Eggleston, "Health Care for 1.3 Billion," 2.

<sup>484</sup> Eggleston, 3.

communes, dissolved both the agricultural collectives and the health services they provided.<sup>485</sup> Village doctors became fee-for-service private providers as a result.<sup>486</sup> The rate of rural health care coverage via cooperatives dropped from about 70-80% of the rural population in the 1970s to less than 10% in the 1980s.<sup>487</sup> By 1999, insurance levels in rural areas dropped to 7% of counties.<sup>488</sup> Eggleston notes that between 1980 and 2000, the majority of China's population did not have health insurance.<sup>489</sup> Government subsidies for health care service providers covered less than 10% of their expenses, with the remainder earned through fee-for-service payment from uninsured patients.<sup>490</sup>

This history highlights that starting in the 1980s, the period when *yinao* began, many Chinese citizens lost their health care insurance, increasing their out-of-pocket costs. Out-of-pocket costs as a percentage of total health expenditure reached its maximum in the early 2000s, when *yinao* began to take off; these two events are correlated. Although, out-of-pocket costs as a percentage of total expenditure on healthcare decreased over time, in absolute terms, health care was still expensive as total out-of-pocket costs and per capita costs continued to rise.<sup>491</sup> Thus high out-of-pocket costs have accompanied *yinao* since it first appeared in the 1980s and has been a continuing context for *yinao*'s beginnings in the 1980s until the present.

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<sup>485</sup> Barry Naughton, *The Chinese Economy: Transitions and Growth* (MIT press, 2007); Eggleston, "Health Care for 1.3 Billion."

<sup>486</sup> Eggleston, "Health Care for 1.3 Billion," 3.

<sup>487</sup> Naughton, *The Chinese Economy*, 245.

<sup>488</sup> Eggleston, "Health Care for 1.3 Billion," 3.

<sup>489</sup> Eggleston, 3.

<sup>490</sup> Eggleston, 3.

<sup>491</sup> National Health and Family Planning Commission, *China Health and Family Planning Statistics Yearbook 2016* 《中国卫生和计划生育统计年鉴 2016》 (Beijing: Peking Union Medical College Press, 2016), Table 4-1-1 Total Health Expenditures, <http://tongji.cnki.net/kns55/Navi/YearBook.aspx?id=N2017010032&floor=1>; "Health Expenditure per Capita, PPP (Constant 2011 International \$): China," World Bank Data, accessed December 18, 2017, <https://data.worldbank.org/indicator/SH.XPD.PCAP.PP.KD?locations=CN>.

High out-of-pocket costs alone, however, do not cause people to choose various forms of protest and violence, though they can cause financial distress, heightened expectations, and if exceedingly high, can raise suspicion about the intentions of caregivers. All of these factors can lead to frustration and disagreement, but the choice of how to settle this disagreement and vent this frustration must involve additional factors.

### Corruption Fueled by Financial Structure of Public Hospitals

China's shift away from a publicly sponsored health care system during the reform period beginning in the late 1970s not only hurt patients, but also had damaging effects on public hospitals and their staffs as well. As a result of the shift to a more market-oriented economy, health care in China also became market-oriented, and the government made hospitals responsible for their own revenue.<sup>492</sup> This led to profit-driven behavior, such as dependence on higher priced drugs and tests for income, the denial of care to those unable to afford it and other "cost, quality, efficiency and equity problems."<sup>493</sup>

Doctors' incomes became directly tied to their clinical department's profits each month as well as pharmaceutical bribes. In public hospitals, doctors' total income is comprised of three components: 1) the official fixed government salary they receive based on their rank, which tends to be low, and as one physician noted, much of it goes directly to social security; 2) bonuses based on their clinical department's profit for the month and their rank (an attending physician would get a higher bonus than a resident); 3)

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<sup>492</sup>Christina Ho, "China's Health Care Reform: Background and Policies," in *Implementing Health Care Reform Policies in China: Challenges and Opportunities*, ed. Charles III Freeman and Lu Boynton (Washington, DC: Center for Strategic and International Studies, 2011), 1, [http://csis.org/files/publication/111202\\_Freeman\\_ImplementingChinaHealthReform\\_Web.pdf](http://csis.org/files/publication/111202_Freeman_ImplementingChinaHealthReform_Web.pdf).

<sup>493</sup> Ho, 1.

pharmaceutical kickbacks.<sup>494</sup> The majority of their income comes from the latter two components, so doctors have a direct incentive to generate income for their departments and themselves by ordering more diagnostic and laboratory tests for their patients and to prescribe more medicines from certain pharmaceutical companies to receive kickbacks.

Until recently, hospitals have been allowed to mark up drugs by as much as by 15%<sup>495</sup> to generate income, so doctors were incentivized to unnecessarily or overprescribe medication,<sup>496</sup> creating the phenomenon of “using medicine [sales] to support hospitals” (以药补医), a phrase indicating that pharmaceutical profits represent a significant source of income that hospitals rely on to remain solvent. The figure below shows the proportion of different income sources (government subsidy, pharmaceutical sales income, other income from inpatient and outpatient services) for public hospitals from 2008-2012 – public hospitals today still are greatly responsible for their financial solvency.

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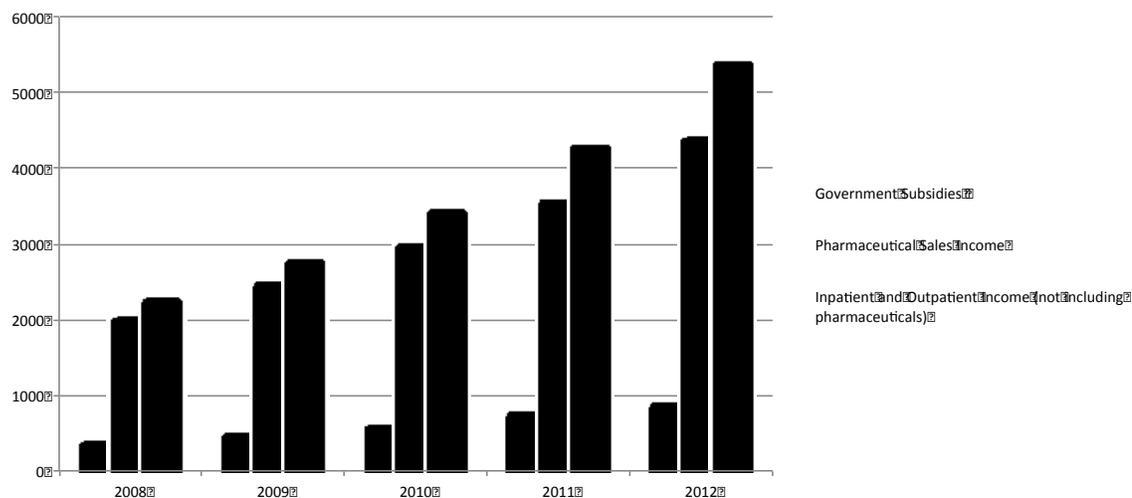
<sup>494</sup> Doctor of Internal Medicine, Interview No. 077, 2016.

<sup>495</sup> Since the early days of the establishment of the PRC, doctors and hospitals have been allowed to mark up drugs by 15%. However, the low level of technology and per capita ability to pay also left little scope for overuse of drugs. Fang and Chen (2012) and Yan and Shen (2014) all note that in the 1950s the government was unable to invest in medical care, so the markup represented a way for hospitals to sustain themselves. However, as Karen Eggleston points out, this was not really relevant during the planned economy era until the 1980s because prior to this time the government funded hospitals and physicians were salaried employees. During reform and opening period beginning in the 1980s when hospitals became responsible for their revenue, this markup became an important source of income. In 2015, the 15% markup policy began to be phased out with full implementation nationwide to be achieved by 2017. See: Eggleston, *Prescribing Cultures and Pharmaceutical Policy in the Asia-Pacific*, 262; Pengqian Fang and Ting Chen, “Analysis of Drug Dependent Doctors and Government Responsibility in the Situation of Post-Drug Dependent Doctors Era,” *China Hospital Management* 32, no. 6 (June 2012): 6; Ni Yan and Xiao Shen, “Dilemma and Countermeasure of Canceling ‘Drug-Maintaining-Medicine,’” *Health Economics Research* 12 (2014); “China Scraps 15% Drug Markup at 100 Hospitals, to Move Nationwide by 2017 | FiercePharma,” accessed February 17, 2017, <http://www.fiercepharma.com/regulatory/china-scraps-15-drug-markup-at-100-hospitals-to-move-nationwide-by-2017>.

<sup>496</sup> Xiaodong Guan, Huigang Liang, Yajiong Xue, Luwen Shi, “An Analysis of China’s National Essential Medicines Policy,” *Journal of Public Health Policy* 32 no. 3: 308.

**Figure 17: Chinese Public Hospital Income Sources (averages for each category)**

Source: Health Statistics Yearbook 2013



As a result of reliance on income from pharmaceuticals and diagnostic testing, hospitals gained a reputation for organizational corruption, and patients increasingly distrusted them due to these practices and others like “arbitrarily and illicitly charging patients” (*luan shoufei*), taking bribes from pharmaceutical companies, using substandard and fake medicines (*jialieyao*) to treat patients, and doctors accepting red envelopes<sup>497</sup> of cash from patients prior to procedures.<sup>498</sup> In addition to the Chinese government’s reduced financial commitment to the health care sector since the 1980s, Weikeung Tam also attributes burgeoning organizational corruption to the “excessive and chaotic development” of the pharmaceutical sector that competes for hospital orders by bribing

<sup>497</sup> A red envelope is often used to gift money – it is a longstanding tradition in China. Red envelopes are frequently given during the Chinese New Year to family members and are also collected on behalf of the bride and groom at wedding banquets. While they can be used in a variety of contexts for celebration and thanks, they can also be used to pass on money for shady and corrupt practices.

<sup>498</sup> Tam, “Organizational Corruption by Public Hospitals in China.”

them and a failed state regulatory infrastructure to check corrupt behavior.<sup>499</sup> Tam observes that “instead of providing efficient, safe and affordable treatment for patients, many public hospitals have engaged in predatory behavior that is harmful to patients’ health.”<sup>500</sup>

Evidence from studies on prescribing behaviors in China confirms that Chinese physicians prescribe medicine at alarming rates. In a 2008-2011 study, Chinese physicians averaged an exceptionally high prescription rate for outpatients, averaging 62% of visits resulting in antibiotic prescription and 39% of visits when patients questioned the use of the antibiotic.<sup>501</sup> By contrast in the US, outpatient visits resulting in antibiotic prescription have been declining from an average of 18% of outpatient visits resulting in an antibiotic prescription from 1995-1996 to 15% in 2001-2002<sup>502</sup>; a new US study since shows that overall rates of prescribing for adults have not changed from 2000-2010.<sup>503</sup>

To summarize, as health insurance coverage decreased, prices for health care increased. This trend set up the patient-doctor relationship to become tense as patients had high expectations for the expensive care they were receiving and doctors had to charge patients for unnecessary medicines and tests in order for their hospitals to remain solvent. Interviews with physicians confirmed this information. One physician exclaimed, “I give you five tests, but you only need two. The hospital needs to survive.”<sup>504</sup> Another doctor candidly admitted that while tending to the patient’s illness is always his most

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<sup>499</sup> Tam, 265.

<sup>500</sup> Tam, 265.

<sup>501</sup> Janet Currie, Wanchuan Lin, and Wei Zhang, “Patient Knowledge and Antibiotic Abuse: Evidence from an Audit Study in China,” *Journal of Health Economics* 30, no. 5 (September 2011): 933–49, <https://doi.org/10.1016/j.jhealeco.2011.05.009>.

<sup>502</sup> Currie, Lin, and Zhang.

<sup>503</sup> Grace C Lee et al., “Outpatient Antibiotic Prescribing in the United States: 2000 to 2010,” *BMC Medicine* 12, no. 1 (2014): 1.

<sup>504</sup> Chinese Attending Physician, Interview No. 054, 2016.

important consideration, in order to reap benefits from drug companies, he also prescribes additional unnecessary medicines, such as those that will have no effect on patients' health and Chinese medicines, which he implied are also harmless.<sup>505</sup>

Though implied by the analysis above, it is worth noting that doctors do not make additional money from consultation fees: whether they see 10 or 70 patients in a day makes no direct difference in their income (excluding, of course, the degree to which they charge for tests and medications). One physician said, although he is only required to have three outpatient sessions per week, he has five because of demand, but he makes no extra money from this directly, and promotions of physicians are also not based on how many consultations they have;<sup>506</sup> in other words, the compensation does not reward the time he spends with his patients. Consultation fees are also exceptionally low. For example, while shadowing an attending physician who was also the director of his clinical department in a 3A public hospital in the southeastern city of Guangzhou, the author also requested a consultation with him, which cost RMB 7 – just a little over US \$1. However, the author left with over RMB 500 (USD \$74.11) in prescribed medications. One possible explanation given for low consultation fees in public hospitals is the government does not want to make it appear as if poor citizens would be unable to see the best doctors. The National Development and Reform Commission (NDRC) and National Health and Family Planning Commission (NHFPC) are seeking to adjust the high prices of drugs and the low price of medical services over time.<sup>507</sup> The next chapter on state responses addresses these policies in more detail.

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<sup>505</sup> Doctor of Internal Medicine, Interview No. 077.

<sup>506</sup> Chinese Attending Physician, Interview No. 054.

<sup>507</sup> “Notice about the Publication of Opinions on Controlling the Unreasonable Growth of Medical Fees in Public Hospitals [关于印发控制公立医院医疗费用不合理增长的若干意见的通知],” 中华人民共和国

Hospital financing creates a context of mistrust because physicians are incentivized to overcharge patients. If patients feel that as soon as their interactions with healthcare workers begin, they are being cheated, presumably there is a greater likelihood that frustration and disputes will emerge. Even though hospital dependence on profits from pharmaceutical sales and lab tests began in the 1980s, as interviews and lack of news reporting on *yinao* during this time period imply, through the 1980s and 1990s, patient-physician relations were not yet so dire that *yinao* was emerging as a regular pattern of behavior. Like out-of-pocket costs, tension created due to known corruption in the healthcare system can contribute to frustration, disputes, and can even be used to justify violent actions against corrupt physicians, but corruption itself does not create society-wide violence and protest against health care workers.

#### Lack of Emphasis on Interpersonal Skills for Healthcare Workers

In addition to the poor incentives created by the pricing system for medical goods and services, the selection of health care professionals as well as the incentives created by the system for their promotion also do not motivate providing quality care and effective communication to patients, increasing the likelihood for disagreements with patients. In China, students begin studying medicine as their primary major at the undergraduate level and are admitted based on their college entrance examination scores. When they receive their exam scores, they rank colleges and preferred majors based on how competitive their exam scores are – students might have a high enough score to be admitted into a top school, but not high enough to be admitted into the department they want. Moreover, because only some schools have a separate code for health care majors,

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国家卫生和计划生育委员会, November 6, 2015,  
<http://www.nhfp.gov.cn/tigs/s9660/201511/0038da2bf8fe43d69511fb675e205d37.shtml>.

unfortunately this system places a number of students in health care professions who did not choose them to begin with: one study found that in universities that do not have a separate code for health-care related majors, 17% of medical students had not chosen medicine as their first choice.<sup>508</sup> As Hou et al. observe, “Patients presumably would rather be cared for by a professional who has expressed preference for a health service career rather than a professional who expressed preferences for other occupations but were involuntarily assigned to health services.”<sup>509</sup>

Once students begin attending medical school, the curriculum often fails to equip them with skills that would facilitate positive relationships with their patients. While students receive an education with a heavy emphasis on basic biomedicine, medical technology, and clinical medicine, they have little exposure to the humanities, social sciences, communication skills, ethics, population studies, or public health.<sup>510</sup> A survey of physicians confirmed that physician training in China lacks “core humanistic components that nurture empathy and caregiving.”<sup>511</sup>

Interviews conducted for this study found that the impact of this lack of training lasts throughout physicians’ careers: a group of gynecologists and nurses readily admitted that they needed to strengthen their communication skills.<sup>512</sup> Communication skills matter especially to gynecologists because they manage high patient volumes that give

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<sup>508</sup> Jianlin Hou et al., “Transformation of the Education of Health Professionals in China: Progress and Challenges,” *The Lancet* 384, no. 9945 (August 30, ): 824, [https://doi.org/10.1016/S0140-6736\(14\)61307-6](https://doi.org/10.1016/S0140-6736(14)61307-6).

<sup>509</sup> Hou et al., 824.

<sup>510</sup> Hou et al., 824.

<sup>511</sup> Tucker et al., “Patient–physician Mistrust and Violence against Physicians in Guangdong Province, China: A Qualitative Study,” 8.

<sup>512</sup> OBGYN Group, Interview No. 014.

them little time to communicate with patients in situations with especially sensitive medical and family issues involving women and infants.<sup>513</sup>

Not only do the admissions and education processes predispose physicians to not focus on their relationships with their patients, but incentives for their career progression also fail to motivate patient satisfaction. The main indicator for career evaluation for physicians is their publications in China's Science Citation Index,<sup>514</sup> not patient satisfaction or the quality of care they provide. Because doctors are under considerable pressure to publish each year, they spend less time treating patients, affecting both the quality of treatment and the patient-doctor relationship.<sup>515</sup> The pressure has also led to physicians falsifying data and the rise of ghostwriting companies, which have all damaged the credibility of Chinese medical research.<sup>516</sup> Other authors feel that while promotion criteria for physicians needs to be reevaluated, ultimately the bigger issue is time; physicians waste a lot of time seeing illnesses that they do not need to see because there is no gatekeeping system in China that prevents someone with a common cold from going to a well-equipped hospital.<sup>517</sup>

The analysis above shows that China's health care admission, education, and promotion systems do not equip physicians with the interpersonal skills and time needed for strong doctor-patient relationships. While these factors may exacerbate conflict between doctors and patients, again they cannot explain why patients may choose *yinao* to settle their conflicts.

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<sup>513</sup> OBGYN Group.

<sup>514</sup> Bo Ye and Ae-Huey Jennifer Liu, "Inadequate Evaluation of Medical Doctors in China," *The Lancet* 381 (June 8, 2013).

<sup>515</sup> Ye and Liu.

<sup>516</sup> Ye and Liu.

<sup>517</sup> Shanquan Chen et al., "Publication Pressure on Chinese Doctors - Another View," *The Lancet* 384 (September 13, 2014).

## Issues in Patient Education and Awareness

Issues in patient education and awareness about health and legal contracts also may contribute to frustration and conflict. Interviews with physicians found that there were two main issues regarding patients' knowledge about health. The first is that many people lack a basic understanding of healthcare. As one doctor said, "Health care is not safe, and a lot of people do not understand [this.] [They] don't understand risk. Medicine, this thing, is not safe."<sup>518</sup> Lack of patient health knowledge coupled with high out-of-pocket costs makes it especially difficult for patients and families to accept bad health outcomes.

Yet on the other hand, information available online also has contributed to patients mistrusting doctors – clinicians in the ER said when patients read about medical illnesses on Baidu (Chinese Google equivalent), it makes them more anxious about their condition.<sup>519</sup> Other physicians said patients doubt them because they are overconfident about what they have read on Baidu – the phenomenon in Chinese is called "seeing the doctor on Baidu" (百度看病). One clinical department director estimated for every 30 patients she sees, there are 1-2 patients that think they know more than the doctor because of what they have read on Baidu.<sup>520</sup> While increasingly accessible medical information has impacted the patient-physician relationship globally and at times has represented a source of concern for physicians,<sup>521</sup> increased information does not necessarily have a

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<sup>518</sup> OBGYN Group, Interview No. 014.

<sup>519</sup> ER Group Interview, Interview No. 013, 2015.

<sup>520</sup> ENT Group Interview, Interview No. 016.

<sup>521</sup> S. Altan Erdem and L. Jean Harrison-Walker, "The Role of the Internet in Physician-patient Relationships: The Issue of Trust," *Business Horizons* 49, no. 5 (September 2006): 387-93, <https://doi.org/10.1016/j.bushor.2006.01.003>; Alex Broom, "Virtually He@lthy: The Impact of Internet Use on Disease Experience and the Doctor-Patient Relationship," *Qualitative Health Research* 15, no. 3 (March 1, 2005): 325-45, <https://doi.org/10.1177/1049732304272916>; Ben S Gerber and Arnold R Eiser, "The Patient-Physician Relationship in the Internet Age: Future Prospects and the Research Agenda,"

negative impact on patients as it can empower them and relieve the burden on physicians to be the sole provider of information.<sup>522</sup>

An additional issue related to patient knowledge concerns general social awareness about the meaning of contracts. When I asked a Medical Affairs Office about whether there was informed consent prior to surgery, they said the family members must sign an informed consent agreement, and they even record the entire interaction of explaining the medical procedure; however, when something goes wrong, according to the Medical Affairs Office, the contract that patients and their families had signed does not seem to matter.<sup>523</sup> One interviewee said this reflects a more general problem in China with the “spirit regarding contracts” (*heyue jingshen*, 合约精神) and noted it was not just in health care, but in real estate, there are also violent behaviors used around contract-related issues as well.<sup>524</sup>

Even though patient issues in healthcare knowledge and disregard for legal contracts may contribute to frustration and conflict between patients and doctors, neither of these phenomena explain why patients may resolve their conflicts through *yinao*. Again, like many of the health care variables above, these are all sources of doctor-patient tension and potential disputes, but do not explain the choice to resort to *yinao*.

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*Journal of Medical Internet Research* 3, no. 2 (April 9, 2001): e15, <https://doi.org/10.2196/jmir.3.2.e15>; Sue Hollander and Don Lanier, “The Physician-Patient Relationship in an Electronic Environment: A Regional Snapshot,” *Bulletin of the Medical Library Association* 89, no. 4 (October 2001): 397–99; C. R. Nwosu and B. M. Cox, “The Impact of the Internet on the Doctor-Patient Relationship,” *Health Informatics Journal* 6, no. 3 (September 1, 2000): 156–61, <https://doi.org/10.1177/146045820000600308>.

<sup>522</sup> Shashank Akerkar and L Bichile, “Doctor Patient Relationship: Changing Dynamics in the Information Age,” *Journal of Postgraduate Medicine* 50, no. 2 (2004): 120–22.

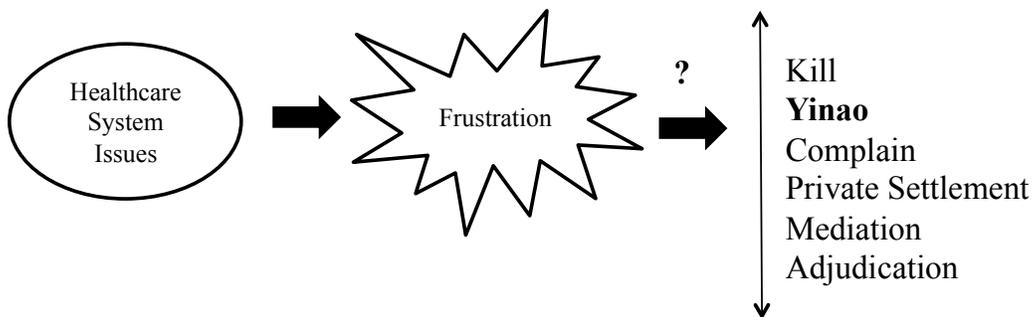
<sup>523</sup> Hospital Administration Group Interview, Interview No. 011.

<sup>524</sup> Pharmaceutical Representative, Interview No. 079, 2016.

## Building Diagram to *Yinao*

Based on this analysis, I build the beginning of the process leading to *yinao* (below). Any of the health care system issues mentioned above can lead to or exacerbate frustration. For example, more corruption and greater out-of-pocket costs could make patients and families more frustrated with health care. But as the analysis above noted, while these health care system issues cause frustration, the channeling of frustration to *yinao* cannot be explained by these health care system variables alone.

**Figure 18: Health Care System Variables in the Process to *Yinao***



## Public Security and Law Enforcement Factors

While issues in the healthcare system may drive frustration and possible conflicts between patients and physicians, they cannot explain how *yinao* became a widespread social phenomenon. For *yinao* to have become a nationwide social phenomenon, it would have needed the ability to grow – this is where public security and law enforcement play a crucial role. In the Chinese government, the Ministry of Public Security governs the policing and law enforcement system. In the fall of 2014, a frustrated hospital Party Secretary from Beijing exclaimed: “Why is it that they [the police] respond to other

instances of violence but not this type [*yinao*]?”<sup>525</sup> This question is difficult to answer definitively, but potential answers include the existing laws related to punishing *yinao* and the political contexts surrounding law enforcement. This section first reviews laws relevant to hospital security prior to the explicit criminalization of group-led *yinao* in 2015 and then examines other contexts that may have affected their enforcement.

### An Uncertain Legal Framework Surrounding *Yinao*?

A common explanation for why police do not intervene revolves around the claim that the laws and regulations are unclear about how to handle *yinao*. In a comprehensive review of the laws and regulations surrounding law enforcement for *yinao*, Liu Weining argues that legislation is incomplete, enforcement is difficult, and the system for accountability is unclear.<sup>526</sup> Two main issues he highlights that inhibit police from decisively controlling *yinao* are the following: 1) police recognize *yinao* as part of civil disputes, so do not treat *yinao* behaviors like crimes<sup>527</sup>; and 2) there is a lack of clarity of the definition for *yinao* within existing laws.<sup>528</sup> He cites Article 46 of the 2002 Medical Accident Regulations as the reason police regard medical disputes as civil disputes: “Patients and hospitals can discuss and resolve compensation and other civil disputes for medical accidents that have occurred.”<sup>529</sup> This allows for private settlement between patients and doctors, and as Liu argues, this created a dilemma as to whether or not police should intervene: if police intervene, then there is an issue of violating the right of doctors and patients to autonomously manage their conflicts; if police ignore it, then they

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<sup>525</sup> October 2014 Baltimore notes.

<sup>526</sup> Liu Weining, “Discussing the Strength of Law Enforcement within the Context of Public Security in Addressing Medical Violence [讨论公安机关在‘医闹’中的执法力度],” *Hospital Director’s Form*, no. 5 (September 2011): 55–56.

<sup>527</sup> Liu Weining, 55.

<sup>528</sup> Liu Weining, 55–56.

<sup>529</sup> Medical Accident Regulations, 2002. 发生医疗事故的赔偿等民事争议，医患双方可以协商解决。

might be failing to carry out appropriate legal and administrative duties.<sup>530</sup> In most cases, police choose not to intervene, which has further encouraged practitioners of *yinao* to create disturbances at hospitals since there has been no harsh punishment for it.<sup>531</sup> When I posed Liu's argument to a former head of a Medical Affairs Office, he said there have always been laws to handle *yinao*, and confirmed that the police view *yinao* as a type of civil dispute. Then he added, "I think this is an excuse."<sup>532</sup>

Both of Liu's arguments are problematic. First, the logic that police intervention interferes with private dispute resolution is weak because it assumes that intervening to stop *yinao* behaviors is mutually exclusive with private dispute settlement. For example, if police detain a group of people with a malpractice claim for blocking an ambulance from a hospital entrance, this does not by definition hinder the hospital and the family from settling the dispute privately, aside from the practical issue that detainment may result in delaying dispute resolution. The key issue is that regardless of the backdrop of a medical dispute, blocking an ambulance is still a crime,<sup>533</sup> and the context of the medical dispute should not be the reason for police to refuse to take action. This would be like saying during a divorce, a husband vandalized his wife's property, but the police will not intervene when she calls them because a divorce is a civil dispute; clearly crimes can happen within the process of civil dispute settlement. Further, the Public Security

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<sup>530</sup> Liu Weining, "Discussing the Strength of Law Enforcement within the Context of Public Security in Addressing Medical Violence [讨论公安机关在‘医闹’中的执法力度]," 55.

<sup>531</sup> Liu Weining, 55.

<sup>532</sup> Hospital official and former hospital affairs office head, Interview No. 072, 72.

<sup>533</sup> Standing Committee of the National People's Congress, "Public Security Administration Punishments Law of the People's Republic of China," August 28, 2005, 50.3, <http://www.lawinfochina.com/display.aspx?lib=law&id=4549&CGid=>.

Administration Punishment Law’s Article 5 (1986 version)<sup>534</sup> and Article 9 (2005 version)<sup>535</sup> state that in civil disputes violating public security like those involving fighting or destruction of property, public security authorities can intervene to mediate the conflict if the situation is not horribly serious. The 2005 version further adds that if the situation cannot be resolved through mediation or an agreement was not carried out, police can otherwise punish violators of public security according to law in the context of civil disputes. These legal articles clearly indicate that public security authorities can intervene in civil dispute resolution, whether it is to help mediate or hold people accountable for illegal public security violations, so the excuse that police cannot intervene in civil disputes, according to law, is simply untrue.

Second, despite the claims of the uncertainty of the legal framework specifically for managing *yinao* and *yinao*’s definition, the legal framework for managing *yinao* is actually surprisingly clear and was quite comprehensive from as early as 1986. Since that time, there have been a number of laws, regulations, and circulars by central ministries directly and indirectly addressing *yinao*,<sup>536</sup> even prior to formal criminalization of group-led *yinao* in 2015.<sup>537</sup> For the remainder of the section, I focus my analysis on the Public Security Administration Punishments Law as well as the on the “Joint Notice on

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<sup>534</sup> “中华人民共和国治安管理处罚条例[失效]\_全文 英文:Regulations on the People’s Republic of China on Administrative Penalties for Public Security 1986,” accessed December 17, 2016, [http://www.pkulaw.cn/fulltext\\_form.aspx?Gid=2959](http://www.pkulaw.cn/fulltext_form.aspx?Gid=2959).

<sup>535</sup> Standing Committee of the National People’s Congress, “Public Security Administration Punishments Law of the People’s Republic of China.”

<sup>536</sup> Relevant documents prior to 2014 for managing *yinao* include the “Joint Notice on Protecting Hospital Order” (1986, Ministry of Public Health and Ministry of Public Security); the Criminal Law of the People’s Republic of China (first passed in 1979, last amended in 2015); and the “Public Security Administration Punishments Law of the People’s Republic of China” (first passed in 1986, amended in 1994; went out of effect for updated version in 2005, revised in 2012).

<sup>537</sup> “Amendment to the Criminal Law of the People’s Republic of China (9th Amended Version),” National People’s Congress of the People’s Republic of China, August 30, 2015, Article 290, [http://www.npc.gov.cn/npc/xinwen/2015-08/31/content\\_1945587.htm](http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm).

Protecting Hospital Order” because they are most directly relevant for addressing *yinao* as it started to turn into a social phenomenon in the early 2000s.<sup>538</sup>

Table 5 on page 160 below shows that by 2005 nearly all types of behaviors that constitute *yinao* had been prohibited by laws or policy documents. As early as 1986, the Health Ministry and Public Security Ministry issued a joint statement specifically on maintaining order in hospitals that prohibited funeral offerings on hospital premises, placing corpses in public areas, vandalizing hospital property, and shaming and assaulting health care workers.<sup>539</sup> While the Public Security Administration Punishments Law in 1986 did not as specifically prohibit as many *yinao* behaviors, it prohibited “disturbing the order of medical institutions” and specifically prohibited threatening and shaming others, limiting another person’s freedom, and assaulting someone.<sup>540</sup> In fact by 1986, all but two *yinao* behaviors (hanging condemnatory banners and blocking doors and offices) were explicitly prohibited between these two documents. By 2005, when the Public Security Administration Punishments Law, was redrafted, even more *yinao* behaviors were added to this law: a condemnatory, setting out corpses, hindering ambulance mobility, and vandalizing both private and public property (see Table 5 for specific article references in each document).

Given that there was no lack of documentation prohibiting *yinao*, then why have police tended to not respond to *yinao* incidents? Another argument is that the terms

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<sup>538</sup> Other relevant laws include the “People’s Republic of China General Principles of Civil Law,” “Law of the People’s Republic of China on Assemblies, Processions, and Demonstrations” (1989), and “Public Health Management Articles.”

<sup>539</sup> “The Ministry of Health and Ministry of Public Security Publish ‘Joint Notice’ Prohibiting Any Person Using Any Excuse to Disrupt the Order of Hospitals 卫生部公安部发出《联合通告》禁止任何人医任何借口骚乱医院秩序,” *The People’s Daily*, November 4, 1986, Third edition.

<sup>540</sup> “中华人民共和国治安管理处罚条例[失效]\_全文 英文:Regulations on the People’s Republic of China on Administrative Penalties for Public Security 1986.”

within the legal framework are unclear. For example, the term “public place” is often unclear or left undefined by laws.<sup>541</sup> Liu Weining asks, when someone leaves a corpse out, what parts of a hospital does “public place” apply to?<sup>542</sup> If *yinao* occurs in the hospital’s main courtyard, lobby, waiting room, or individual sickroom, what law should be used? Again, the logic here is weak, especially with regards to public hospitals because they are classified as “public institutions” (*shiyue danwei*, 事业单位), so by definition they are institutions created by the government for public service. One interview also implied it did not matter whether it was public or private property: “In other types of crimes, like robbing a bank, the police will come, no questions asked. It seems like in all other acts of violence, protest, they will come, but not for *yinao*. Why is it that they respond to other instances of violence but not this type?”<sup>543</sup>

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<sup>541</sup> Liu Weining, “Discussing the Strength of Law Enforcement within the Context of Public Security in Addressing Medical Violence [讨论公安机关在‘医闹’中的执法力度].”

<sup>542</sup> Liu Weining, 55.

<sup>543</sup> Hospital Party Secretary, Interview No. 003, 2014.

**Table 5: Relevant Laws and Documents for Managing Yinao**

Year	Relevant Law/Document	Type	Yinao behaviors law/document explicitly applicable to									
			A banner with condemnation	Refusing to leave (sitting, standing, laying down)	Setting up funeral alter, wreaths, burning funeral money	Parking corpse in public areas	Blocking doors, offices, ambulances (blocking access to care for	Vandalizing hospital property	Blackmail and extortion	Threatening and shaming hospital staff	Stalking and surrounding hospital staff	Assault
09/1986 (1987 EIF), amended 1994	Public Security Administration Punishments Law of the People's Republic of China (1986)	Law	-	? Article 19.1 "Disturb the order of organizations, groups, public institutions, resulting in the inability to conduct work, production, medicine, education, and research, still not resulting in serious loss.	? Article 19.1	? Article 19.1	? Article 19.1	? Article 19.1 (above) AND (maybe – some uncertainty as to whether medical disputes constitute civil disputes) Article 5	✓(for property only) Article 23.3 :	✓Article 22.3 & 22.5: The following behaviors infringing on other's rights, but insufficient to constitute crime, punishable by 15 or less detention, 200 yuan or less fine or warning;	✓Article 22.2: The following behaviors infringing on other's rights, but insufficient to constitute crime, punishable by 15 or less detention, 200 yuan or less fine or warning;	✓Article 22.1: The following behaviors infringing on other's rights, but insufficient to constitute crime, punishable by 15 or less detention, 200 yuan or less fine or warning;
10/1986	Joint Notice from Ministry of Public Security, Ministry of Public Health on Protecting Hospital Order	Notice	-	✓ #5 (but refusing to leave bed, not so much protest behaviors)	✓#6 (says no offering activities within hospital to corpse)	✓	- (but "disorderly behavior" in #8 could be interpreted to include)	✓#8	-	✓ #8 (shaming but not threatening included)	-	✓ #8
08/2005 (amended 2012)	Public Security Administration Punishments Law of the People's Republic of China (1986) 中华人民共和国治安管理处罚法	Law	✓ Article 24.5: "Showing any insulting banner, scroll, or insulting article," punishable by 200 yuan fine, and in serious circumstances detained between 5-10 days and not fined more than 500 yuan.	? Article 23.1 Where a person commits any of the following acts, he shall be given a warning or a pecuniary penalty. If the circumstances are serious, he (she) shall be detained for not less than 5 days but not more than 10 days and may be fined 500 yuan: 1) He (she) disturbs the order of any organ, social organization, enterprise or public institution and makes it impossible for the work, production, business, medical services, teaching or scientific research to proceed normally, but has not caused any serious loss;	? Article 25.3 Anyone who commits any of the following acts shall be detained for not less than 5 days but not more than 10 days, and may be concurrently fined 500 yuan. If the circumstances are relatively lenient, he (she) shall be detained 5 days or less or be fined not more than 500 yuan: (3) Disturbing public order by threat to set fire, blast or throw dangerous substances.	✓ Article 65.2 Anyone who commits any of the following acts shall be detained for not less than 5 days but not more than 10 days. If the circumstances are serious, he shall be detained for not less than 10 days but not more than 15 days, and may be concurrently fined 1,000 yuan: (2) Parking any corpse at a public place or affecting the normal life or work order of any other person for parking a corpse, and refusing to stop his (her) act after being dissuaded from doing so.	✓50.3 (hindering ambulance)	✓Article 26.3 Anyone who commits any of the following acts shall be detained for not less than 5 days but not more than 10 days, and may be fined not more than 500 yuan. If the circumstances are quite serious, he (she) shall be detained for not less than 10 days but not more than 15 days, and may be fined not more than 1,000 yuan: (3) Forcibly taking or damaging, destroying or appropriating any public or private property;	✓ (for property only) Article 49 Anyone who steals, swindles, plunders, pillages, extorts or intentionally damages or destroys any public or private property shall be detained for not less than 5 days but not more than 10 days, and may be concurrently fined 500 yuan. If the circumstances are serious, he (she) shall be detained for not less than 10 days but not more than 15 days, and may be concurrently fined 1,000 yuan.	Article 42 Anyone who commits any of the following acts shall be detained for not more than 5 days or shall be fined not more than 500 yuan. If the circumstances are relatively serious, he (she) shall be detained for not less than 5 days but not more than 10 days, and may be concurrently fined not more than 500 yuan: (1) Threatening the personal safety of any other person by writing threat letters or by any other means; (2) Insulting any other person openly or making up stories to defame any other person	✓ Article 40.3 Anyone who commits any of the following acts shall be detained for not less than 10 days but not more than 15 days, and shall be concurrently fined not less than 500 yuan but not more than 1,000 yuan. If the circumstances are relatively lenient, he (she) shall be detained for not less than 5 days but not more than 10 days, and shall be concurrently fined not less than 200 yuan but not more than 500 yuan:	✓ Article 43 Anyone who blows any person or intentionally injures the body of any person shall be detained for not less than 5 days but not more than 10 days, and shall be fined not less than 200 yuan but not more than 500 yuan. If the circumstances are lenient, he (she) shall be detained for not more than 5 days or shall be fined not more than 500 yuan.

## Law Enforcement under Zhou Yongkang and President Hu Jintao

The laws themselves are insufficient for explaining why they were not enforced; they are not as unclear as they are often characterized to be. However, there are other important political contexts surrounding these laws that may have contributed to *yinao*'s ability to flourish: the directives of former Minister of Public Security Zhou Yongkang and the *weiwen* (stability maintenance) policy of Hu Jintao.

The now imprisoned but formerly powerful Zhou Yongkang was Minister of Public Security (governs police in China) from 2002-2007. He then became a member of the Standing Committee of the Politburo of the 17<sup>th</sup> Party Congress<sup>544</sup> and also became the head of the powerful Central Party Political-Legal Committee, where he continued to have power over China's legal and public security systems until 2012.<sup>545</sup> An interview with a hospital administrator revealed the connection of Zhou Yongkang to *yinao*, saying that Zhou Yongkang's handling of *yinao* was a mistake – he treated medical disputes as “civil issues,” “causing our administration of justice to fall back.”<sup>546</sup> When I asked this interviewee how he knew this, he said that this is what the police told him - that this policy (to treat *yinao* as part of civil disputes and to not intervene) was a policy of the national Ministry of Public Safety,<sup>547</sup> which Zhou Yongkang led during the rise of *yinao* in the early 2000s. When this interviewee led his hospital's Medical Affairs Office, the police would only respond in the most serious of cases, but not in cases, for example, such as placing the corpse in the hospital public areas. He said, “[If] no one has hit you,

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<sup>544</sup> This is China's most powerful leadership group, with the Party Secretary (who is also almost always China's president), serving as its leader.

<sup>545</sup> Jonathan Kaiman, “Zhou Yongkang: Oil Boss Who Became China's Third Most Powerful Man,” *The Guardian*, July 29, 2014, sec. World news, <http://www.theguardian.com/world/2014/jul/29/zhou-yongkang-china-profile>.

<sup>546</sup> Hospital official and former hospital affairs office head, Interview No. 072, 72.

<sup>547</sup> Hospital official and former hospital affairs office head, Interview No. 072.

they won't handle it."<sup>548</sup> He mentioned hanging banners, setting up funeral altars and wreaths, blocking doors, and even some violent behaviors could all be seen in the context of civil disputes.<sup>549</sup> While I have not further validated this claim, if true, it explains why the claim of *yinao* behaviors being civil disputes worked as a valid explanation for police non-intervention despite clarity in the law for police to handle civil disputes: the public security tsar Zhou Yongkang had said so, supporting the well-known fact that often powerful leaders in China ultimately wield enforcement power.

In the broader political context of Zhou Yongkang's alleged policy on *yinao* was former President Hu Jintao's (General Secretary of CCP from 2002-2012) overarching policy of building a "socialist harmonious society," with "stability maintenance" (*weiwen*) as an important way to achieve this.<sup>550</sup> Although the bureaucratic infrastructure to enforce social stability arguably began following the Tiananmen democracy movement of 1989,<sup>551</sup> enforcement of stability maintenance during the early and mid 2000s under the Hu Jintao administration saw some changes in enforcing public security.<sup>552</sup> During this time, the framework for police enforcement around stability maintenance became increasingly based on Mao Zedong's view of criminal justice built on his "theory of social contradictions."<sup>553</sup> This theory differentiates between "contradictions" (conflicts) among the people (like *yinao*) and those that threaten the CCP (this latter type of contradiction can be broadly defined, but the highly organized spiritual group Falun

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<sup>548</sup> Hospital official and former hospital affairs office head.

<sup>549</sup> Hospital official and former hospital affairs office head, 072.

<sup>550</sup> "Introduction to the Main Table of Contents of Comrade Hu Jintao's 'Theory on Construction Socialism and Harmonious Society' 胡锦涛同志《论构建社会主义和谐社会》主要篇目介绍," April 25, 2013, [http://news.xinhuanet.com/politics/2013-04/25/c\\_115542334.htm](http://news.xinhuanet.com/politics/2013-04/25/c_115542334.htm).

<sup>551</sup> Yuhua Wang and Carl Minzner, "The Rise of the Chinese Security State," *The China Quarterly* 222 (June 2015): 339–59, <https://doi.org/10.1017/S0305741015000430>.

<sup>552</sup> Susan Trevaskes, "Using Mao to Package Criminal Justice Discourse in 21st-Century China," *The China Quarterly* 226 (June 2016): 313–15, <https://doi.org/10.1017/S0305741016000266>.

<sup>553</sup> Trevaskes, 313.

Gong is a clear example of this).<sup>554</sup> As a result of this mindset, the majority of people were to be treated with more lenience because their conflicts were just amongst themselves, and severe punishment would be reserved for a minority of serious offenders.<sup>555</sup>

Another possible reason for this shift in police force policy may have also been in part due to the controversial 2003 Sun Zhigang case. Sun Zhigang was a 27-year-old college graduate from Wuhan who was taken into custody in Guangzhou for not having a residence permit and was brutally beaten to death while in detention.<sup>556</sup> The news exploded online, and netizens called upon the government to severely punish the perpetrators of the crime and to handle the case openly and publicly, forming a large, powerful wave of public opinion.<sup>557</sup> This led to a reputation crisis for Chinese police, especially those in Guangzhou,<sup>558</sup> and according to one interviewee, “After this, all of China’s police dared not to fully perform the tasks of their job” (“全中国的警察不敢做到位”).<sup>559</sup> Before this incident, “law enforcement had been too strong” (“执法的权利以前太强”).<sup>560</sup>

### Social Stability Policy Bleeding into Hospital Governance

Notably, the timing of Hu Jintao’s leadership, the more lenient management of crime via social stability policy, as well as the Sun Zhigang case all occurred in the early

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<sup>554</sup> Trevaskes, 313–15.

<sup>555</sup> Trevaskes, 300.

<sup>556</sup> Li Tao, “From the Case of Sun Zhigang, Looking at the Police Crisis in Public Relations [从‘孙志刚事件’看警察危机公关,” *Journal of Chinese People’s Public Security University* 6 (2003).

<sup>557</sup> Li Tao, 132.

<sup>558</sup> Li Tao, 132. Note: This case may have not been as influential on law enforcement in other parts of China. An interview in Nanjing suggested that the case had an impact China’s custody and repatriation policy of migrants, but he had not connected it to policy response more generally. Hospital official and former hospital affairs office head, Interview No. 072.

<sup>559</sup> Prominent Professor of Medicine in Large Guangzhou Hospital, Interview No. 051.

<sup>560</sup> Prominent Professor of Medicine in Large Guangzhou Hospital.

2000s - right around the beginnings of *yinao*'s turn into a social phenomenon. Interviews suggest that the combined lack of police force to manage *yinao* in addition to employment incentives for officials to maintain social stability<sup>561</sup> put hospitals in a difficult position. A surgeon commented that a mission of social stability policy (*weiwēn*) is to control issues like *yinao*, adding, "On the surface, [*weiwēn*] looks tranquil, but beneath, there are undercurrents surging."<sup>562</sup>

A hospital administrator explained that *weiwēn* also exists in the United States, but maintaining public security in the US is based on law; China, however, "depends on people to maintain social stability" (*kaoren lai weiwēn*, 靠人来为维稳).<sup>563</sup> As a result, it becomes a vicious cycle: "Patients will threaten the hospital, [saying] 'If you don't give me money, I'll make trouble.' They threaten you, they will leave the corpse out somewhere, set up wreaths, burn funeral money, [threaten] to go to Tiananmen."<sup>564</sup> When asked if patients would really go to Tiananmen for medical disputes, the interviewee exclaimed, "It doesn't matter if it is real or not, we have to regard it as if it were true."<sup>565</sup>

He explained how the internal reporting process for public hospitals worked: hospitals have to report *yinao* and other incidents to their superiors in their overseeing governing agency, and the higher authorities will say to them, "this [incident] cannot leave the hospital."<sup>566</sup> The hospitals then give the threatening patients money to make the issue disappear: "one person gets money, the next person gets money,"<sup>567</sup> so it becomes a pattern of behavior. The authorities want to ensure the "earlier to not have something

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<sup>561</sup> Wang and Minzner, "The Rise of the Chinese Security State," 350.

<sup>562</sup> Prominent Professor of Medicine in Large Guangzhou Hospital, Interview No. 051.

<sup>563</sup> Hospital official, Interview No. 070.

<sup>564</sup> Hospital official.

<sup>565</sup> Hospital official, 7.

<sup>566</sup> Hospital official, 070.

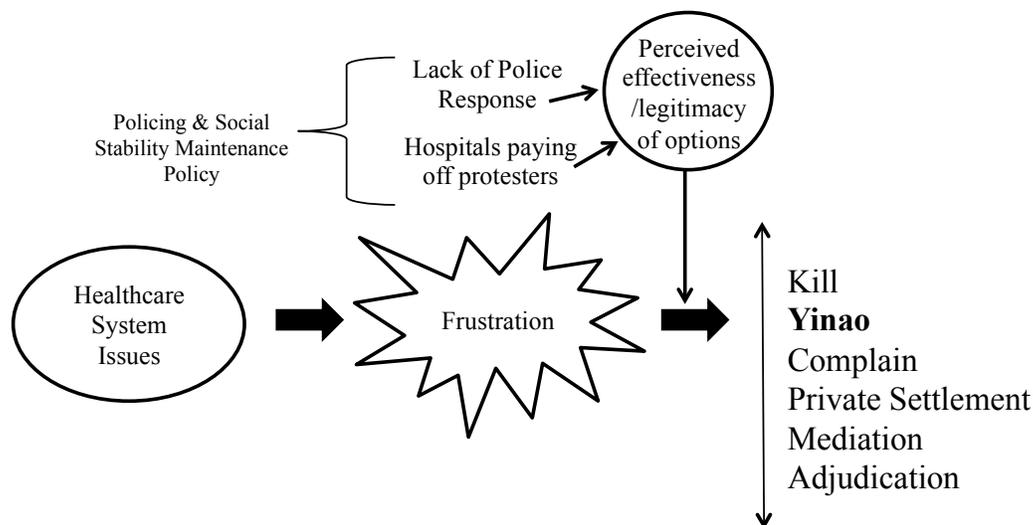
<sup>567</sup> Hospital official, Interview No. 070.

happen” (早点别出事). The interviewee concluded, “This is not maintaining stability according to law. They [the patients] will threaten, and the way we have [carried out] *weiwen* has contributed to this. China’s social stability maintenance is very complicated.”<sup>568</sup> He added that the overall situation has improved since Xi Jinping has come to power and especially since 2015 when *yinao* was criminalized. These responses will be dealt with in the next chapter.

### Adding to the Diagram to *Yinao*

In the last section I established how health care issues could lead to frustration. This section analyzes how that frustration may be channeled in the decision to use *yinao*. When police do not respond to *yinao* incidents, this tacitly legitimizes *yinao* behaviors. When hospitals pay off protesters as a result of *weiwen* policies, they make *yinao* effective. If complainants see that *yinao* is both a legitimate and effective way for settling claims, then they are likely more willing to use *yinao* to resolve disputes.

**Figure 19: Addition of Law Enforcement and Social Stability Variables**



<sup>568</sup> Hospital official, 70.

## The Media: Negative Media Coverage of Physicians

Healthcare workers often note that negative media coverage of notorious medical dispute cases has fomented tense doctor-patient relations, contributing to the development of *yinao*.<sup>569</sup> Two famous cases that are particularly notorious are “the postpartum woman whose anus was sown up” (产妇肛门北缝事件).<sup>570</sup> and “eight cents-gate” (八宝们),<sup>571</sup> both which accused doctors of malpractice and ended up being false. However, other stories, like “doctors fleeing” (*yi paopao*), in which health care workers fled an operating room on fire without saving the patient, were true.<sup>572</sup>

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<sup>569</sup> ER Group Interview, Interview No. 013; OBGYN Group, Interview No. 014; ICU Group Interview, Interview No. 017; Tucker et al., “Patient–physician Mistrust and Violence against Physicians in Guangdong Province, China: A Qualitative Study,” 4.

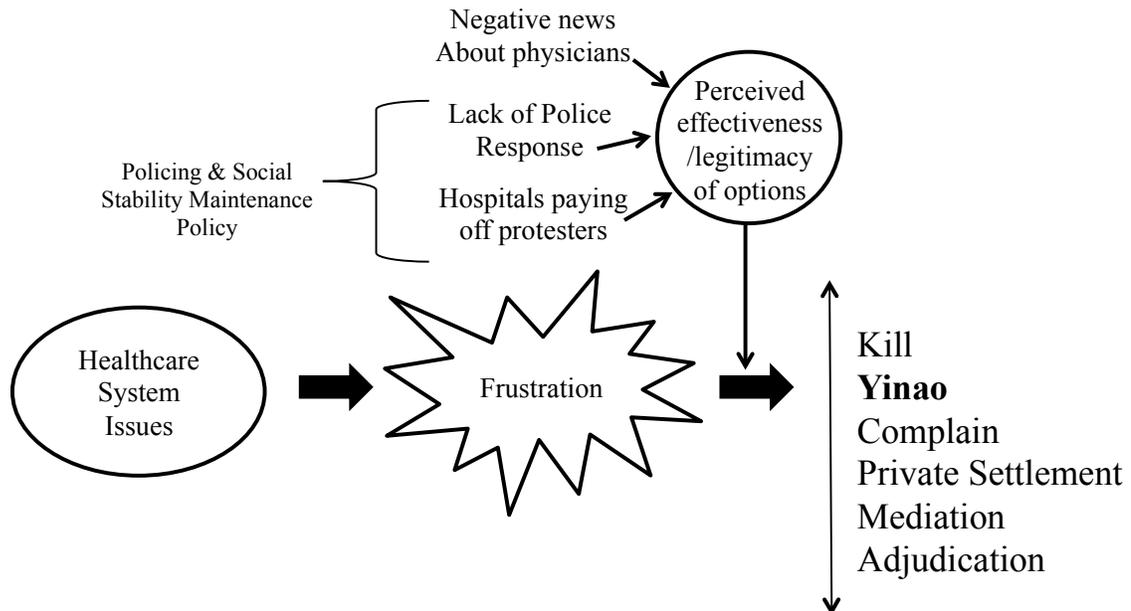
<sup>570</sup> This case occurred in July 2010 when it was reported that a woman’s anus had been sown up after giving birth to her son. The responsible midwife reportedly told the woman’s husband that this was a free procedure to remove anal hemorrhoids; however, the husband thought instead that the midwife did this as revenge since the family had not given her a red envelope (a common way of bribing doctors prior to receiving medical procedures) for delivering their child. The hospital president said that the woman’s anus had not been sewn up, and that this case did not constitute a medical accident. The different accounts of the patient and the midwife garnered national media attention, becoming an infamous case highlighting the issues of malpractice and corruption. However, CCTV’s “News Investigation” (新闻调查) program found that the story was false. The woman’s anus had not been sewn up; there had instead been an emergency procedure performed following the birth to stop postpartum rectal bleeding caused by hemorrhoids. Source: “Sown up Anus Incident: Media Owes an Apology” [‘缝肛门’事件: 媒体欠一个道歉], ifeng.com i-talk, February 2, 2013, <http://news.ifeng.com/opinion/special/fenggangmen/>.

<sup>571</sup> The second infamous case “Eight Cents-Gate” occurred in 2011 when a doctor at Shenzhen Children’s Hospital recommended that a 6-day-old infant unable to regularly pass bowel movements undergo anal fistula surgery, costing over RMB 100,000 (\$14,420). The father of the infant who has a background in medicine refused to have this surgery performed and went to another hospital for an assessment. The second hospital prescribed paraffin wax, costing eight cents, to ease the infant’s symptoms. This story also went viral highlighting the corruption and untrustworthiness of physicians. However, later it was confirmed that the infant did have congenital megacolon, a condition that obstructs the passage of stool. The father of the child later went on to write an apology. Source: Dawei Fu, “Hospital Wants to Perform a Surgery Costing Tens of Thousands of Yuan, but in the End Only 8 Cents Was Needed for Treatment [医院要动十几万元的手术 最终 8 毛钱治愈],” *Shenzhen News*, September 5, 2011, [http://www.sznews.com/zhuanti/content/2011-09/05/content\\_6200405.htm](http://www.sznews.com/zhuanti/content/2011-09/05/content_6200405.htm); Jing Tao and Xuan Tong, “Shenzhen ‘8 Cents-Gate’ patient Healthy and Discharged from Hospital, Father Writes a Letter of Apology [深圳‘8毛门’小患者康复出院 父亲写信致歉],” *Shenzhen News*, October 29, 2011, [http://www.sznews.com/zhuanti/content/2011-10/29/content\\_6192189.htm](http://www.sznews.com/zhuanti/content/2011-10/29/content_6192189.htm)

<sup>572</sup> Wu Junyi and Rao Zhen, “Shanghai ‘Doctors Fleeing’ Case Sparks Controversy about Criminality of the Case [上海‘医跑跑’涉嫌犯罪引争议 院方称将负全责],” *Tencent Finance*, August 27, 2011, <http://finance.qq.com/a/20110827/000820.htm>.

While these viral stories about corruption and malpractice in China's hospitals may not directly cause *yinao* incidents, they generate a culture of bias against healthcare workers, which may help justify violence and protest against them. For this reason, I also add them as a legitimatizing factor for *yinao* in the diagram. The Internet plays a crucial role in this process because it enables these stories to go viral in the first place. The next section exclusively discusses the role of Internet in aiding *yinao* to become a social phenomenon.

**Figure 20: Addition of Negative News Coverage of Physicians**



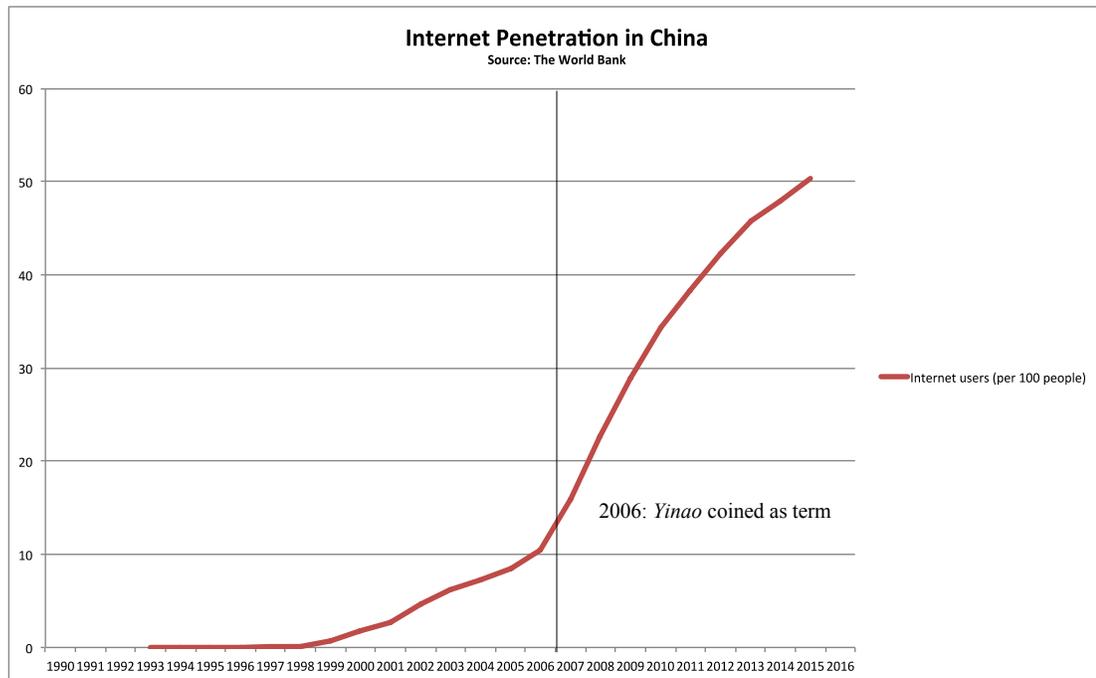
### Internet Usage

While *yinao* incidents started to accelerate around the early 2000s, China's Internet usage per 100 people was also increasing at the same time (see graph below). While the Internet could not have caused *yinao*, it arguably has made it possible for more people to read about it, post about it on blogs, and generally become more aware of it.

Even though there is evidence that *yinao* was occurring during the 1980s and 1990s, the Internet was not widely available during that time, so news did not travel as fast as it did in the 2000s – when *yinao* also started to accelerate.

**Figure 21: Internet Penetration in China**

Source: The World Bank



Data from Internet searches using Google Trends and Baidu Index bolster the argument above that increasing Internet access influenced the level attention to *yinao* received by society. These tools show the popularity of search terms during certain periods of times. I first used Google Trends to search *yinao* and a couple terms often related to and included in conversations about *yinao* (“doctor-patient relationship” and

“killing doctor”)<sup>573</sup> to assess interest in the topic (see page 170 for graph). I start with 2004 because it is the earliest available date for which this data can be pulled.

In Google Trends, the peaks and valleys show the trends in relative popularity among the three terms. These search terms are measured in “interest over time,” which is measured on a scale of 0 to 100. A value of 100 represents the peak popularity for a term; while a value of 50 means that it is half as popular as the highest peak on the graph. The numbers on the chart are relative, so for example a score of around 50 in 2004 for patient-doctor relationship means that at that point in time it was half as popular as *yinao* was as a search term in 2012 (the highest point on the graph). The peaks most likely correspond with high-profile events. For example, the spike in June/July of 2009 likely is related to a high-profile *yinao* incident in Nanping.<sup>574</sup> *Shayi* (杀医) saw a peak in March 2012, which likely due to a high-profile killing of a doctor in Harbin at that time.<sup>575</sup> This is important because it provides evidence that the Internet has enabled interest in *yinao* incidents.

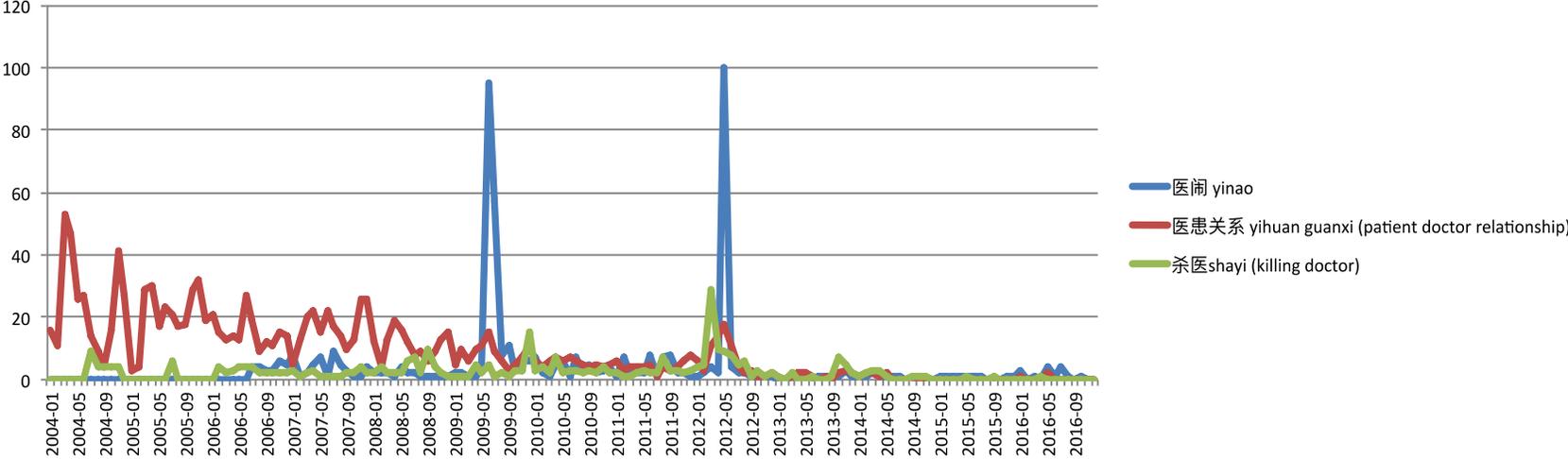
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<sup>573</sup> In addition to searching *yinao*, I also use 医患关系 (*yihuan guanxi* or “the patient-doctor relationship”) because it is a common phrase in China, especially in the context of the saying *yihuan guanxi jinzhang* or “the patient doctor-relationship is tense.” I also used the term 杀医 (*shayi* or “killing a doctor”), which occurs on the continuum of violent behaviors associated with *yinao* (see Chapter Five). Further, because these murder cases are so dramatic, they often receive a high level of media attention.

<sup>574</sup> “Newest Announcement: Progress on the Nanping Yinao Incident [最新通告：南平医闹事件进展],” China Medical Doctors Association, July 20, 2009, <http://www.cmda.net/xiehuixiangmu/falvshiwubu/bumendongtai/2010-12-08/5690.html>.

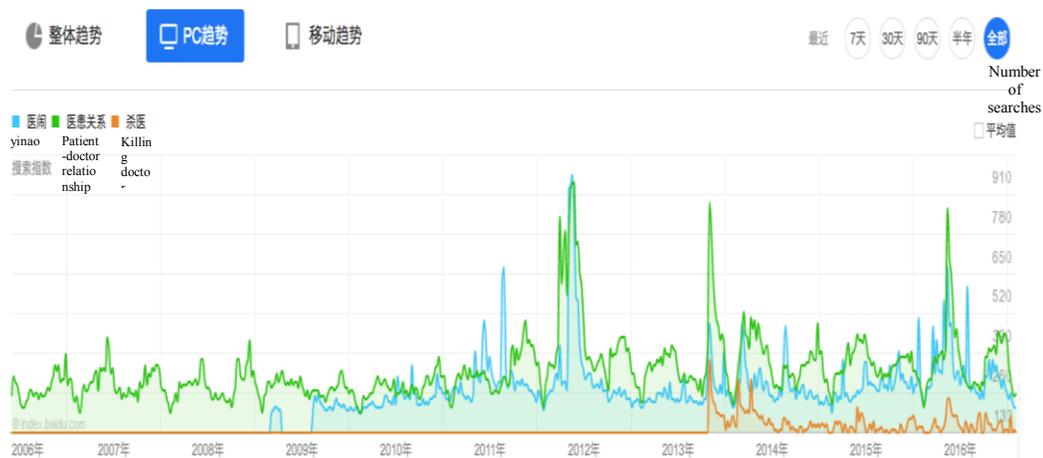
<sup>575</sup> Wang et al., “The Tragedy of China’s Patient-Doctor Conflicts Behind the Harbin Doctor Murder [哈尔滨杀医案背后中国的医患冲突悲剧].”

Figure 22: Google Trends for 2004-2016 for *Yinao* and *Yinao*-related Search Terms



However, Google Trends is limited for understanding popularity of search terms because Baidu (the Google of China) is more widely used in China, especially because in 2010 Google left China,<sup>576</sup> and in 2012 Google was blocked in China<sup>577</sup> (and is still blocked today). Baidu Index displays trends in the absolute number of searches across all types of electronic devices, as well as for PCs and cellular phones, separately. The data are displayed in the three figures below. Like the Google Trends data, data from Baidu Index show that increased search popularity correlates with *yinao* events, suggesting that Internet coverage has enabled greater attention to *yinao*. It is important to note that this type of data is incomplete, however, because it displays active searching, not passive following.<sup>578</sup> we are seeing how many people actively searched *yinao*, but not seeing how many people read about it or forwarded messages about it. As a result, the attention to *yinao* could be even greater than this data suggests.

**Figure 23: Baidu Trends for Yinao and Related Terms via PCs, 2006-2016**

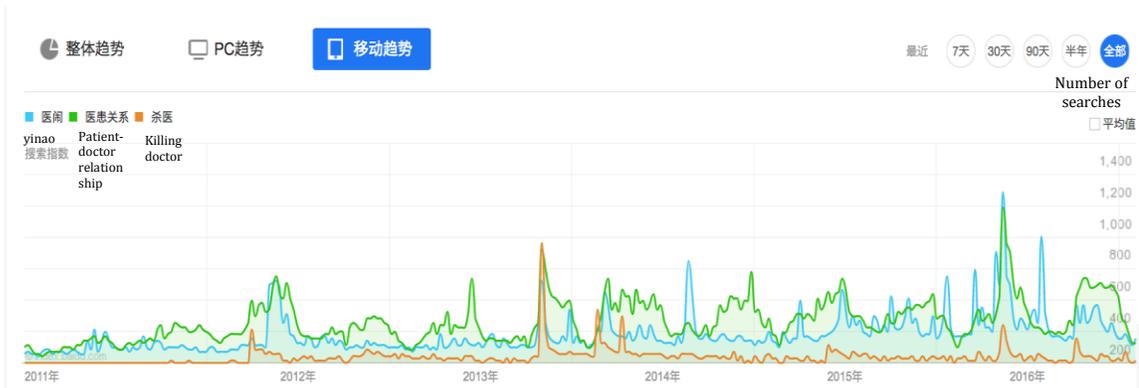


<sup>576</sup> Nicholas Carlson, “BREAKING: Google Pulls Search Engine Out Of China,” Business Insider, accessed February 20, 2017, <http://www.businessinsider.com/google-pulls-out-of-china-2010-3>.

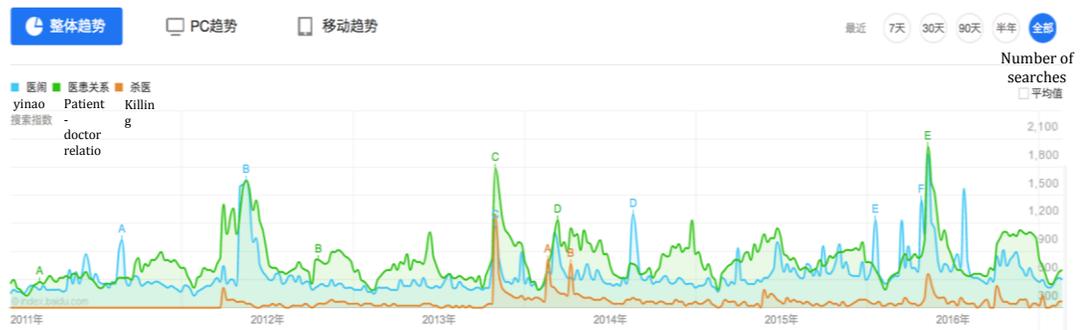
<sup>577</sup> “Web Monitor: China Takes Extraordinary Step of Blocking Google,” Washington Post, accessed February 20, 2017, <https://www.washingtonpost.com/news/worldviews/wp/2012/11/09/web-monitor-china-takes-extraordinary-step-of-blocking-google/>.

<sup>578</sup> Thanks to Dr. Charles Wiener for articulating this point.

**Figure 24: Baidu Trends for Yinao and Related Terms via Mobile Phone, 2011-2016**



**Figure 25: Overall Baidu Trends for Yinao and Related Terms, 2011-2016**



Baidu Index provides additional information on the peaks in the third graph (overall data across all device types) by linking the peaks with news articles associated with them. These data help further corroborate the claim above the Internet enabled increased attention to *yinao*. Table 6 below shows the associated events with the peaks for *yinao*. For *yinao*, all peaks except one are associated with actual *yinao* incidents. Interestingly, Peak B is associated with a depiction of *yinao* on a TV show that generated online discussion about the corruption of physicians. The two labeled peaks for “killing doctor” are linked to two murder cases in 2014 (described further in Chapter 7). The peaks for “doctor-patient relationship” turned out not to be good indicators for studying trends in *yinao* as they tend to be associated with broader policies, essays, or other events.

**Table 6: Events and Articles Linked with Peak *Yinao* Searches on Baidu**

Peaks	Date	Article	Event
Peak A	08/26/2011	医院对付医闹岂能使用“丛林法则”以暴制暴？ When hospitals handle yinao how can they use “the law of the jungle”: use violence against violence?	Jiangxi Nanchang First Hospital Armed Assault Incident: More than 30 of the patient’s relatives and 50 employees of the hospital. 15 people injured, three vans destroyed.
Peak B	05/17/2012	《心术》上演医闹持久战 引发热议红包论 “Xinshu” Screening Yinao Long War of Attrition, Triggers Commentary on Red Envelopes	Internet discussion of an episode of the popular television show “Xinshu” takes off as patients and doctors share their experiences – the episode is about how a physician is accused by a family for not taking the patient’s surgery seriously, which they believe to be true because the physician refused to take a red envelope of money before the surgery. When the patient suffered complications following the surgery, the family resorted to <i>yinao</i> .
Peak C	10/30/2013	广东医调委:五成现场医闹为“医闹组织”策划鼓动 Guangdong Mediation Committee: “50% of on-site yinao” are encouraged by “Yinao organizations”	5 vicious doctor-patient incidents ( <i>yinao</i> ) in the past week, from Guangzhou to Shenyang, from Nanchang to Wenling
Peak D	8/20/2014	如何让化解“医闹”回归法律轨道 How to make ameliorating “yinao” go back to legal track?	When still reeling from the Hunan Pregnant Woman Death incident, in Beijing there is the incident of a car driving to steal a dead body hitting police (both examples of <i>yinao</i> incidents)
Peak E	1/18/2016	北京卫计委: 坚决反对一切形式的医闹 Beijing Health and Family Planning Commission: Resolutely Opposing All Forms of Yinao	On January 11, 2016, a postpartum woman at Beijing Third Hospital died, causing a <i>yinao</i> event that received attention nationally.
Peak F	04/25/2016	警方鸣枪震慑医闹 辣椒水驱散无效 果断明枪示警震慑全场 Police fire warning shots to intimidate yinao, using pepper spray to clear the area was ineffective, decisive warning shots clear the area	Police fire warning shots during an <i>yinao</i> incident at Henan Province, Linying County People’s Hospital.

Analysis and Limitations

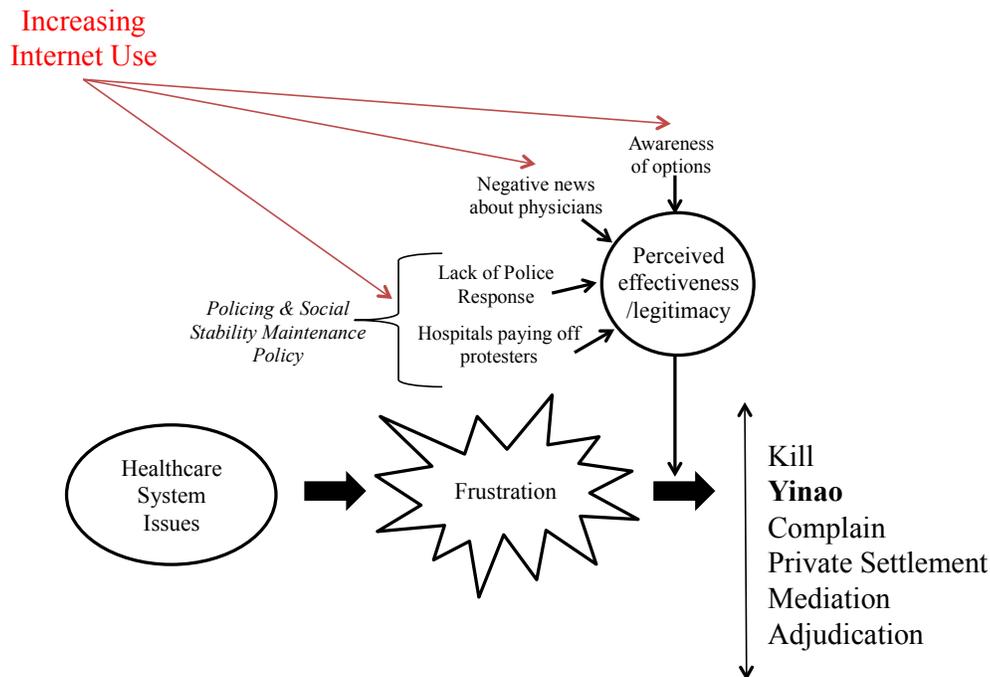
The data on increasing Internet usage in the 2000s, attentiveness to *yinao* via online searches, and increasing *yinao* incidents beginning in the 2000s strongly suggest that increasing internet access helped spread news about *yinao* in society. Even though *yinao* clearly existed in 1986, the difference between the periods of 1986 to the early 2000s and from the early 2000s to the present is Internet access – prior to the early 2000s,

there was very little Internet access in China. The increased attention to *yinao* via the Internet arguably helped solidify its place as a social phenomenon and also legitimized it as a known way for people to resolve medical disputes. As people became aware of this option, the lax police responses to it, hospitals appeasing it with money, and saw it becoming increasingly used over time, this may have led to increased adoption of it. While I cannot prove that increased online attention to *yinao* directly influenced individual decision-making in medical dispute cases that employed *yinao*, the logic above provides a sound argument for how increased Internet access likely influenced the development of *yinao* in society as a whole and nationwide.

One could also question this analysis with the following counterfactual: if there were no Internet, would *yinao* still have become a widespread social phenomenon? The answer is maybe; it is possible, but less likely for two reasons. The first is pace – while *yinao* in theory could have spread through more traditional news outlets (newspaper, TV), the pace would have been much slower without the speed of the Internet. Second, the Internet empowers individuals to share their own stories and to also spread news through social media and mobile applications. This means that without the Internet, the Chinese Communist Party (CCP) would have had greater ability to control reporting on *yinao* through newspapers and TV broadcasting, decreasing the likelihood of more people becoming aware of it if it chose not to report on *yinao*. Interestingly, before the internet took off in the early 2000s, we saw the lack of reporting on *yinao* during the 1980s and 1990s before it spread. Therefore, while any mode of communication that enables awareness can potentially foment *yinao*'s escalation into a national phenomenon, the

speed and relative freedom the Internet offers was likely able to help catapult *yinao* into a social phenomenon in the 2000s. The diagram below adds the role of the Internet.

**Figure 26: The Role of the Internet in Fomenting Yinao**



### Is *Yinao* Uniquely Chinese? Culture, Traditions, and *Yinao* Elsewhere

This section considers Chinese traditional and political cultures as potential causes of *yinao*, and argues that while Chinese traditional and political cultures influence the unique ways in which *yinao* is carried out in China, evidence of violence occurring against physicians in medical disputes in other countries demonstrates that the phenomenon of violence against physicians due to medical disputes is not uniquely Chinese.

#### Chinese Funerary Rituals in *Yinao*

It is important not to isolate *yinao* as a strange, contemporary phenomenon because many aspects of it appear in traditional Chinese funerary culture. Paying

professionals to create a ritual funeral performance has characterized Chinese funerals since imperial times.<sup>579</sup> In traditional Chinese culture, weeping represents a display of filial piety;<sup>580</sup> the harder one cries, the more filial piety displayed. As Huwy-min Liu highlights, “The obligatory aspect of outward expressions of grief and mourning is why traditionally people hired professional weepers if the bereaved felt that they were unable to cry for the full socially expected length and strength.”<sup>581</sup> Liu finds in her research that professional funeral weepers are still “alive and well” in China today, even though in the more urban areas of cities like Shanghai, they no longer exist.<sup>582</sup>

Other aspects of *yinao* also echo traditional funeral practices in China. For example, families and *yinao* professionals sometimes wear hemp or white cloth,<sup>583</sup> which is the garb for mourning in traditional Chinese culture.<sup>584</sup> Also in China, people traditionally have believed that burning items such as paper money transmits the money to their deceased relative to support them in their afterlife.<sup>585</sup> All of these rituals can be seen in *yinao* activities performed at hospitals today.

The ritual of disposal and burial of the body also has had cultural significance in China, even though today most bodies in urban China must be cremated.<sup>586</sup> Reputation after death is also important, not just traditionally and culturally, but also politically. In

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<sup>579</sup> James L Watson and Evelyn Sakakida Rawski, *Death Ritual in Late Imperial and Modern China*, vol. 8 (Univ of California Press, 1988), 13.

<sup>580</sup> Huwy-min Liu, “Dying Socialist in Capitalist Shanghai: Ritual, Governance, and Subject Formation in Urban China’s Modern Funeral Industry” (Boston University, 2015), 317.

<sup>581</sup> Liu, 318.

<sup>582</sup> Liu, 318.

<sup>583</sup> “Yinao in Suzhou Wearing Mourning Clothes and Laying Out Wreaths, Creating a Scene of Jumping from a Building [苏州现医闹 披麻戴孝放花圈上演跳楼秀].”

<sup>584</sup> Watson and Rawski, *Death Ritual in Late Imperial and Modern China*, 8:12.

<sup>585</sup> Watson and Rawski, 8:13.

<sup>586</sup> Liu, “Dying Socialist in Capitalist Shanghai: Ritual, Governance, and Subject Formation in Urban China’s Modern Funeral Industry”; Jonathan Kaiman, “In China, a Cremation Order Has Driven Some Elderly to Desperate Acts,” *Los Angeles Times*, November 6, 2015, <http://www.latimes.com/world/asia/la-fg-china-suicides-20151106-story.html>.

an interesting account by Martin Whyte, he mentions the case of a deceased museum curator who was shamed politically and after he died, his family would not remove the body from the museum until the government revived his name.<sup>587</sup> The use of corpses as a bargaining point in disputes is thus not unique to *yinao*.

#### Culture of big character posters and banners with official slogans

The other cultural and historical aspect commonly seen in *yinao* is the hanging of banners criticizing hospitals – this is called *la hengfu* (拉横幅) in Chinese. Examples of *la hengfu* in *yinao* include the banner messages in Table 7 on the following page.

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<sup>587</sup> Martin King Whyte, “Death in the People’s Republic of China,” in *Death Ritual in Late Imperial and Modern China*, ed. James L Watson and Evelyn Sakakida Rawski, vol. 8 (Univ of California Press, 1988), 312.

**Table 7: Examples of Yinao Banner Messages**

Banner (English)	Banner (Chinese)	Hospital Location	City
“Murder-hospital, doesn’t take responsibility, where is divine justice! Give me back my loved one!” <sup>588</sup>	杀人医院，擦官任命 天理公道何在！还我 亲人生命！	Across front doors	Kunming
“Murder- hospital, treat human life as if it were not worth a straw” <sup>589</sup>	杀人医院，草官官任 命	Across (what appears to be a ticket window)	Guiyang
“Evil Hospital” <sup>590</sup>	黑心医院	Carrying in protest	Kunming
“People’s Hospital, Give me Justice” <sup>591</sup>	人民医院，还我公道	Across the front doors with wreaths	Hebei, Xingtaishi (prefectural level cities)
“Only a tiny cold and dies in one day, the hospital gives no explanation” <sup>592</sup>	小小感冒一天死亡远 方不给说法	Across the front entry way	Hunan Province, Changsha City, Ningxiang county
“Twins Misdiagnosed as Uterine Fibroids, Give me back my sons, Give me back my grandsons.” (accompanied by photos of corpses of dead twins) <sup>593</sup>	双胞胎误诊为子宫肌 瘤，还我儿子，还我 孙子	Hand held stretched across within the hospital lobby	Yunnan province, prefectural level city of Yuxi
“Blood-debt Doctor Killed Someone” <sup>594</sup>	血债医生杀人	Front door	Haifeng county, Shandong province

<sup>588</sup> “Kunming Patient’s Family Play Funeral Music, Burn Money, Doctors Wear Helments to Work [昆明患者家属放哀乐烧纸钱 医生戴安全帽工作],” Guanchazhe (the Observer), August 28, 2015, [http://www.guancha.cn/life/2015\\_08\\_28\\_332324.shtml](http://www.guancha.cn/life/2015_08_28_332324.shtml).

<sup>589</sup> “Guiyang First Hospital ‘leaked Diagnosis’ Causes over 20 People to Hang a Banner Demanding for an Explanation [贵阳一医院‘漏诊’遭 20 余人拉横幅讨说法],” People’s Daily Online, May 4, 2014, <http://gz.people.com.cn/n/2014/0504/c222152-21129800.html>.

<sup>590</sup> “杀人县医院还我儿子来！！ [Killer County Hospital Give My Son Back],” Baidu, accessed December 9, 2016, [http://image.baidu.com/search/detail?ct=503316480&z=0&ipn=d&word=%E5%8C%BB%E9%99%A2%E F%BC%8C%E6%8B%89%E6%A8%AA%E5%B9%85&step\\_word=&hs=0&pn=112&spn=0&di=137231036910&pi=0&rn=1&tn=baiduimagedetail&is=0%2C0&istype=2&ie=utf-8&oe=utf-8&in=&cl=2&lm=-1&st=-1&cs=2794938594%2C2691866618&os=954506870%2C4042981932&simid=4199678492%2C639374489&adpicid=0&ln=1985&fr=&fmq=1481256002090\\_R&fm=&ic=0&s=undefined&se=&sme=&tab=0&width=&height=&face=undefined&ist=&jit=&cg=&bdtype=0&oriquery=&objurl=http%3A%2F%2Fimgsrc.baidu.com%2Fforum%2Fw%3D580%2Fsign%3Dcbbb5b8b728da9774e2f86238050f872%2F76540c338744ebf89b67fc87d8f9d72a6059a72c.jpg&fromurl=ippr\\_z2C%24qAzdH3FAzdH3Fptjkw\\_z%26e3Bkwt17\\_z%26e3Bv54AzdH3FAzdH3Fdnmab00m9d&gsm=5a&rpstart=0&rpnum=0](http://image.baidu.com/search/detail?ct=503316480&z=0&ipn=d&word=%E5%8C%BB%E9%99%A2%E F%BC%8C%E6%8B%89%E6%A8%AA%E5%B9%85&step_word=&hs=0&pn=112&spn=0&di=137231036910&pi=0&rn=1&tn=baiduimagedetail&is=0%2C0&istype=2&ie=utf-8&oe=utf-8&in=&cl=2&lm=-1&st=-1&cs=2794938594%2C2691866618&os=954506870%2C4042981932&simid=4199678492%2C639374489&adpicid=0&ln=1985&fr=&fmq=1481256002090_R&fm=&ic=0&s=undefined&se=&sme=&tab=0&width=&height=&face=undefined&ist=&jit=&cg=&bdtype=0&oriquery=&objurl=http%3A%2F%2Fimgsrc.baidu.com%2Fforum%2Fw%3D580%2Fsign%3Dcbbb5b8b728da9774e2f86238050f872%2F76540c338744ebf89b67fc87d8f9d72a6059a72c.jpg&fromurl=ippr_z2C%24qAzdH3FAzdH3Fptjkw_z%26e3Bkwt17_z%26e3Bv54AzdH3FAzdH3Fdnmab00m9d&gsm=5a&rpstart=0&rpnum=0).

<sup>591</sup> Xingtai Yaba (“the Xingtai Mute”), “Xingtaishi People’s Hospital Inpatient Building Sees Wreaths Blocking Doors [邢台市人民医院住院大楼遭花圈堵门],” accessed December 9, 2016, <http://tieba.baidu.com/p/3995791635>.

<sup>592</sup> “Baby Girl with High Fever Admitted to Hospital and Dies, Family Hangs a Banner at the Hospital and Arrested 【女婴发高烧住院不治身亡 家属在医院拉横幅被拘】,” bbs.rexian.net.cn, May 18, 2012, <http://bbs.rexian.net.cn/read-htm-tid-818179.html>.

<sup>593</sup> “zai huishou” (username), “Following Twins Accidental Miscarriage: Family Members Arrive at the Hospital with a Banner Demanding an Explanation [双胞胎意外流产追踪：家属到医院拉横幅讨说法],” January 23, 2013, <http://www.gaogulou.com/forum.php?mod=viewthread&tid=249101>.

<sup>594</sup> “Haifeng Hospital Door There Are People with a Banner, What Is the Situation? [海丰彭湃医院门口有人拉横幅，什么情况? ],” accessed December 10, 2016, <http://www.soocoo.net/news-id-801744.html>.

Banners expressing political opinions or grievances became a popular form of political expression under communism in China and are called *dazibao* “big character posters.” *Dazibao* “are a form of speech unique to China. They are created by writing large characters on pieces of paper or old newspaper then pasting the paper up in public areas. No special skill or equipment is required. *Dazibao* are used to communicate a broad range of ideas in a variety of forms including essays, news reports, poems, cartoons, slogans, and even novels.”<sup>595</sup>

Traditionally, posters written with large characters had been used for business advertising, public notices, and good news, but rarely for expressing political opinions.<sup>596</sup> A CCP member during the Yan’an period<sup>597</sup> first used big character posters for political reasons to “criticize party leaders for their arbitrary and repressive treatment of political dissent.”<sup>598</sup> The Party has since had a mixed relationship with *dazibao*; while they beheaded the author of the first *dazibao* in 1947 and became furious over their use to criticize the CCP during the “Hundred Flowers Movement,” Mao later encouraged *dazibao* that favored his opinions to promote his political goals and used them to initiate the Cultural Revolution.

*Dazibao* ranged from containing political slogans and short sentences to entire essays laid out in several posters. Mao officially approved *dazibao*, and they were known as one of the four great freedoms of political expression, though they were always subject to official interpretation and control.<sup>599</sup> According to Sheng Hua, “despite the

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<sup>595</sup> Hua Sheng, “Big Character Posters in China: A Historical Survey,” *Journal of Chinese Law* 4 (1990): 234 (footnote 1).

<sup>596</sup> Sheng, 236.

<sup>597</sup> The CCP was headquartered in Yan’an after the Long March from 1936-1945.

<sup>598</sup> Sheng, “Big Character Posters in China: A Historical Survey.”

<sup>599</sup> Zhao Huasheng, “China’s View of and Expectations from the Shanghai Cooperation Organization,” *Asian Survey* 53, no. 3 (June 1, 2013): 238, <https://doi.org/10.1525/as.2013.53.3.436>.

leadership's control and censorship efforts over three decades, *dazibao* had contributed significantly toward a more mature political mentality in China.”<sup>600</sup>

Use of *dazibao* became powerful during the Democracy Wall Movement (1978-1980) following Mao's death. The most famous *dazibao* of this time by 28-year-old Wei Jingsheng indirectly criticized Deng Xiaoping's four modernizations by arguing that to achieve true modernization, China must have a fifth modernization – democracy.<sup>601</sup> The 1979 criminal law introduced during this time criminalized the use of *dazibao* that publicly insult another person or fabricates facts to defame him and even sanctions imprisonment for it. During spring 1989 university students used *dazibao* at university campuses and Tiananmen Square.<sup>602</sup>

In a hospital field study in 1979-1980, American authors observed the use of *dazibao* in protest to a hospital that resembles *yinao*. The authors reported the following:

“In one case we were told about, the parents of a girl who had died of hepatitis offered her body to the hospital in exchange for 400 yuan and a job for the girl's mother. When the hospital leaders refused this proposal, her parents hung a large poster (*dazibao*), complete with cartoon, on the hospital entrance saying that the physician taking care of their daughter had killed her by giving an incorrect injection. After a visit from the head of the hospital, the parents retracted their claims and the matter was dropped.”<sup>603</sup>

This brief historical analysis shows that interest expression through banners has been a way in which Chinese citizens have become socialized to air their grievances, which gives us context to understand why banners are so apparent in *yinao* demonstrations today.

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<sup>600</sup> Sheng, “Big Character Posters in China: A Historical Survey,” 243.

<sup>601</sup> Huasheng, “China's View of and Expectations from the Shanghai Cooperation Organization,” 246.

<sup>602</sup> Sheng, “Big Character Posters in China: A Historical Survey,” 251–52.

<sup>603</sup> Henderson and Cohen, *The Chinese Hospital*, 126.

### Pengci and Trickery in Today's China

An interesting general cultural context of today's China is the idea of using trickery to make money. One method of doing this is called *pengci* (碰瓷), which literally means to “bump into porcelain.” The origin of the word comes from the idea of an owner of a porcelain store knocking over a piece of porcelain to make it look like a customer broke it and then to demand compensation for it. Today this refers to deliberately crashing into someone to make money off him or her. One interviewee gave an example of a *pengci* event she had witnessed before: an old man driving a motorcycle would crash into someone at every block and demand compensation; while most people knew this was *pengci* and ignored the man every time he fell, a group of foreigners, not knowing that he was faking it, rushed over to try to help him.<sup>604</sup>

An attending physician said, “*Pengci* and suing a doctor have the same reasoning [behind them.]”<sup>605</sup> Of course this is just the opinion of one person biased towards the view of physicians, and it would be unfair to say every *yinao* practitioner is trying to cheat the hospital for money; however, the context of taking advantage of people to make money certainly resonates with trends in Chinese society today.

### Yinao Elsewhere

There is evidence of *yinao* in other countries, showing that *yinao* is not unique to China, so variables like its traditional and political cultures are weak when attempting to explain how *yinao* became a social phenomenon. India and Vietnam are experiencing *yinao* similar to China's. I cover India more extensively in Chapter 5, but to summarize here, India, has seen increasing violence towards physicians similar to that in China,

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<sup>604</sup> Interview/interaction with MX 2016.

<sup>605</sup> Chinese Attending Physician, Interview No. 054, 054.

though the ways in which this violence appear do not appear in the unique Chinese cultural ways as discussed above. News about *yinao* in India (it is not called *yinao* in India), began to appear around 2009-2010 (in English language news publications),<sup>606</sup> and the state of Maharashtra invoked penalties for violence against physicians in 2008.<sup>607</sup> Since at least 2015, Vietnam has also seen increasing violence that mirrors China's *yinao* problem as well.<sup>608</sup>

In the past few years, stories of *yinao*-like incidents have emerged from Latin America as well. In Mexico, an analyst reported that shortages of medical professionals, available appointments, supplies, as well as organized crime contribute to increased violence towards physicians.<sup>609</sup> For example, if a physician is treating an assassin and dissatisfies him, the physician may become a victim of violence as well.<sup>610</sup> In Venezuela, violence has also increased against the backdrop of the daily violence and instability occurring in the country. According to one expert, the lack of supplies to treat patients make patients and families angry at healthcare personnel, and “in many cases the doctors are insulted, beaten, and even threatened with death because of the inefficiency of the national government in matters of health.”<sup>611</sup> Thus, despite the varying contexts of this

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<sup>606</sup> Search conducted in LexisNexis Academic with “violence against doctors in India”; <https://www-lexisnexis-com>.

<sup>607</sup> “Attack on Medicos Non-Bailable Offence: Docs,” *Indian Express*, November 11, 2009.

<sup>608</sup> “Violence against Viet Nam’s Health Workers Seen Growing,” [vietnamnews.vn](http://vietnamnews.vn/society/277972/violence-against-viet-nams-health-workers-seen-growing.html), March 2015, <http://vietnamnews.vn/society/277972/violence-against-viet-nams-health-workers-seen-growing.html>;

“Violence on Health Workers Wrong: MoH,” [vietnamnews.vn](http://vietnamnews.vn/society/416431/violence-on-health-workers-wrong-moh.html), October 28, 2017,

<http://vietnamnews.vn/society/416431/violence-on-health-workers-wrong-moh.html>.

<sup>609</sup> Agencia Reforma, “Violence against Doctors and Nurses Increases in Mexico: #IamaDoctor17 [Violencia Contra Médicos y Enfermeras Crece En México: #YoSoyMédico17],” *Periódico Expreso - Más Cerca de Ti*, May 27, 2017, <http://www.expreso.com.mx/seccion/mexico/16838-violencia-contra-medicos-y-enfermeras-crece-en-mexico-yosoymedico17.html>.

<sup>610</sup> Reforma.

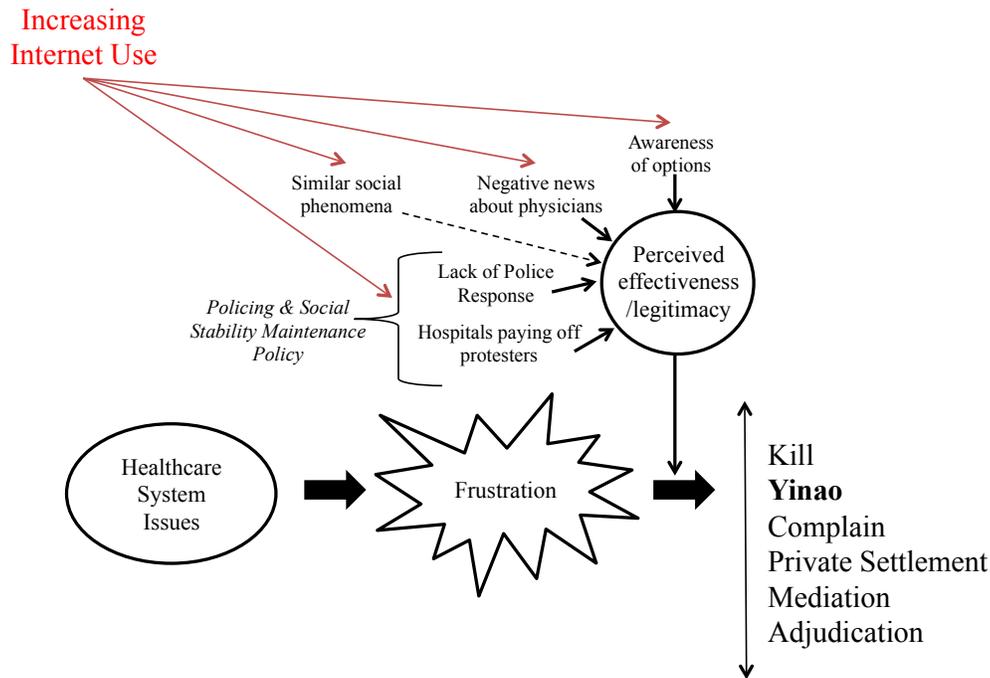
<sup>611</sup> “In Depth: Doctors and Nurses Exposed to Violence [En Profundidad: Médicos y Enfermeras Expuestos a La Violencia],” June 13, 2014, <http://www.elimpulso.com/noticias/nacionales/en-profundidad-medicos-y-enfermeras-expuestos-a-la-violencia>.

group of countries, all of them have experienced *yinao*, making it more of a functional and systemic issue rather than a cultural one.

#### Social and Cultural Variables in the *Yinao* Process

As the above analysis demonstrates, social and cultural variables do not directly explain *yinao*, but provide a backdrop around which *yinao* emerged. Cultural variables like funeral rituals and big character posters illuminate why *yinao* takes on certain forms in China, but is not part of the causal process. *Pengci* is not directly related to *yinao*, but because it is also a phenomenon in Chinese society today, it is perhaps more likely that in a society where trickery is already a broader practice, a phenomenon like *yinao* would be more likely to emerge because trickery is seen as an effective way of extracting money. For this reason, I depict the role of *pengci* and possibly other related social phenomena as “similar social phenomena” with a dotted line (since it is an indirect influence) towards the perceived legitimacy and effectiveness circle. I also connect it to the Internet since the Internet also spreads news about *pengci* and other social phenomena as well.

**Figure 27: Including Broader Social Context**



**Towards a Theory of *Yinao*'s Development**

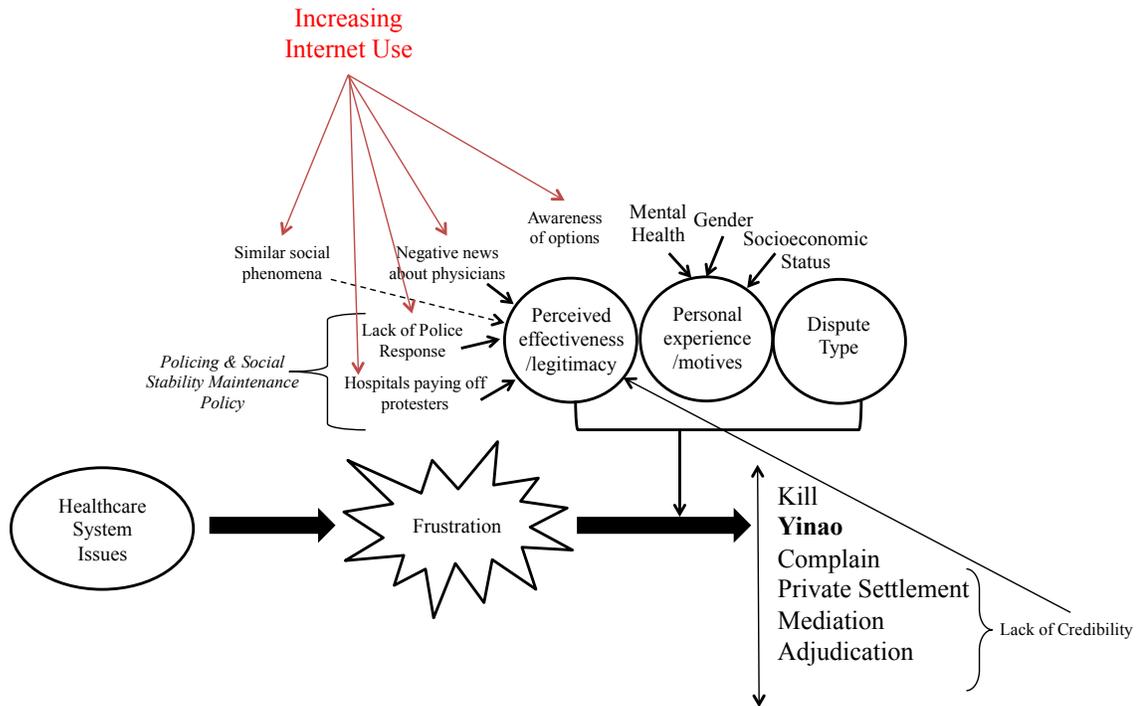
This chapter has identified, analyzed, and placed various factors of *yinao* that play different roles in the development of *yinao*. The process begins with initial conditions in the health care system as discussed above: high-out-of pocket costs, systemic corruption, poor doctor-patient communication skills, poor quality of care, and poor access to health care. These factors create the context around which disputes occur and heighten frustration. Then patients and families are faced with a choice of how to channel that frustration, from the formal options in China's complaint and dispute resolution system outlined in chapter 4 to the various shades of *yinao* and murder as the most extreme form of action. Important factors that contribute to the adoption of *yinao* include awareness of it, negative news about physicians, the lack of police response to it, and hospitals paying protesters. I argue that the takeoff of the Internet of the early 2000s and the social stability policy that led to paying off protesters and police not responding – and the

Internet coverage of these *yinao* cases – is what led to *yinao*'s development as a social phenomenon.

This model remains incomplete, however, without bringing in the factors discussed in the previous two chapters. In addition to perceived effectiveness and legitimacy of options as a driver in the decision to use *yinao*, other important factors include type of dispute and individual experiences and motives. I broached the topic of type of dispute in Chapter 4, and to briefly summarize here: complaints that are relatively minor (bad attitudes, food, service, etc.) would likely not turn into a court case or to *yinao*, whereas those that are more serious (unexpected health outcome, death) would. Another factor covered in chapter 5 is the personal experiences of complainants. While there are insufficient data on perpetrators of *yinao* to make sweeping generalizations, existing evidence suggests that men with a low socioeconomic status tend to commit murder of healthcare workers (see Chapter 5).

Further, the dispute resolution system itself influences the perceived effectiveness and legitimacy of options available for dispute resolution. As discussed in chapter 4, China's current medical dispute resolution system suffers from a lack of credibility, which also can make *yinao* appear more attractive. I add these additional contexts to complete the diagram.

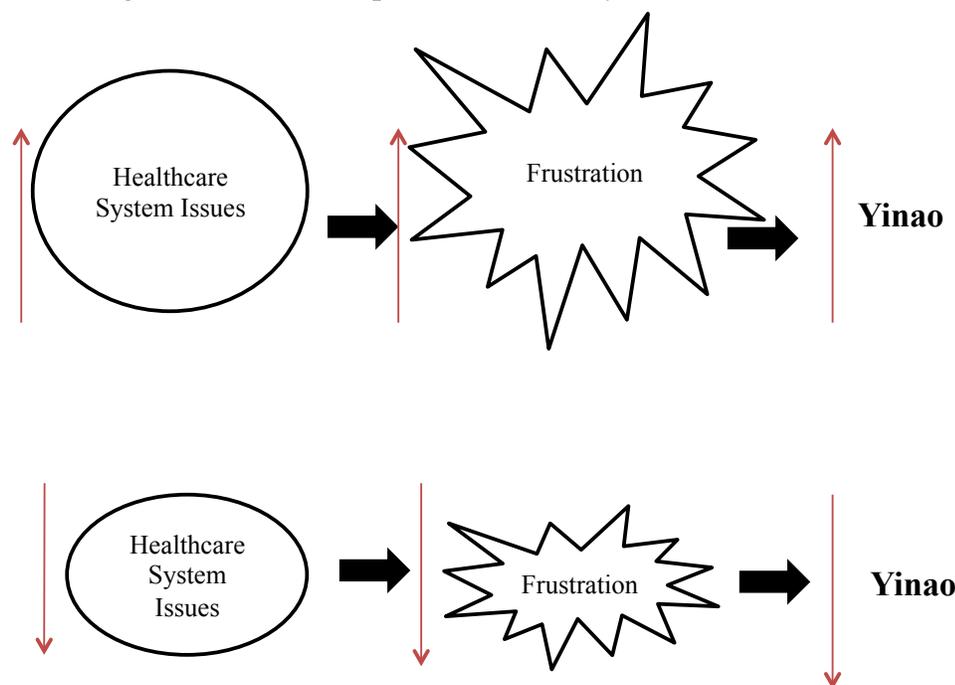
**Figure 28: The Path to Yinao's Development as a Social Phenomenon**



**Implications of this Process for Policy Management of Yinao**

This model helps us understand how different policy choices may resolve the *yinao* issue. The more issues in China's health care system, the greater the frustration, and assuming no changes in other parts of the model, the use of *yinao* to resolve these issues would also likely increase. If policy aims to tackle health care system conditions and reduce frustration, disputes and behaviors like *yinao* that stem from them would then likely decrease (see relationships in diagram below).

**Figure 29: Relationship of Health Care System Issues to Yinao**



But as the model shows, this is not just about frustration and dissatisfaction with China's health care system; policy also needs to address *yinao* from many different angles in order to be successful at eradicating *yinao*: public security, law enforcement, dispute resolution, and social assistance programs, etc. This depiction of how different factors influence the development of *yinao* represents the basis for analysis in the next chapter on policy responses.

#### A Brief International Comparative Perspective for Model Testing

This chapter examined some of the basic variables behind violence and protest against health care workers and placed these variables in a process that leads to *yinao* and propagated it as a social phenomenon. Many of these variables exist in other countries, so this process may have implications for other contexts. Hopefully, it offers a guide for issues countries should be aware of in order to prevent widespread violence against health care workers. In this section, I briefly test parts of this process in other

international contexts that vary in their experiences with *yinao* and some of the other identified independent and intervening variables.

These general variables can also be considered in and refined further based on other contexts. I choose a sample of countries that both experience and do not experience widespread violence against health care workers in medical disputes in order to tease out which variables may be most critical. While it is beyond the purview of this paper to do in-depth cross-country analysis, I consider a few variables below: regime type, out-of-pocket costs, civil justice system, order and security, and Internet coverage of population.

#### *Broad Regime Type*

India<sup>612</sup>, China, Vietnam,<sup>613</sup> Venezuela, and Mexico all experience some form of *yinao*. Automatically, this group of countries indicates that broad regime type is not necessary for *yinao* to occur, as India and Mexico are broadly categorized democracies (albeit flawed<sup>614</sup>), and China and Vietnam are communist authoritarian systems. Venezuela is a failed democracy and classified as a “hybrid regime” (between democracy and authoritarian).<sup>615</sup>

#### *High Out-of-Pocket Costs*

Since high out-of-pocket costs are a common source of frustration and often used as an explanation for *yinao* in China and because data is available across countries worldwide for this variable, I consider whether it matters in other country contexts. I find that a variable all of the countries with *yinao* share is relatively high out-of-pocket costs

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<sup>612</sup> See Chapter 5 for more in-depth analysis of India’s *yinao* problem.

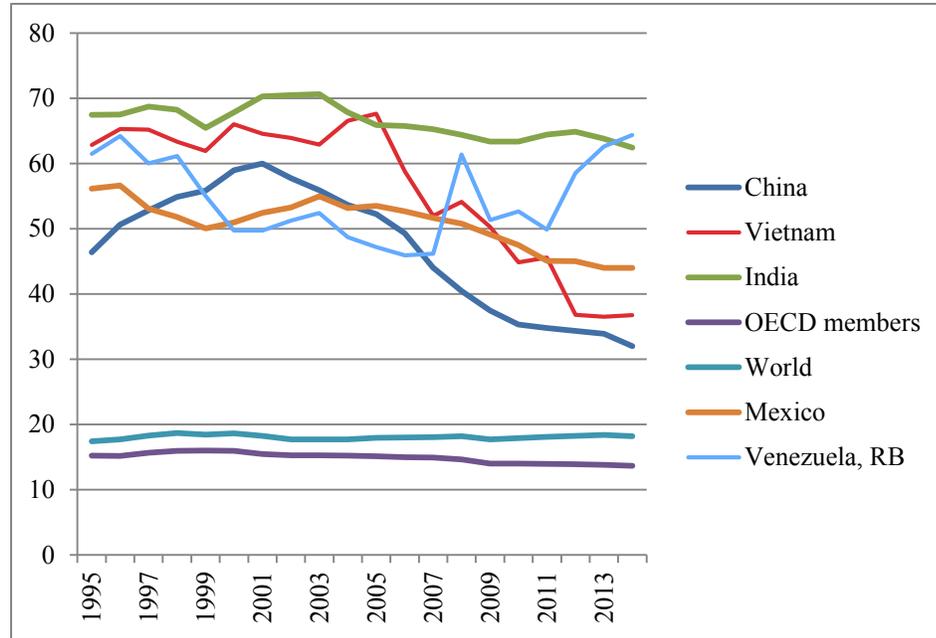
<sup>613</sup> In the past few years, there has been reporting of violence against Vietnam’s health care workers in a similar manner to China’s, though I have yet to find nationwide statistics. More research is needed in this area, but some preliminary articles referencing this phenomenon are the following: “Violence on Health Workers Wrong”; “Violence against Viet Nam’s Health Workers Seen Growing.”

<sup>614</sup> “Democracy Index 2016 - The Economist Intelligence Unit,” accessed December 19, 2017, [https://www.eiu.com/public/topical\\_report.aspx?campaignid=DemocracyIndex2016](https://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2016).

<sup>615</sup> “Democracy Index 2016 - The Economist Intelligence Unit.”

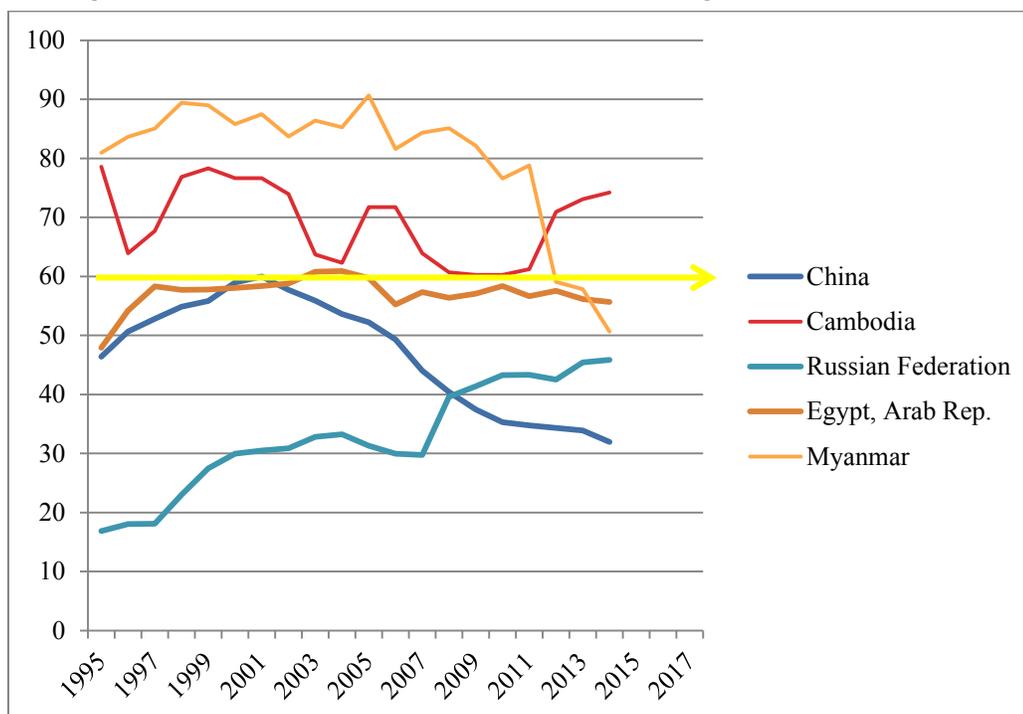
in health care as compared to world and OECD averages (see diagram below). Vietnam and India also experience especially high out-of-pocket costs during this period of time.

**Figure 30: Out-of Pocket Health Expenditure (% of total expenditure) for *Yinao* Countries**



However, other countries also have high-out-of-pocket costs and no *yinao*, so there are other certainly other variables at play that may interact with high-out-of-pocket costs to produce *yinao* on a mass scale. I have provided some examples of other countries from various regions with high-out-of-pocket costs (Egypt, Myanmar, Cambodia, Russia) and no *yinao* (to my knowledge) in the graph below. Defining “high-out-of-pocket costs” for this analysis can be difficult, but I decided to include those countries that have touched China’s maximum at almost 60% of total expenditure on health accounting for out-of-pocket costs (yellow line in graph). I also include Russia since it is commonly compared to China in this regard and shows a trend toward this point. Some interesting cases are Myanmar and Cambodia, which have mostly remained far above China’s maximum of 60% and yet neither of them has shown evidence of *yinao*.

**Figure 31: China and Non-Yinuo Countries with High Out-of-Pocket Costs**



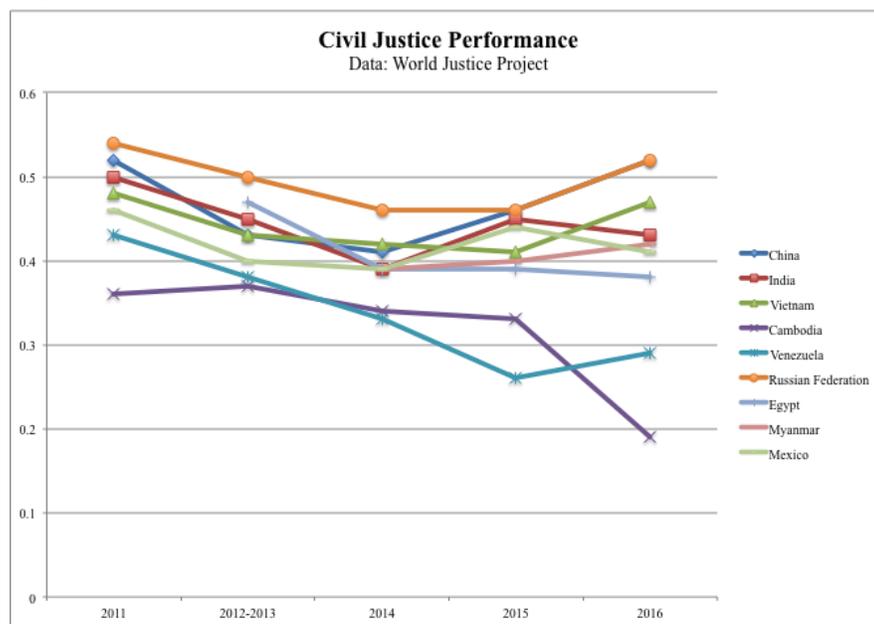
*Rule of Law – Civil Justice*

Another important variable I discussed was the credibility of the civil justice system. While this variable is difficult to measure across countries, the World Justice Project’s (WJP) Rule of Law Index provides a cross-country measure for strength of the civil justice system. Although methodology changes slightly from year to year, WJP generally measures civil justice based on “whether people can resolve their grievances peacefully and effectively through the civil justice system.”<sup>616</sup> They consider a number of variables in deciding on how to measure the strength of civil justice in each country: accessible and affordable, free of discrimination and corruption, timeliness, enforcement of decisions, and the accessibility, impartiality, and efficiency of Alternative Dispute

<sup>616</sup> “WJP Rule of Law Index 2016,” World Justice Project, 166, accessed December 15, 2017, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016>.

Resolution (ADRs) mechanisms.<sup>617</sup> The countries are given a number on a 0 to 1 scale, 1 indicating a high score (as in high level of civil justice) and 0 a lower score performance.<sup>618</sup> Data for the sample of countries in the previous section are below. All of them do not have robust civil justice systems, with most of them basically staying between 0.4 and 0.5 and with Cambodia and Venezuela performing even worse in these categories. This data does not indicate that civil justice is irrelevant, but that it cannot explain whether *yinao* appears or not.

**Figure 32: Civil Justice Performance**



### *Order and Security*

I also argue in this chapter that the lack of police involvement in controlling *yinao* encouraged it to grow. It is difficult to measure this across international contexts, especially because countries like China generally perform high in social control because of its strong police force and coercive power; in the case of *yinao*, however, the police

<sup>617</sup> “WJP Rule of Law Index 2016,” 166.

<sup>618</sup> “WJP Rule of Law Index 2016,” 46.

force did not respond, so a general measure of public security fails to capture this nuance. With this in mind, however, general public security may influence the emergence of *yinao* in other countries. I have used WJP’s “order and security” measure to examine this factor among the sample group of countries in Figure 33. Order and Security “measures how well the society assures the security of persons and property,” and includes three dimensions: crime, political violence, and violence as a socially acceptable means to redress personal grievances.<sup>619</sup>

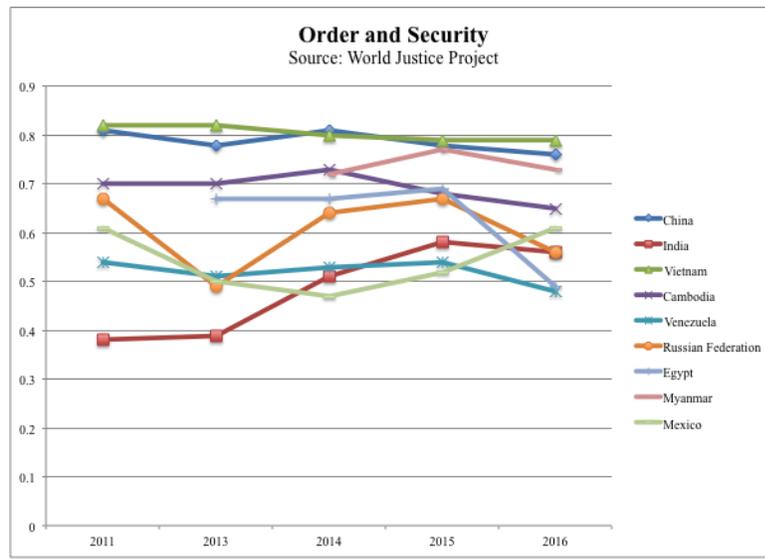
China and Vietnam perform highly in order and security, but again, this may fail to capture individual policies toward medical violence, and still may be relevant in explaining contexts elsewhere. Cambodia has had poor civil justice and high out of pocket costs, but here it also has a relatively high level of order and security, so it could indicate that police strength is too strong to allow for “disorder” like *yinao*.

In Mexico and Venezuela, lower levels of order and security could certainly be a factor contributing to the fomenting of violence of health care workers, especially as organized crime related to drugs bleeds into the hospital system. Poor public order may also explain why *yinao* has become an issue in India. Egypt had a high level of security until its recent drop in this variable, so this may become relevant for possible development of *yinao* in Egypt in the future. Russia has also fluctuated on public order significantly over time, so it is difficult to tell how such fluctuations over a short period of time would matter. More research needs to be done on the nuances of public security in each country, but based on this broad cross-national data, general order and public security are not enough to explain why *yinao* may or may not occur.

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<sup>619</sup> “WJP Rule of Law Index 2016,” 11.

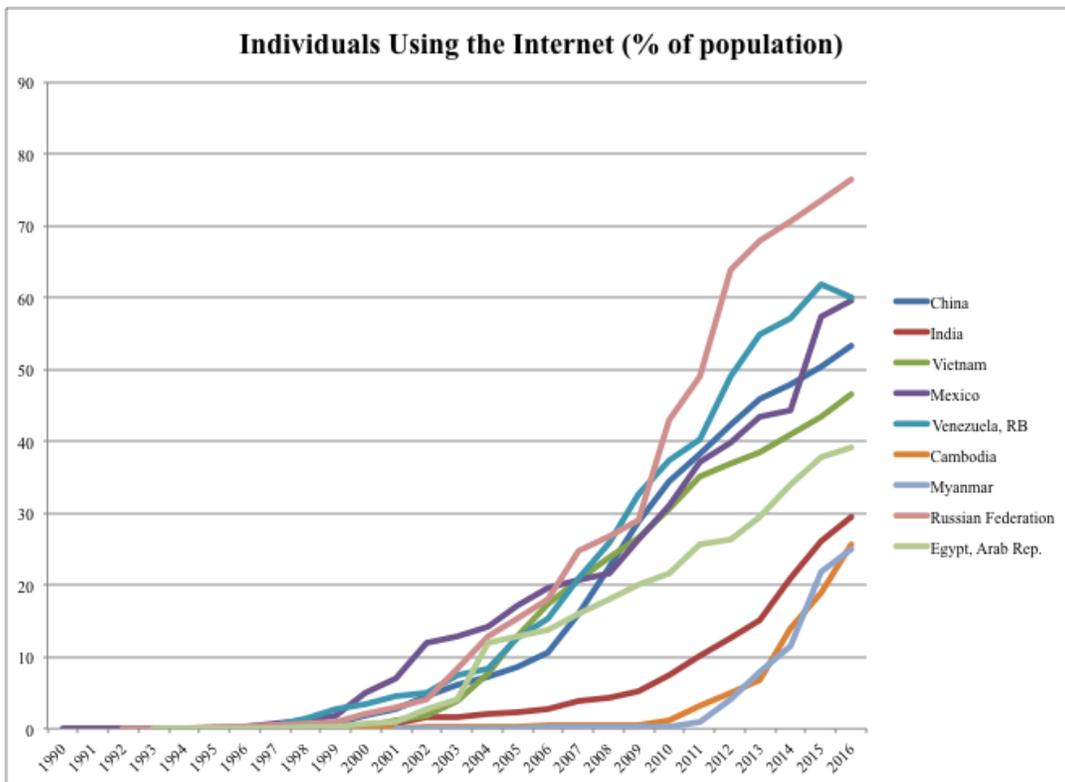
**Figure 33: Order and Security**



### *Internet Access*

My main argument of this chapter revolves around the role of the Internet – the Internet is what spread the idea in the 2000s that *yinao* was an effective and legitimate form of health care dispute resolution and thus helped facilitated *yinao*'s growth into a nationwide social phenomenon. I would expect that other countries that have *yinao* like Mexico, Vietnam, Venezuela, and India, would all show similar trends and rates of Internet coverage. Based on the graph below, they basically do share the same levels and trends in Internet coverage; India, however, is lower. I have not studied India's case to the extent to which I have studied China's, but from what I have gathered in India this takes places among people in rural areas, where Internet coverage may be less. The idea that the information spreads though may still be valid, but perhaps more so through rural networks than the Internet. Future research can examine other mechanisms for spreading information, but the idea of the importance of the spread of the information for something to turn into a social phenomenon still likely holds.

**Figure 34: Individuals Using the Internet (% of population)**



Non-*yiniao* countries like Myanmar and Cambodia share in common with *yiniao* countries expensive health care and poor civil justice systems, but here they differ in Internet coverage of the population, being lower in Internet coverage than *yiniao* countries. Based on the model I have laid out thus far, I would predict that with increasing Internet coverage and poor law enforcement in the area of medical violence, there is a greater likelihood that people may resort to more violence towards physicians in these countries.

*Conclusion to Cross-Country Analysis*

This cross-country analysis has been brief and even though I cannot decisively conclude that the model I have developed for China patently applies worldwide, it does help to bolster some of the conclusions in my analysis. All of the countries experiencing *yiniao* share high out-of-pocket costs, poorly performing civil justice systems, and with the exception of India, similar levels of Internet access. Internet is what separates non-

*yinao* countries Cambodia and Myanmar from the *yinao* countries, and perhaps as Internet increases and assuming there are no significant changes in other variables, *yinao* may appear in those countries as well. These same factors hold true for Egypt as well, which has higher Internet coverage than Myanmar and Cambodia, but lower than the other *yinao* countries besides India. There may be a level of coverage for which *yinao* is more likely, though it is difficult to tell without data on *yinao*. Russia has seen has performed differently in each of the variables (generally lower out-of-pocket costs, poor but still slightly better civil justice system, and very high Internet access), so it is not unsurprising *yinao* has not developed into a notable national phenomenon there.

This short analysis has several limitations. First the author's inability to perform research in the native languages of many of these countries makes it difficult to assert that *yinao* does not exist in those place, so this is something further research must ascertain. Also, understanding the nuances of law enforcement and public security in each individual country context also matters for *yinao*, so more in-depth research needs to be done on the relationship between police and hospitals because general data on security is not enough. Lastly, even though I have found evidence of *yinao* existing in other contexts, in cases like Venezuela and Mexico, more attention should be dedicated to the extent to which more specific circumstances like organized crime and drug cartels matter for *yinao* in those countries.

## **Conclusion**

This chapter has identified and evaluated multiple factors that have contributed to *yinao*. It argued that while there are multiple variables that contribute to *yinao*, the increase of Internet usage in China beginning in the 2000s is one of the main reasons for

*yinao*'s development into a social phenomenon because Internet access enabled increased awareness of *yinao* as a potentially legitimate and effective means for medical dispute resolution. Despite some possible challenges from cross-national comparisons, the model I have developed not only potentially can predict *yinao* elsewhere, but perhaps even more importantly, also identifies the policy areas that need to be addressed in order to truly eradicate *yinao*. China's policy responses to *yinao* are the subject for the next chapter.

**PART III**  
**RESPONSES OF STATE AND SOCIETY TO *YINAO***

## CHAPTER 7: STATE RESPONSE TO *YINAO*

In order to assess state responsiveness to *yinao*, this chapter examines national-level laws and policies related to *yinao* against four criteria: 1) the type of policy tool employed; 2) the policy document type; 3) agencies involved in issuing policies; and 4) implementation and outcomes of the policy. Below I explain each of these criteria. In order to simplify the analysis, this chapter focuses on national laws and ministerial-level policies only. It is important to note, however, that there have also been local-level regulations and policies to address legal issues for medical disputes and to directly combat *yinao*, often preceding national policies.<sup>620</sup> While the central government often bases national policies off local-level policy models, national-level policies also influence the direction of local governance. National-level policies are administered from the top-down in China through the vertical ministerial agencies that stretch from the national-level to the local level (called *xitong*). So for example, the National Health and Family Planning Commission (NHFPC) oversees the Health and Family Planning Commissions (HFPCs) at the provincial levels, which oversee the health departments at the city level and so on. When a national policy is approved, provincial-level governments or relevant agencies issue a supporting document (配套文件, *peitao wenjian*) for their locality and

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<sup>620</sup> For examples of varying policies on the degree to which judiciary inspection agencies can be involved in medical inspections for court cases, see Benjamin Liebman, “Law in the Shadow of Violence: Can Law Help to Improve Doctor-Patient Trust in China?,” 120. The city of Zhongshan in Guangdong Province has also received media attention about its own campaign to eradicate *yinao*. See: Li, “Zhongshan No Longer Allows Hospitals and *Yinao* to Settle Privately [中山不许医院与医闹私了 (民生调查, 一线新探索)]”; Zhang Xuebin et al., “Becoming the City Without Medical Chaos: What Is Zhongshan’s Secret? [成为无医闹城市 广东中山有何秘诀? ],” *The Southern Daily 南方日报*, accessed May 10, 2014, [http://news.xinhuanet.com/local/2014-04/01/c\\_1110040334.htm](http://news.xinhuanet.com/local/2014-04/01/c_1110040334.htm).

can write more detailed measures for implementing the policy in a way that fits the province's local context.<sup>621</sup>

### 1. The Policy Toolkit of Agencies Managing *Yinao*

While *yinao* offers us a window through which to look at state responsiveness, there is no one clear-cut “response” to *yinao*, as Chinese Communist Party (CCP) and government institutions have many different tools to address it that span the jurisdictions of multiple government ministries, CCP departments, and hospitals. Some tools represent more direct responses to deal immediately with *yinao* like police campaigns against professional *yinao* protesters (third parties that receive money from families in exchange for protesting on behalf of their medical dispute), while other tools attack the sources that contribute to the problem, such as a distorted health care pricing system that incentivizes physicians to overprescribe medication, contributing to a culture of patients mistrusting physicians. Table 8 on the following page shows many of the policy tools available to respond to *yinao*.

The types of tools used to respond to *yinao* help elucidate the adaptive capacity of the Chinese state. For example, if the Chinese government only relies on police campaigns against *yinao*, then it fails to address both the dispute resolution and health care system issues that drive *yinao*. A more sophisticated, adaptive system would employ tools that address not only the immediate fallout from *yinao*, but also its root causes.

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<sup>621</sup> Head of Medical Affairs Office, Interview No. 048, 2016.

**Table 8: Policy Tools for Managing Yinao**

<b>Language Tools</b>	<b>Official language</b> prohibiting <i>yinao</i>
<b>Security Tools</b>	Police <b>crackdown</b> (targeted policing programs at arresting those engaging in <i>yinao</i> )
	Increased hospital <b>security capabilities</b>
<b>Justice Tools</b>	<b>Procedural reform</b> - rules and procedures for filing, receiving, evaluating, and facilitating resolution of medical disputes
	<b>Official petitioning (<i>xinfang</i>) and internal hospital complaint systems</b>
	<b>Legal reform</b> (Tort and Criminal)
	<b>Dispute mediation reform</b>
<b>Health Care System Tools</b>	<b>Pricing</b> of Health Care Goods and Services
	<b>Malpractice Insurance Reform</b>
	<b>Health Care Insurance Reform</b>
	Better <b>health care access</b> , especially for rural areas
	<b>Anti-corruption campaign</b>
	Improving education for physicians on <b>doctor-patient communication</b>
<b>Propaganda Tools</b>	<b>TV shows and media reporting</b> emphasizing the dedication and hard work of health care workers so Chinese citizens can better understand their perspective

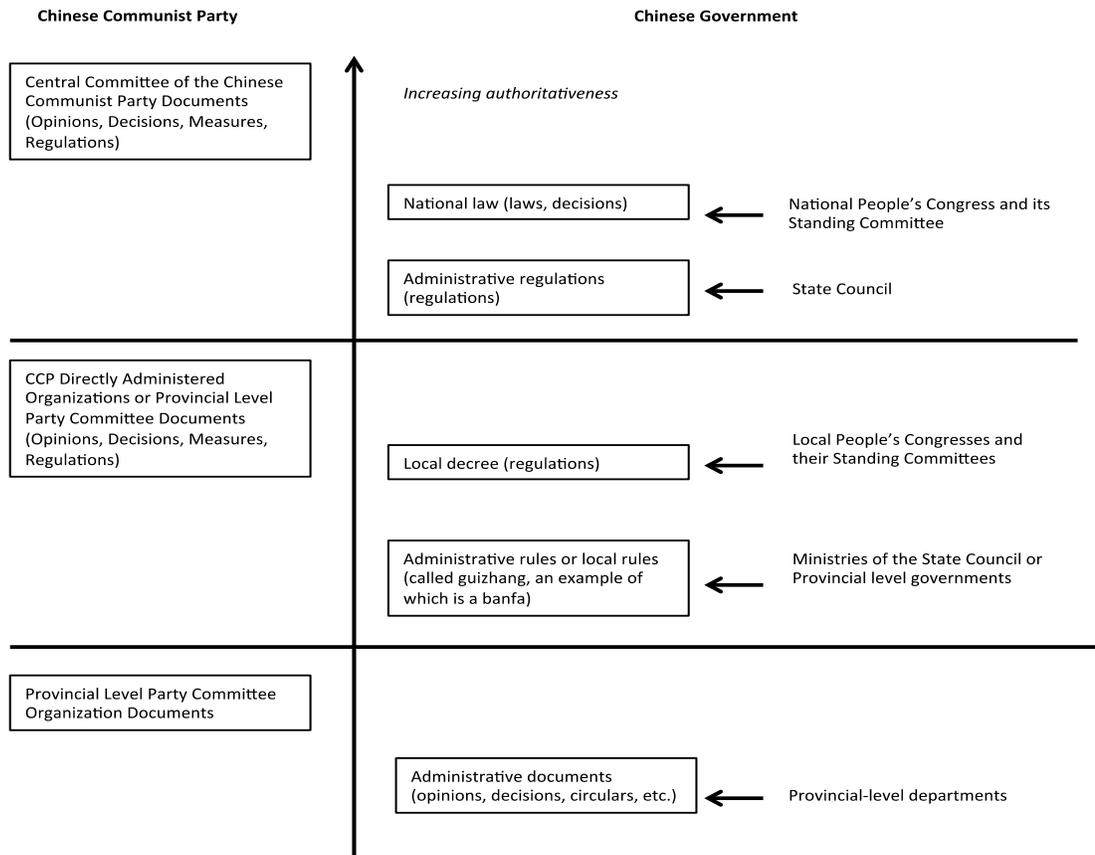
## 2. Types of Laws and Policies

In addition to the policy tools used to address *yinao* and medical disputes, the types of policies and laws in which these tools are contained signal their degree of importance to governing agencies. Both the Chinese Communist Party (CCP) and the Chinese government issue policy documents. They exist in a variety of forms – circulars, opinions, decisions, etc. There are also national laws, which only are issued by the government’s National People’s Congress (NPC) and the Standing Committee of the NPC. In theory, laws are the most authoritative documents, but in practice, documents issued by the CCP are more authoritative (see Figure 35<sup>622</sup>).

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<sup>622</sup> Illustration provided by Chinese government official.

**Figure 35: Authoritativeness of Official Documents of China**



Unfortunately, the CCP and its departments tend not to make many of its policy documents (left side of figure) available to the public, whereas the central government and its ministries (right side of figure) often publicize their policy documents. This is true in the case of *yinao* and medical disputes – most of the documents publicly available on the subject are government policy documents and laws. Often laws represent stances the CCP has already adopted, which is why China’s legislative body, the National People’s Congress, is often dubbed the “rubber stamp” for the CCP.

In order to understand the changing responsiveness of the Chinese governing system over time using available policy documents, this chapter considers the type of agency that sponsors them, the number of agencies that sponsor them, and the number of

documents dedicated to addressing the issues relevant to *yinao* in a given time period. For example, if a Party agency sponsors a document, then the document and the problem it addresses carry a high degree of importance. If the State Council issues a document, it is more authoritative than ministerial directives. Yet not only does the rank of the issuing agency matter, but also the degree of cooperativeness between agencies. This is because *yinao* is a multifaceted issue that requires a joint effort by relevant ministries to resolve it, so if only one ministry like the Ministry of Health (or later, the National Health and Family Planning Commission) repeatedly authors policies to manage *yinao*, then this indicates a limited response from the state. If multiple relevant agencies jointly author a document, then the response shows that Chinese state agencies are working together to resolve complicated social issues.

The number of documents is also important because if there are many documents focusing on a particular issue, then this indicates an increasing emphasis on it; however, if a period of time goes by without any documentation, then the issue is clearly not a priority. Additionally, the content of documents is important. According to one source, the greater the amount of detail and content in a document, the likelier agencies with higher authority created it.<sup>623</sup>

### 3. Relevant Party and Ministerial Level Players

There are many bureaucratic players that manage the policy tools listed above. Table 9 below summarizes their roles in the *yinao* issue.

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<sup>623</sup> Shanghai Legal Expert, Interview No. 87.

**Table 9: Governing Agencies Involved with Managing Yiniao and Its Sources**

Party Agencies		Function
CCMPS	<b>Commission for Comprehensive Management of Public Security</b>	Responsible for coordinating and guiding implementation of State Council and Party policies for public security. <sup>624</sup> It reportedly includes representatives from a broad range of agencies such as justice, education, and health departments. <sup>625</sup> Relevant to <i>yinao</i> , it is responsible for coordinating special action plans to tackle the issue with multiple ministries. <sup>626</sup>
–	<b>Publicity (or Propaganda) Department</b>	Guides ideological thought and education in China and oversees the work of China’s news media agencies. <sup>627</sup> In medical disputes, it is responsible for guiding public opinion, disseminating information about health and respect for health care workers <sup>628</sup> , and ensuring that media agencies do not sensationalize medical dispute stories. <sup>629</sup>
CALSG	<b>Office of the Central Leading Group of Cyberspace Affairs</b>	Coordinates strategy on internet and informationization strategy and policy. <sup>630</sup> In <i>yinao</i> , it is supposed to work with the Publicity Department to coordinate the monitoring of broadcasts on violence against doctors and to prohibit sensationalization of news stories. <sup>631</sup> It also has the responsibility of deleting advertisements related to ticket peddlers (illegal markups of appointments) and medical introducers (illegal referrals). <sup>632</sup>
Ministerial-level Agencies		Function
NHFPC	<b>National Health and Family Planning Commission (Ministry of Health until 2013)</b>	NHFPC governs China’s health care system, including epidemic management, health care system reform, rural health care, medical education, hospital administration, and family planning. <sup>633</sup> As the leading ministerial body for policies related to <i>yinao</i> and medical disputes, it develops regulations, collects data, and leads related special action plans. <sup>634</sup>
MPS	<b>Ministry of Public Safety</b>	MPS oversees the police force and public security in China as well as related

<sup>624</sup> Juan Xu, “After Three Years, the Central Commission for Comprehensive Social Management Changes Its Name Back to the Original [3年后中央综治委改回原名],” People’s Daily Online, October 10, 2014, <http://politics.people.com.cn/n/2014/1010/c1001-25807059.html>.

<sup>625</sup> Liebman, “China’s Law and Stability Paradox,” 168.

<sup>626</sup> “About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” National Health and Family Planning Commission Bureau of Health Governance and Administration, December 20, 2013, 4.3, <http://www.nhfpc.gov.cn/yzygj/s3589/201312/46ce2b7c0b974391b8f8bf308f2784f8.shtml>.

<sup>627</sup> Dictionary of Communist Party’s Organizational Work, “Main Functions of the China Communist Party Central Publicity Department,” News of the Communist Party of China, accessed November 22, 2017, <http://cpc.people.com.cn/GB/64114/75332/5230610.html>.

<sup>628</sup> “About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 4.4.

<sup>629</sup> National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知],” 4.3.

<sup>630</sup> “Xi Jinping: From Cyber Power Construction, Make China a Cyber Power [习近平:把我国从网络大国建设成为网络强国],” Xinhua, February 27, 2014, [http://news.xinhuanet.com/politics/2014-02/27/c\\_119538788.htm](http://news.xinhuanet.com/politics/2014-02/27/c_119538788.htm).

<sup>631</sup> National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知],” 4.3.

<sup>632</sup> “Circular on Issuing the Special Action Plan Focusing on Punishing ‘Ticket Peddlers’ and ‘Internet Medical Scalpers’ [关于印发集中整治‘号贩子’和‘网络医托’专项行动方案的通知],” National Health and Family Planning Commission Comprehensive Supervision Bureau, May 3, 2016, 4.3, <http://www.nhfpc.gov.cn/zhjcj/s3577/201605/870ebfb0f7b848a59803626ec8a401e9.shtml>.

<sup>633</sup> “Institution Functions [机构职能],” National Health and Family Planning Commission, December 23, 2016, <http://www.nhfpc.gov.cn/zhuz/jgznlmtt.shtml>.

<sup>634</sup> As this chapter will show, NHFPC (or its predecessor the Ministry of Health) has been involved as the leading agency on almost all policy related to *yinao* and medical disputes.

		areas such as traffic administration, entry and exit, border defense, firefighting, identify cards, visas and residency permits. <sup>635</sup> For <i>yinao</i> , MPS helps define police responsibility for responding to it and is a frequent sponsor of policies related to managing <i>yinao</i> as crimes. <sup>636</sup>
<b>MOJ</b>	<b>Ministry of Justice</b>	Oversees mediation in China through the People’s Mediation Office of its Office for Guiding Grassroots Work. <sup>637</sup> Local justice bureaus oversee Medical Dispute Mediation Committees (MDMCs), but do not directly manage their daily activities. <sup>638</sup>
<b>MCA</b>	<b>Ministry of Civil Affairs</b>	Oversees civil society organizations (CSOs), <sup>639</sup> including registration of MDMCs classified as CSOs. <sup>640</sup> In special action plans, MCA agencies are charged with providing aid to economically strained groups <sup>641</sup> - likely inferring to those that commit <i>yinao</i> out of economic distress.
<b>NDRC</b>	<b>National Development and Reform Commission</b>	Agency charged with China’s overall development trajectory, most known for its drafting of five-year plans. Related to the topic of <i>yinao</i> and more broadly patient-doctor mistrust, NDRC’s Pricing Department regulates prices on pharmaceuticals and medical services. Pharmaceuticals have traditionally been priced too high and services too low, though both of these pricing systems are currently under reform. <sup>642</sup>
<b>SPC</b>	<b>Supreme People’s Court</b>	Highest supervising institution over China’s court system. <sup>643</sup> One of its roles is to offer explanations for concrete application of laws <sup>644</sup> , so relevant to medical disputes, it offers explanations on how existing laws should be applied in tort or personal injury cases <sup>645</sup> and also contributes to how courts define <i>yinao</i> crimes under existing law. <sup>646</sup>
<b>SPP</b>	<b>Supreme People’s Procuratorate</b>	China’s national public prosecutor’s office, which also oversees procuratorates at the local levels. SPP initiates and supervises public prosecution of criminal cases, <sup>647</sup> such as those for <i>yinao</i> .
<b>SAIC</b>	<b>State Administration for Industry and Commerce</b>	“SAIC functions in maintaining market order and protecting the legitimate rights and interests of businesses and consumers by carrying out regulations in the fields

<sup>635</sup> “People’s Republic of China Ministry of Public Security [中华人民共和国公安部],” Ministry of Public Security, accessed November 22, 2017, <http://www.mps.gov.cn/>.

<sup>636</sup> These policies are covered throughout the chapter in each policy cycle.

<sup>637</sup> “Office of Guiding Grassroots Work,” Ministry of Justice of the People’s Republic of China, 2017, [http://www.moj.gov.cn/organization/node\\_jcgzdzs.html](http://www.moj.gov.cn/organization/node_jcgzdzs.html).

<sup>638</sup> See chapter 8 for full description of MDMCs and they related to justice bureaus.

<sup>639</sup> “Ministry of Civil Affairs - Structure,” Ministry of Civil Affairs of the People’s Republic of China, accessed November 22, 2017, <http://www.mca.gov.cn/article/jg/>.

<sup>640</sup> To search for MDMCs classified as social organizations, go to: “Nationwide Social Organization Search [全国社会组织查询],” accessed November 22, 2017, <http://www.chinanpo.gov.cn/search/orgindex.html>.

<sup>641</sup> “About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 4.3.

<sup>642</sup> “Attack and Overcome Difficulties, Strive to Make Progress, Fully Implement Medical Price Reform - Since the 18th Party Congress Medical Price Reform Record [攻坚克难 奋力前行 全面实施医药价格改革——党的十八大以来医药价格改革纪实],” National Development and Reform Commission, November 3, 2017, [http://www.ndrc.gov.cn/fzgggz/jggj/zhd/201711/t20171103\\_866240.html](http://www.ndrc.gov.cn/fzgggz/jggj/zhd/201711/t20171103_866240.html).

<sup>643</sup> “Introduction,” The Supreme People’s Court of the People’s Republic of China, July 16, 2015, [http://english.court.gov.cn/2015-07/16/content\\_21299713.htm](http://english.court.gov.cn/2015-07/16/content_21299713.htm).

<sup>644</sup> “Introduction.”

<sup>645</sup> Supreme People’s Court, “Interpretation of the Supreme People’s Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury [最高人民法院于审理人身损害赔偿案件适用法律若干问题的解释].”

<sup>646</sup> The Supreme People’s Procuratorate of the PRC [中华人民共和国最高人民检察院], “Five Ministries’ Opinions on Illegal Criminal Activities Involving Medical Institutions and Protecting the Normal Order of Medical Care [五部门关于依法惩处涉医违法犯罪维护正常医疗秩序的意见].”

<sup>647</sup> “Judicial System - Introduction to the People’s Procuratorates of the People’s Republic of China,” The Supreme People’s Court of the People’s Republic of China, May 14, 2002, <http://en.chinacourt.org/public/detail.php?id=44>.

		of enterprise registration, competition, consumer protection, trademark protection and combating economic illegalities. <sup>648</sup> For medical disputes, it has been charged with the responsibility of eradicating illegal medical advertisements. <sup>649</sup>
<b>CIRC</b>	<b>China Insurance Regulatory Commission</b>	Conduct administration, supervision and regulation of the Chinese insurance market, and to ensure that the insurance industry operates stably in compliance with law. <sup>650</sup> Responsible for promoting medical liability insurance. <sup>651</sup>
<b>SATCM</b>	<b>State Administration of Traditional Chinese Medicine</b>	Collects data on TCM, examines and approves advertising for TCM, approves TCMs, and oversees TCM hospitals. <sup>652</sup> Though a sponsor of a special action plan against <i>yinao</i> <sup>653</sup> , its responsibilities are indirectly defined, but SATCM responsibilities likely pertain to <i>yinao</i> as TCM and TCM hospitals encounter it.

#### 4. Policy Outcomes and Implementation

There are different ways to view outcomes of policies – the immediate implementation of the policy itself (whether or not, for example, police offices were truly installed in all hospitals as a result of a policy) as well as the ultimate goal of reducing *yinao* incidents. This chapter uses both of these ways to evaluate outcomes, though the difficulty in obtaining good data on outcomes makes it difficult to do this systematically.

I rely on news and government reports as well as fieldwork observations and interview data to evaluate the outcomes of policies where possible. I analyze the available statistics on implementation by comparing them to other data from previous years as well as macro-level data about China’s health system to better contextualize them. Even though the exact numbers do not always make sense, the general trends of the data can demonstrate general trends in outcomes that the Party is trying to convey.<sup>654</sup>

<sup>648</sup> “Mission,” State Administration For Industry & Commerce (SAIC) People’s Republic of China, 2009, <http://www.saic.gov.cn/english/aboutus/Mission/index.html>.

<sup>649</sup> “About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 4.3.

<sup>650</sup> “China Insurance Regulatory Commission > Home,” CIRC China Insurance Regulatory Commission, accessed November 25, 2017, <http://www.circ.gov.cn/web/site45/>.

<sup>651</sup> “About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 4.3.

<sup>652</sup> “State Administration for Industry and Commerce of the People’s Republic of China [中华人民共和国国家工商行政管理总局].”

<sup>653</sup> “About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知].”

<sup>654</sup> Shanghai Legal Expert, Interview No. 87.

While news reports cannot provide comprehensive data, due to the fact that the Party controls the official media, if the media emphasizes *yinao* incidents, then this indicates that the authorities are giving the issue more attention and that the policies about *yinao* will likely become more decisive in their implementation.<sup>655</sup> High profile incidents reported in the media also help to contextualize policy responses: they are at once outcomes of previous policies (or the absence of) that have failed to quell the problem, and they also can represent events to which new policies respond. Some policies, like circulars, do not necessarily require implementation, so I often do not provide information on implementation for these types of documents, though I still may include some context about important events surrounding these types of documents.

### **Policy Selection and Analysis**

I track and analyze the policy tools and types over time based on these criteria using 21 national laws and policies (see Appendix for full list) that have addressed *yinao* and medical dispute resolution since 1986, when, to my knowledge, the first reports of and policy responses to *yinao* began to appear.<sup>656</sup> I chose these policies based on their direct relevance to *yinao*, medical disputes, and healthcare-related complaints. The list is intended to be a basically complete list of national laws and policies related to these areas. Often these policies or laws cover more than just *yinao* or medical disputes, so within these policies or laws, I focus on the parts that are most relevant to *yinao*, medical complaints, and medical disputes.

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<sup>655</sup> Shanghai Legal Expert, 87.

<sup>656</sup> “The Ministry of Health and Ministry of Public Security Publish ‘Joint Notice’ Prohibiting Any Person Using Any Excuse to Disrupt the Order of Hospitals 卫生部公安部发出《联合通告》禁止任何人医任何借口骚乱医院秩序。”

## 1986 Policy Cycle 1: Weak Responses and Preference for Private Resolution

The first signs of *yinao* as a national phenomenon appear in 1986, when an article in the *People's Daily* reported that these incidents were occurring across China and highlighted the lack of appropriate response from relevant government departments.

“Recently reporters have received many letters from readers, reacting to repeatedly occurring events of disorderly behavior, vandalism in hospitals, and the shaming and beating up of health care workers. Through investigation, we have found that this year from February through July, Beijing, Hubei, Henan, Hunan, Yunnan, Shandong, among other provinces, have seen 31 of these incidents, both large and small. The city of Wuhan within the last month has seen 18 incidents, seriously disrupting hospitals’ normal work order. The physical security of medical personnel has been seriously threatened. According to current understanding, these incidents are mostly dealt with inappropriately, sometimes there are no questions asked.”<sup>657</sup>

The thrust of the article was that these violent incidents were growing, but not being handled appropriately by responsible government departments. In the same year this article appeared, the Ministry of Health<sup>658</sup> and Ministry of Public Security released “Joint Notice on Protecting Hospital Order,”<sup>659</sup> which appears to be the first notice addressing how to respond to *yinao* (though at this point it was not called *yinao*). The document prohibits the following *yinao* actions: performing funeral rites in hospitals, placing the corpses anywhere outside the hospital morgue, and using a medical accident as an excuse to cause trouble.<sup>660</sup> It also made clear that in cases in which people caused

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<sup>657</sup> Huang, “These Past Few Years Some Places Have Seen Doctor-Patient Conflicts Become Extreme, Vandalizing Hospitals Repeatedly Occur, after the Event Occurs No Questions Asked [进来一些地方医患矛盾激化 打砸医院率发生 事发之后无人问].”

<sup>658</sup> The Ministry of Health was the predecessor to the National Health and Family Planning Commission, which was created in 2013. The change from a Ministry to a Commission raises its status and Family Planning governance was also assumed under the new body’s portfolio.

<sup>659</sup> “The Ministry of Health and Ministry of Public Security Publish ‘Joint Notice’ Prohibiting Any Person Using Any Excuse to Disrupt the Order of Hospitals 卫生部公安部发出《联合通告》禁止任何人医任何借口骚乱医院秩序.”

<sup>660</sup> “The Ministry of Health and Ministry of Public Security Publish ‘Joint Notice’ Prohibiting Any Person Using Any Excuse to Disrupt the Order of Hospitals 卫生部公安部发出《联合通告》禁止任何人医任何借口骚乱医院秩序.”

trouble, destroyed hospital property, beat up and humiliated medical personnel, the public security organs (police) could address them with relevant public security regulations and also pursue criminal liability in particularly serious instances.<sup>661</sup>

### 1987 Medical Accident Management Measures

The next year in 1987 the Ministry of Health issued the Medical Accident Management Measures, establishing the foundation for administrative procedures on health care dispute resolution, asserting that patients and doctors both have legal rights and benefits, defining and categorizing medical accidents,<sup>662</sup> and creating the process by which they could be investigated.<sup>663</sup> There are several important aspects of the Measures that highlight the initial stance of the Chinese health care system towards medical disputes.

*Dispute Resolution Avenues: Preference for Private Settlement.* The Medical Accident Management Measures implies that there are three main avenues: private settlement between patients and doctors, review of the case by the corresponding local health bureaucracy, or pursuing a court case. It clearly favors private settlement within hospitals, saying that if private settlement does not work, only then should patients seek review of the case outside the hospital.<sup>664</sup>

*Managing Disputes: Preference for Keeping Them within the Health Care Bureaucracy.* These measures also created Medical Accident Technical Review

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<sup>661</sup> “The Ministry of Health and Ministry of Public Security Publish ‘Joint Notice’ Prohibiting Any Person Using Any Excuse to Disrupt the Order of Hospitals 卫生部公安部发出《联合通告》禁止任何人医任何借口骚乱医院秩序,” Point 8.

<sup>662</sup> “Medical Accident Management Measures [医疗事故处理办法],” Ministry of Health, June 29, 1987, Chapter 2, <http://www.moh.gov.cn/mohyzs/s3576/200804/29362.shtml>.

<sup>663</sup> “Medical Accident Management Measures [医疗事故处理办法],” Chapter 4.

<sup>664</sup> “Medical Accident Management Measures [医疗事故处理办法],” Article 11 and Chapter 6 Article 29.3.1.

Committees, which comprised of health care workers chosen by the Ministry of Health bureaucracies and approved by the local people's government.<sup>665</sup> Patients, their families, and hospitals could apply for a Medical Technical Review from the committee when a dispute occurred. These reviews were later accused of being biased towards the hospitals because the government's health bureaucracy not only oversaw the technical reviews but also the hospitals themselves, casting doubt on the neutrality of the reviews since it would be in the health bureaucracy's best interest for the hospitals under their administration to perform well.<sup>666</sup>

*Evidence - Prohibiting Tampering: The Medical Accident Management Measures* further lays out measures for collecting evidence, managing cadavers, and prohibiting health care workers from tampering with documents and destroying evidence for medical disputes,<sup>667</sup> the latter of which is still a concern today.<sup>668</sup>

*Establishing Accountability for Medical Personnel Involved in Negligence:* There are also administrative punishments in the document for medical personnel responsible for medical accidents – such as demotion or dismissal depending on the severity of the incident among other factors.<sup>669</sup>

*Compensation: Little Guidance for Localities:* The document leaves standards for compensation at the discretion of provincial-level units.<sup>670</sup> This is important because

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<sup>665</sup> “Medical Accident Management Measures [医疗事故处理办法],” Article 12.

<sup>666</sup> National Health and Family Planning Commission Official, Interview No. 69, 2016.

<sup>667</sup> “Medical Accident Management Measures [医疗事故处理办法],” Article 8.

<sup>668</sup> Chuan Wang, “Judicial Inspections Difficult to Initiate, Undue Medical Treatment Difficult to Decide, Medical Records Difficult to Monitor [司法鉴定难启 过度医疗难定 病历书写难管],” *Shanghai Law Journal*, May 23, 2012, sec. A02, [http://newspaper.jfdaily.com/shfzb/html/2012-05/23/content\\_809771.htm](http://newspaper.jfdaily.com/shfzb/html/2012-05/23/content_809771.htm).

<sup>669</sup> “Medical Accident Management Measures [医疗事故处理办法],” Article 20.

<sup>670</sup> “Medical Accident Management Measures [医疗事故处理办法],” Article 18.

compensation standards are one of the most important issues in medical dispute resolution.

*Yinao*: Clear desire and permission for police intervention in *yinao* incidents: The measures contain two clauses directly alluding to *yinao*, one prohibiting these behaviors against the health bureaucracy's medical technical review committee and the other directly reflects *yinao*: "On the pretext that a medical accident occurred in a medical work unit, no one is allowed to pick a fight and cause trouble, and disturb the normal order of medicine. Violators will be given punishment according to relevant regulations of the Ministry of Public Security's 'People's Republic of China's Public Security Administration Management Principles.' In serious circumstances constituting a criminal offense, the justice institutions should pursue the case according to criminal liability."<sup>671</sup> The statements against *yinao* resemble those in the 1986 joint MOH and MPS notice – using language to prohibit it and state that public security organs have the ability to punish the behaviors.

### Establishing the Health Care Bureaucracy Petitioning System

While the dispute system had been established in 1987, there still lacked a coherent system for collecting complaints about the health care system, so in 1993 and 1996, the Ministry of Health passed measures for its system of letters and visits – part of the *xinfang* system<sup>672</sup> – to standardize the collection of health-related complaints, which

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<sup>671</sup> "Medical Accident Management Measures [医疗事故处理办法]," Article 25.

<sup>672</sup> The *xinfang* system stems from a long tradition in China of submitting citizen complaints through "letters and visits" at local level government offices and is not unique to the health care bureaucracies – virtually every bureaucracy has a letters and visits system at all levels (bottom-up: village, township, county, prefecture, province/special administrative region/provincial-level municipality, national-level) (See: Minzer, "Xinfang: An Alternative to Formal Chinese Institutions." If the lower-level office does not resolve the complaint, then the complainant(s) can go to the next higher level to make the complaint, and if the matter still remains unresolved at each successive level, the complainant(s) can go to the relevant central government agency in Beijing, though local governments try to prevent complainants from

cover anything from complaints about national health care policy to individual complaints about a hospital.

*Condemning Yinao Behaviors and Requesting Police Assistance:* In 1993 the Ministry of Health published “Health Ministry Xinfang Work Measures”<sup>673</sup> to lay out the procedures for the complaint management process and then followed with the 1996 “Management Measures for Mass Petitioning Up Levels and Health Ministry Receiving Cases at Different Levels.”<sup>674</sup> While neither of these measures explicitly addresses *yinao*, both measures have articles specifically aimed at identifying and addressing inappropriate behaviors similar to *yinao*. Both, notably, use weak language for handling these behaviors. For example, Article 20 of the 1993 Measures states the following about how to handle people causing disturbances at *xinfang* offices: “Request [*qing*, 请] the local police department, according to law, to handle or to remove [the individuals] and send [them] back to their locality.”<sup>675</sup> Article 20 of the 1996 Measures states, “If the visitor has one of the following behaviors [attacking, blocking doors, occupying the work area, causing disturbances, hanging signs, abandoning an old person or infant to threaten employees, blocking employees from work, etc.], it shall be reported to and requested

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escalating their complaints up the bureaucratic ladder (See: Jianxing Yu and Biao Huang, “Dampening Rather than Resolving Popular Contention in China: Strategies Used by Local Governments [地方政府在社会抗争事件中的‘摆平’策略],” *CASS Journal of Political Science* [政治学研究] 2 (2016): 26–28..

<sup>673</sup> Ministry of Health, “Ministry of Health Xinfang Work Measures (Annulled) Full Text [卫生部门信访工作办法(废止)\_全文],” Law Library [法律图书馆], June 29, 1993, [http://www.law-lib.com/law/law\\_view.asp?id=56390](http://www.law-lib.com/law/law_view.asp?id=56390).

<sup>674</sup> Ministry of Health, “Management Measures for Mass Petitioning Up Levels and Health Ministry Receiving Cases at Different Levels [群众逐级走访和卫生部门分级受理管理办法\_全文],” Law Library [法律图书馆], November 11, 1996, [http://www.law-lib.com/law/law\\_view.asp?id=302610](http://www.law-lib.com/law/law_view.asp?id=302610).

<sup>675</sup> Ministry of Health, “Ministry of Health Xinfang Work Measures (Annulled) Full Text [卫生部门信访工作办法(废止)\_全文],” Article 20.

[*baoping*, 报请] that the public security organs handle [the situation].”<sup>676</sup> This document cannot oblige police to respond since it is not within the purview of the MOH to do so, so instead they can only ask that the xinfang offices report the incidents to the police.

### Analysis of Policy Cycle 1

Weak policy documents, meaning documents with a low level of authoritativeness and with few authors, characterize the policies of the first policy cycle (see Table 10 for full summary below). Despite the weakness of the documents, at the same time they established the foundational procedures for complaint and dispute management. The primary policy tools used during this period were language, justice, and security tools. Policy documents used language to define the scope of and to prohibit *yinao* behaviors in addition to explicitly permitting police intervention in serious cases. All of the policy documents during this time invited police intervention to handle disturbances. Importantly, these documents established official complaints and dispute resolution for the health care bureaucracy – a first attempt to provide a system through which patients can seek justice in instances when they feel wronged.

Notably the preliminary system for dispute resolution favors in-hospital dispute resolution, which is also reflected by the dominance of the Ministry of Health in authoring these documents. Only in one document - a circular, the weakest type – do the Health and Security Ministries tackle the issue jointly. MPS is not obliged to obey any document that another ministry issues that crosses over into the realm of issues within its jurisdiction, which includes police intervention. Further, even though MPS supported one of these documents, its weak degree of authoritativeness does not oblige implementation.

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<sup>676</sup> Ministry of Health, “Management Measures for Mass Petitioning Up Levels and Health Ministry Receiving Cases at Different Levels [群众逐级走访和卫生部门分级受理管理办法\_全文],” Article 20.

The concentration of documents in the Ministry of Health in addition to the lack of authority of the one jointly issued document makes the resulting outcomes of this policy cycle unsurprising: there has been a well-known lack of police response to *yinao*<sup>677</sup> incidents in spite of explicit permission to do so, and further, the maintenance of dispute resolution within the health care bureaucracy itself without a third party evaluation of cases further fomented distrust of the system.

**Table 10: Policy Cycle 1, 1986-2000**

Date	Title of Document (EN)	Tool(s) - Content	Type	Agencies	Outcomes of Policy Cycle 1
1986.10.30	<i>Joint Notice On Protecting Hospital Order</i>	<b>Language</b> - prohibiting <i>yinao</i> behaviors <b>Language/Security</b> - permitting police intervention	Notice (weak)	1. MOH 2. MPS	<input type="checkbox"/> Lack of police intervention
1987.06.29	<i>Medical Accident Management Measures</i>	<b>Justice</b> - procedural establishment of dispute management system, creation of technical review committees, favoring in-hospital resolution <b>Security</b> - permitting police to punish <i>yinao</i> under existing regulations for public security <b>Healthcare System</b> - prohibits tampering of documents/destroying evidence by health care workers, administrative discipline for health care workers responsible for medical accidents	Measures	1. MOH	<input type="checkbox"/> Biased towards MOH and interest in protecting hospitals, lacked credibility with patients <input type="checkbox"/> Lack of police intervention <input type="checkbox"/> Persisting reports of tampering/destroying evidence <sup>678</sup>
1993.6.29	<i>Ministry of Health Xinfang Work Measures</i>	<b>Justice</b> - procedural establishment of complaint system for health care <b>Language/Security</b> - ask/report <i>yinao</i> behaviors to police	Measures	1. MOH	<input type="checkbox"/> Xinfang system implemented <input type="checkbox"/> Lack of police intervention (but not obliged by document)
1996.11.4	<i>Mass Petitioning at Levels of Government and the Measures for Accepting and Managing at Different Levels</i>	<b>Justice</b> - Procedural reform of complaint system <b>Language/Security</b> - ask/report <i>yinao</i> behaviors to police	Measures	1. MOH	<input type="checkbox"/> Xinfang system implemented <input type="checkbox"/> Lack of police intervention (but not obliged by document)

<sup>677</sup> News reports, academic articles, and interviews in late 2014 all emphasized the lack of police response. See Chapter Six on Sources of *Yinao* for more information.

<sup>678</sup> The issue of tampering with evidence and editing medical records is a well-known phenomenon. It is discussed in many research articles and was even featured in a scene on the 12<sup>th</sup> episode the popular TV show depicting doctors *Xinshu*. Tampering with medical records (篡改病历) produces 82 search results in CNKI since 1985. The years 2012 and 2013 saw the highest number of results, with 11 and 13 results respectively. The number is even greater with broader searches. See also: Lilac Garden, "Netizens Discuss *Xinshu*: A Doctor Edits a Medical Record to Protect Himself, Making People Feel No Shame or Sympathy 网友评心术: 医生为自保改病历 让人不耻又同情-搜狐健康," Sohu Health, May 9, 2012, <http://health.sohu.com/20120509/n342763849.shtml>.

## 2001-2002 Policy Cycle 2: Reforming the Regulations for Dispute Resolution

Against the backdrop of the lack of police response to *yinao* and general distrust of the dispute resolution system, the number of violent medical dispute cases broadcast by media almost doubling from 2000 to 2001.<sup>679</sup> One of these cases occurred in 2001 when the son of a deceased patient used a glass object to attack Dr. Wang Renzhi, Director of Neurology at Beijing's prestigious Peking Union Medical College Hospital. The attack resulted in an 8cm gash on Dr. Wang's arm that needed 25 stitches.<sup>680</sup> About a week after the incident, MOH and MPS issued a joint statement, identifying several *yinao* behaviors as explicitly constituting a violation of public security.<sup>681</sup> The statement said that public security organs should handle these incidents according to the "Public Security Administration Regulations" and further investigate acts with criminal liability according to law.<sup>682</sup> This notice not only identifies how specific behaviors should be punished like the previous 1986 notice, but it also addresses other factors that contribute to *yinao*, recognizing that this is not simply a problem of patients being violent, but that there are clear sources of patient discontent. It states that medical institutions must increase the transparency of fees and prohibit arbitrary fees, illegal use of medicine, and

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<sup>679</sup> Zhao et al., "The Pain of an Era: Big Data Records the Trajectory of 16 Years of Violence against Doctors [时代之痛! 大数据记录 16 年暴力伤医轨迹]"; "Taking Stock of Despicable Patient Doctor Incidents in the Past 10 Years [近十年医患恶性事件盘点]," March 26, 2012, <http://health.sina.com.cn/y/2012-03-26/112324911.shtml>.

<sup>680</sup> Shenghuo Shibao (now Xin Jingbao), "Beijing Xiehe Yiyuan Yisheng Bei Da An Yue Shen Yue Liqi (北京协和医院医生被打案越审越离奇)The Case of Assault against A Doctor at Beijing Xiehe Hospital Becomes More Bizarre the More It Is Investigated," People's Daily Online, accessed August 4, 2017, <http://www.people.com.cn/GB/shehui/44/20020312/685387.html>.

<sup>681</sup> "The Ministry of Health, The Ministry of Public Security Notice [卫生部公安部通告]," National Health and Family Planning Commission Bureau of Health Governance and Health Management, November 22, 2001, <http://www.nhfpc.gov.cn/yzygj/s3585u/200804/90d25a53b7ca40c08dca7252ba93e376.shtml#>.

<sup>682</sup> "The Ministry of Health, The Ministry of Public Security Notice [卫生部公安部通告]."

refusal of patients in need of emergency care.<sup>683</sup> It also details how to handle corpses, prohibiting the placement of corpses anywhere outside a hospital's morgue<sup>684</sup> – this is an important issue because placing dead bodies in public areas is a one of the behaviors of *yinao*.

### 2002 Medical Accident Management Regulations

The next year in 2002 the Medical Accident Management Measures were repealed and the State Council passed the Medical Accident Management Regulations<sup>685</sup> to replace it. The Medical Accident Management Regulations made several important changes, explained below and summarized in Table 11:

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<sup>683</sup> “The Ministry of Health, The Ministry of Public Security Notice [卫生部公安部通告],” Articles 6 & 7.

<sup>684</sup> “The Ministry of Health, The Ministry of Public Security Notice [卫生部公安部通告],” Article 8.

<sup>685</sup> State Council fo the People’s Republic of China, “Medical Accident Management Regulations [医疗事故处理条例],” 2002, [http://www.gov.cn/gongbao/content/2002/content\\_61445.htm](http://www.gov.cn/gongbao/content/2002/content_61445.htm).

**Table 11: Health Care Dispute Resolution Changes Over Time**

Key Characteristics of System	1987 Measures	2002 Regulations	Main Change
<b>Official Avenues Available</b>	Private settlement*, Court	Private settlement, Mediation by Health Bureaucracy, Court	Adds additional option of mediation by health bureaucracy <i>Bottom Line:</i> Maintains dispute resolution within health care bureaucracy
<b>Review Process</b>			
<i>Body Charged with Reviewing Cases</i>	Medical Accident Technical Review organized by Health Bureaucracy	Medical Accident Technical Review organized by China Medical Association	Moves responsibility of reviews to China Medical Association <i>Bottom Line:</i> Maintains dispute resolution within health care bureaucracy
<i>Burden of Proof</i>	On patients/families (plaintiffs)	On physicians/hospitals (defendants)	Reversed the burden of proof (举证倒置)
<i>Stance on tampering with evidence</i>	Preserve evidence from the scene and medical records, forbidden to tamper with	Preserve evidence from the scene and medical records, forbidden to tamper with	No change, maintains strong stance against tampering with evidence
<b>Accountability for Medical Personnel Responsible for Malpractice</b>	Yes - identifies punishments based on level of accident and other factors characterizing responsible personnel	Yes - less specific punishment than previous law, instead refers punishment to administrative punishment laws and Party discipline	Less specific, now depends on other legislation
<b>Compensation Standards</b>	No guidance, leaves to provinces to decide	Yes - provides general guidelines for areas under which patients and/or their families should be compensated in the case of a medical accident	Identified scope of issues that compensation should cover
<b>Explicit Messages on Yinao</b>	Yes	Yes - adds that people who use yinao can be charged with the crime of disturbing social order	Stronger verbal stance by identifying <i>yinao</i> behaviors as a specific crime - the crime of disturbing social order (扰乱社会秩序罪)

\*Avenue policies explicitly endorse as preferred

*New emphasis on prevention not just management of medical accidents*<sup>686</sup>. Unlike its predecessor, the Regulations has a section that focuses on preventing medical accidents and strengthening the monitoring of quality control,<sup>687</sup> an important step for reducing accidents, and therefore, disputes in hospital settings.

*Dispute Resolution Avenues: Introduction of Mediation by Health Bureaucracy.*

The avenues for dispute resolution (in-house negotiation with hospital, technical review,

<sup>686</sup> Thanks to an NHFPC official for this insight. National Health and Family Planning Commission Official, Interview No. 69.

<sup>687</sup> State Council of the People's Republic of China, "Medical Accident Management Regulations [医疗事故处理条例]," Chapter 2 Prevention and Handling of Medical Accidents.

court) remained intact, but Regulations explicitly gave the administrative bureaucracies under the Ministry of Health the ability to mediate conflicts over compensation at the local level.<sup>688</sup>

*Dispute Resolution Procedure: Moving Technical reviews to the Chinese Medical Association.* Regulations also, very importantly, moved Medical Accident Technical Reviews (performed under the Medical Accident Management Regulations) out of the health administrative bureaucracy, where there had been a clear conflict of interest in conducting the reviews for the hospitals that they administered. Instead, the medical accident technical reviews were given to the Chinese Medical Association (CMA),<sup>689</sup> which is a “civic organization with official background,”<sup>690</sup> so it is not a truly independent civic organization. Transferring the medical accident technical reviews to the CMA was an attempt to increase both the professional and third-party nature of the reviews,<sup>691</sup> but its attachment to local networks of physicians and its close administrative relationship with the health care bureaucracy continued to cast doubt on its objectivity.<sup>692</sup>

*Evidence: Continued Policy on No Tampering, but Reversing Burden of Proof*  
The Regulations continued, like the 1987 Procedures, to prohibit tampering with evidence, a continuing concern since doctors have been known to tamper with medical records. However, importantly, as mentioned in Chapter Three, Regulations also reversed the burden of proof from the plaintiff (patient) side to the defendant (doctor) side, creating a “guilty until proven innocent” culture in settling medical malpractice disputes

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<sup>688</sup> State Council for the People’s Republic of China, Article 48.

<sup>689</sup> State Council for the People’s Republic of China, Article 20.

<sup>690</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>691</sup> National Health and Family Planning Commission Official, Interview No. 69.

<sup>692</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China.”

and complaints,<sup>693</sup> though in reality, this did not make the medical malpractice dispute resolution process more in favor of patients.<sup>694</sup>

*More Specific Compensation Guidelines.* The new 2002 Regulations, unlike its predecessor, which left compensation standards to the provinces to decide, laid out more specific guidelines for compensation. These guidelines cover accident-related medical fees, workers compensation, subsidies for meals at hospitals, fees for accompanying relatives, compensation for those disabled, equipment needed to support disability, funeral and burial, compensation for dependents, transportation reimbursement, hotel reimbursement, pain and suffering, etc.<sup>695</sup> It also outlines acts that incur disciplinary measures for health care personnel directly related to the accident.<sup>696</sup> These guidelines aimed to standardize compensation and procedures in order to reduce arbitrariness in those decisions. However, in practice, as highlighted in Chapter 3 and more in the proceeding sections, these standards compensated less than allowed under the Tort Liability Law, and ultimately having the choice between claiming damages under both the Regulations and the Tort Liability ultimately encouraged arbitrariness in choosing criteria to evaluate compensation.<sup>697</sup>

*Provide greater specification on which crime yinao entails.* Unlike the 1987 Measures, the 2002 Regulations point directly to a specific crime in the Criminal Law of the People's Republic of China by which serious *yinao*-type behaviors should be

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<sup>693</sup> See analysis in Chapter 3 and also: Hospital official and former hospital affairs office head, Interview No. 072.

<sup>694</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 194–96.

<sup>695</sup> State Council fo the People's Republic of China, "Medical Accident Management Regulations [医疗事故处理条例]," Chapter 5.

<sup>696</sup> State Council fo the People's Republic of China, Articles 55 & 56.

<sup>697</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 198.

punished - the Crime of Disturbing Social Order (扰乱社会秩序罪).<sup>698</sup> It further states that in less serious *yinao* events, perpetrators are to be punished according to public security administration regulations.<sup>699</sup> While the 1987 Measures mentions that the criminal law or public security laws can be used to punish persons disturbing the order of hospitals, the document does not identify a specific crime for *yinao*-type behaviors to be categorized and punished under.<sup>700</sup> This change between the 1987 Measures and 2002 Regulations demonstrates a small move towards a more formal criminal categorization of *yinao*, though because MPS has not signed onto this document and it is not a law, MPS is not technically required to follow it.<sup>701</sup>

#### Analysis of Policy Cycle 2: Small, Incremental Changes in Justice, Security

The second policy cycle contains significant though small, incremental changes in policies relevant to *yinao* (see Table 12 for summary of policies).

**Table 12: Policy Cycle 2, 2001-2002**

Date	Title of Document (EN)	Tool(s) - Content	Type	Agencies	Outcomes of Era
2001.08.03	Ministry of Health, Ministry of Public Security Notice	<b>Language</b> - prohibiting <i>yinao</i> <b>Language/Security</b> - permitting police intervention under existing regulations <b>Language/Healthcare System</b> - transparency issues, arbitrary fees, illegal use of medicine, patient refusal for emergency care	Notice (Weak)	1. MOH 2. MPS	<input type="checkbox"/> Lack of police intervention <input type="checkbox"/> Persisting healthcare system issues with fees and corruption
2002.04.04	Medical Accident Management Regulations	<b>Justice</b> - Procedural establishment of dispute management system <b>Justice</b> - Identifying specific crime in criminal that serious <i>yinao</i> behaviors can constitute	Regulations (Moderate)	State Council	<input type="checkbox"/> Persisting mistrust of dispute resolutions system <input type="checkbox"/> Increasing Medical Disputes

<sup>698</sup> State Council for the People's Republic of China, "Medical Accident Management Regulations [医疗事故处理条例]," Article 59.

<sup>699</sup> State Council of the People's Republic of China, "Medical Accident Management Regulations [医疗事故处理条例]," Article 59.

<sup>700</sup> "Medical Accident Management Measures [医疗事故处理办法]," Article 25.

<sup>701</sup> "Legislation Law of the People's Republic of China [中华人民共和国立法法]," The National People's Congress of the People's Republic of China, March 18, 2015, Articles 81, 91, [http://www.npc.gov.cn/npc/dbdhhy/12\\_3/2015-03/18/content\\_1930713.htm](http://www.npc.gov.cn/npc/dbdhhy/12_3/2015-03/18/content_1930713.htm).

The first significant change is that the joint notice between MPS and MOH is the first explicit joint document tying together the violence against health care workers with the endemic issues of transparency and corruption in the health care system, showing that from a policy perspective, the acknowledgement that the health care system, not just patients and their families, are in part responsible for *yinao*. This is important because a response to *yinao* that truly aims to resolve it needs to address the underlying issues in the healthcare system that contribute to patients' frustrations.

Another significant change is the elevation of medical dispute resolution measures to Regulations adopted by the State Council, showing its rise in importance with an increase in authoritativeness in its document type and issuing agency. One of the themes that emerges when examining the group of changes in the dispute resolution process by the Regulations, as outlined in the section above and summarized in Table 12, is that they are small, incremental changes within the health care bureaucracy itself: Regulations allows for administrative mediation of disputes and entrusts the CMA with technical reviews for medical accidents, but both of these changes occur within its administrative jurisdiction.

As far as explicit messaging on *yinao*, there is more specific linking of *yinao* with crimes under China's Criminal Law; however, just as in past documents, the absence of both the MPS' endorsement in addition to the lack of authoritativeness on the documents makes them weaker in their ability to enforce.

#### *Outcomes of Era Two: No Apparent Improvement with Increasing Yinao Cases*

Available data on *yinao* and medical disputes show that unfortunately, despite the incremental changes made in the second policy cycle between 2001 and 2002, high-

profile attacks against health care workers increased in the years following these policies. Estimates made using available data on the average number of incidents per hospital per year suggest that the total number of *yinao* incidents in 2006 was around 94,861, up from around an estimated 66,000 incidents two years earlier.<sup>702</sup> Not only were the numbers of *yinao* incidents increasing, but media attention to it also grew: according to one study, media reports on violent attacks against doctors more than tripled from eight reported in 2002 to 27 reported in 2005<sup>703</sup> – about one report every two weeks for that year.

The worsening of *yinao* in the period following the passage of the Regulations was not necessarily caused by the Regulations and of course, there is usually a lag period between policy adoption and implementation. But at the same time, the worsening of the *yinao* situation also suggests that the incremental changes that characterized policy cycle two were insufficient for addressing *yinao*. Preserving the primary role of the health care bureaucracy in dispute resolution failed to build credibility. Further, not having MPS, and more importantly, any Party body endorse the policies also continued to enable a lack of a strong police response to disruptive behaviors; the explicit acknowledgment of *yinao* as a crime, even by a policy (the Regulations) adopted by China’s highest-ranking government body, the State Council, was not enough.

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<sup>702</sup> See Chapter 5 for more information regarding calculating data estimates for *yinao*, but briefly summarized here: This figure was calculated using the number of average *yinao* incidents according to a survey conducted by the China Medical Doctor Association (CMDA), whose survey revealed on average hospitals in China experienced 15.31 *yinao* incidents per year in 2006. While it is unclear which types of hospitals were included in the survey, I conservatively estimate a total figure by multiplying the 2006 number of second and third level hospitals in China (6,300), since these are facilities where *yinao* accidents tend to occur more often due their size, popularity with patients, and more advanced and therefore riskier procedures done in these facilities. For 2006, I get a total *yinao* estimate of 94,861. I repeat this calculation for 2004, when hospitals experienced on average 10.48 incidents per year, producing a total of about 66,000 incidents. See 2007 *China Health Statistics Yearbook* and 2005 *Health Statistics Yearbook*.

<sup>703</sup> Zhao et al., “The Pain of an Era: Big Data Records the Trajectory of 16 Years of Violence against Doctors [时代之痛！大数据记录 16 年暴力伤医轨迹].”

### Policy Cycle 3: 2005-2010 Establishing “Secure Hospitals” and the New Tort Law

Within the context of the early 2000s seeing violent incidents continue to arise from medical disputes, discussion about establishing “secure hospitals” began to circulate in the Chinese academic literature mainly from hospitals in Jiangsu and Zhejiang provinces attempting to establish more secure environments during 2005 and 2006.<sup>704</sup> These initiatives to establish “secure hospitals” followed the 2005 nationwide launch of “Opinions of the Central Political and Legal Affairs Commission and the Central Committee for Comprehensive Management of Public Security on Deepening the Launching of Secure Construction.”<sup>705</sup> Jiangsu Province was developing these “secure” initiatives as early as 2003.<sup>706</sup> It spread all over China, resulting in a plethora of initiatives nationwide to establish “secure Shaanxi,” “secure Jiangsu,” and “secure Fujian.”<sup>707</sup>

In April 2007, Jiangsu Province Comprehensive Security Commission, Public Security Department, Justice Department, and Department of Health jointly issued “Opinions on Launching Secure Hospitals Establishment Activity.”<sup>708</sup> A month later in

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<sup>704</sup> Chen Jianrong et al., “Gouzhu Yiyuan Zhian Fangkong Tixi de Tansuo Yu Shijian (构筑医院治安防控体系的探索与实践) [On Construction and Practice of Hospital Security, Prevention and Control System],” *Jiangsu Weisheng Shiye Guanli (江苏卫生事业管理) [Jiangsu Management of Health Care]* 9, no. 3 (March 2005); Ye Xinmin, “Zhuahao Yiliao Anquan Chuangjian Pingan Yiyuan (抓好医疗安全 创建平安医院) [Grasp Medical Safety, Establish Secure Hospitals],” *Zhongguo Nongmin Weisheng Shiye Guanli (中国农村卫生事业管理) [Chinese Rural Health Service Administration]* 1 (2006).

<sup>705</sup> “Zhongban Guoban Zhuanfa 《Zhongyang Zhengfa Weiyuanhui、Zhongyang Shehui Zhian Zonghe Zhili Weiyuanhui Guanyu Shenru Kaizhan Pingan Jianshe de Yijian》(中办国办转发《中央政法委员会、中央社会治安综合治理委员会关于深入开展平安建设的意见》) [Opinions of the Central Political and Legal Affairs Commission and the Central Committee for Comprehensive Management of Public Security on Deepening the Launching of Secure Construction],” *People’s Daily*, December 5, 2005.

<sup>706</sup> Jindong Ge et al., “Putting into Practice the ‘Three Represents’ to Establish a ‘Secure Jiangsu’ 践行‘三个代表’建设‘平安江苏,’” *China Police Daily*, June 25, 2003.

<sup>707</sup> Search for news results in CNKI best illustrate how the “secure” initiatives picked up following the national policy adoption of “Opinions of the Central Political and Legal Affairs Commission and the Central Committee for Comprehensive Management of Public Security on Deepening the Launching of Secure Construction” in 2005. Beginning in 2006, for example, there are 34 news articles on “peaceful Shaanxi” for that year. There were 3 for “secure Fujian” in 2005 and then 16 in 2006.

<sup>708</sup> Provincial Committee for Comprehensive Management of Public Security et al., “Shengzhengfu Bangong Ting Zhuanfa Sheng Zongzhiban Deng Bumen Guanyu Kaizhan Pingan Yiyuan Chuangjian

direct response to the worsening *yinao* situation and other concerns about the security and quality of hospitals,<sup>709</sup> seven central departments of the government and CCP (Ministry of Health, Central Public Security Comprehensive Management Commission, the Propaganda Department, Ministry of Public Security, Ministry of Civil Affairs, the State Administration for Industry and Commerce, and the State Administration of Traditional Chinese Medicine) released “Guiding Opinions on Launching the Establishment of ‘Secure Hospitals’ Activity” and declared the creation of a leading small group (LSG)<sup>710</sup> to assess the progress and achievements of the initiative.<sup>711</sup>

### Implementation Measures for Establishing “Secure Hospitals” Nationwide

The following year in 2008, these seven responsible departments released the implementation measures for launching the “Secure Hospitals” initiative.<sup>712</sup> There are several important points to note about this document.

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Huodong Yijian de Tongzhi(省政府办公厅转发省综治办等部门关于开展平安医院创建活动意见的通知) [Provincial Government Office Transmits Notice from Provincial Committee for Comprehensive Management of Public Security and Other Departments on Opinions on Launching Secure Hospitals Establishment Activity]” (Jiangsu Government Office, April 9, 2007).

<sup>709</sup> “Seven Departments: In the Health Care System Launch Activity for Establishing Secure Hospitals [七部门：在卫生系统开展创建平安医院活动],” *National People’s Congress*, May 10, 2007, [http://www.npc.gov.cn/npc/xinwen/fztd/yfxz/2007-05/10/content\\_365190.htm#](http://www.npc.gov.cn/npc/xinwen/fztd/yfxz/2007-05/10/content_365190.htm#).

<sup>710</sup> A Leading Small Group (LSG) is a consulting and coordination body established to coordinate policymaking on specific issue areas; while it is not a decision-making body, it can have an important sway on how policies are decided. They cover a broad range of areas from Foreign Affairs like the Foreign Affairs Leadership Small Group to domestic affairs like the Leadership Small Group for Deepening Comprehensive Economic Reform. They are composed of leading members of relevant government, party, and, military ministerial ranking agencies. The LSGs conduct meetings on their dedicated area and vary in size and importance and often do not have permanent staff. They are important because many policy initiatives fall under the roles of various ministries and LSGs give the ministries a forum to coordinate their efforts. In the case of the LSG for the Secure Hospitals initiative, its role would be to coordinate the work of the relevant ministries to the initiative among other obligations such as responsibilities for assessing nationwide progress on the initiative. For more information about LSGs, see Ning Lu, “The Central Leadership, Supraministry Coordinating Bodies, State Council Ministries, and Party Departments,” in *The Making of Chinese Foreign and Security Policy in the Era of Reform, 1978-2000*, ed. David M Lampton (Stanford: Stanford University Press, 2001), 45–46.

<sup>711</sup> “Seven Departments: In the Health Care System Launch Activity for Establishing Secure Hospitals [七部门：在卫生系统开展创建平安医院活动].”

<sup>712</sup> “Notice on the Publication of ‘Nationwide ‘Secure Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及

*Establishment of a National Coordinating Group for Enforcement, but no LSG:*

Notably, the implementation measures no longer mentions an LSG, the creation of which would have signaled a possibly higher level of importance and attention by the leadership.<sup>713</sup> Instead, the document charges an inter-ministerial national small group (the Nationwide Establishing Secure Hospitals Activity Working Group) with the responsibility of coordinating the campaign and assessing the performance of relevant provincial-level institutions to implement the initiative.<sup>714</sup> Even though this coordination body is not as prestigious as an LSG, the creation of a coordination group shows priority in coordinating the interdisciplinary nature of resolving issues related to *yinao* and other security issues within hospitals.

*Continued broadening scope of policy issues:* These implementation measures evaluate the progress of hospitals and health bureaucracies in establishing “secure hospitals” based on a 100-point based system that includes both direct and indirect sources of *yinao*, such as improving both security<sup>715</sup> and quality of care.<sup>716</sup> One of the sections is specifically dedicated to the patient-doctor relationship and explicitly evaluates hospitals based on transparency of fees, whether or not they collect inappropriate fees, and price management – all cost related issues that kindle a tense

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考核标准（试行）》的通知],” *Ministry of Health*, March 25, 2008,  
<http://www.moh.gov.cn/mohbgt/s2906/200806/36724.shtml>.

<sup>713</sup> “Conversation with Chinese Think Tank Employee,” February 2017.

<sup>714</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知],” *Ministry of Health*, March 25, 2008, 1.3,  
<http://www.moh.gov.cn/mohbgt/s2906/200806/36724.shtml>.

<sup>715</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知],” Assessment Section 3.

<sup>716</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知],” Assessment Section 4.

patient-doctor relationship.<sup>717</sup> This section also places emphasis on health departments collecting information about patient satisfaction<sup>718</sup> and ensuring that complaint management procedures are standardized and unobstructed.<sup>719</sup>

*Rewarding initiatives for mediation.* While these evaluation criteria did not introduce new institutions for dispute resolution, they reward provinces that explore third-party mediation methods for medical dispute resolution.<sup>720</sup> By 2008 mediation had already been established in several cities throughout China (see next chapter for details on development of mediation), but to my knowledge, this is one of the first, if not the first national document that endorses it.

*Deducting points for lack of attention to yinao.* *Yinao* appears explicitly in the evaluation as a criterion for losing points – if an investigation finds evidence of only weak attempts to crackdown on *yinao* or medical introducers (*yituo*),<sup>721</sup> up to ten points, or 10% of total possible points, can be deducted.<sup>722</sup>

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<sup>717</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知],” Assessment Section 5.

<sup>718</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知],” Assessment Section 5, Part 3.

<sup>719</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知],” Assessment Section 5, Part 4.

<sup>720</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知],” Assessment Section 6, Part 5.

<sup>721</sup> *Yituo* are “medical introducers” or “medical scalpers” occupy various public spaces in and around large hospitals to coax patients into going to other hospitals that are often illegal or substandard. They also operate online and have been the recent target of government crackdowns. See: Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 205–6; Guanxing Zhu, Meilao Shen, and Xuliang Zhang, “Legal Exploration for Rectifying ‘Yituo’ [整治“医托“的法律探讨],” *China Health Service Management* Editorial Email, no. 4 (2008).

<sup>722</sup> “Notice on the Publication of ‘Nationwide ‘Secure Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知].”

## 2009 Hospital Complaint Management Procedures

Even though the implementation measures for establishing “secure hospitals” emphasized standardized complaint procedures, there were no existing national guidelines specifically on hospital complaint management systems, though hospitals were supposed to look to the petitioning system in the health care bureaucracy established during the first policy cycle era (1986-2000) for guidance.<sup>723</sup> This changed in 2009 when the Ministry of Health issued the Hospital Complaint Management Procedures.<sup>724</sup> Expanding procedural standards to the hospital level is important for *yinao* because, as noted in Chapter Four, disputes can escalate from initial complaints, and it is at this point in the process that hospitals have the potential to defuse conflict.

*Standardization of Procedures to Address Complaints in Timely Manner:* The 2009 Procedures standardized the reception and management of medical complaints by outlining requirements for complaint management personnel,<sup>725</sup> appropriate management of complaint records,<sup>726</sup> and time limits for how long hospitals should take to resolve complaints, depending on the type of complaint.<sup>727</sup>

*Defining Hospital Complaint Department Purview, Not to Include Mass Incidents:* The Complaint Management Procedures also defines the scope of responsibility for complaint management departments at hospitals. For example, complaints that result in

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<sup>723</sup> “Health Xinfang Work Measures [卫生信访工作办法 (卫生部令第 54 号)],” Ministry of Health Policy and Regulations Department, February 16, 2007, Article 37, <http://www.moh.gov.cn/mohzcfgs/pgz/201207/7858fe06203746cd8625bc36026b361f.shtml>.

<sup>724</sup> “Notice on ‘Hospital Complaint Management Measures (Implementation)’ [关于印发《医院投诉管理办法 (试行)》的通知],” Office of the Ministry of Health, November 26, 2009, <http://www.moh.gov.cn/mohbgt/s10695/200912/44756.shtml>.

<sup>725</sup> “Notice on ‘Hospital Complaint Management Measures (Implementation)’ [关于印发《医院投诉管理办法 (试行)》的通知],” Chapter 3.

<sup>726</sup> “Notice on ‘Hospital Complaint Management Measures (Implementation)’ [关于印发《医院投诉管理办法 (试行)》的通知],” Part Five.

<sup>727</sup> “Notice on ‘Hospital Complaint Management Measures (Implementation)’ [关于印发《医院投诉管理办法 (试行)》的通知],” Chapter 4.

mass incidents, such as a possible *yinao* situation, are beyond the purview of the guidelines and are to be handled according to the 2002 Medical Accident Regulations.<sup>728</sup>

*Advocacy of People's Medical Dispute Mediation Committees:* The regulations further encourage linking hospital complaint management with the people's medical dispute mediation committees,<sup>729</sup> not only implying that this new institution for dispute resolution was starting to take shape throughout China at this time, but also showing the recognition that the resolution of complaints and disputes needed an integrated, systemic solution.

*Integrating Complaints, Quality, and Safety:* The Procedures also integrate the complaint management system with medical quality and safety management as well as interdepartmental communication systems in order to raise quality and ensure safety.<sup>730</sup> The guidelines are broad and administrative regions are encouraged to write their own detailed measures for enforcement.<sup>731</sup>

#### Passage of Tort Liability Law of the PRC Includes Medical Damages Liability

In the same year that MOH issued regulations for complaints at the grassroots level at hospitals, the National People's Congress passed the Tort Liability Law with an entire section on medical liability,<sup>732</sup> addressing the legal obligations for health care workers and hospitals during treatment and disputes.

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<sup>728</sup> "Notice on 'Hospital Complaint Management Measures (Implementation)' [关于印发《医院投诉管理办法（试行）》的通知],” Article 37.

<sup>729</sup> "Notice on 'Hospital Complaint Management Measures (Implementation)' [关于印发《医院投诉管理办法（试行）》的通知],” Article 9.

<sup>730</sup> "Notice on 'Hospital Complaint Management Measures (Implementation)' [关于印发《医院投诉管理办法（试行）》的通知],” Chapter 5.

<sup>731</sup> "Notice on 'Hospital Complaint Management Measures (Implementation)' [关于印发《医院投诉管理办法（试行）》的通知].”

<sup>732</sup> "The People's Republic of China Tort Liability Law (Order of the President of the People's Republic of China No. 21) [中华人民共和国侵权责任法（主席令第二十一号)],” Section 7.

*Giving legal weight to medical dispute resolution, but vague on procedures:* The Tort Liability Law addressed important problems in medical damages liability, such as obligations of medical practitioners during the course of diagnosis and treatment,<sup>733</sup> and what constitutes liability.<sup>734</sup> But it did not address the details for conducting the technical reviews to determine fault in medical liability cases (called the Medical Damages Review), such as which organizations could be entrusted to conduct the reviews and the procedures that they should follow.<sup>735</sup> Even though before the Tort Liability Law went into effect, a legal explanation by the Supreme People's Court made it clear that the judicial inspection agencies could review these cases,<sup>736</sup> it failed to differentiate which cases should go to the Medical Associations for evaluation and which should go to the Judicial Inspection Agencies, the process by which these cases should be evaluated, and the division of labor between these two types of agencies.<sup>737</sup> In 2011, some of these issues were addressed in the drafted "Supreme People's Court Explanation of Several Issues in Applying the Law in Hearing Medical Damages Liability Dispute Cases (Draft Seeking Comments)," but to my knowledge, this document was never formally approved.<sup>738</sup>

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<sup>733</sup> The Standing Committee of the 11th National People's Congress [第十一届全国人民代表大会常务委  
员会], "The People's Republic of China Tort Liability Law 中华人民共和国侵权责任法," Article 55.

<sup>734</sup> *Ibid.*, Articles 55, 57-58; Shihao Jiang, "Exploring China Medical Association's Role as the Main Body  
for Conducting Medical Damages Reviews [医学会作为医疗损害主体之探讨]," *ACTA Universitatis  
Medicinalis Nanjing (Social Sciences)* 2 (April 2013): 128.

<sup>735</sup> Jiang, 128.

<sup>736</sup> "Notice of the Supreme People's Court on Certain Issues Concerning the Application of the Tort Law of  
the People's Republic of China [最高人民法院关于适用《中华人民共和国侵权责任法》若干问题的通  
知]," June 30, 2010, [http://www.pkulaw.cn/fulltext\\_form.aspx?Gid=134591&Db=chl](http://www.pkulaw.cn/fulltext_form.aspx?Gid=134591&Db=chl).

<sup>737</sup> "Notice of the Supreme People's Court on Certain Issues Concerning the Application of the Tort Law of  
the People's Republic of China [最高人民法院关于适用《中华人民共和国侵权责任法》若干问题的通  
知]"; Jiang, "Exploring China Medical Association's Role as the Main Body for Conducting Medical  
Damages Reviews [医学会作为医疗损害主体之探讨]," 127.

<sup>738</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 201-2. Since Liebman's writing  
on this matter in 2013, the author has still not found any evidence that this Notice was formally adopted.

*Implies Yinao is Prohibited (Again)*: While the Tort Liability Law does not specifically address *yinao*, it implies it is prohibited: “The legitimate rights and interests of medical organizations and their medical personnel are protected by law. Anyone who interferes in medical administration and hinders the work or lives of medical personnel shall bear legal liability in accordance with the law.”<sup>739</sup>

### Analysis of Policy Cycle 3

There are some significant changes in this third policy cycle (see summary Table 13 below).

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Even finding an official version of its release online has been difficult. For an unofficial version, see: “Explanation on Legal Application for Hearing Medical Damages Liability Dispute Cases [关于审理医疗损害责任纠纷案件适用法律的解释],” *Findlaw.Cn*, June 5, 2014, <http://china.findlaw.cn/yiliao/ylsgql/yiliaochulifagui/1110214.html>.

<sup>739</sup> The Standing Committee of the 11th National People’s Congress [第十一届全国人民代表大会常务委  
员会], “The People’s Republic of China Tort Liability Law 中华人民共和国侵权责任法,” Article 64.

**Table 13: Policy Cycle 3, 2007-2010**

Date	Title	Tool(s) Used	Type	Agencies	Outcomes
2007.02.16	Health Xinfang Work Measures	<b>Justice:</b> Procedural reform of complaint system: more specific guidelines for procedures (timing, place of reception, etc.)	Measures (Moderate)	1. MOH	<input type="checkbox"/> <b>Increasing yinao:</b> available data suggest increasing yinao incidents from between 2006 and 2012 <input type="checkbox"/> <b>Fragmented implementation of Tort Liability Law:</b> Difference in implementation of Tort Liability Law on provincial level, <input type="checkbox"/> <b>“Secure hospitals” initiative enforced, but performance of initiative unclear</b>
2008.3.25	Notice on the Publication of "Nationwide 'Peaceful Hospitals' Establishment Work Assessment Measures and Assessment Standards (Implementation)"	<b>Security:</b> Increasing hospital security capabilities, incentivizes strict security enforcement against <i>yinao</i> <b>Healthcare – quality</b> Improving health care quality <b>Healthcare – Communication:</b> Improving doctor-patient communication around fees and patient satisfaction <b>Healthcare/Justice – complaint system:</b> Ensuring complaint channels unobstructed <b>Justice – third party dispute resolution:</b> incentivizing the creation of third-party dispute resolution institutions (mediation)	Notice (Weak)	<b>Increased inter-ministerial participation:</b> 1. Ministry of Health (MOH) 2. Central Public Security Comprehensive Management Commission 3. Central Propaganda Department 4. Ministry of Public Security (MPS) 5. Ministry of Civil Affairs (MCA) 6. State Administration for Industry and Commerce (SAIC) 7. State Administration of Traditional Chinese Medicine	
2009.11.26	Hospital Complaint Management Measures	<b>Justice</b> - Standardizes complaint management procedures in hospitals <b>Justice/healthcare:</b> Links complaint system to improving safety and quality	Measures (Moderate)	1. MOH	
2009.12.26	Tort Liability Law	<b>Legal reform:</b> Officially integrating medical liability into Tort Law	<b>Law (Strong*)</b>	1. National People's Congress (NPC)	
* Strong in the sense of authoritativeness of document, but not necessarily in implementation					

*Increasing Coordination between Multiple Government and Party Organizations:*

The first obvious change is that policies during this era begin to integrate the roles of more than just the Ministry of Health. The “Peaceful Hospital” initiatives involved seven

ministries and created a coordinating body to connect and evaluate their reforms. This type of policy demonstrates that the Chinese state is acknowledging the complexity of *yinao* and beginning to adopt a holistic, joint approach to resolving it.

*Continued expansion of policy tools used to address the issue, with an increase in attention in patient-doctor communication as well as mediation:* The Implementation Measures for “Secure Hospitals” and the Tort Liability Law notably place emphasis on the communication obligations doctors have to their patients. While the 2002 Regulations in the last cycle emphasized quality and safety, in this era, the implementation measures for “secure hospitals” actually establishes a formal system for evaluating the improvement in quality and safety, potentially strengthening enforcement. This era further places emphasis on complaint management – three out of the four relevant documents to *yinao* emphasize standardized and timely management of complaints, suggesting a clear recognition on the instrumental role that addressing complaints may have for defusing disputes. Further, both the Implementation Measures and the Hospital Complaint Procedures endorse using MDMCs to resolve complaints and conflict, and as will be seen in the following policy cycle, MDMCs will continue to receive increasing attention for their effectiveness in dispute resolution.

*Elevation of medical malpractice liability into law:* Another major change in addition to the “secure hospitals” initiative during this era was the introduction of law into medical disputes with the Tort Liability Law.<sup>740</sup> This is important because laws are technically more powerful than the other forms of documentation used in the past to respond to medical disputes and *yinao*; previously regulations, procedures, notices, circulars, and announcements had governed these issues. The Tort Liability Law also

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<sup>740</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 193.

clearly states that people disturbing the order of medical institutions, like practitioners of *yinao*, will also be held accountable according to law for their actions. Of course, this last statement about holding those accountable for disturbing the order of medicine is not different from previous documents stating the same thing; the main change is that this statement appears in a more authoritative type of document. The elevation of legal status of medical liability as well as an anti-*yinao* stance, however, does not necessarily mean it has improved the dispute resolution process or decreased the occurrence of *yinao*.

### *Outcomes of Policy Cycle 3*

Available data suggest that *yinao* incidents continued to rise in the immediate years following this 2005-2010 policy cycle, with the number of estimated incidents in secondary and tertiary hospitals in 2012 reaching as many as 223,587 incidents per year, an increase from an estimated 94,861 incidents in 2006.<sup>741</sup> Again, there is lag between policy adoption and implementation, but it is suffice to say that in the immediate period after this period, the situation of violence in health care setting did not improve. The sections below highlight some of the features of implementation of the “secure hospitals” initiative and the Tort Liability within this context of worsening *yinao* incidents.

#### “SECURE HOSPITALS”: PUBLICITY UPFRONT, FADING INTO THE BACKGROUND

Available documents and articles as well as interviews show that the national coordination body for the “secure hospitals” initiative has met periodically,<sup>742</sup> and that

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<sup>741</sup> See Chapter 4, page 11-13 for an explanation on the calculation of these figures.

<sup>742</sup> The group met in 2012 and 2014 Guiyang, and also compiled the 2016 Circular on work to protect hospital order nationwide. See: “Nationwide Medical Dispute People’s Mediation Work On-Site Meeting Convenes in Tianjin [全国医疗纠纷人民调解工作现场会在天津召开 - 中华人民共和国国家卫生和计划生育委员会],” *National Health and Family Planning Commission of the People’s Republic of China*, May 5, 2014, <http://www.nhfpc.gov.cn/mxwgrwz/pldhd/201405/9801d4c22bad4457839c3a4ca3f984e6.shtml>; “News Brief - National Establishing ‘Peaceful Hospitals’ Activity Work Group Office Meeting Opens in Guiyang [全国创建“平安医院”活动工作小组办公室会议在贵阳召开],” *People’s Mediation* 12 (2014); “National

the initiative has been enforced at the local level. A publicized list of the leadership of the Nationwide Establishing Secure Hospitals Activity Working Group in 2011 reveals the group's level of importance to and the roles of participating ministries.<sup>743</sup> The Group Leader was the Ministry of Health's Party Secretary Zhang Mao, and the Vice-leaders were the director of the CCP's Central Public Security Comprehensive Management Commission (CPSCMC) and the Vice Minister of the Ministry of Public Security, indicating the importance of the group's work for social stability in China. Other members were also mostly vice-ministers of the other participating ministries or Party departments.<sup>744</sup> This arrangement shows that while this was a top priority for the Ministry of Health with its highest-ranking leader overseeing the working group and for the CPSCMC with its Director (highest position) as a vice leader, for other ministries it was not of utmost priority because otherwise their highest-ranking members would have likely been on this coordination group. This does not mean its work did not matter, but this helps us gauge its importance and prioritization to actors involved. But even if it was not a top priority for every ministry involved, the scope of the group's work notably expanded in 2011, with the number of participating ministries rising from seven to ten,<sup>745</sup> further demonstrating an increasing awareness for the need to address *yinao* and other hospital security issues with an interdisciplinary approach.

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Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报], National Health and Family Planning Health Affairs and Governance Bureau, (February 27, 2017), <http://www.moh.gov.cn/yzygj/s3590/201702/de9f284c30f546dba85ba8323538cfa8.shtml>.

<sup>743</sup> "Circular on Adjusting the National Establishment 'Peaceful Hospitals' Activity Working Group and Office [关于调整全国创建'平安医院'活动工作小组及办公室成员的通知]," Ministry of Health Information Publication on Special Topics, December 21, 2011, <http://www.moh.gov.cn/zwgkzt/s9968/201201/53891.shtml>.

<sup>744</sup> "Circular on Adjusting the National Establishment 'Peaceful Hospitals' Activity Working Group and Office [关于调整全国创建'平安医院'活动工作小组及办公室成员的通知]."

<sup>745</sup> "Circular on Adjusting the National Establishment 'Peaceful Hospitals' Activity Working Group and Office [关于调整全国创建'平安医院'活动工作小组及办公室成员的通知]."

As far as this group's meetings, (more on this will be covered in the next policy cycle as well), the national-level group met in Tianjin on June 29, 2012.<sup>746</sup> While it is likely that the group would have met more than this one time during this era, so far this study has not found other documentation of the meetings. The 2012 meeting emphasized the effectiveness of medical dispute people's mediation committees (MDMCs) in several areas of the country, including Tianjin.<sup>747</sup> It also emphasized then-Vice Premier Li Keqiang's recognition of the effectiveness of these committees in Tianjin, Henan, and Hainan.<sup>748</sup> In light of the success of these committees, at this meeting it was concluded that Tianjin's experience with MDMCs could be studied and replicated elsewhere, and that MDMCs represented an effective method for advancing the establishment of "secure hospitals."<sup>749</sup> The recognition of mediation as an important aspect of the initiative represents a change from when it was initially established four years prior, when assessment criteria for peaceful hospitals regarded mediation as an area for bonus points, but not an essential part of the program. Also, the fact that top-level leader Li Keqiang recognized and approved of medical mediation efforts across the country signals the rising importance of the issue.<sup>750</sup> As noted in the previous chapter, during 2012 *yinao*

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<sup>746</sup> "National Establishment 'Peaceful Hospitals' Activity Working Small Group Office Meeting Convened in Tianjin [全国创建"平安医院"活动工作小组办公室会议在天津召开]," *People's Mediation* Editorial Email, no. 8 (2012): 7.

<sup>747</sup> "National Establishment 'Peaceful Hospitals' Activity Working Small Group Office Meeting Convened in Tianjin [全国创建"平安医院"活动工作小组办公室会议在天津召开]," *People's Mediation* Editorial Email, no. 8 (2012): 7.

<sup>748</sup> "National Establishment 'Peaceful Hospitals' Activity Working Small Group Office Meeting Convened in Tianjin [全国创建"平安医院"活动工作小组办公室会议在天津召开]."

<sup>749</sup> "National Establishment 'Peaceful Hospitals' Activity Working Small Group Office Meeting Convened in Tianjin [全国创建"平安医院"活动工作小组办公室会议在天津召开]."

<sup>750</sup> "National Establishment 'Peaceful Hospitals' Activity Working Small Group Office Meeting Convened in Tianjin [全国创建"平安医院"活动工作小组办公室会议在天津召开]."

received a relatively high level of public attention compared to previous years.<sup>751</sup> The next chapter provides greater detail on the implementation of MDMCs.

Regarding the implementation of the “secure hospitals” initiative at the local level, the provinces also created their own working groups to coordinate the peaceful hospitals initiative,<sup>752</sup> which is required by the 2008 assessment standards.<sup>753</sup> In 2017 when asked about the status of this initiative nearly a decade after its adoption, a hospital official explained that this initiative is a type of program that initially receives a high amount of attention but over time becomes a long-term form of work, noting that launching special program activities and campaigns are traditional ways that the Ministry of Health makes and implements policies.<sup>754</sup>

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<sup>751</sup> See Chapter 2, page 10, Baidu trends peak for search term *yinao* occurs in 2012 for PCs.

<sup>752</sup> For example, see Jiangsu’s version of the policy for its province: “Provincial Government Office Transmits Provincial Public Security Comprehensive Management Commission and Other Department’s Circular on Opinions on Launching Peaceful Hospitals Establishment Activity [省政府办公厅转发省综治办等部门关于开展平啊你愿创建活动意见的通知],” *Jiangsu Province People’s Government Announcements*, April 9, 2007, 27–31.

<sup>753</sup> “Notice on the Publication of ‘Nationwide ‘Peaceful Hospitals’ Establishment Work Assessment Measures and Assessment Standards (Implementation) [关于印发《全国‘平安医院’创建工作考核办法及考核标准（试行）》的通知].”

<sup>754</sup> Hospital Administrator, Interview No. 79, 2017, 79; Other examples of these types of policy campaigns include the Nationwide Special Rectification Activity Program for the Clinical Application of Antibiotics to encourage rational practice in prescribing antibiotic use and the Patriotic Health Campaign - a public health campaign Mao started in 1952 still ongoing today). Ministry of Health Health Governance Office, “Ministry of Health Office Notice on Continuing to Deepen the Launching of National Antibiotic Clinical Application Special Rectification Program [卫生部办公厅关于继续深入开展全国抗菌药物临床应用专项整治活动的通知],” March 6, 2012, <http://www.moh.gov.cn/mohyzs/s3586/201203/54251.shtml>; The Central Government of the People’s Republic of China, “Patriotic Health Campaign [爱国卫生运动],” April 18, 2012, [http://www.gov.cn/test/2012-04/18/content\\_2116044.htm](http://www.gov.cn/test/2012-04/18/content_2116044.htm).

Implementation of the Tort Liability Law has varied at the local level due to the lack of guidance from the national level regarding how medical damages reviews are to be conducted, providing little clarification on whether judicial inspection committees, the CMA, or both should conduct these reviews.<sup>755</sup> As a result, the provinces themselves have formulated policies for implementing the new Tort Liability Law. For example, Jiangsu Province has released documents to clarify that medical associations (local branches of the CMA) carry the primary responsibility for conducting Medical Damages Reviews and have also laid out more specific details on how the Medical Damages Reviews should be conducted.<sup>756</sup> As a result in Jiangsu Province, it is rare for a judicial inspection to be used in a medical malpractice case because Jiangsu province requires that both sides agree to this type of review,<sup>757</sup> and hospitals usually refuse it.<sup>758</sup> Further, courts in Jiangsu Province, regardless of opposition by the plaintiff or defendant, can order a Medical Damages Review,<sup>759</sup> and there is rarely an objection to conducting this review.<sup>760</sup>

The situation, however, differs in Guangzhou Province. A white paper on Guangzhou's medical dispute lawsuit situation by Guangzhou's Intermediate People's Court stated in May 2015 that at that point in time, the Guangzhou Medical Association did not have a program to conduct Medical Damages Reviews and medical associations

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<sup>755</sup> Jiang, "Exploring China Medical Association's Role as the Main Body for Conducting Medical Damages Reviews [医学会作为医疗损害主体之探讨]," 128.

<sup>756</sup> Jiang, 129.

<sup>757</sup> "Judicial Review Service Guide."

<sup>758</sup> Medical Affairs Office Employee, Interview No. 063, 4.

<sup>759</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>760</sup> Medical Affairs Office Employee, 3–4.

throughout Guangzhou Province also did not perform these types of reviews.<sup>761</sup> The white paper reports that in Guangzhou there are no uniform standards for the judicial inspection companies for conducting the medical accident reviews, leaving important decisions to the discretion of individual judicial inspection companies, such as decisions regarding holding hearings with both plaintiffs and defendants, consulting with clinical experts about cases, and choosing the expertise level of consulted clinical experts.<sup>762</sup> This is important because without rules regulating these decisions, there is greater room for corruption in deciding cases, which potentially further decreases the credibility of the dispute resolution system to both plaintiffs and defendants.

The Tort Liability Law also did not explicitly address the issue of two tracks for medical reviews, but there is evidence that in practice some provinces have eliminated the two tracks. In Jiangsu Province courts only evaluate cases under the Tort Liability Law, only order Medical Damages Reviews (not Medical Accident Reviews),<sup>763</sup> and compensate according to the standards set by the 2003 judicial interpretation for compensating personal injury (not according to the standards in the Medical Accident Regulations).<sup>764</sup> While the courts neither order Medical Accident Reviews nor compensate according to the corresponding Medical Accident Regulations, medical accident reviews still may be permitted as evidence in a court case if previously conducted.<sup>765</sup> In Jiangsu Province, Medical Accident Reviews are only pursued

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<sup>761</sup> Guangzhou City Intermediate Level People's Court, "White Paper on Guangzhou's Medical Dispute Lawsuit Situation" (Guangzhou City Intermediate Level People's Court, May 21, 2015), 18, <http://www.gzcourt.gov.cn/upfile/File/201505/26/18275054.pdf>.

<sup>762</sup> Guangzhou City Intermediate Level People's Court, 18.

<sup>763</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>764</sup> Hospital Administrator, Interview No. 79.

<sup>765</sup> Medical Affairs Office Employee, Interview No. 063.

separately through the health administrative bureaucracy,<sup>766</sup> and these are becoming increasingly rare.<sup>767</sup> In Guangdong province the Medical Accident Reviews no longer have legal basis for deciding medical accident disputes,<sup>768</sup> but as discussed above, Guangzhou is still in the process of establishing a system to enforce the new Tort Liability Law.

#### **Policy Cycle 4, 2012-2017: Heightened Security Amidst High-Profile Incidents**

Despite the progress made during the third policy cycle with the creation of measures for more accountability for hospitals and the Tort Liability Law, high-profile cases of violence against health care workers continued to emerge. Baidu Trend data shows increased attention by society to *yinao* with 2012 being a peak year for Internet searches (via PCs) for *yinao*.<sup>769</sup>

#### 2012 The Li Mengnan Incident and Heightening Hospital Security

One of the most well-known incidents of violence occurred in March 2012, when 17-year-old spine inflammation patient Li Mengnan went into a hospital in the northern city of Harbin and stabbed several doctors, killing one young 28-year-old resident. The case received national and international coverage. The *New Yorker* wrote a poignant article, humanizing the young man who committed the murder by balancing out his terrifying acts with the excruciating pain of his condition, poverty, and despair when the hospital refused to treat him for having a history of tuberculosis and despite the fact that

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<sup>766</sup> District-level health and family planning official, Interview No. 060.

<sup>767</sup> Medical Affairs Office Employee, Interview No. 063, 7.

<sup>768</sup> Guangzhou City Intermediate Level People's Court, "White Paper on Guangzhou's Medical Dispute Lawsuit Situation," 17.

<sup>769</sup> See Baidu Trends Data in Chapter 6 on Sources of *Yinao* on p. 171.

he had been travelling to the hospital for two years on 10-hour train rides from his home in Inner Mongolia.<sup>770</sup> In October 2012, Li was sentenced to life imprisonment.<sup>771</sup>

Shortly after the Li Mengnan incident, on April 30, 2012 the Ministry of Health and the Ministry of Public Security released “Announcement on Protecting the Order of Medical Institutions.”<sup>772</sup> This seven-point document is similar to the documents following high-profile events in the past: it reiterates the rights and roles of both health care workers and patients, prohibits disturbing the normal order of medicine, asserts that cadavers are to be properly handled, and provides a list of behaviors (including *yinao* behaviors) to be punished strictly according to the “People’s Republic of China Public Security Administration Punishment Laws.”<sup>773</sup>

A few days following the publication of this announcement, the Ministry of Health released “Urgent Notice on the Implementation of the “Ministry of Health and Ministry of Public Security Announcement on Protecting the Order of Medical Institutions.”<sup>774</sup> There were two important policies introduced by this notice aimed at strengthening hospital security:

*Requirement for installing security offices in higher-tier hospitals:* The Notice required all hospitals at the secondary level and above as well as other key health

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<sup>770</sup> Christopher Beam, “Why Are Chinese Patients Violently Attacking Their Doctors?,” *The New Yorker*, August 18, 2014, <http://www.newyorker.com/magazine/2014/08/25/under-the-knife>.

<sup>771</sup> Xinhua Harbin, “Li Mengnan Sentenced to Life in Prison,” *Shenzhen Economic Daily*, October 20, 2012, sec. A6, [http://szsb.sznews.com/html/2012-10/20/content\\_2244108.htm](http://szsb.sznews.com/html/2012-10/20/content_2244108.htm).

<sup>772</sup> “Ministry of Health, Ministry of Public Security Announcement on Protecting the Order of Medical Institutions [关于维护医疗机构秩序的通告（卫通（2012）7号）],” National Health and Family Planning Commission Bureau of Health Affairs and Management, April 30, 2012, <http://www.nhfp.gov.cn/yzygj/s7658/201205/fb53a6594ef2413ca7ef661859a5b7de.shtml>.

<sup>773</sup> “Ministry of Health, Ministry of Public Security Announcement on Protecting the Order of Medical Institutions [关于维护医疗机构秩序的通告（卫通（2012）7号）].”

<sup>774</sup> “Ministry of Health General Office Urgent Notice on Implementing ‘Ministry of Health and Ministry of Public Security Notice on Protecting the Order of Medical Institutions’ 卫生部办公厅关于贯彻执行《卫生部公安部关于维护医疗机构秩序的通告》的紧急通知,” Ministry of Health, May 3, 2012, <http://www.moh.gov.cn/zwgkzt/s9968/201205/54607.shtml>.

institutions to coordinate with public security organs to establish police affairs offices within these hospitals.<sup>775</sup> These offices provide a direct point of contact with police and a space for them to work in hospitals.<sup>776</sup>

*Introduction of the “three safeguards” policy:* Another important aspect of this urgent notice is to ensure the “three safeguards” of hospital security: personnel-based security (security guards), material-based security (communication and security equipment), and technology-based security (video surveillance).<sup>777</sup> This policy sets the foundation for required security personnel, their required activities, and the surveillance technology to monitor hospitals.<sup>778</sup>

### 2013 Wave of High-Profile Incidents and Opinions to Strengthen Hospital Security

Despite the call for increased hospital security, the year 2013 continued to see high-profile violent incidents targeting health care workers – according to one study, it was the peak year from 2000-2015 for news reporting on violent incidents against health care workers.<sup>779</sup> A wave of six such attacks occurred within a ten-day period in October,<sup>780</sup> and in the midst of this ten-day period, NHFPC and MPS jointly released

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<sup>775</sup> Zhao Jia and Nuo Lu, “Ministry of Health: Coordinate Public Security Organ Toward Level Two and Up Hospitals Establish a Police Affairs Office [卫生部：协调公安机关向二级以上医院派驻警务室],” Xinhua News, May 4, 2012, [http://news.xinhuanet.com/politics/2012-05/04/c\\_111891413.htm#](http://news.xinhuanet.com/politics/2012-05/04/c_111891413.htm#).

<sup>776</sup> Observation based fieldwork conducted at police affairs offices in two hospitals.

<sup>777</sup> “Ministry of Health General Office Urgent Notice on Implementing ‘Ministry of Health and Ministry of Public Security Notice on Protecting the Order of Medical Institutions’ 卫生部办公厅关于贯彻执行《卫生部公安部关于维护医疗机构秩序的通告》的紧急通知,” Section 3.

<sup>778</sup> “Ministry of Health General Office Urgent Notice on Implementing ‘Ministry of Health and Ministry of Public Security Notice on Protecting the Order of Medical Institutions’ 卫生部办公厅关于贯彻执行《卫生部公安部关于维护医疗机构秩序的通告》的紧急通知.”

<sup>779</sup> Zhao Min et al., “Baoli Shangyi Shijian Da Shuju Yanjiu: Jiyu 2000 Nian ~ 2015 Nian Meiti Baodao (暴力伤医事件大数据研究 - 基于 2000 年~2015 年媒体报道) The Big Data Research on Violence against Doctors: Based on the Media Reports from 2000 to 2015,” 90.

<sup>780</sup> 魏铭言 Wei Mingyan and 萧辉 Xiao Hui, “In the Entire Country within 10 Days There Have Been 6 Medical Violence Incidents, Several Hundred Doctors and Nurses in Wenling Protest Medical Violence 【全国 10 天发 6 起伤医事件 温岭数百医护抗议医闹】,” 北京报 - 搜狐新闻 [Beijing News via Sohu News], October 29, 2013, <http://news.sohu.com/20131029/n389100818.shtml>.

“Guiding Opinions on Strengthening Hospital Security Systems,” which explicitly recognized cases of “disturbing medical order” and “harming medical personnel” as a continuing challenge for hospital security.<sup>781</sup>

The document emphasized the “three safeguards” and provided more detail on how they should be enforced by the health departments, public security, and hospitals. For “personnel-based security” (*renfang*, 人防), “Guiding Opinions” gave hospitals guidelines for the number of security guards they should have, requirements for their training, rules for patrolling, and guidance for disseminating information about relevant laws in public areas.<sup>782</sup> For “materials-based” security, “Guiding Opinions” provided specific guidelines for communication devices, equipment, and confiscating dangerous items.<sup>783</sup> “Technology-based” security includes rules for using video surveillance to monitor key areas of the hospital, establishing a security control center, and installing direct communication lines with police.<sup>784</sup>

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<sup>781</sup> “National Health and Family Planning Commission and the Ministry of Public Security Guiding Opinions on Strengthening the Construction of the Hospital Safety System 国家卫生计生委办公厅公安部办公厅关于加强医院安全防范系统建设的指导意见 - 中华人民共和国国家卫生和计划生育委员会,” National Health and Family Planning Commission Bureau of Health Administration, October 22, 2013, <http://www.nhfdc.gov.cn/yzygj/s3589/201310/1c98e954a86642b5bdc8b3f33d79f89c.shtml>.

<sup>782</sup> “National Health and Family Planning Commission and the Ministry of Public Security Guiding Opinions on Strengthening the Construction of the Hospital Safety System 国家卫生计生委办公厅公安部办公厅关于加强医院安全防范系统建设的指导意见 - 中华人民共和国国家卫生和计划生育委员会,” 2.1.

<sup>783</sup> “National Health and Family Planning Commission and the Ministry of Public Security Guiding Opinions on Strengthening the Construction of the Hospital Safety System 国家卫生计生委办公厅公安部办公厅关于加强医院安全防范系统建设的指导意见 - 中华人民共和国国家卫生和计划生育委员会,” 2.3.

<sup>784</sup> “National Health and Family Planning Commission and the Ministry of Public Security Guiding Opinions on Strengthening the Construction of the Hospital Safety System 国家卫生计生委办公厅公安部办公厅关于加强医院安全防范系统建设的指导意见 - 中华人民共和国国家卫生和计划生育委员会,” 2.4.

2013 Wenling Incident, 18<sup>th</sup> Party Congress, and First Special Action Plan to Crackdown on *Yinao*

But just three days after NHFPC and MPS released “Guiding Opinions,” one of the most nationally infamous cases of an attack on physicians occurred: On October 25, 2013, a patient who felt unwell following a minimally invasive nasal surgery stabbed three doctors, killing one.<sup>785</sup> After the event, Premier Li Keqiang called upon all relevant ministries to place a high degree of importance on violent incidents arising from patient-doctor conflicts and to adopt actions to maintain order in medicine.<sup>786</sup> MPS also demanded a “zero-tolerance” policy for violent acts against medical personnel.<sup>787</sup>

By mid-December 2013 twelve ministries jointly had released the “Special Action Plan for Maintaining Medical Order and Combating Illegal Activity Interfering with Medicine.”<sup>788</sup> The Special Action Plan for Maintaining Order in Medicine sought to protect social harmony and stability, guarantee the legal rights and interests of both patients and health care workers, and to construct a favorable medical environment

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<sup>785</sup> Zhouxi Chen, “Wenling Murder and Assault of Physicians: Our Community Is Too Weak [温岭杀医事件受伤医生：我们这个群体太弱势],” October 30, 2013, <http://news.sina.com.cn/c/2013-10-30/092328570273.shtml>.

<sup>786</sup> Huanzong Ju, “Li Keqiang Comments on ‘Wenling Doctors Stabbing’ Incident Requires Protecting Medical Order 李克强批示‘温岭医生被刺’事件 要求维护医疗秩序,” November 11, 2013, [http://news.xinhuanet.com/fortune/2013-11/01/c\\_125632531.htm](http://news.xinhuanet.com/fortune/2013-11/01/c_125632531.htm).

<sup>787</sup> “Ministry of Public Security: Zero-Tolerance Policy towards Violent and Harmful Actions against Doctors [公安部：对暴力伤医行为坚决‘零容忍’],” October 31, 2013, [http://news.xinhuanet.com/local/2013-10/31/c\\_117946999.htm](http://news.xinhuanet.com/local/2013-10/31/c_117946999.htm).

<sup>788</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” National Health and Family Planning Commission Health Governance and Administration Office, December 20, 2013, <http://www.nhfpc.gov.cn/yzygj/s3589/201312/46ce2b7c0b974391b8f8bf308f2784f8.shtml>.

through launching a one-year special action plan to be implemented in three phases during 2014.<sup>789</sup>

*Influence of the 18<sup>th</sup> Party Congress Focus on Resolving Social Conflicts:* It is important to note that this plan followed shortly after and occurred within the context of the Third Plenum of the Eighteenth Party Congress.<sup>790</sup> The Third Plenum recognized the growing discontent in Chinese society, including in the area of health care, as a result of economic development,<sup>791</sup> and emphasized innovating ways to prevent and respond to social conflicts among a wide array of goals for system-wide development.<sup>792</sup>

*Reaffirming interdisciplinary approach to addressing yiniao:* It set goals for a wide range of issues: reaffirming strengthening security through the “three safeguards system,”<sup>793</sup> improving medical service quality and patient-doctor communication,<sup>794</sup>

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<sup>789</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知].”

<sup>790</sup> Party Congresses in China are major meetings of more than a thousand party leaders that take place infrequently, in recent history about every five years, to select the Central Committee of the Communist Party. When the Central Committee convenes meetings these are called plenums. The third plenum of a Party Congress thus means that the Central Committee is meeting for the third time since being elected by the party congress. The third plenum often has particular importance because this has been the time when in the past leaders have announced important reforms, particularly economic reforms (1978 Deng Xiaoping’s Reform and Opening Up and Zhu Rongji’s 1993 “socialist” market economy. See: Kenneth Lieberthal, *Governing China from Revolution through Reform* (New York: W.W. Norton & Company, 2004), 78–79; Ryan Ong, “The Third Plenum of the 18th Chinese Communist Party Congress: A Primer – China Business Review,” *China Business Review* (blog), September 16, 2013, <https://www.chinabusinessreview.com/the-third-plenum-of-the-18th-chinese-communist-party-congress-a-primer/>.

<sup>791</sup> Jinping Xi, “Xi Jinping: Explanation on ‘Chinese Communist Party Decisions on Several Major Questions About Deepening Reform’ 习近平：关于《中共中央关于全面深化改革若干重大问题的决定》的说明,” *Xinhua News*, November 15, 2013, [http://news.xinhuanet.com/politics/2013-11/15/c\\_118164294.htm](http://news.xinhuanet.com/politics/2013-11/15/c_118164294.htm).

<sup>792</sup> “Authorized Publication: Decision of the Chinese Communist Party Central Committee on Several Major Questions About Deepening Reform [授权发布：中共中央关于全面深化改革若干重大问题的决定],” *Xinhua News*, November 12, 2013, No. 49, [http://news.xinhuanet.com/politics/2013-11/15/c\\_118164235.htm](http://news.xinhuanet.com/politics/2013-11/15/c_118164235.htm).

<sup>793</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 2.2.2.

improving health care system reform and service quality,<sup>795</sup> strengthening the role of people's mediation in medical disputes, improving the work environment for doctors by reducing pressure on them,<sup>796</sup> encouraging the establishment and monitoring of medical liability insurance systems at the local level,<sup>797</sup> and monitoring people with mental disabilities as well as those who might threaten social stability.<sup>798</sup>

*Reiteration of the obligation of police to respond to incidents:* The policy begins by asserting that people performing criminal acts in hospitals should be promptly arrested and prosecuted.<sup>799</sup> It explicitly states that public security organs must immediately respond to calls about *yinao* behaviors, which police had often failed to respond to in the past: "After public security organs receive an emergency call, they should immediately adopt decisive measures, immediately controlling the scene, protecting normal medical order."<sup>800</sup> The announcement also specifically aims to crack down on professional, third-

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<sup>794</sup> "Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]," 1.3.2.

<sup>795</sup> "Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]," 1.3.1.

<sup>796</sup> "Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]," 1.3.3.

<sup>797</sup> "Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]," 2.4.3.

<sup>798</sup> "About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]," 2.5.

<sup>799</sup> "About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]," 2.1.1.

<sup>800</sup> "Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]," 2.2.

party *yinao*,<sup>801</sup> asserting that those conducting these acts must be punished according to law.<sup>802</sup>

*Adoption of people's mediation as premier medical dispute resolution institution:*

Unlike policy documents in the past that simply encouraged Medical Dispute People's Mediation Committees (MDMCs), this document set goals for national coverage of MDMCs – here it was to increase coverage to 75% of county-level administrative districts by the end of 2014.<sup>803</sup> It also outlines the minimum number of personnel that should be hired and explicitly charges local governments with the financial responsibility for supporting the medical dispute mediation committees with the personnel and supplies they need to operate.<sup>804</sup> The following chapter exclusively deals with these mediation committees and offers analysis on the implications of their establishment.

2014: Wave of High-Profile Incidents Amidst Crackdown and Path to Criminalize *Yinao*

Despite the comprehensive goals of the Special Action Plan to crack down on *yinao* during 2014, media reports from 2014 implied that doctor-patient relations continued to deteriorate: in the month of February alone, a nurse was beaten to the point of paralysis in Nanjing by a patient's angry parents, a patient in Hebei province slit the

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<sup>801</sup> “Seven Departments: In the Health Care System Launch Activity for Establishing Peaceful Hospitals [七部门：在卫生系统开展创建平安医院活动].” See also the following story which garnered nationwide attention in China: “Watch.”

<sup>802</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 2.1.3.

<sup>803</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 2.4.1.

<sup>804</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知],” 2.4.1 & 2.4.2.

throat of his doctor,<sup>805</sup> and a dissatisfied 19-year old patient took revenge on his doctor by beating him to death with an iron rod.<sup>806</sup> The *yinao* problem was becoming so prominent that during the “two meetings” in March 2014, Xi Jinping commented on the issue while attending one of provincial delegation meetings during the event: “It is necessary to maintain the normal order of hospitals, protect the safety of health care workers; any illegal activities harming health care workers all must be dealt with strictly according to law.”<sup>807</sup>

*MPS Strengthens its Response to Yinao:* In March 2014, the Ministry of Public Security issued “Six Measures for Public Security Organs to Maintain the Public Security of Medical Institutions,” to which NHFPC followed with a complementary notice to enforce it.<sup>808</sup> This document is important because it is the first time that MPS has issued its own document with measures for implementation, signaling that internally MPS was taking steps to prioritize controlling crime in hospitals.

The six measures require public security organs to dispatch police in cases of humiliation, threatening assault, and infringing upon personal freedom.<sup>809</sup> They also clarify that *yinao* behaviors (burning funeral money, setting up wreaths, blocking entrances, disturbing medical order, and placing corpses in public areas) must be

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<sup>805</sup> Shuainan Wang, “In Hebei One Doctor Had His Throat Slit in His Office [河北 1 名医生办公室内遭割喉 嫌疑人已被抓获],” *Tengxun Xinwen*, February 19, 2014, <http://news.qq.com/a/20140219/015913.htm>.

<sup>806</sup> Jiege Bai, Song Chi, and Xianzhi Song, “Heilongjiang Doctor Is Beaten to Death by an Iron Rod, Suspect Not Even 19 Years Old [黑龙江医生遭铁管打死面目全非 嫌犯未满 19 岁],” *Zhongguo Xinwen Wang*, February 18, 2014, <http://www.chinanews.com/fz/2014/02-18/5848184.shtml>.

<sup>807</sup> “Xi Jinping: Violent Acts toward Physicians Should Be Severely Dealt with According to Law [习近平：伤医行为要依法严肃处理].”

<sup>808</sup> “Notice on Seriously Enforcing Six Measures for Public Security Organisms to Maintain the Public Security of Medical Institutions [关于认真落实公安机关维护医疗机构治安秩序六条措施的通知],” *Ningde City Chinese Medicine Hospital*, June 5, 2014, [http://www.ndzzy.com/news\\_view.asp?newsid=1188](http://www.ndzzy.com/news_view.asp?newsid=1188).

<sup>809</sup> “Notice on Seriously Enforcing Six Measures for Public Security Organisms to Maintain the Public Security of Medical Institutions [关于认真落实公安机关维护医疗机构治安秩序六条措施的通知],” Step 1.

dispersed and punished according to law if preliminary warnings are ineffective.<sup>810</sup> The six steps also require police to make hospitals at the second tier and above regular stops on their patrols, demand that all level three hospitals establish police affairs offices, and suggest that those at level two and above establish these offices as well should they have the available resources to do so.<sup>811</sup>

*Linking Specific Yinao Behaviors to Specific Crimes:* In April 2014 the Supreme People’s Court, Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of Justice, and the National Health and Family Planning Commission issued “Opinions on Punishing Illegal Crimes Interfering with Medicine According to Law and Protecting the Normal Medical Order.”<sup>812</sup> Unlike past documents stating *yinao* behaviors generally should be punished according to law, this document links the specific types of *yinao* behaviors to articles in the laws by which they should be punished. For example, setting up funeral altars, placing wreaths, burning paper funeral money, hanging a banner, and other disruptive behaviors can be punished according to Article 23 of the Public Security Administration Law.<sup>813</sup> Serious cases of using violence or other methods to humiliate and threaten health care workers can constitute crimes under China’s Criminal Law.<sup>814</sup>

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<sup>810</sup> “Notice on Seriously Enforcing Six Measures for Public Security Organisms to Maintain the Public Security of Medical Institutions [关于认真落实公安机关维护医疗机构治安秩序六条措施的通知],” Measure 2.

<sup>811</sup> “Notice on Seriously Enforcing Six Measures for Public Security Organisms to Maintain the Public Security of Medical Institutions [关于认真落实公安机关维护医疗机构治安秩序六条措施的通知],” Measure 4.

<sup>812</sup> The Supreme People’s Procuratorate of the PRC [中华人民共和国最高人民检察院], “Five Ministries’ Opinions on Illegal Criminal Activities Involving Medical Institutions and Protecting the Normal Order of Medical Care [五部门关于依法惩处涉医违法犯罪维护正常医疗秩序的意见].”

<sup>813</sup> The Supreme People’s Procuratorate of the PRC [中华人民共和国最高人民检察院].

<sup>814</sup> The Supreme People’s Procuratorate of the PRC [中华人民共和国最高人民检察院], No. 4.

## 2015: 12 Incidents in 20 Days and the Criminalization of *Yinao*

Despite the crackdown on *yinao* and increased security measures, 2015 continued to see high-profile incidents heavily covered by the media. China saw another wave of high-profile incidents – 12 in 20 days from May 28 to June 16, 2015.<sup>815</sup> Officials had been discussing criminalization of *yinao* at least since the previous year,<sup>816</sup> and finally this happened on August 29, 2015, with the ninth amended version of the Criminal Law of the People’s Republic of China, which entered into force in November 2015.<sup>817</sup> Article 290 of the revised version of the Criminal Law officially criminalized crowds gathering to disrupt the functioning of medical activity, a crime punishable by three to seven years of imprisonment for main offenders and up to three years of imprisonment, short term detention, supervision, or deprivation of political rights to other active participants.<sup>818</sup>

## Redrafting the Medical Accident Regulations and “Three Mediations, One Insurance”

In November 2015, NHFPC released a draft version of “Medical Dispute Prevention and Management Regulations.”<sup>819</sup> If passed, these regulations would replace the 2002 Medical Accident Regulations to address problems that have arisen since the passage of the 2002 Regulations, namely the inconsistency between the 2009 Tort Liability Law and the original Regulations on compensation, concerns about the fairness

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<sup>815</sup> Kan, “Violent Attacks against Health Care Workers Continue Despite Repeated Prohibition: Nationwide in 20 Days There Have Been 12 Successive Attacks on Medical Personnel [暴力伤医事件屡禁不止:全国20天连发12起伤医案].”

<sup>816</sup> “Three Members of the National People’s Congress Demand That ‘Yinao’ Enters the Criminal Law [人大常委三名委员要求‘医闹’入刑],” *The Paper*, November 11, 2014, [http://www.thepaper.cn/newsDetail\\_forward\\_1274720](http://www.thepaper.cn/newsDetail_forward_1274720).

<sup>817</sup> “Amendment to the Criminal Law of the People’s Republic of China (9th Amended Version).”

<sup>818</sup> “Amendment to the Criminal Law of the People’s Republic of China (9th Amended Version).”

<sup>819</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明],” National Health and Family Planning Commission, November 2, 2015, <http://www.nhfpc.gov.cn/fzs/s3578/201511/3b9643ca57004569ae44db8b967b49ba.shtml>.

of the NHFPC/CMA role in resolving medical disputes, and the problem of *yinao*.<sup>820</sup>

Notably, the terminology in the title of the new Regulations is entirely different than its predecessors (Medical Accident Regulations): it not only covers medical accidents, but covers medical disputes more broadly, which can include medical accidents among other disputes that occur in health care settings. The title also implies that prevention continues to be a central objective for these new regulations. The table below captures changes in Regulations for medical disputes over time, and the sections below discuss some of the main changes.

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<sup>820</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明].”

**Table 14: Health Care Dispute Resolution Over Time**

Key Characteristics of System	1987 Measures	2002 Regulations	2015 Draft Regulations	Main Change
<b>Official Avenues Available</b>	Private settlement*, Court (mediation, adjudication)	Private settlement, Mediation by Health Bureaucracy, Court (adjudication, mediation)	Private Settlement, Mediation* by Medical Dispute People's Mediation Committees, Court (mediation, adjudication)	Adds mediation by third-party Medical Dispute People's Mediation Committees and also involvement of insurance companies in compensating patient side from resulting agreement
<b>Review Process</b>				
<i>Type of Review Committee</i>	Medical Accident Technical Review organized by Health Bureaucracy	Medical Accident Technical Review organized by China Medical Association (CMA)	Adds Medical Damages Review (procedures unknown) and retains Medical Accident Technical Review by CMA	Adds Medical Damages Review as the review to decide compensation, Medical Accident Technical Review for internal bureaucratic purposes
<i>Burden of Proof</i>	On patients/families (plaintiffs)	On physicians/hospitals (defendants)	On patients/families (plaintiffs)	Places burden of proof back on plaintiffs (not explicit in document, but occurred after Tort Liability Law) <sup>821</sup>
<i>Evidence</i>	Preserve evidence from the scene and medical records, forbidden to tamper with	Preserve evidence from the scene and medical records, forbidden to tamper with	Preserve evidence from the scene and medical records, forbidden to tamper with	No change, maintains strong stance against tampering with evidence
<b>Compensation Standards</b>	No guidance, leaves to provinces to decide	Adds compensation standards	Removes compensation standards	Resolves issue of two separate sets of compensation standards between Medical Accident Regulations and tort cases
<b>Explicit Messages on Yinao</b>	Yes	Yes - adds that people who use yinao can be charged with the crime of disturbing social order	Yes - explicitly says public security organs should address yinao quickly and according to law	Stronger stance on the attentiveness and immediate reaction police should have when receiving calls about yinao
*Avenue government explicitly endorses				

*Adopting the “Three Mediations, One Insurance Policy”*: The new regulations seek to enshrine the policy “three mediations, one insurance,” which emerged following a high-level work meeting on national people’s mediation for medical disputes in 2014.<sup>822</sup> “Three mediations” refers to a policy that provides three channels for mediating medical

<sup>821</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 201.

<sup>822</sup> Meng Sun, “Establishing ‘Three Mediations, One Insurance’ Prevention Management System [建立‘三调解一保险’预防处置体系],” *Jiankang Bao*, May 5, 2014, <http://www.jkb.com.cn/news/industryNews/2014/0506/340467.html>.

disputes (mediation between parties at hospitals, people's mediation, and court mediation), with people's mediation being the preferred type.<sup>823</sup> "One insurance" means that medical liability insurance companies, instead of hospitals, should directly compensate the families and patients for damages.<sup>824</sup> The policy ultimately seeks to push the settlement of conflicts outside the hospital,<sup>825</sup> to standardize mediation and to encourage medical institutions to have medical liability insurance and for medical liability insurance companies to timely and appropriately cooperate with medical institutions as well as people's medical mediation committees.<sup>826</sup>

*Explicit shift away from preference to resolve disputes within hospitals:* There is also a clear difference and reversal in attitude toward channels to dispute resolution. In 1987, the Ministry of Health explicitly endorsed prioritizing resolving disputes within the hospital. The 2002 Regulations made no explicit statement about preferred dispute resolution avenues, but the vast majority of disputes were resolved within hospitals, as much as 95%, according to one estimate, by negotiation and protest,<sup>827</sup> and hospitals often compensated regardless of fault in order to stop protestors from destructive behavior.<sup>828</sup> However, the official explanation of the 2015 drafted regulations explicitly states that now the goal is to move these conflicts out of hospitals.<sup>829</sup> This is an important

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<sup>823</sup> "Medical Dispute Prevention and Management Regulations (Draft) [医疗纠纷预防与处理条例 (送审稿)]," National Health and Family Planning Commission of the People's Republic of China, November 2, 2015, Article 4, <http://www.nhfpc.gov.cn/zhuz/zqyj/201511/3f61fb6c076645738d961a152024b7e8.shtml>.

<sup>824</sup> "Explanation of Draft of 'Medical Dispute Prevention and Management Regulations (Draft)' [关于《医疗纠纷预防与处理条例 (送审稿)》的起草说明]."

<sup>825</sup> "Explanation of Draft of 'Medical Dispute Prevention and Management Regulations (Draft)' [关于《医疗纠纷预防与处理条例 (送审稿)》的起草说明], 3.3.

<sup>826</sup> "Explanation of Draft of 'Medical Dispute Prevention and Management Regulations (Draft)' [关于《医疗纠纷预防与处理条例 (送审稿)》的起草说明], 3.3.

<sup>827</sup> Liebman, "Malpractice Mobs: Medical Dispute Resolution in China," 233.

<sup>828</sup> Liebman, 233.

<sup>829</sup> "Explanation of Draft of 'Medical Dispute Prevention and Management Regulations (Draft)' [关于《医疗纠纷预防与处理条例 (送审稿)》的起草说明]."

step to addressing *yinao* because it physically removes heated dispute resolution out of the hospital, potentially reducing the use of *yinao* at hospitals in the midst of conflict resolution.

*Potentially eliminating inconsistencies between 2002 Regulations and Tort Liability Law:* The new regulations, if passed, would importantly eliminate the two-track system for compensation.<sup>830</sup> As explained previously, medical malpractice cases could be compensated using the standards promulgated under the 2002 Medical Accident Regulations or the more generous compensation allowed under the Tort Liability Law.<sup>831</sup> By eliminating the standards under the Medical Accident Regulations, there is no longer a competing set of standards that enable arbitrariness in decisions about compensation.<sup>832</sup>

Even though the two-track system for compensation would be removed by this law, the new Regulations still preserves two types of medical reviews for medical disputes – the Medical Damages Reviews (医疗损害技术鉴定) and Medical Accident Technical Review (医疗事故技术鉴定). The procedural details for the newer Medical Damages Reviews remain unclear with the new Regulations, which delegates the responsibilities of forming medical damages review institutions and management measures to the NHFPC and MOJ.<sup>833</sup> However, procedures for reviews have been created at the local level.<sup>834</sup>

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<sup>830</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明].”

<sup>831</sup> Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 193.

<sup>832</sup> Liebman, 198.

<sup>833</sup> “Medical Dispute Prevention and Management Regulations (Draft) [医疗纠纷预防与处理条例（送审稿）],” Article 38.

<sup>834</sup> For example, Jiangsu Province has its own measures for Medical Damages Reviews and recently passed a provincial-level version of the nationally drafted Medical Dispute Prevention and Management Regulations, which provides rules on the scope of medical accident reviews. See: “Notice on ‘Hospital Complaint Management Measures (Implementation)’ [关于印发《医院投诉管理办法（试行）》的通知

*Maintaining the of Role of CMA in Review Process:* NHFPC’s official explanation of the new Regulations praises the success of the CMA in conducting medical reviews, implying that the system of using the CMA will be maintained.<sup>835</sup> This response is tone-deaf to complaints that the CMA and NHFPC make biased decisions that protect their colleagues in the health care sector by taking control of the medical review process. If the final document does not address this concern regarding expert reviews of medical dispute cases, then the State has not responded in a way that would increase credibility of the system.

*Continued Condemnation of Yinao:* As far as directly addressing *yinao* in the new drafted Regulations, like many previous documents before, strictly prohibits *yinao* behavior<sup>836</sup> at any stage in the medical dispute process and states that the public security organs (police) should quickly stop extreme behaviors and punish them according to law.<sup>837</sup> However, these regulations do not have any direct bearing on the actions of public security and represents more of an affirmation on a strong stance against *yinao*.

#### 2016 Special Action Program to Crack Down Criminal Activity in Medical Institutions

In July 2016, the State Council launched another yearlong special action program resembling the one conducted in 2014 aimed to crack down on illegal criminal activity

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]; “Jiangsu Province Medical Dispute Prevention and Management Regulations [江苏省医疗纠纷预防与处理条例]” (Nanjing Medical Association, Nanjing Medical Doctor Association, March 30, 2017), <http://www.njyxh.cn/content.asp?cid1=50&cid2=52&contid=910>.

<sup>835</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明].”

<sup>836</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明],” Drafted Law, Article 27.

<sup>837</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明],” Drafted Regulations, Article 28.

occurring in hospitals.<sup>838</sup> This special action program acknowledged that while progress had been made by the previous campaign in 2014, nevertheless some places still successively experienced attacks against medical personnel.<sup>839</sup> The campaign began in July 2016 and will end in May 2017.<sup>840</sup> It resembles the 2013 program, focusing on an array of policy areas from using police force to crack down on illegal activity to improving the quality and safety of medicine.<sup>841</sup> Like the 2013 plan, it promotes people's mediation and insurance, but does so under the "three mediations, one insurance" policy<sup>842</sup>, which had not quite emerged at the time when the previous campaign was launched. Interestingly, unlike the last campaign, this one enlists the support of the CCP's Office of the Central Leading Group for Cyberspace Affairs, presumably to help achieve the goal of "strengthening online media standardization and guidance."<sup>843</sup>

#### Analysis of Policy Cycle 4

The summary table below (Table 15) shows the group of policies during this fourth era (2013-2017). Some notable points for this period are the following:

*Policy Tools - Increase in security measures, coercive power:* From 2012 to the present, there has been a notable policy shift towards special action programs aimed at combating *yinao* and the criminalization of *yinao*. In other words, there has been an increase in the amount of coercive power used to solve the problem. Perhaps this is because despite efforts to improve the complaint and dispute resolution systems and

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<sup>838</sup> National Health and Family Planning Commission, "Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知]."

<sup>839</sup> National Health and Family Planning Commission.

<sup>840</sup> National Health and Family Planning Commission, Part 3.

<sup>841</sup> National Health and Family Planning Commission, "Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知]."

<sup>842</sup> National Health and Family Planning Commission, 2.3.

<sup>843</sup> National Health and Family Planning Commission, 2.4.

strong language against *yinao* in the past, hospitals continued to struggle with *yinao* incidents. There were also other notable policy tools used during this period, such as formally placing mediation and malpractice liability insurance into the dispute resolution system itself with the “three mediation, one insurance” policy.

*Continued multidisciplinary approach to yinao:* In multiple policy documents, there are many ministries taking part in policy initiatives to address *yinao*, again showing the increased awareness and acknowledgement in policy-making that *yinao* requires a multidimensional approach for resolution. Superficially, the new type of policy introduced to manage *yinao*, the yearlong crackdown campaigns, look like temporary campaigns to arrest practitioners of *yinao*, which they indeed seek to achieve, but these campaigns (or action programs) also set goals for insurance, education, mediation, and hospital security.<sup>844</sup> This expansive set of goals reflects the large number of ministries, commissions, and party departments involved in the campaigns – in the 2014 campaign, there were twelve<sup>845</sup> and in the 2016-2017 campaign, there were nine.<sup>846</sup>

*Increasing authoritativeness of documents to manage yinao:* During this period, there were also only two notices, the weakest form of policy response, and more authoritative types of policies like regulations and laws adopted to address *yinao*. Further, the increasing presence of Party institutions also represents an important factor in the

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<sup>844</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知]”; National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知].”

<sup>845</sup> “Notice on the Publication of Protecting the Order of Hospitals, Campaign Program Cracking Down on Illegal Crimes Interfering with Medicine [关于印发维护医疗秩序打击涉医违法犯罪专项行动方案的通知].”

<sup>846</sup> National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知].”

increasing authoritativeness of the documents during this period, with the Central Public Security Comprehensive Management Commission, Propaganda Department, and the Office of the Central Leading Group of Cyber Space Affairs involved in the special action programs.

**Table 15: Yinao-Relevant Policies in Policy Cycle 4, 2012-Present**

<b>Date</b>	<b>Title of Document</b>	<b>Tool(s) Used</b>	<b>Type</b>	<b>Agencies</b>
2012.04.30	Ministry of Health, Ministry of Public Security Notice on Protecting the Order of Medical Institutions	<b>Language</b> prohibiting yinao	Announcement (weak)	1. MOH 2. MPS
2012.05.03	General Office of the Ministry of Public Health Urgent Notice on "Ministry of Health, Ministry of Public Security Notice on Protecting the Order of Medical Institutions	Increasing hospital security capabilities - surveillance and installing police affairs offices in hospitals Strengthen education, employee training, doctor-patient communication	Notice (weak)	MOH
2013.10.22	Guiding Opinion on Strengthening the Construction of the Hospital Safety System	Increasing hospital security capabilities	Opinions (moderate/weak)	1. National Health and Family Planning Commission (NHFPC, formerly MOH) 2. MPS
2013.12.20	About the Special Action Program to Protect Medical Order, Strike Illegal Crimes Interfering with Medicine	Crackdown on violent crime Increased presence and participation of law enforcement Increasing hospital security capabilities Improving patient-doctor communication Improving Education and Skills of Health Care Personnel Establishes goals for national coverage of Medical Dispute People's Mediation Committees Encourages implementation of medical malpractice insurance	Special Action Program (moderate/strong)	1. National Health and Family Planning Commission (NHFPC) 2. Central Public Security Comprehensive Management Commission ( <b>Party</b> ) 3. Propaganda Department ( <b>Party</b> ) 4. Supreme People's Court 5. Supreme People's Procuratorate 6. Ministry of Public Security (MPS) 7. Ministry of Civil Affairs 8. Ministry of Justice (MOJ) 9. State Administration for Industry & Commerce of the People's Republic of China (SAIC) 11. China Insurance Regulatory Commission (CIRC) 12. State Administration of Traditional Chinese Medicine
2014.3.15	Six Measures for Public Security Organs to Maintain the Public Security of Medical Institutions	Demands that police be dispatched for more serious crimes in medical institutions and also requires them to charge those committing yinao Also requires police making second level and above hospitals part of their patrolling and requires a police affairs office at all Level 3 hospitals	Measures	1. MPS

2014.04.21	Notice on Seriously Enforcing Six Measures for Public Security Organs to Maintain the Public Security of Medical Institutions	Requires hospitals at Level 3 to have Police Affairs Offices and Level 2 and above to become parts of regular police patrolling and if the hospitals have the ability, should also install police affairs offices	Notice	1. NHFPC
2014.04.28	Opinion on According to Law Punish Illegal Crimes Interfering with Medicine	Preliminary legal reform/clarification - links yinao to crimes in existing laws	Opinions	1. Supreme People's Court 2. Supreme People's Procuratorate 3. Ministry of Public Security 4. Ministry of Justice 5. NHFPC
2015.08.29	Criminal Law of the People's Republic of China 9th Amended Version 2015	Criminalized yinao committed by groups, serious offenses get 3-7 years than prison, less serious offenses, up to 3 years in prison	Law	1. National People's Congress (NPC)
2015.11.02	Medical Dispute Prevention and Management Regulations	Mediation reform Procedural reform in dispute resolution to make system fairer and more consistent with law	Regulations	1. National Health and Family Planning Commission (NHFPC)
2016.03.30	Notice on Moving Forward the Work to Accomplish Protecting the Order of Medicine	Reiterates handling yinao according to law. Reiterates linking health and public security systems Advocates increasing hospital security capabilities Advocates improving quality and safety	Notice	1. NHFPC 2. Central Public Security Comprehensive Management Commission 3. MPS 4. MOJ
2016.06.30	About the Special Program of Action for Cracking Down on Illegal Crimes Interfering with Medicine	Crackdown on violent crime increased presence and participation of law enforcement Increasing hospital security capabilities Improving patient-doctor communication Improving Education and Skills of Health Care Personnel Establishes goals for national coverage of Medical Dispute People's Mediation Committees Encourages implementation of medical malpractice insurance	Campaign	1. NHFPC 2. Central Public Security Comprehensive Management Commission (Party) 3. Central Propaganda Department (Party) 4. Office of the Central Leading Group of Cyber Space Affairs (Party) 5. Supreme People's Court 6. Supreme People's Procuratorate 7. Ministry of Public Security 8. Ministry of Justice 9. China Insurance Regulatory Commission

*Outcomes of Policy Era 4: Increased Security Focus and Likely Decreasing Yinao in Large Cities*

IMPLEMENTATION OF 2014 CRACKDOWN: INSUFFICIENT PROGRESS

While, official reports imply that the 2014 special action program was successful on many fronts – the title of a *People's Daily* article about the progress made in 2014

reads, “Harmony between Patients and Doctors is Mainstream,”<sup>847</sup> the first crackdown’s progress was questionable and the implementation of a second crackdown in 2016 in itself suggests that the first was one insufficient for resolving *yinao* issues.<sup>848</sup>

*Official media praise police response, other data cast doubt on it:* During this crackdown year, reportedly for the first time an *yinao* gang had been dissolved in China.<sup>849</sup> Further according to official data for 2014, police broke 1,349 criminal cases involving medical institutions, detained 1,425 people for criminal activities, transferred 347 people for prosecution, investigated 4,599 cases of interference with security in medical institutions, and curbed 8,342 incidents of illegal behaviors in hospitals.<sup>850</sup> The number of cases of infringing upon citizen’s personal rights occurring at hospitals decreased by 10%, and 80% of hospitals at level two and above had installed police affairs offices.<sup>851</sup> At the local level, Shanghai, Shaanxi, and many other places formulated detailed measures on how to handle incidents interfering with medicine.<sup>852</sup>

However, fieldwork and data work cast doubt on progress made in policing *yinao*. First, the numbers on police activity above are small in comparison to the likely overall number of *yinao* incidents. As stated previously, data suggests that there was an

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<sup>847</sup> Jianfeng Bai, “Harmony between Patients and Physicians Is Mainstream [亿元和谐是主流],” *People’s Daily*, January 22, 2015, sec. 9, <http://58.68.145.22/directLogin.do?target=101>.

<sup>848</sup> A news report on another special action program that would be launched several years later acknowledged that even though the special campaign in 2013 had sought to address violence against physicians and *yinao*, in 2016, “crimes involving medical disputes [were] still common in hospitals across the country.” See: “Beijing Police Get Green Light to Use Weapons to Protect Doctors from Attackers in Hospitals | South China Morning Post,” accessed September 28, 2016, <http://www.scmp.com/news/china/policies-politics/article/2004634/beijing-police-get-green-light-use-weapons-protect>.

<sup>849</sup> Medical World Magazine, “The Thunder Sounds: The First Time an *Yinao* Group Has Been Destroyed in China [雷霆出击 中国首个医闹集团被覆灭].”

<sup>850</sup> Bai, “Harmony between Patients and Physicians Is Mainstream [亿元和谐是主流].”

<sup>851</sup> Bai.

<sup>852</sup> Bai.

estimated 221,130<sup>853</sup> violent attacks annually just at secondary and tertiary hospitals alone. Although the official figures above do not provide us specific reasons for the arrests and prosecutions (they could include other crimes like arresting ticket peddlers), if there are over 200,000 of violent attacks against health care workers per year, the numbers reported above seem quite low – none of the figures on solved cases, arrests, or security incidents involving hospitals broke 10,000. At face value these low numbers may indicate a glaring policy failure since it looks like law enforcement is hardly making progress given the magnitude of the issue. But it is more likely that the true totals for each of these numbers are not being reported to conceal the magnitude of the issue.

The second reason to doubt progress on this campaigns initiative to increase police activity to hold criminal *yinao* accountable is that interviews with hospital leaders from China's cities did not corroborate this progress. A hospital administrator at a 3A hospital in Beijing in October 2014 reported that police still were not responding when hospitals called for help with these incidents, and he said that he believed the doctor-patient relationship was getting worse.<sup>854</sup> An administrator in Guangzhou at a 3A hospital said that 2015 was a better year than 2014 as far as progress on the police response to *yinao*.<sup>855</sup>

*Progress on Complaint Management Emphasized, but Incomplete Data Casts*

*Doubt on True Progress:* Nationwide in 2014, medical institutions received and resolved

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<sup>853</sup> According to *2013 China Health Statistics Yearbook*, in 2012 there were 8,190 secondary and tertiary hospitals (Table 1-2-1). If on average each of these hospitals experienced 27 violent attacks per year, then that would amount to an estimate of 221,130 violent attacks in total for these facilities that year. See: *2013 China Health Statistics Yearbook* [2013 中国卫生统计年鉴] (National Health and Family Planning Commission of the People's Republic of China, 2013), <http://www.nhfp.gov.cn/htmlfiles/zwgkzt/ptjnj/year2013/index2013.html>.

<sup>854</sup> Hospital Party Secretary, Interview No. 003.

<sup>855</sup> Head of Medical Affairs Office, Interview No. 048, 2016.

over 108,000 complaints,<sup>856</sup> and by the beginning of 2015, 80% of hospitals at level two and above had established dedicated institutions for managing medical complaints.<sup>857</sup> But again, the statistics on progress for complaint management like those on police activity are problematic. According to fieldwork for this study, one of the employees who manages complaints at a 3A hospital said typically the hospital receives six to seven complaints per day, and on particularly bad days, this number is in the teens.<sup>858</sup> If using the lower number of six complaints per day and applying this to all 3A hospitals (there are only 989 3A hospitals in China according to most recently available statistics<sup>859</sup>), that would amount to 5,934 complaints per day in China's 3A hospitals alone. Over the course of a year, if counting five days per week for 52 weeks, this number would amount to 1,542,840 complaints alone for 3A hospitals. Therefore, reporting that hospitals handled over 108,000 complaints in 2014 is not very useful. If this figure truly represents the total number of complaints successfully resolved, then the policy would not have been very successful in practice at all. As stated about the statistics for law enforcement, these figures are likely purposely low in order to avoid revealing the magnitude of the issue. If the headlines in newspapers read, "Chinese hospitals successfully resolved over one million complaints last year," this might raise questions about the level of discontent with hospitals among the population; even though when considering the number of hospitals and patient volume, this number does not seem so outrageous, at face value it may not appear to be a positive development, which the Chinese government would likely not want to advertise.

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<sup>856</sup> Bai, "Harmony between Patients and Physicians Is Mainstream [亿元和谐是主流]."

<sup>857</sup> Bai.

<sup>858</sup> Xinfang Office, Interview No. 026.

<sup>859</sup> "2013 China Health Statistics Yearbook [2013 中国卫生统计年鉴]," Table 1-3-1.

*Police Affairs Offices Established, but Implementation Differs: Police Affairs Offices in Hospitals Established, but Vary in Important Ways:* According to the work report, the area of increasing security capabilities also showed progress with over 85%<sup>860</sup> of second level and higher hospitals establishing a Police Affairs Office (up from 80% in 2014<sup>861</sup>) and over 6,000 level two and above hospitals linking their emergency response systems with local public security offices.<sup>862</sup> Nationwide, over 85% of hospitals had established a security system.<sup>863</sup>

It is important to note that implementation of Police Affairs Offices vary from hospital to hospital and this variation carries important implications for the roles that police play in hospitals. The two field site hospitals observed by this study both had Police Affairs Offices, though with some important differences. One of them had two full-time police officers in the Police Affairs Office at all times, while the other only had police officers part time. In the latter case the police who staffed the office part time were the police assigned to the district patrol zone that the hospital was located in.<sup>864</sup> They would come in once per week or as needed; otherwise security guards hired from a private company would staff the office.<sup>865</sup>

The location of the Police Affairs Office also varied between the two hospitals. In the first hospital with the full-time police, the office was in the same building and on the

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<sup>860</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 1.3.

<sup>861</sup> Bai, “Harmony between Patients and Physicians Is Mainstream [亿元和谐是主流].”

<sup>862</sup> “Circular on Taking a Step Forward to Improve Medical Services Action Plan [关于印发进一步改善医疗服务行动计划的通知],” National Health and Family Planning Commission Bureau of Health Governance and Administration, January 28, 2015, 1.3, <http://www.nhfpc.gov.cn/zygj/s3593g/201501/5584853cfa254d1aa4e38de0700891fa.shtml>.

<sup>863</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 1.3.

<sup>864</sup> Hospital Security Guard, Interview No. 055.

<sup>865</sup> Hospital Security Guard.

same floor as the Petitioning (Complaints) Office and the Office of Doctor-Patient Communication, a branch of the Medical Affairs Office, which was also right next door. Largely in part due to this setup, the police officers were close to the hospital staff and helped assuage patients that proved to be difficult for the Petitioning Office.<sup>866</sup> The closeness of the hospital staff to the police raises the question of whether the police are objective in their intervention in cases; it seemed that police intervened on the hospital's behalf, not necessarily as a third party.

In the second hospital with the part-time police, the office had its standalone unit within the main outpatient building and not connected to the Medical Affairs Office or physicians' offices. Because the office was not attached to the Medical Affairs Office and the police officers were not full-time, they had less interaction with the hospital staff and perhaps a decreased likelihood of being so biased towards them. A security guard at this hospital commented that in China, "Police are like nannies and can help you with anything".<sup>867</sup> He said when police come, it is better because it is a third party and in situations with patients, sometimes just having the police there reassures them.<sup>868</sup> These two field sites show that Police Affairs Offices can help hospitals ensure better security of their environment and potentially provide a third-party to help ease tense situations. However, depending on the location of the office and frequency of contact with hospital staff, the Police Affairs Office may potentially skew the power between patients and physicians in disputes to favor hospitals instead of providing an objective party meant to serve both patients and physicians.

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<sup>866</sup> Xinfang Office, Interview No. 026.

<sup>867</sup> Hospital Security Guard, Interview No. 055, 55.

<sup>868</sup> Hospital Security Guard, Interview No. 055.

*People's Mediation Spreads Throughout China, but Implementation Differs:*

People's Mediation handled 66,000 cases, almost 60% of the number of medical disputes in total, up about 5% from the previous year.<sup>869</sup> The medical dispute mediation committees reported success rates of over 85%.<sup>870</sup>

*Medical Malpractice Liability Insurance Adopted Across China, Mixed Reviews:*

In 2014, 50,000 medical institutions joined medical liability insurance, among them 6,100 at the second level and above.<sup>871</sup> Close to 6,000 medical institutions joined risk-sharing funds.<sup>872</sup> The following section on concurrent influences in policy responses presents a more in-depth analysis of the progress of medical malpractice insurance in China.

OUTCOMES OF 2015 CRIMINALIZATION OF YINAO AND THE PATH TOWARDS IT

Something had changed by 2015 – the police started to truly crack down on *yinao*. This is something interviews resoundingly reflected at 3A hospitals in Beijing, Guangzhou, and Nanjing,<sup>873</sup> though the different reasons behind it may vary. The Beijing hospital administrator who had said the situation was worsening in the fall of 2014 and felt so pessimistic that he told the author to not pursue this study acknowledged in an interview in the Spring of 2016 that criminalizing *yinao* had been effective: he observed that now the police “dared” to handle these issues, whereas in the past they would not handle them because of the *weiwen* (stability maintenance) policy.<sup>874</sup>

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<sup>869</sup> Bai, “Harmony between Patients and Physicians Is Mainstream [亿元和谐是主流].”

<sup>870</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明].”

<sup>871</sup> Bai, “Harmony between Patients and Physicians Is Mainstream [亿元和谐是主流].”

<sup>872</sup> Bai.

<sup>873</sup> Beijing, Nanjing, Shanghai, Guangzhou field interviews all reflected this trend. Hospital official, Interview No. 070. Head of Medical Affairs Office, Interview No. 048, 2016, 48. Shanghai Legal Expert, Interview No. 87.

<sup>874</sup> Hospital official, Interview No. 070.

It is important to note, however, that the law itself was likely not the original impetus for this change in police behavior; an official stated that the amended criminal law formalized an internal party directive to police to handle these situations; the law did not cause the increase in law enforcement.<sup>875</sup> Another hospital official in Guangdong added that the reason there had been an improvement in law enforcement against yinao in Guangdong in particular was because top Party Leader Ma Xingrui (Vice Party Secretary of Guangdong's Party Committee and the Secretary of Guangdong's Political and Legal Affairs Commission) placed a great deal of importance on this issue following the 2014 policy document from five ministerial-level government agencies associating specific *yinao* behaviors with crimes.<sup>876</sup> A hospital administrator in 2015 reported that professional yinao had improved from 2013-2015, suggesting the possibility that police efforts may have also started earlier there.

These interviews reveal that Party directives and individual leaders in provinces still drive both policymaking and implementation, not the formal government institutions. This is important because as the preceding analysis on policymaking shows, even as the authoritativeness of documents increases and more government agencies become more involved in the policy process surrounding yinao, ultimately these factors are not decisive. Further, after years of calling for more police action since the 1980s and years of linking the Public Security Law and Criminal Law with yinao, only in 2015 has there been evidence of authorities actually addressing this issue.

#### *Implementation of Policy Crackdown 2: 2016-2017*

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<sup>875</sup> Shanghai Legal Expert, Interview No. 87, 087.

<sup>876</sup> Head of Medical Affairs Office, Interview No. 048, 2016.

The 2016-2017 action program was still underway at the time of this writing, so understanding its full impact is not yet possible. However, in February 2017, NHFPC published a Circular on the 2016 Work Situation of Maintaining Order in Medicine.<sup>877</sup> The report is not only about the progress of the special action program launched in 2016, but also about general progress on initiatives to maintain the order of medicine, such as the “secure hospitals” project and improvements on institutions for medical dispute resolution.<sup>878</sup> Unlike past reports that tout the success of programs, this one highlights problems and areas for improvement.

*Inconsistent emphasis and enforcement throughout provinces:* In evaluating the degree of interdepartmental coordination in enforcing relevant policy initiatives, the report found that 19 provinces had provincial-level leaders in charge of the institutions responsible for the “secure hospitals” initiative, helping to strengthen interdepartmental linkages to coordinate their work related to protecting the order of medicine.<sup>879</sup> The level of the leader in charge is important because it indicates the degree of importance the province is giving to the initiative, though within provincial-level leaders, rank and power vary. However, the report also acknowledges that coordination has not been even across provinces; while some places have done well, others like Guangdong have failed to

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<sup>877</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报].”

<sup>878</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报].”

<sup>879</sup> National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知],” 1.1.

adequately coordinate between relevant government departments to carry out policies relevant to maintaining order in hospitals.<sup>880</sup>

*Linking provincial action to decreasing medical disputes:* The report also evaluates progress of pursuing the rule of law based on the degree to which governments at local levels adopt regulations and measures to achieve maintaining order in hospitals. It notes a general trend of local-level governments using regulations, particularly Tianjin, Shanghai, Zhejiang, Jiangxi, Hubei, Hunan, and Guangxi, for medical dispute prevention and resolution, implying that these measures have led to successful outcomes by citing that in 2016 the entire country's number of medical disputes decreased by 6.7%<sup>881</sup> compared to 2015.<sup>882</sup> Supreme People's Court Official Ma Yan in a press conference further added that in 2016 cases for medical damages compensation received by people's courts decreased by 7.5%.<sup>883</sup> He also reported that in 2016 nationwide, courts altogether concluded 20,833 cases for medical damages compensation, among them 6,489 were mediated and 3,572 were dropped.<sup>884</sup>

However, despite this progress, the report observes that while some places exhibited strengthening in passing laws to better resolve conflicts, other places due to concerns about conflicts intensifying, delayed the immediate resolution of medical

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<sup>880</sup> "National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报]," 2.1.

<sup>881</sup> "National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报]," 1.2.

<sup>882</sup> Juan Xu, "Supreme People's Court: Crimes Interfering with Medicine Last Year Dropped by 14.1% [最高法院: 涉医违法犯罪案去年下降 14.1%]," *The People's Daily*, February 24, 2017, 4 edition.

<sup>883</sup> Juan Xu, "Supreme People's Court: Crimes Interfering with Medicine Last Year Dropped by 14.1% [最高法院: 涉医违法犯罪案去年下降 14.1%]," *The People's Daily*, February 24, 2017, 4th edition.

<sup>884</sup> Xu.

conflicts.<sup>885</sup> The assessment gives an example of an incident in Hunan in which government departments involved instructed a hospital to compensate people engaging in *yinao*, condoning the behavior.<sup>886</sup>

*Decrease in public security cases related to medicine:* The report explicitly mentions the 2016-2017 crackdown and states that in 2016 the number of public security cases involving medicine has decreased by 14.1%.<sup>887</sup> Liaoning, Jilin, Guangxi are among twelve provinces that have seen a decrease of over 20% in criminal cases involving medical institutions.<sup>888</sup> In the area of medical dispute resolution, there were over 60,000 medical cases mediated nationwide with a satisfaction rate of over 85%,<sup>889</sup> the definition and data collection of which is unknown.

*Increasing coverage of medical liability coverage for hospitals:* By 2016, 70,000 medical institutions had joined medical liability insurance.<sup>890</sup>

*Uneven enforcement in mediation:* However, the report also observed issues in enforcement of mediation, using Hebei as an example of poor performance because its

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<sup>885</sup> National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知],” 2.2.

<sup>886</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 2.2.

<sup>887</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 1.4.

<sup>888</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 1.4.

<sup>889</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 1.5.

<sup>890</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 1.5.

peoples' mediation committees have inadequate space, personnel and funds for the committees.<sup>891</sup>

*Continued evidence of barriers between hospitals and police:* In the area of communication and disseminating information, the report notes that barriers in communication of information between hospitals and police can lead to mass incidents, recognizing that some cases are not handled in a timely and resolute manner and that those involved often fail to foresee the consequences of these events. The report uses examples from Shandong and Anhui to illustrate that failure to have a timely response to public opinion can lead to the sensationalization of yinao events.<sup>892</sup>

*Uncertainty Regarding Use of Dispute Resolution Institutions:* The data about dispute resolution institutions and medical disputes convey mixed messages about the degree to which the public uses them. If the statistics gathered by the author are correct, the number of mediated cases actually fell from 71,000 mediated cases in 2015<sup>893</sup> to 60,000<sup>894</sup> mediated cases in 2016, which is about 15% decrease in the number of mediated cases. While this decreasing trend may signal that improvements in the health care system (better quality, better communication, etc.) have decreased the number of disputes, these improvements tend to take years to implement and so their effects would likely be less drastic between two years. If mediation decreased, then perhaps other avenues were being increasingly used such as the court, but medical liability cases in the

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<sup>891</sup> National Health and Family Planning Commission, "Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知]," 2.1.

<sup>892</sup> "National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报]," 2.4.

<sup>893</sup> National-level official, "Text Message," April 2016.

<sup>894</sup> "National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报]."

court system also decreased from 2015 to 2016. The decrease in both mediation and adjudication may indicate that people are still settling within the hospitals or resorting to *yinao*. The former is harder to attain data for, and the latter may have decreased if since the number of public security incidents involving hospitals decreased by 14.1% (according to official statistics), though public security incidents in hospital settings can include more than just *yinao*, so true trends are still unknown. A decrease in the absolute number of medical disputes could help explain the decrease in these dispute resolution figures, but this figure is nonexistent and when it is published, it is rarely defined and vague – in this report the number of medical disputes decreased by 6.7%.

It is difficult to imagine that quality would have improved so quickly to deter medical disputes. Likely the Chinese system wants to convey that medical disputes are overall decreasing by publishing these statistics. Even though an increase in the number of adjudicated and mediated cases may have implied that there are more medical disputes, it also may have shown an increase in the use of these institutions, which would have been a positive affirmation of the dispute resolution institutions created to handle these disputes. Decreases so early on may on the surface appear to show that the Chinese health care system is becoming less contentious, but it is unlikely that improvements could have been implemented that quickly, so the decreasing numbers may instead indicate that people are increasingly discouraged about the official avenues offered and also are seeing protests as less viable, so they ultimately may be discouraged to pursue their cases at all.

*Overall conclusion of crackdown period:* The thrust of this report can be summarized in the following way: While locally implementation may vary, when looking at the national, macro prospective, overall progress is occurring on all indicators. There is

increased leadership and interdepartmental coordination to carry out relevant initiatives, there are more regulations being passed at the local level to address the issue, and all statistics about conflict – whether it be criminal cases or medical disputes in courts, are falling. By providing this report, the government is saying overall, despite problems, there is a net improvement. This finding is not particularly unique to this issue because China is well known for having varying levels of implementation at the local level<sup>895</sup>, which can be expected due to the vast differences among its provincial-level units.

### **Concurrent Influences Occurring During Policy Cycles**

Assessing in detail the breadth of policy tools relevant to *yinao* is beyond the purview of this study, but understanding basic trends in relevant areas to resolving some of the root causes of *yinao* is important for understanding the full context of the responsiveness of the state. The next few sections review the progress made in medical malpractice insurance reform, general health care reform, and media coverage of *yinao* events.

### Establishing a Medical Malpractice Insurance System

Beginning in 2014, nationwide public hospitals at level two and above were supposed to purchase medical liability insurance,<sup>896</sup> and coverage is supposed to reach over 90% of level two and above hospitals by the end of 2017.<sup>897</sup> However, this broad coverage belies issues in the quality and implementation of the insurance system.

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<sup>895</sup> A phenomenon in the China Studies field noted by authors in the early 1980s that results from “fragmented authoritarianism.” See K. Lieberthal and M. Oksenberg, *Policy-Making in China: Leaders, Structures, and Process* (Princeton University Press, 1988); David M. Lampton, “A Plum for a Peach: Bargaining, Interest, and Bureaucratic Politics in China,” in *Bureaucracy, Politics, and Decision-Making in Post-Mao China* (Berkeley: University of California Press, 1992), 33–58.

<sup>896</sup> “Opinions on Strengthening Medical Liability Insurance Work [关于加强医疗责任保险工作的意见].”

<sup>897</sup> “Circular on Taking a Step Forward to Improve Medical Services Action Plan [关于印发进一步改善医疗服务行动计划的通知].”

Because the medical malpractice insurance industry is a relatively new industry, insurance companies lack data on important variables used to set competitive insurance rates.<sup>898</sup> Further, these insurance companies do not offer a diverse set of policies that fit the needs of different types of hospitals and different types of risks.<sup>899</sup> Insurance companies also still tend to lack qualified personnel in underwriting and compensation.<sup>900</sup>

Localities are adopting their own insurance policies, and results have been mixed. In one of the cities researched in this study, all 3A hospitals had to purchase the same medical malpractice insurance provided by the People's Insurance Company of China (PICC).<sup>901</sup> Hospital administrators from 3A facilities expressed some discontent with the current state of malpractice insurance – one expressing that he wished insurance companies would participate directly in negotiations with patients,<sup>902</sup> which is often done in the US with the insurance company taking a large role in estimating the costs of litigation and deciding whether to settle in or out of court.<sup>903</sup> In China at the present time, hospitals still mainly negotiate with the patients, either in the hospital or mediation, reimburse the patient, and then they apply for compensation from the insurance companies later.<sup>904</sup> As one mediator put it, the hospitals have to pay twice: first they have to spend money to buy insurance, and then they have to spend money to compensate the patient.<sup>905</sup>

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<sup>898</sup> Mingan Huang and Yonglian Zhou, “Existing Problems and Development Path of China’s Medical Liability Insurance System [我国医疗责任保险制度存在的问题及发展路径],” *Contemporary Economics* 7 (2015): 88.

<sup>899</sup> Huang and Zhou, 88.

<sup>900</sup> Huang and Zhou, 88.

<sup>901</sup> Mediation Committee Employees, Interview No. 043, 2016.

<sup>902</sup> Medical Affairs Office Employee, Interview No. 27.

<sup>903</sup> Horn III, Caldwell, Jr, and Osborn, *Law for Physicians: An Overview of Medical Legal Issues*.

<sup>904</sup> Eastern City Mediator, Interview No. 85, 2017.

<sup>905</sup> Eastern City Mediator.

A lawyer from another 3A hospital in a different city reported that hospitals were not enthusiastic about these new insurance policies because it seemed like the insurance companies were primarily focused on winning the favor of relevant local government agencies in order to profit from the requirement for hospitals to purchase medical malpractice insurance.<sup>906</sup>

The “three mediations, one insurance” policy also indicates that the insurance company should directly compensate the amounts decided in mediation.<sup>907</sup> Insurance companies have been invited into and also been involved in establishing medical mediation committees in order to hasten the process by which insurance companies compensate patients;<sup>908</sup> but there are different views about the fairness of involving the insurance companies in the mediation process and even when they are present at mediation committees, fast compensation has remained a challenge.<sup>909</sup> The next chapter on mediation will continue to explore this issue.

In the National People’s Congress of 2017, representative Yao Yuanzhen spoke about addressing challenges in establishing a medical malpractice insurance system. She called for the establishment of a compulsory insurance system.<sup>910</sup> Yao further remarked that the insurance industry was not being effective for hospitals, advocating a different system whereby the government, hospitals, and patients together buy what was termed to

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<sup>906</sup> Hospital Lawyer, Interview No. 86, 2015.

<sup>907</sup> Xiaoli Wu, “Li Bin: Establishing ‘Three Mediations, One Insurance’ Mechanism to Alleviate Doctor-Patient Disputes [李斌: 建‘三调解一保险’机制缓解医患纠纷],” *Wenda Shenzhen [问答神州]*, April 11, 2015, <http://v.ifeng.com/news/society/201504/0199415c-d976-4d24-b14d-1bf248020c15.shtml>.

<sup>908</sup> Chen Xianxin and Jiang Zehong, “Analysis on Third-Party Mechanism in Medical Disputes Resolve [国内外医疗纠纷第三方调解机制述评].”

<sup>909</sup> Eastern City Mediator, Interview No. 85, 85; Shanghai Legal Employee, Interview No. 36, 2015.

<sup>910</sup> Tao Deng, “National People’s Congress Representative Yao Yuanzhen: Punish and Prevent Violent Attacks on Doctors, Guarantee the Physical Safety of Health Care Workers [全国人大代表姚媛贞: 惩防暴力伤医事件 保障医务人员人身安全],” Sina News Center, March 9, 2017, <http://news.sina.com.cn/c/2017-03-09/doc-ifychavf2193470.shtml>.

be “social medical liability insurance,”<sup>911</sup> though it is unclear how exactly this would work. She also advocated for legislation to establish a medical risk fund system through which medical damages could be compensated.<sup>912</sup> Yao further supported the establishment of other types of more specialized insurance and also insurance that patients could purchase prior to serious procedures.<sup>913</sup> This type of insurance, called Surgery Accident Insurance, can compensate patients directly for costs for the costs incurred by complications and malpractice.<sup>914</sup>

This fledgling model of insurance is interesting because the patients would pay into the risk pool for potential claims that could be the fault of physicians. The existence of this type of insurance conveys the idea that patients should be willing to bear the risk of surgery to the point that they will insure themselves against possible mistakes physicians make. One of the field hospitals used in this study was contemplating making Surgery Accident Insurance available for purchase at the hospital. Though this type of insurance may save on costs of medical disputes, at the same time, presenting patients with Surgery Accident Insurance prior to surgery may increase their distrust of their physicians.

### Health Care System Reform

Many of the measures useful for addressing *yinao* and medical disputes have to do with the ongoing massive health care reform,<sup>915</sup> which touches upon increasing insurance coverage to reduce out-of-pocket costs, decreasing the gap in quality and

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<sup>911</sup> Deng.

<sup>912</sup> Deng.

<sup>913</sup> Deng.

<sup>914</sup> Medical Affairs Office Employee, Interview No. 27.

<sup>915</sup> “Opinions of the CPC Central Committee and the State Council on Deepening the Health Care System Reform,” April 6, 2009, [http://china.org.cn/government/scio-press-conferences/2009-04/09/content\\_17575378.htm](http://china.org.cn/government/scio-press-conferences/2009-04/09/content_17575378.htm).

accessibility of care between rural and urban areas to reduce overcrowding of tertiary urban hospitals, and the adjusting the pricing of health care goods and services. While the performance of the reform has been mixed,<sup>916</sup> it has made progress in or intends to address each of these areas. As noted elsewhere, the vast majority of the Chinese population had no insurance when the agricultural collectives and work unit systems were dismantled beginning in the late 1970s.<sup>917</sup> However, by 2011, two years after the reform, the government boasted nearly 95% insurance coverage.<sup>918</sup> On paper, nearly the entire population is covered, but this coverage is still shallow, with the average annual subsidy for a rural resident being only RMB 490.3 (\$71.38) as of 2015.<sup>919</sup>

Although the reform is attempting to improve quality of rural care and encourage the use of grassroots health organizations, the 2015 work report still showed an increase in the use of tertiary care facilities.<sup>920</sup> Corruption and pricing of health care goods and services also remain important challenges in the health care system.<sup>921</sup> The State Council took a step towards resolving issues of high-priced drugs in 2015 when it announced it would begin phasing out China's 15% drug mark-up policies, which allows hospitals to charge 15% markup in drugs in order to profit from them.<sup>922</sup> However, issues of enforcing better drug policies remain. One physician candidly admitted that he monthly

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<sup>916</sup> Yip et al., "Early Appraisal of China's Huge and Complex Health-Care Reforms."

<sup>917</sup> Eggleston, "Health Care for 1.3 Billion."

<sup>918</sup> Yip et al., "Early Appraisal of China's Huge and Complex Health-Care Reforms."

<sup>919</sup> "2015 China Health and Family Planning Activity Development [2015 年我国卫生和计划生育事业发展统计公报]," National Health and Family Planning Commission Planning and Information Bureau, July 20, 2016,

<http://www.nhfpc.gov.cn/guihuaxxs/s10748/201607/da7575d64fa04670b5f375c87b6229b0.shtml>.

<sup>920</sup> "Explanation of Relevant Statistics from '2015 Health and Family Planning Commission Institutional Development Statistics Announcement' 关于《2015 年我国卫生和计划生育事业发展统计公报》有关数据的说明 - 中华人民共和国国家卫生和计划生育委员会," July 20, 2016, 201,

<http://www.nhfpc.gov.cn/zhuzhan/zcjd/201607/573fe91db64b45d3add70429b8680775.shtml>.

<sup>921</sup> Tam, "Organizational Corruption by Public Hospitals in China." Trends identified by Tam in 2011 were confirmed by interviews in 2016 in both Nanjing and Guangzhou: Chinese Attending Physician, Interview No. 054; Doctor of Internal Medicine, Interview No. 077.

<sup>922</sup> "China Scraps 15% Drug Markup at 100 Hospitals, to Move Nationwide by 2017 | FiercePharma."

took bribes from eight or nine pharmaceutical companies, constituting over a third of his income.<sup>923</sup> A consultant for a foreign company in China reflected that even though the prosecution of GlaxoSmithKline (GSK) in China reverberated across the foreign pharmaceutical community, the reality is that the system has not really changed: “the hands are still open” – the doctors have not been given enough incentives to stop demanding bribes.<sup>924</sup>

Despite these challenges, the long-term goals of China’s health care reform show that it seeks to increase the depth of insurance coverage, improve rural and grassroots-level health care, and balance out the artificially low prices for health care services and exceptionally high prices of pharmaceuticals and laboratory tests.<sup>925</sup> The table below (Table 16) highlights the indicators the government agencies are using for making improvements in the health care system, as outlined in the 2015 “Notice About the Publication of Opinions on Controlling the Unreasonable Growth in Health Care Fees.”<sup>926</sup> In February 2017, the State Council released “Several Opinions of the State Council on Taking a Step Forward to Improve Policies for Pharmaceutical Production, Distribution, and Usage,” which limits growth of pharmaceutical costs at public hospitals at 10% or below for 2017.<sup>927</sup>

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<sup>923</sup> Doctor of Internal Medicine, Interview No. 077, 77.

<sup>924</sup> International Consultant, Interview No. 76, 2016.

<sup>925</sup> “Notice about the Publication of Opinions on Controlling the Unreasonable Growth of Medical Fees in Public Hospitals [关于印发控制公立医院医疗费用不合理增长的若干意见的通知].”

<sup>926</sup> “Notice about the Publication of Opinions on Controlling the Unreasonable Growth of Medical Fees in Public Hospitals [关于印发控制公立医院医疗费用不合理增长的若干意见的通知].”

<sup>927</sup> “Several Opinions of the State Council on Taking a Step Forward to Improve Policies for Pharmaceutical Production, Distribution, and Usage [国务院办公厅关于进一步改革完善药品生产流通使用政策的若干意见],” Office of the National Health and Family Planning Commission, February 9, 2017, <http://www.nhfp.gov.cn/bgt/gwywj2/201702/4250c51ae43140a38f82f27d1b5a795f.shtml>.

**Table 16: Main Monitoring Indicators for Public Hospital Medical Fee Control**

Main Monitoring Indicators for Public Hospital Medical Fee Control	
Medical Fee Indicator	Indicator Requirement
1 Regional medical fees increasing	Achieve the goal of regional medical price control
2 Average medical fees for outpatient visits	Monitor comparison
3 Inpatient average medical fees	Monitor comparison
4 Average outpatient visit medical fee growth rate	Gradually decrease
5 Inpatient per capita medical fee growth rate	Gradually decrease
6 Average fees for 10 common illnesses	Monitor comparison
7 Payment proportion for insurance policy holders	Gradually decrease
8 Proportion of fees not in the medical insurance catalogue	Monitor comparison
9 Proportion of ordinary outpatient visits in urban level general hospitals	Gradually decrease
10 Comparison of inpatient visits and number of people	Monitor comparison
11 Composition of surgery types	Monitor comparison
12 Proportion of outpatient income to medical income	Monitor comparison
13 Proportion of inpatient income to medical income	Monitor comparison
14 Proportion of medication income (not including Traditional Chinese Medicine liquids and solids) to total income	Gradually decrease
15 Proportion of examination and laboratory testing income to medical income	Gradually decrease
16 Proportion of health supplies income to medical income	Gradually decrease
17 Proportion of appointment ticket numbers, patient examinations, bed numbers, treatment, surgery and nursing income total to medical income	Gradually increase
18 Cost of health materials consumed per 100 yuan of medical income	Gradually decrease
19 Average number of days for hospital stay	Gradually decrease
20 Administration fee rate	Gradually decrease
21 Property liability rate	Gradually decrease

### Media and Propaganda

Media responsiveness means both how official media handles reporting *yinao* incidents as well as how state propaganda attempts to address *yinao*. First, because heads of top public hospitals hold government rank on par with the heads of TV networks, they frequently attend provincial-level meetings with each other and know each other.<sup>928</sup> As a result, if there are stories that a hospital head does not want covered about his or her hospital, he or she has access to the top person at the TV network who decides which stories are ultimately published. Of course, while this does not automatically guarantee

<sup>928</sup> Media Official, Interview No. 065.

protection of hospitals in media coverage, it increases the likelihood that these types of stories may be censored. If a provincial-level hospital head and the head of the local media disagree about whether a medical dispute story should be covered, then the head of the Provincial Level Propaganda Department would make the final decision on whether a specific news story would be published about a hospital.<sup>929</sup>

The second point about the media is its ability to spread propaganda to further state interests by changing public opinion on contentious issues. For *yinao*, there have been several popular television programs that have sought to increase the reputability of physicians by showing their hard work and dedication. Perhaps the most famous of these TV shows is *Xinshu* (心术) (2012), which features top Chinese celebrities as physicians and nurses who must handle a variety of challenging issues with patients, including *yinao*.<sup>930</sup> Other TV shows include *Renjianshi* (人间事) (2016) and *Jizhenshi Gushi* (急诊室故事) (2015-2016). Both are reality TV shows depicting real-life medical situations. A notable point about all of these shows is that they are all from the perspective of the physicians. While they show patients experiencing difficult situations, the shows are not about how hard it is for patients to navigate the Chinese health care system, but rather how heroic health care workers are. Without survey data, it is unclear whether these shows have improved the patient-doctor relationship in China.

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<sup>929</sup> Media Official, 4.

<sup>930</sup> “‘Xinshu’ Shows Prolonged War with Yinao, Sparking Everyone into a ‘Red Envelope Discussion’ [《心术》上演医闹持久战，引发全民‘红包论’],” Souhu Entertainment, May 17, 2012, <http://yule.sohu.com/20120517/n343447306.shtml>.

## Analysis and Conclusion

The above analysis implies that the adaptability of the Chinese state to respond to social conflict can be viewed in terms of the adaptability of the policies as well as the adaptability of the system needed to enforce the policies.

*Adaptive policymaking:* In the sense of adapting policies, laws, and regulations to address complicated issues like *yinao*, the Chinese system has performed well: it has moved from ministerial documents relying on a couple of policy tools to detailed policies that address many different direct and indirect aspects of the issue and have the support of multiple ministries and Party departments. Table 17 below illustrates this point, showing the number of documents, policy tools, and types of policies increasing over the past four decades to address *yinao*. I use decades instead of policy cycles here to highlight the frequency of responsive documents for the same amount of time.

**Table 17: Summary of Policies from 1986-2017**

Decade	Total No. of Docs	Policy tools
<b>1980-1990</b>	<b>2</b>	Prohibiting language, procedural reform for complaints and disputes
Party-Govt Docs	0	
NPC Laws	0	
State Council Docs	1	
Ministerial-level Docs	1	
<b>1990-2000</b>	<b>2</b>	Procedural reform for complaints
Party-Govt Docs	0	
NPC Laws	0	
State Council Docs	0	
Ministerial-level Docs	2	
<b>2000-2010</b>	<b>6</b>	Prohibiting language, procedural reform of dispute management system, hospital security capabilities, doctor-patient communication, safety and quality, better education and training for health care workers, legal reform, mediation
Party-Govt Docs	1	
NPC Laws	1	
State Council Docs	1	
Ministerial-level Docs	3	
<b>2010-present</b>	<b>11</b>	Prohibiting language, procedural reform of dispute management system, hospital security capabilities, doctor-patient communication, safety and quality, better education and training for health care workers, legal reform, mediation, police crackdown, medical malpractice insurance
Party-Govt Docs	3	
NPC Laws	1	
State Council Docs	0	
Ministerial-level Docs	7	

At the same time, the above policies and their implementation reveal two points about the lack of systemic change: 1) the continuing power of the Party and individual leaders as decisive elements for implementation and; 2) the challenge to achieve the increasingly sophisticated set of policy goals due to the interlocking interests of for-profit public hospitals, physicians and their medical associations, local governments and their health bureaucracies, and SOEs selling drugs, medical equipment, and insurance – a combination of interests that can be termed the medical-professional-industrial complex.<sup>931</sup>

The crackdown and criminalization of *yinao* demonstrate the continuing pivotal role of Party institutions and directives for enforcement. Official data on enforcement reported above also confirm this by implying that decreases in both public security incidents at hospitals and in the overall number of medical disputes correlate with the increasing involvement of the Party in crackdowns and policies in the fourth era. This ultimately means that while functional bureaucracies may fully understand and seek to resolve policy issues, they ultimately have to wait until they receive enough attention from the Party to pursue meaningful change. This potentially creates a lag between the realization and resolution of issues. If *yinao* could have been addressed as it began and the early policy documents of the Ministry of Health and Ministry of Public Security could have been enforced without the need for Party attention, *yinao* may not have become as severe as it is today.

Not surprisingly, state responsiveness to social conflict also correlates with the objectives of China's top Party leaders. Not only did interviews show that priorities of local leaders determine the attention to enforcing policies, but also the eras chosen to

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<sup>931</sup> Thanks to Professor David M. Lampton for the idea for this term.

narrate the development of these policies coincidentally (or not coincidentally) correspond closely with changes in leadership and broad policy themes pursued by China's presidents. For example the "secure hospitals" initiative mirrors President Hu Jintao's "harmonious society" initiative.<sup>932</sup> His emphasis on a harmonious society and social stability (*weiwen*) incentivized hospitals to end medical disputes quickly and did not strongly encourage using police power to intervene in medical disputes.<sup>933</sup> But when President Xi Jinping took full power by the beginning of 2013, he began an anti-corruption campaign. This focus on crime and crackdown is also mirrored in the policies toward *yinao*. While these leaders may not have caused the policies to respond to *yinao*, their influence may have been their impetus for enforcement. For example, government ministries had long called for increasing use of police force against *yinao*, but it was not until Xi Jinping came to power that the policy was actually enforced.

The medical-professional-industrial complex creates issues for the adoption of much-needed policy changes and enforcement. The revised regulations for medical disputes, enforcement of the health care reform, and fledgling medical malpractice insurance system demonstrate this challenge. The newest version of the regulations on medical disputes (the drafted Medical Dispute Prevention and Management Regulations) shows that while the Chinese system can adapt to make its regulations and laws more consistent with each other, at the same time the failure to change the role of the Medical Associations in the controversial case review process likely demonstrates the inability to overcome the interests of hospitals and medical professionals in the system.

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<sup>932</sup> "Introduction to the Main Table of Contents of Comrade Hu Jintao's 'Theory on Construction Socialism and Harmonious Society' 胡锦涛同志《论构建社会主义和谐社会》主要篇目介绍。”

<sup>933</sup> Hospital official, Interview No. 070, 70.

China's health care reform goals face a similar challenge of embedded interests. The policy goals are good – if achieved, they would drastically improve the health care system in the areas of pricing, insurance coverage, and access; however, realizing these goals require deeper changes in the incentives created by the financing of health care, salary structure for physicians, and cracking down not just foreign pharmaceuticals but the SOEs and other Chinese companies involved in bribing. Increasing quality and safety as well as ensuring that medical professionals do not accept bribes likely would necessitate removing the health care bureaucracy as both the overseeing and evaluating agency for the country's public hospitals.

This chapter began by emphasizing that medical disputes are endemic and recurring and so will require long-term institutional responses. The Chinese state has shown its capacity to respond to the issue of contentious medical disputes specifically by creating a new medical dispute resolution institution: the medical dispute people's mediation committees. While statistics on implementation have revealed that the Chinese system can quickly set up these mediation offices, what remains to be seen is the quality of their implementation. The following chapter dives into the details of the implementation of a medical dispute mediation committee shadowed for this study.

## CHAPTER 8: MEDICAL DISPUTE PEOPLE'S MEDIATION COMMITTEES

The previous chapter demonstrated the rise of mediation as the state's preferred form of medical malpractice dispute resolution. This chapter delves into the inner workings of one Medical Dispute People's Mediation Committee (MDMC) in order to evaluate China's progress towards achieving rule of law and to assess the impact these MDMCs may have on improving China's health care system. The Chinese Party-state sees itself responsible for providing functional legal and health care systems, so performance in these areas helps to illuminate its efforts to maintain legitimacy.

Scholars stress that emphasizing mediation over adjudication can detract from establishing rule of law because mediation represents a private settlement that does not distinguish between right and wrong for society, and therefore its results do not contribute to building a legal framework.<sup>934</sup> However, there are several reasons why mediation should still be considered in evaluating China's progress toward building a rule-of-law system. First, mediation is not necessarily in conflict with the rule of law – many countries such as the US have established a reputable rule of law system that includes mediation operating alongside its courts; though, as I explain below, China's mediation system is rooted in very different traditions, ideologies, and sometimes-controversial coercive practices, so it is not quite the same as it is in western countries. Second, there is increasing consensus in the medical malpractice literature that alternative dispute resolution (ADR) such as mediation might be a more optimal way to resolve medical malpractice disputes because it can allow for a variety of solutions beyond

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<sup>934</sup> Fu Hualing and Richard Cullen, "From Mediator to Adjudicator Justice: The Limits of Civil Justice Reform in China," 37; Luban, "Bargaining and Compromise: Recent Work on Negotiation and Informal Justice," 414.

compensation tailored to the needs of specific cases, such as apologies, establishment of new safety protocols, donations to charities, and even memorials for deceased patients.<sup>935</sup> China's emphasis on pushing many of its medical disputes to mediation may therefore actually be a positive move for its legal system. Third, while the definition of the rule of law in Xi Jinping's China remains ambiguous,<sup>936</sup> in China mediation is often seen as an integral part of China's rule of law framework,<sup>937</sup> so it cannot be omitted from the discussion.

Yet the concept of the rule of law even outside of the Chinese context is vague and has been subject to scholarly debate. At its most basic form, rule of law often characterizes a system that makes law known to the public and holds everyone, including a country's highest leaders, accountable to the law.<sup>938</sup> Scholars contemplating rule of law both in the Chinese and American contexts also consider other aspects such as an independent judiciary, fair procedures, the ways in which laws are interpreted and applied, and upholding principles such as liberty, justice, and equality.<sup>939</sup> While medical dispute mediation cannot provide insight into all of the relevant aspects of the rule of law, it can demonstrate the degree to which procedures in mediation are followed, the accessibility

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<sup>935</sup> Sohn and Bal, "Medical Malpractice Reform: The Role of Alternative Dispute Resolution"; Szmania, Johnson, and Mulligan, "Alternative Dispute Resolution in Medical Malpractice."

<sup>936</sup> Liebman, "China's Law and Stability Paradox," 174.

<sup>937</sup> Mediation Committee Director and District Bureau of Justice Office Assistant Director, Interview No. 28, 2015.

<sup>938</sup> Richard H Fallon Jr, "'The Rule of Law' as a Concept in Constitutional Discourse," *Columbia Law Review*, 1997, 2–3.

<sup>939</sup> Fallon Jr, "'The Rule of Law' as a Concept in Constitutional Discourse"; Albert HY Chen, "Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law," *UCLA Pac. Basin LJ* 17 (1999): 132–52.

of legal dispute resolution institutions, and whether the principles of equality and voluntariness, two important values of mediation in China<sup>940</sup>, are upheld.

Medical dispute resolution through mediation also provides an opportunity to understand how this process may contribute to health care system improvement. Medical disputes help expose problems in any health care system from issues in communication to technical issues in the procedures performed by health care workers. This chapter therefore also inquires into whether mediation reveals any systemic issues in and provides feedback to China's health care system to improve the quality of care.

This chapter analyzes the impact of MDMCs on rule of law and health care based on fieldwork conducted through shadowing one MDMC in a city district (District X) of a large city in Eastern China (from here on referred to as Eastern City). The author shadowed the committee over the course of several visits from September 2015 through April 2016. Based on this work, this chapter provides and analyzes the transcripts of three full mediations as well as three consultations (other types of interactions that mediators have with potential complainants or hospitals).

This chapter begins by briefly providing a broader context of the development of mediation throughout Chinese history. It then outlines the development of medical dispute mediation from its beginning in various local-level experiments to its adoption into national policy. It also considers the literature analyzing various differences between and challenges facing these committees. Next, this chapter launches into the specifics of the committee observed for this study – the procedures it followed and how it handled several cases of mediation and consultation in order to assess the actual implementation

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<sup>940</sup> “The People’s Republic of China People’s Mediation Law [中华人民共和国人民调解法],” Articles 2 & 3.1.

of MDMCs. Finally, this chapter analyzes the broader implications of these committees for rule of law, quality of care, and regime legitimacy in China.

### **Historical Context of People’s Mediation in the People’s Republic of China**

The practice of mediation dates back to imperial China. Traditionally mediation by local magistrates encouraged compromise, urging parties to “yield” a little to each other and emphasizing the importance of maintaining harmonious relationships.<sup>941</sup> The Chinese Communist Party (CCP) has continued to promote mediation through neighborhood-based people’s mediation committees as well as through judges in its court system (judicial mediation).<sup>942</sup> However, initially the CCP had an aversion towards traditional mediation methods performed just for the sake of compromise and instead attempted to politicize the process by using it to guide and correct ideological thinking.<sup>943</sup>

Maoist style mediation dates back to the CCP revolutionary period in the 1930s and 1940s.<sup>944</sup> Mediation during this time had several important functions: it enabled on-the-spot dispute resolution, thereby facilitating reconciliation and unity among the masses;<sup>945</sup> it was a tool to “bring people around to the correct attitude,” so they understood the principles of Communist ideology<sup>946</sup>; and it encouraged mass participation in dispute resolution, thereby helping to educate more people about Party policies and showing the masses that the Party understood them and had their interests in mind.<sup>947</sup> One example of bringing people around to the right attitude is denying an

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<sup>941</sup> Stanley Lubman, “Mao and Mediation: Politics and Dispute Resolution in Communist China,” *California Law Review* 55, no. 5 (1967): 64–65, <https://doi.org/10.2307/3479330>.

<sup>942</sup> Stanley B Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford University Press, 1999), 218–19.

<sup>943</sup> Lubman, Chapter 3.

<sup>944</sup> Lubman, “Mao and Mediation,” 1306.

<sup>945</sup> *Ibid.*, 1307.

<sup>946</sup> *Ibid.*, 1308.

<sup>947</sup> *Ibid.*, 1307.

adulterous woman's request for divorce and convincing her of the "badness" of her adulterous relations.<sup>948</sup> In the post-1949 period following the CCP's victory, mediation committees became an integral part of urban residential communities, resolving a variety of disputes from rent payment issues to divorce.<sup>949</sup> While mediators were lauded by the CCP for heroically rushing to the scenes of neighborhood disputes and resolving them,<sup>950</sup> there were also reports of mediators coercing settlements and threatening to inhibit parties from pursuing their conflicts in court. In addition to residence-based extralegal mediation, courts also practiced and favored judicial mediation,<sup>951</sup> practices which are also encouraged today.<sup>952</sup>

Mediation, along with many other legal institutions, came to a halt during the Cultural Revolution (1966-1976).<sup>953</sup> During the post-1978 reform era, the number of mediators and mediation committees expanded greatly, resolving millions of disputes per year.<sup>954</sup> The Ministry of Justice, the government ministry charged with managing the committees, also adopted procedures to make mediation committees more rule-based and less politicized.<sup>955</sup> New regulations and laws also reiterated the importance of

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<sup>948</sup> Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 1308.

<sup>949</sup> Lubman, "Mao and Mediation, 1309-1314.

<sup>950</sup> *Ibid.*, 1316-1317.

<sup>951</sup> *Ibid.*, 1325.

<sup>952</sup> Fu Hualing and Richard Cullen, "From Mediatory to Adjudicatory Justice: The Limits of Civil Justice Reform in China."

<sup>953</sup> Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 218.

<sup>954</sup> Lubman, 219.

<sup>955</sup> "People's Mediation Committee Organization Regulations [人民调解委员会组织条例]" (State Council, June 17, 1989), [http://pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=4331&keyword=%e3%80%8a%e4%ba%ba%e6%b0%91%e8%b0%83%e8%a7%a3%e5%a7%94%e5%91%98%e4%bc%9a%e7%bb%84%e7%bb%87%e6%9d%a1%e4%be%8b%e3%80%8b&EncodingName=&Search\\_Mode=accurate](http://pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=4331&keyword=%e3%80%8a%e4%ba%ba%e6%b0%91%e8%b0%83%e8%a7%a3%e5%a7%94%e5%91%98%e4%bc%9a%e7%bb%84%e7%bb%87%e6%9d%a1%e4%be%8b%e3%80%8b&EncodingName=&Search_Mode=accurate). For analysis see: Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 220-22. For the most updated law on people's mediation see, "The People's Republic of China People's Mediation Law [中华人民共和国人民调解法]."

voluntariness in mediation because the process had become known for coercing parties into agreement.<sup>956</sup>

In the court system during the 1980s and 1990s, there was a retreat from mediation as an increasingly educated cohort of legal professionals and judges pushed legal reforms toward strengthening the adjudication process.<sup>957</sup> However the beginning of the 2000s saw an increase in the number of petitions<sup>958</sup> to central authorities, a large portion of which were related to the legal system.<sup>959</sup> Central authorities blamed adjudication for destabilizing society and as a result, the Supreme People's Court began to reemphasize mediation.<sup>960</sup> This is because in mediation, parties agree to the outcomes, so its results are often perceived to better promote social harmony and stability.<sup>961</sup> Mediation also has some advantages for judges because they are not accountable for wrong decisions and protected from appeals of their decisions.<sup>962</sup>

During this time the policy of “Grand Mediation” (*da tiaojie* - GM) also began to emerge and was officially adopted nationwide by 2010.<sup>963</sup> GM emphasizes the linkage

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<sup>956</sup> “People’s Mediation Committee Organization Regulations [人民调解委员会组织条例]”; “The People’s Republic of China People’s Mediation Law [中华人民共和国人民调解法]”; Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 221–22.

<sup>957</sup> Fu Hualing and Richard Cullen, “From Mediatory to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” 30–39.

<sup>958</sup> China has a vast petitioning system called the “Letters and Visits” or the *Xinfang* System. These petitioning offices exist in nearly every local government bureau for patients to air their grievances and to hopefully receive a response to their complaints. When petitioners feel that the local response has been inadequate, they can go up to the next level of government to make their case (this is called *shangfang*) and can take their complaint all the way to the petitioning offices of government offices in Beijing. Local governments have become notorious for preventing petitioners to complain to authorities in Beijing.

<sup>959</sup> Fu Hualing and Richard Cullen, “From Mediatory to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” 44–45.

<sup>960</sup> Fu Hualing and Richard Cullen, 48–51.

<sup>961</sup> Fu Hualing and Richard Cullen, 48–51.

<sup>962</sup> Benjamin L Liebman, “A Return to Populist Legality? Historical Legacies and Legal Reform,” in *Mao’s Invisible Hand: The Political Foundations of Adaptive Governance in China*, ed. Sebastian Heilmann and Elizabeth Jean Perry (Harvard University Asia Center, 2011).

<sup>963</sup> “The Central Comprehensive Social Control Committee: Further Promoting Grand Examination and Grand Mediation [中央综治办：深入推动矛盾纠纷大排查大调解工作],” The Central People’s

between government departments, courts, mediation committees, and Party institutions to immediately resolve social conflict when it arises at the grassroots level.<sup>964</sup> The high degree of state involvement in GM also raises questions about the degree to which it is coercive, though the superficial goal of GM is to be less coercive.<sup>965</sup> It is within this greater context of mediation being pushed as the premier method for dispute resolution nationally that MDMCs began to emerge.

### **Development of Medical Dispute People's Mediation**

In this context of a renewed emphasis on mediation combined with rising instances of *yinao*, medical dispute mediation committees began to appear across China. Following a typical pattern of policymaking and implementation in China that fosters regional experimentation with new policies, people's medical dispute mediation committees grew organically at the grassroots level and were implemented in a variety of ways. Several different models have evolved over time for people's mediation, such as the "Beijing Model,"<sup>966</sup> "Shanghai Model,"<sup>967</sup> "Tianjin Model,"<sup>968</sup> "Nanjing Model,"<sup>969</sup> and "Ningbo Model."<sup>970</sup> Tianjin, for example, initially emphasized the use of arbitration committees, which ran into struggles with attracting disputants since it charged 10% of

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Government of the People's Republic of China, April 28, 2010, [http://www.gov.cn/jrzg/2010-04/28/content\\_1594555.htm](http://www.gov.cn/jrzg/2010-04/28/content_1594555.htm).

<sup>964</sup> Jieren Hu, "Grand Mediation in China," *Asian Survey* 51, no. 6 (2011): 1070,

<https://doi.org/10.1525/as.2011.51.6.1065>; Jeong Meng U, "The Development of Grand Mediation and Its Implications for China's Regime Resilience: The Li Qin Mediation Office," *The China Review*, 2016, 97.

<sup>965</sup> Meng U, "The Development of Grand Mediation and Its Implications for China's Regime Resilience," 110.

<sup>966</sup> Chen Xianxin and Jiang Zehong, "Analysis on Third-Party Mechanism in Medical Disputes Resolve [国内外医疗纠纷第三方调解机制述评]."

<sup>967</sup> Chen Xianxin and Jiang Zehong.

<sup>968</sup> Chen Xianxin and Jiang Zehong.

<sup>969</sup> Chen Xianxin and Jiang Zehong.

<sup>970</sup> Chen Xianxin and Jiang Zehong.

the patient's final compensation award.<sup>971</sup> Nanjing initially experimented with for-profit mediation, in which a company set up the mediation committees and charged fees for mediation and reviews up front, but the idea of paying before the work was done was unappealing for both patients and physicians.<sup>972</sup>

After several years of experimentation, medical dispute people's mediation committees that offered free services and were under the guidance of local Justice Departments emerged as the preferred model, though of course there still exists some variation. In 2010, the Ministry of Justice, Ministry of Health, and the Chinese Insurance Regulatory Commission issued "Opinions on Strengthening Medical Dispute People's Mediation Committee Work."<sup>973</sup> "Opinions" established guidelines and principles for the provinces to develop their committees and reiterated principles of the mediation law to guide medical dispute people's mediation. Provinces, Special Administrative Regions, and directly controlled municipalities soon after followed with their own rules and regulations on people's mediation committees.

By October 2016, 3,917 MDMCs staffed by 25,000 people's mediators had been established nationwide, from the provincial level down to the county level, covering 80% of counties in China by the end of 2016.<sup>974</sup> According to official statistics, in 2015

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<sup>971</sup> Xiaomei Liu and Guopeng Pan, "Current Situation and Countermeasure of the Third Party Mediation on Medical Disputes in Tianjin," *Soft Science of Health* 29, no. 11 (November 2015): 711–12.

<sup>972</sup> Chen Xianxin and Jiang Zehong, "Analysis on Third-Party Mechanism in Medical Disputes Resolve [国内外医疗纠纷第三方调解机制述评]," 44.

<sup>973</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, "Opinions on Strengthening Medical Dispute People's Mediation Work [关于加强医疗纠纷人民调解工作的意见]," Ministry of Health, January 8, 2010, <http://www.moh.gov.cn/mohbgt/s10696/201001/45726.shtml>.

<sup>974</sup> "National Mediator Association Medical Dispute Specialty Committee Is Established [全国调解员协会医疗纠纷专业委员会成立]," Department of Guiding the Grass-root Work, October 26, 2016, [http://www.moj.gov.cn/jcgzzds/content/2016-10/26/content\\_6851745.htm?node=405](http://www.moj.gov.cn/jcgzzds/content/2016-10/26/content_6851745.htm?node=405).

nationwide these committees resolved 71,000 medical dispute cases,<sup>975</sup> though this actual number in reality may be higher.<sup>976</sup> The National Health and Family Planning Commission (NHFPC) aims for MDMCs to be established in 90% and above of the county level by the end of 2017.<sup>977</sup> According to official statistics, MDMCs boast a satisfaction rate of 85%<sup>978</sup> and a success rate of over 85% nationwide.<sup>979</sup> It is unclear how the satisfaction rate was calculated. The success rate means the percentage of cases registered at committees that ended in agreement signed by both parties.<sup>980</sup> In the MDMC observed for this study, this percentage also included agreements successfully negotiated in hospitals that were finalized at the local MDMC,<sup>981</sup> which would inflate the success rate and in theory could misrepresent the success of mediations actually conducted at the MDMC. Parties to the agreement can choose to register the agreement with the local court to make the agreement legally enforceable.<sup>982</sup> Later in the chapter, I include more analysis on the measure and meaning of successful mediation.

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<sup>975</sup> “National Mediator Association Medical Dispute Specialty Committee Is Established [全国调解员协会医疗纠纷专业委员会成立].”

<sup>976</sup> If there are 3,917 committees resolving 71,000 cases annually, that is roughly 18 cases on average per committee in 2015, which seems far too low given the average for the MDMC in this study was about 157 resolved cases per year (Mediation Committee Director and District Bureau of Justice Office Assistant Director, Interview No. 28.). The official statistic of 71,000 may be lower than the real total for a number of reasons. One reason is that announcing to the public that MDMCs have mediated hundreds of thousands of disputes highlights that these disputes occur more frequently than the government would like to admit. A Chinese official told me that official statistics should often be read with “at least” before them. So in this case the mediation committees concluded “at least” 71,000 cases in 2015. It is also possible that these statistics may be true, but if so, then this likely means that some of these committees may only exist nominally or simply that they are not very well known or effective in their communities.

<sup>977</sup> “Circular on Taking a Step Forward to Improve Medical Services Action Plan [关于印发进一步改善医疗服务行动计划的通知].”

<sup>978</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报].”

<sup>979</sup> “Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明].”

<sup>980</sup> Mediation Committee Director and District Bureau of Justice Office Assistant Director, Interview No. 28.

<sup>981</sup> Mediation Committee Director and District Bureau of Justice Office Assistant Director.

<sup>982</sup> “The People’s Republic of China People’s Mediation Law [中华人民共和国人民调解法],” Article 33.

## Core Principles of the MDMCs

Medical dispute people's mediation committees are supposed to follow the core principles of people's mediation<sup>983</sup> as promulgated by the People's Mediation Law of the People's Republic of China:

- 1) Mediating on the basis of free will and equality of the parties concerned;
- 2) Abiding by laws, regulations, and policies of the state;
- 3) Respecting the rights of parties concerned, and refraining from stopping the parties concerned from protecting their rights through arbitration, administrative means or judicial means in the name of mediation.<sup>984</sup>

While these core principles of mediation tend not to be debated in principle, as discussed above, in practice the principle of voluntariness has been frequently violated by judges and mediators.<sup>985</sup> Scholars also express a broader concern about the general idea of transferring the People's Mediation Law directly to mediating medical disputes because medical disputes require a special level of procedural expertise not warranted by other civil disputes like transportation and marital issues.<sup>986</sup>

## Inter-Departmental Responsibilities for Medical Dispute Mediation

The 2010 "Opinions" stresses that the establishment and work of the MDMCs require coordination from various departments - the Justice Administrative Departments and Health Administrative Departments at all levels are expected to communicate with other related departments such as Public Security, Insurance Regulatory Commissions, Finance, and Civil Affairs. "Opinions" also encourages striving to gain the support of the

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<sup>983</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, "Opinions on Strengthening Medical Dispute People's Mediation Work [关于加强医疗纠纷人民调解工作的意见]."

<sup>984</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, Part 1; "The People's Republic of China People's Mediation Law [中华人民共和国人民调解法]," Article 3.

<sup>985</sup> Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 222; Fu Hualing and Richard Cullen, "From Mediator to Adjudicatory Justice: The Limits of Civil Justice Reform in China," 33. Also, I have been asked about whether courts push difficult cases to mediation committees, but since I did not work directly with courts or focus on court proceedings for this project, I cannot verify that in this case.

<sup>986</sup> Liu and Pan, "Current Situation and Countermeasure of the Third Party Mediation on Medical Disputes in Tianjin," 713.

committees by local Party Committees and governments to establish a medical dispute people's mediation working leadership group to coordinate and clarify work responsibilities among the departments and promote people's mediation work. This is important because when Party leaders place importance on a certain issue, policies to address it tend to be implemented better.<sup>987</sup>

For this among other reasons, implementation of effective interdepartmental coordination has varied.<sup>988</sup> In February 2017, NHFPC released "Bulletin on the 2016 Work Situation for Protecting Medical Order," which highlighted inconsistencies in implementing interdepartmental coordination and in particular singles out Guangdong Province for having poor work coordination between relevant departments.<sup>989</sup>

#### Staff of MDMCs

Offices must have "in principle" at least three or more full-time mediators that are retired medical experts, judges, prosecutors, police officers, and lawyers "who have a strong professional knowledge, relatively high level of mediation skills, and passion for the mediation profession."<sup>990</sup> Employees who engage in insurance work should have relevant experience in that industry. A general issue with mediation committees is that the staff of the committees does not have the expert and professional qualifications to

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<sup>987</sup> Head of Medical Affairs Office, Interview No. 048, 2016, 048.

<sup>988</sup> "National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报]," Section 2.1.

<sup>989</sup> "National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报]," Section 2.1.

<sup>990</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, "Opinions on Strengthening Medical Dispute People's Mediation Work [关于加强医疗纠纷人民调解工作的意见]," Section 3.

assess medical malpractice cases.<sup>991</sup> There is also high turnover due to lack of formal government employment with the committee.<sup>992</sup>

In the MDMC studied for this project, two out of the five mediators were retired physicians. On one hand this is important for having enough expertise to assess cases, but on the other hand, it could also present issues of bias towards other physicians. In my experience, however, medical backgrounds were not decisive in whether mediators were biased; as I explain below, when there appeared to be some bias towards hospitals, it seemed to come from repeated interaction with the same fixed set of hospitals in the local district over time – naturally the mediators would grow to know the personnel they interact with more regularly. Further, as I also show below, one of the retired physician-mediators did some advocacy work for patients, so the identity of whether or not a mediator was a physician, according to my observations, was not decisive in them being biased.

#### Fees and Financing of MDMCs

One of the chief principles of people's mediation is that the services are free, and this applies to medical dispute people's mediation committees as well. "Opinions" stipulates basic requirements for MDMCs, from the number and types of rooms they should have, minimum number of employees (3) they should employ, and the signs they

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<sup>991</sup> Liu and Pan, "Current Situation and Countermeasure of the Third Party Mediation on Medical Disputes in Tianjin," 712; Wangtao Chen et al., "Retrospective Analysis of Medical Dispute Third-Party Mediation Based on the Related Literatures from 2008 to 2016," *The Chinese Health Service Management* 1, no. 343 (2017): 40.

<sup>992</sup> Liu and Pan, "Current Situation and Countermeasure of the Third Party Mediation on Medical Disputes in Tianjin," 712–13; "National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报]."

need to hang outside.<sup>993</sup> According to “Opinions,” workplace expenses are supposed to be covered by the work unit responsible for establishing it – often through the Justice Administration, since this is the administration responsible for people’s mediation, though in some areas, such as in Guangdong Province, insurance companies have sponsored the committees.<sup>994</sup> The degree of involvement by insurance companies represents a heated issue because of the conflict of interest between providing a third party mediator and the insurance company acting in its own interest to pay out as little as needed – the sections and case studies below further explore this issue. If funds for the committees are insufficient, the Justice Departments can apply for subsidies. Committees are also encouraged to accept donations and sponsors.<sup>995</sup> In practice, in some places this model of funding by local justice departments coupled with free services has become difficult to sustain.<sup>996</sup> The above-mentioned 2016 work report by NHFPC pointed out Hebei for lacking stable financing to support the operations of its mediation committees.<sup>997</sup>

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<sup>993</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, “Opinions on Strengthening Medical Dispute People’s Mediation Work [关于加强医疗纠纷人民调解工作的意见],” Section 4.

<sup>994</sup> Zheng Jiang, “Guangdong Medical Dispute Mediation Committee Salaries Will Be Paid by Insurance Company, Casuing Doubts about Fairness [广东医调委发工资要靠保险公司 公平性遭质疑],” *Yangcheng Wanbao*, June 4, 2012, [http://news.ycwb.com/2012-06/04/content\\_3825569\\_2.htm](http://news.ycwb.com/2012-06/04/content_3825569_2.htm).

<sup>995</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, “Opinions on Strengthening Medical Dispute People’s Mediation Work [关于加强医疗纠纷人民调解工作的意见],” Number 4.

<sup>996</sup> Liu and Pan, “Current Situation and Countermeasure of the Third Party Mediation on Medical Disputes in Tianjin,” 712; Chen et al., “Retrospective Analysis of Medical Dispute Third-Party Mediation Based on the Related Literatures from 2008 to 2016,” 40; “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报].”

<sup>997</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报].”

### Scope of Cases Accepted by Committees

Factors considered when accepting cases for mediation include the location of the hospital where the incident occurred, the amount requested by the complainant, and the type of dispute. According to “Opinions,” the scope of mediation committees should include conflicts patients have with hospitals in the committee’s administrative area. So for example, if a patient were treated at a hospital in the Putuo District of Shanghai, he or his family would apply for mediation at the Shanghai Putuo District Medical Mediation Committee. The type of cases that patients and hospitals can bring to the committee, as suggested by “Opinions,” includes behaviors of hospitals and medical personnel in the course of seeking medical treatment (examination, treatment, nursing), consequences and reasons during this process, liability, problems with compensation, and disputes arising from a difference of understanding.<sup>998</sup>

Chen et al. assert that the scope outlined by “Opinions” is too limited, failing to address all types of problems that can arise between doctors and patients, such as issues in communication, service attitudes, asymmetric information, awareness differences, deliberate blackmail, etc.<sup>999</sup> He said even though mediation has demonstrated a high success rate, the limited scope limits the full realization of third party mediation, and argues in the future it should cover more.<sup>1000</sup> However, other scholars favor a more narrow definition of scope, arguing that issues of service and ethics fall within the purview of the hospital administration and that cases accepted by the medical dispute

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<sup>998</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, “Opinions on Strengthening Medical Dispute People’s Mediation Work [关于加强医疗纠纷人民调解工作的意见],” Section 5.

<sup>999</sup> Chen et al., “Retrospective Analysis of Medical Dispute Third-Party Mediation Based on the Related Literatures from 2008 to 2016,” 40.

<sup>1000</sup> Chen et al., 40.

mediation committee should only concern disputes concerning medical care, medical goods, and informed consent.<sup>1001</sup>

Another component of scope that “Opinions” does not capture is requirements for mediation or consideration of mediation based on the amount of compensation patients request. For example, in Shanghai when patients or their families request RMB 30,000 or more, hospitals should inform them that they have the ability to take the case to mediation.<sup>1002</sup> In Nanjing, if agreements compensate RMB 5,000 or more, then the agreement must be notarized by the appropriate MDMC.<sup>1003</sup> In Tianjin, if the requested amount exceeds RMB 10,000, then the case should go to mediation, and public hospitals are not allowed to settle privately with patients.<sup>1004</sup> It would be difficult to set a national standard for a compensation limit that requires mediation or settlement outside of hospitals because of the vast degree of economic variation between the different provinces of China.

### Medical Mediation Process and Procedures

The 2010 “Opinions” instructs Medical Mediation Committees to carry out their procedural work according to the State Council’s “People’s Mediation Committees Organization Regulations” and the Ministry of Justice’s “Several Regulations for

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<sup>1001</sup> Wei Li et al., “Comment on the Scope of People’s Mediation in Medical Dispute Mediation,” *Chinese Hospitals*, April 2014, 71.

<sup>1002</sup> “Shanghai City Doctor-Patient Dispute Prevention and Mediation Measures [上海市医患纠纷预防与调解办法(沪府令 12 号)],” [www.shanghai.gov.cn](http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw2407/nw32093/u26aw38216.html), February 19, 2014, Article 23, <http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw2407/nw32093/u26aw38216.html>.

<sup>1003</sup> Mediation Committee Director and District Bureau of Justice Office Assistant Director, Interview No. 28, 28.

<sup>1004</sup> “Tianjin City Medical Dispute Management Regulations [天津市医疗纠纷处置条例],” Tianjin People’s Mediation Committee of Medical Malpractice Disputes, November 28, 2014, Article 18.2, <http://www.tjytw.com/zhengcfagui/10.html>.

People’s Mediation Work,”<sup>1005</sup> both which apply to mediation work more broadly. “Opinions” does not specifically lay out many procedures specific to medical mediation and broadly encourages persuasion, education, guidance, mutual yielding, and attention to details of the dispute, reflecting some of the more traditional styles of mediation that have been used in China throughout history.<sup>1006</sup> It allows for expert reviews of cases, but does not require them.<sup>1007</sup> It has no guidance on calculating the amount to be awarded in compensation cases, and instead leaves this to the provinces to decide.<sup>1008</sup>

A comprehensive study on the literature on MDMCs found that the lack of unified procedures and compensation standards leaves a wide opportunity for arbitrary decisions.<sup>1009</sup> The inability for MDMCs to conduct investigations or entrust another organization to conduct reviews also undermines the authoritativeness of their decisions.<sup>1010</sup> Gaps in oversight of the MDMCs further allow for issues that have been pervasive and criticized in the past for mediation, such as “low-priced justice” (廉价争议) and “plastering over principles for the sake of resolving differences” (和稀泥).<sup>1011</sup>

Despite the lack of specific procedures at the national level, some places have issued more procedures for expert review and compensation standards for their MDMCs that help to professionalize them. For example, in Shanghai, there must be an expert

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<sup>1005</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, “Opinions on Strengthening Medical Dispute People’s Mediation Work [关于加强医疗纠纷人民调解工作的意见],” Section 5.

<sup>1006</sup> Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 64.

<sup>1007</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, “Opinions on Strengthening Medical Dispute People’s Mediation Work [关于加强医疗纠纷人民调解工作的意见],” Section 5.

<sup>1008</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, Section 6.

<sup>1009</sup> Chen et al., “Retrospective Analysis of Medical Dispute Third-Party Mediation Based on the Related Literatures from 2008 to 2016,” 40, 2.3.2.

<sup>1010</sup> Chen et al., 40, 3.1.2.

<sup>1011</sup> Chen et al., 40, 2.3.

review<sup>1012</sup> for cases if the amount requested in compensation exceeds RMB 100,000, if the patient has died, if there is a significant difference in the understanding of the facts of the case between the hospital and the patient sides, if the amount to be compensated by insurance exceeds RMB 100,000 and the insurance organization advises it, and other situations that require experts.<sup>1013</sup> According to Li et al., these types of limits help to prevent patients from pressuring mediators, arbitrary mediation, and asking for overestimated compensation rates.<sup>1014</sup>

Other places even recommend in serious medical mediation cases to have a medical review performed.<sup>1015</sup> A “medical review” here refers to either a Medical Accident Review or a Medical Damages Review. Local governments generally endow the Chinese Medical Association with the responsibility for conducting these reviews, though in court cases judicial inspection agencies can conduct reviews of medical damages as well.<sup>1016</sup> The Medical Accident Review evaluates whether a medical accident occurred and if so, the level of that medical accident.<sup>1017</sup> The Medical Damages Review

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<sup>1012</sup> An expert review is a written evaluation completed by a medical or legal expert submitted to the committee. Depending on the case there can be a number of different experts, usually an odd number to determine whether the majority of experts believe the health care worker has fault in the case. Information on processes may not be present in official policy documents, but in handbooks for mediation committees, as was the information provided in this footnote (keeping handbook anonymous for confidentiality purposes), but Shanghai City Doctor-Patient Dispute Prevention and Mediation Measures provides some information on how experts reviews work. See “Shanghai City Doctor-Patient Dispute Prevention and Mediation Measures [上海市医患纠纷预防与调解办法(沪府令 12 号)],” Articles 31 & 32.

<sup>1013</sup> “Shanghai City Doctor-Patient Dispute Prevention and Mediation Measures [上海市医患纠纷预防与调解办法(沪府令 12 号)],” Article 30.

<sup>1014</sup> Li et al., “Comment on the Scope of People’s Mediation in Medical Dispute Mediation,” 70.

<sup>1015</sup> Li et al., 70.

<sup>1016</sup> “Notice of the Supreme People’s Court on Certain Issues Concerning the Application of the Tort Law of the People’s Republic of China [最高人民法院关于适用《中华人民共和国侵权责任法》若干问题的通知].”

<sup>1017</sup> State Council fo the People’s Republic of China, “Medical Accident Management Regulations [医疗事故处理条例],” Article 4.

concerns the degree to which medical negligence caused the damages incurred.<sup>1018</sup> Li et al. note that while conducting reviews may increase the rigor of the evaluation, medical reviews take a long time and usually slow down the court process, defeating the point of differentiating mediation from adjudication, as mediation is supposed to offer a faster alternative.<sup>1019</sup>

### Insurance Integration

“Opinions” states that health departments at every level must organize public health institutions to join medical liability insurance and to encourage other types of medical institutions to do the same. It also states that the insurance regulatory departments must encourage leading insurance companies to support medical dispute mediation committees and that the mediation agreements represent a valid basis on which mediation committees can compensate.

In 2014 the “three mediations, one insurance” policy emerged following a meeting on people’s mediation held in Tianjin and led by leaders of NHFPC, Comprehensive Social Control Committee, and the Ministry of Justice.<sup>1020</sup> The policy emphasizes that following dispute settlement, insurance companies should compensate instead of hospitals.<sup>1021</sup> This policy has continued to encourage the linkages between people’s mediation and medical liability insurance,<sup>1022</sup> though there are no requirements

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<sup>1018</sup> For example, see: “Jiangsu Province Medical Damages Review Implementation Measures [江苏省医疗损害鉴定实施细则（试行）],” Nanjing Medical Association, Nanjing Medical Doctor Association, March 10, 2015, Article 19, <http://www.njyxh.cn/content.asp?cid1=50&cid2=52&contid=589>.

<sup>1019</sup> Li et al., “Comment on the Scope of People’s Mediation in Medical Dispute Mediation,” 70.

<sup>1020</sup> “Nationwide Medical Dispute People’s Mediation Work On-Site Meeting Convened in Tianjin [全国医疗纠纷人民调解工作现场会在天津召开 - 中华人民共和国国家卫生和计划生育委员会].”

<sup>1021</sup> Wu, “Li Bin: Establishing ‘Three Mediations, One Insurance’ Mechanism to Alleviate Doctor-Patient Disputes [李斌：建‘三调解一保险’机制缓解医患纠纷].”

<sup>1022</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报],” 3.3.

on the type of integration between the insurance companies and the mediation committees.

Some cities like Beijing,<sup>1023</sup> Tianjin,<sup>1024</sup> and Ningbo<sup>1025</sup> all have direct integration with insurance committees, with insurance companies joining mediation and establishing centers for distributing medical dispute compensation, so patients can go there immediately once cases are over to start the compensation process. However, in Shanghai this is not the case because insurance companies are directly associated with the interests of hospitals, which would make the process less fair. While in Shanghai, the medical liability insurance companies pay compensation in medical disputes; they do not have contact with the medical dispute people's mediation committees in order to avoid conflicts of interest; mediation is supposed to provide an unbiased third party to both sides.<sup>1026</sup> One analysis of Beijing's system observes that the close financial linkage between the medical liability insurance company and Beijing's medical dispute people's mediation centers has called into question whether mediation is truly an independent third party.<sup>1027</sup> The presence of the insurance company in MDMCs risks turning them into extensions of the insurance companies themselves.

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<sup>1023</sup> Changchao Li, "Empirical Research on the Third-Party Mediation Mechanism in Medical Dispute," *Chinese Health Service Management* 2, no. 308 (2014): 126.

<sup>1024</sup> Liu and Pan, "Current Situation and Countermeasure of the Third Party Mediation on Medical Disputes in Tianjin," 712, 2.4.

<sup>1025</sup> Chen Xianxin and Jiang Zehong, "Analysis on Third-Party Mechanism in Medical Disputes Resolve [国内外医疗纠纷第三方调解机制述评]," 44; Jinxin Lu and Ping Xie, "The 'Ningbo Solution' to Preventing and Alleviating Doctor-Patient Disputes [预防和化解医患纠纷的'宁波解法']," *Public Security Science Journal - Journal of Zhejiang Police College* 5, no. 127 (October 2011): 20.

<sup>1026</sup> Shanghai Legal Employee, Interview No. 36, 6-7.

<sup>1027</sup> Li, "Empirical Research on the Third-Party Mediation Mechanism in Medical Dispute," 126.

## Legal Effectiveness and Enforcement of Mediation Agreements

According to law, mediation agreements are technically legally binding,<sup>1028</sup> but because mediation committees do not have law enforcement capabilities, they cannot enforce them should one of the parties renege on the agreement.<sup>1029</sup> In theory because both parties agree to mediation agreements, they should be easier to enforce, though in practice this is not necessarily true.<sup>1030</sup> If parties want the agreements enforced, they can apply for judicial recognition of the agreement by the relevant people's court within thirty days of the signing of the agreements, and once this is done, the people's court can enforce the agreement.<sup>1031</sup> The mediation committee interviewed for this study said the majority of parties to agreements do not apply for judicial recognition, although sometimes hospitals apply for it when they are concerned patients will not abide by the agreement.<sup>1032</sup>

### **The MDMC of District X in Eastern City**

The sections above raise questions about the implementation of the medical dispute mediation committees in several areas. While academic research and interviews reveal some variations in the abovementioned aspects of medical dispute mediation, to the knowledge of this author, no independent study (there are government-published case studies) has observed in real time how these committees work on a day-to-day basis.

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<sup>1028</sup> “The People’s Republic of China People’s Mediation Law [中华人民共和国人民调解法],” Article 31.

<sup>1029</sup> Mediation Committee Member, Interview No. 081, 2017.

<sup>1030</sup> Fu Hualing and Richard Cullen, “From Mediator to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” 36.

<sup>1031</sup> In 2011 the Supreme People’s Court released “Regulations on People’s Mediation Agreements Legal Recognition Procedures”, which established preliminary procedures for judicial recognition of mediation agreements. The 2012 revised Civil Procedure Law of China, according to Ai Erken fundamentally resolved civil mediation agreement’s legal effectiveness by recognizing mediated agreements in its Special Procedures. See: Erken Ai, “Discussing China’s Medical Dispute Third Party Mediation System [论我国医疗纠纷第三方调解制度],” *Western Legal Studies Commentary*, February 20, 2015, 33.

<sup>1032</sup> Mediation Committee Member, Interview No. 081.

Understanding how the committee's operate is essential to determining the extent to which they follow procedures and principles of mediation. This chapter analyzes three full mediation cases as well as three consultations (interactions that mediators have with potential complainants or hospitals other than mediations).

These cases represent those I randomly came across while living in Eastern City from September 2015 through April 2016, though I was not always present in Eastern City for that entire time. After clearing my research with his supervisor in District X's Justice Bureau, the director of the MDMC gave me permission to stop by the committee at any time. I would randomly drop by or send a message asking if there were any scheduled cases for the day because often, the committee was completely quiet. On the quiet days, I would still sometimes sit in the committee and review policy and governance issues with the committee members. The mediators therefore did not preselect the cases for me and did not ever discourage me from attending any of the mediations – a rare level of access for a foreigner. Even though the sample of cases is small, it represents a lens into the reality of these committees without any official censorship or editing. I was briefly introduced to patients or physicians, none of whom ever seemed to mind my presence since the gravity of their cases far outweighed the fascination of interacting with a foreigner. Before I evaluate the individual cases of mediations and consultations, below I first provide some basic information about the MDMC in District X.

#### Set-up of the MDMC in District X of Eastern City

The Medical Dispute People's Mediation Committee in District X of Eastern City was established in 2008 under the direction of the Provincial Department of Justice and

the City Bureau of Justice<sup>1033</sup> as part of a pilot initiative.<sup>1034</sup> At the time of its establishment in 2008, the Mediation Committee was under the District X's Bureau of Justice's Grassroots Office.<sup>1035</sup> Then in 2015, District X's Doctor-Patient Conflict Mediation and Management Services Center (est. 2015) was established and the Medical Dispute Mediation Committee came under its jurisdiction.<sup>1036</sup> This committee was established to coordinate the work of peoples' medical mediation with public security bureaus, health bureaus, the courts, the expert review committees, and insurance companies in order to ultimately "weiwen" (ensure social stability).<sup>1037</sup> The center's employees pictured on the wall include specific representatives from the district justice bureau, court, and police department.<sup>1038</sup> Although not explicitly mentioned in interviews about this office, the establishment of the coordination body mirrors the overall trend of Grand Mediation to coordinate mediation committees with other government bodies in order to better prevent and manage social conflict. In practice this newly established center is still managed by the same personnel who oversaw it from District X's Bureau of Justice's Grassroots Office; the newly minted center in reality is just an "additional sign on the door";<sup>1039</sup> however, establishing a separate center shows that the government has placed special importance on its role.<sup>1040</sup> The Center has office

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<sup>1033</sup> Materials of Doctor-Patient Conflict Mediation and Management Services Center, "Brief Introduction' Poster," n.d.

<sup>1034</sup> Zhengrong Shen, "Nanjing Pilots Establishment of Medical Dispute Professional Mediation Institutions [南京试点建立医患纠纷专业调解机构]," *Xinhua Daily Newspaper*, April 1, 2008, sec. A8, [http://xhfb.jschina.com.cn/mp1/html/2008-04/01/content\\_6749029.htm](http://xhfb.jschina.com.cn/mp1/html/2008-04/01/content_6749029.htm).

<sup>1035</sup> Mediation Committee Employees, Interview No. 043, 043.

<sup>1036</sup> Mediation Committee Employees, 043.

<sup>1037</sup> Mediation Committee Employees, 043.

<sup>1038</sup> City District X Doctor-Patient Dispute and Conflict Mediation and Management Services Center, "Poster 'Center Employees Announcement,'" n.d.

<sup>1039</sup> Mediation Committee Employees, Interview No. 043.

<sup>1040</sup> Mediation Committee Employees.

space in a small room within the Medical Dispute People's Mediation Committee.<sup>1041</sup>

Figure 36 (below) shows the organizational layout from the central government down to the city district level of the Medical Dispute People's Mediation Office.

### Staff and Hours

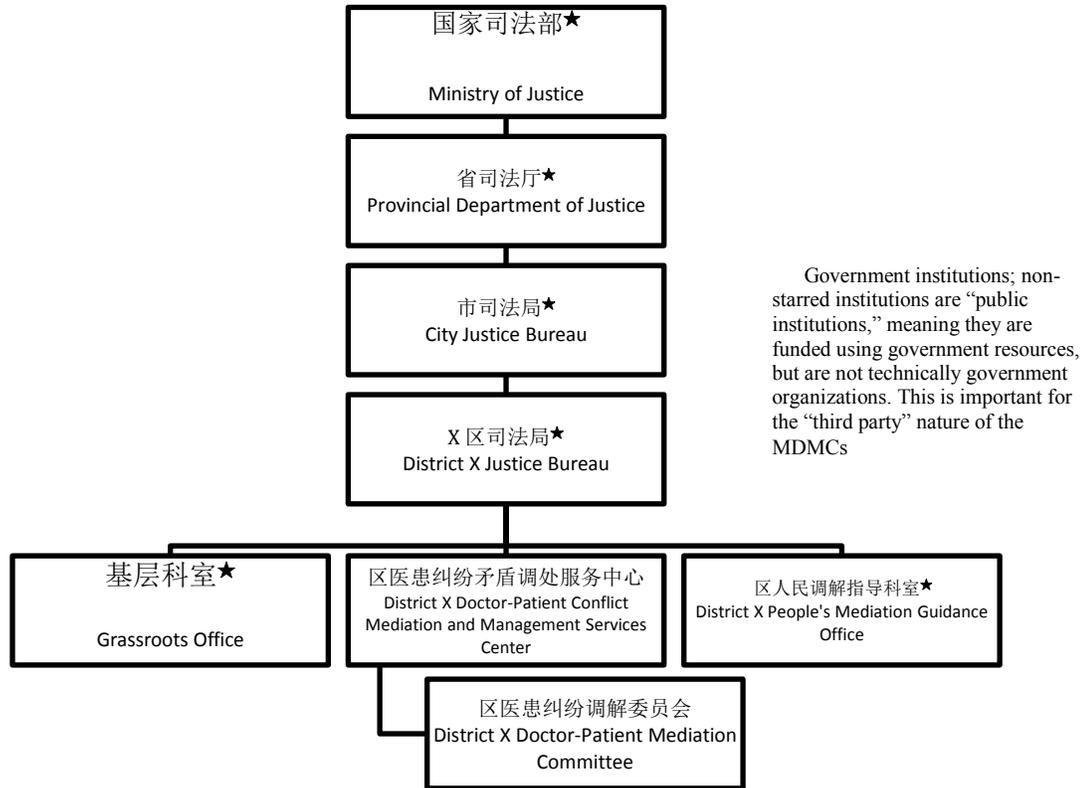
At the time fieldwork was conducted for this study, the mediation office had a staff of six people. Five were mediators – two were retired career mediators, two were retired physicians, and one was a recent law school graduate. The committee also had a receptionist. In addition to the permanent staff, the committee also had a legal expert, a retired former judge, who is supposed to come in about once a week, though I never saw her. The local district Bureau of Justice pays the employees, though they are not technically ranking government officials.<sup>1042</sup>

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<sup>1041</sup> Mediation Committee Employees. Author also visited office.

<sup>1042</sup> Mediation Committee Employees, 43.

**Figure 36: Administrative Management of District X's People's Mediation Committee**



The hours of the office were from 9:00am to 11:00am and 2:30pm to 5:30pm, so only 5.5 hours per day, though sometimes hours varied depending on adjustment of schedules for mediation. The young lawyer and receptionist were full-time. The mediators seemed to have flexible schedules, not necessarily being present every day. From the time I visited the committee for the first time in June 2015 to the time I left in April 2016, one of the mediators retired from the committee, and two new mediators

were hired on to the committee, both retired women. State policy<sup>1043</sup> encourages MDMCs to hire retired persons, which explains the dominance of retired personnel on the committee.

### Integration of Insurance Company

In October 2016, an employee from a large state-owned insurance company and his student intern from a local law school began to join the work of the committee, with the intention of them eventually engaging in the work of the committee full-time.<sup>1044</sup> The insurance company employee was a former doctor who later became a lawyer.<sup>1045</sup> The insurance company began to participate as a result of a contract between the insurance company and the local health department with the goal of drawing disputes outside of hospitals for settlement.<sup>1046</sup> The province of Eastern City requires all public medical institutions at level one and above to purchase medical liability insurance,<sup>1047</sup> and all public hospitals Level 3A hospitals in Eastern City must purchase a medical malpractice insurance plan from this particular state-owned insurance company.<sup>1048</sup> As of April 2017, the contract the insurance company signed with Eastern City's health department expired, and they were set to leave the committee.<sup>1049</sup> There is a possibility of another insurance company coming in instead, though at the time of this writing, the mediators of the committee remained uncertain about what would happen after the current insurance

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<sup>1043</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, "Opinions on Strengthening Medical Dispute People's Mediation Work [关于加强医疗纠纷人民调解工作的意见]."

<sup>1044</sup> Mediation Committee Employees, Interview No. 043, 043.

<sup>1045</sup> No. 038 Mediation Session: Patient Death Following Surgery to Remove Gastric Polyp, 2015.

<sup>1046</sup> Mediation Committee Member, Interview No. 081.

<sup>1047</sup> "Jiangsu Officially Launches New Policy on Medical Liability Insurance [江苏出台医疗责任保险新政]," China Insurance Regulatory Commission, Jiangsu Bureau, January 14, 2015, <http://www.circ.gov.cn/tabid/1423/InfoID/3947890/Default.aspx?type=Apply>.

<sup>1048</sup> Mediation Committee Employees, Interview No. 043, 043.

<sup>1049</sup> Mediation Committee Member, Interview No. 081.

company representatives left.<sup>1050</sup> If private hospitals mediate and do not have medical liability insurance, then they generally pay out of their risk fund (风险基金).<sup>1051</sup>

### Rules and Procedures of the Committee

District X's MDMC clearly displays basic information in posters on its walls about its work principles and procedures,<sup>1052</sup> scope of cases accepted,<sup>1053</sup> rights and responsibilities of disputants,<sup>1054</sup> responsibility of the committee to protect confidentiality of disputants,<sup>1055</sup> recusal procedures for mediators should they have an interest in the case at hand,<sup>1056</sup> basic materials that applicants must provide,<sup>1057</sup> and time limits for mediation.<sup>1058</sup> Notable aspects of these rules include the assertion and public display of individual rights, which as noted above has been absent for most of Chinese history, as well as measures to address potential bias in mediation like the ability of disputants to request the removal of mediators and procedures for mediators with conflicts of interests to remove themselves from the case.

However, the procedures for actual mediation are quite rudimentary: to understand the situation, analyze and research the case, set the mediation program,

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<sup>1050</sup> Mediation Committee Member.

<sup>1051</sup> Mediation Committee Employees, Interview No. 043, 043.

<sup>1052</sup> Materials of Doctor-Patient Conflict Mediation and Management Services Center, "Brief Introduction" Poster."

<sup>1053</sup> Doctor-Patient Dispute Conflict Mediation and Management Services Center, "Poster 'Medical Dispute Mediation Committee Scope of Accepting Cases,'" n.d.

<sup>1054</sup> City District X Doctor-Patient Dispute and Conflict Mediation and Management Services Center, "Poster 'Rights and Responsibilities of Parties to Disputes,'" n.d.

<sup>1055</sup> "Poster 'Confidentiality, Recusal of Mediators, Termination of Mediation'" (City District X Doctor-Patient Medical Dispute and Conflict Mediation and Management Services Center, n.d.).

<sup>1056</sup> "Poster 'Confidentiality, Recusal of Mediators, Termination of Mediation.'" "

<sup>1057</sup> "Poster 'Materials That Applicants Must Provide to the Medical Dispute People's Mediation Committee'" (City District X Doctor-Patient Medical Dispute and Conflict Mediation and Management Services Center, n.d.).

<sup>1058</sup> "Poster 'Confidentiality, Recusal of Mediators, Termination of Mediation.'" "

facilitate communication and persuade and guide toward an agreement.<sup>1059</sup> There is nothing about providing factual evidence for the case or guidelines for when experts should be called in. Methods for how mediators are supposed to conduct mediation are also quite vague, but reflect the 2010 Opinions on the issue: “Under the direction of the Doctor-Patient Dispute People’s Mediation Committee, using national laws and policies and on the basis of social public morality, respecting medicine and science, respecting objective facts, persuade and educate, advise and guide, to urge both sides to mutually forgive and yield, with discussion based on equality, to voluntarily come to an agreement, eliminating the conflict.”<sup>1060</sup>

#### Intake of New Cases and Procedures for Starting New Cases

This section documents several cases to observe how mediation was conducted in practice in City X. Cases were taken in in an intake book, on which mediators would write down the simple details of the case (see Appendix for document): type of dispute; dispute number (in order of those recorded in the book); basic information like name, age, gender, ethnicity, occupation, workplace or home address; legal person and social organization name or legal representative name; and brief summary of the case, date of intake, and signature of the person recording the case. Every time someone calls or visits, they write down basic notes of the interaction.<sup>1061</sup>

When mediations began, the mediators were supposed to begin by asserting several important points of the people’s mediation law and had a transcript (see Appendix

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<sup>1059</sup> “Poster ‘Doctor-Patient Dispute People’s Mediation Workflow’” (City District X Doctor-Patient Medical Dispute and Conflict Mediation and Management Services Center, 2015).

<sup>1060</sup> Materials of Doctor-Patient Conflict Mediation and Management Services Center, “‘Brief Introduction’ Poster.”

<sup>1061</sup> Full Mediation (Death of Elderly Woman Following Surgery to Remove Gastric Polyp), Interview No. 38, 2015, 038.

for full text) to guide them to inform the parties of their rights and responsibilities, the legal weight of the agreement as well as the ability of parties to seek judicial recognition within thirty days of the agreement, and the main principles of mediation (equality, voluntariness, on the basis of law, free of charge, and ability of parties to pursue other avenues of justice).

### **Cases of Mediation and Consultation**

In this section I provide the brief summaries and analyze each of the cases for mediation and consultation. I then examine mediations and consultations together to make some overall observations about the implementation of these committees. The Appendix contains the full transcripts of the mediated cases.

#### Case 1: Death of 71-year-old Woman Following Surgery

On October 21, 2015 a 71-year-old woman had surgery to remove a gastric polyp. Several hours after the surgery, she had a fever of 39.3°C (102.7°F), a sign of an infection, which according to the doctor, is not uncommon following this type of procedure. The patient also complained of lower back and stomach pain. They prescribed antibiotics to the patient, and her temperature decreased to 38°C (100.4°F). Doctors checked the patient at the end of the first day and at 2:00am early the next morning. However, around 8:00am the next morning the doctors saw the patient's mouth had gone dry and realized she had gone into shock. They transferred her to the ICU, where she died a little over a week later on November 1, 2015.

The patient's family felt that the hospital overlooked the gravity of the patient's worsening situation, and it was not addressed soon enough to save her. Both parties agreed to mediation on November 4, 2015, just three days following the patient's

death.<sup>1062</sup> The deceased patient's family consisted of her elderly husband and their middle-aged son. The hospital where the incident occurred is a top, city-level public hospital affiliated with a local medical university. From the hospital side, the patient's physician attended the mediation as well as a representative from the hospital's Medical Affairs Office. Once the parties arrive, the mediators separated them to first hear the opinions of both sides, and then everyone assembled into one room. After discussion and separation again into different rooms, the parties came to an agreement that the hospital would cover all medical fees incurred as well as provide compensation of RMB 150,000 (\$21,729). Below I identify several points about the process and outcomes of mediation.

*Notifying parties about process and rights of mediation.* One of the mediators began by explaining how the process worked according to the People's Mediation Law and emphasized the main principles from the law like mutual respect, the right to request a different mediator, and the ability to apply for judicial recognition within 30 days of the agreement so authorities can enforce it. This is important so parties understand their rights during and after the mediation process.

*No reference to medical records.* Despite the heated debate over when various events occurred (initial discomfort, fever, shock), the medical records were not present during the mediation. One of the mediators clarified that medical records are not a crucial component for mediating cases because the goal of mediation is not to determine responsibility, but to discuss and negotiate an agreement.<sup>1063</sup> Mediators read the medical records prior to mediation, and if they find that the hospital or doctor likely carry significant responsibility, then they will raise this issue either during mediation or

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<sup>1062</sup> Full Mediation (Death of Elderly Woman Following Surgery to Remove Gastric Polyp), Intake Sheet.

<sup>1063</sup> Medical Dispute Mediation Committee Member, Interview No. 83, 2017.

individually to the hospital only.<sup>1064</sup> Mediators usually do not mention the likelihood of fault when both parties are present because, in the words of one mediator, mediation committees are supposed to resolve disputes, and revealing this information in front of both parties might intensify the dispute again.<sup>1065</sup> Mediators tend to judge whether to disclose their opinions to one or both parties on an ad-hoc basis.<sup>1066</sup>

*Not revealing insurance company employee's identity.* Another notable characteristic about this case is that the PICC lawyer assigned to the committee was present at the mediation conversation, but the patient's family was unaware of the identity of this man, likely assuming he was one of the mediators. According to an interview with the mediation committee members following this case, they did not inform the patient's family of the insurance company's lawyer's because the mediators were concerned that if they knew, they would ask for more money.<sup>1067</sup> This clearly violates the principle of mediation based on equality because one the patient's family did not have equal information about the actors present in mediation and the potential bias this could bring. This situation also highlights the relationship between resident insurance company representatives at the MDMC and potentially creates an unfair setting for the patient.<sup>1068</sup>

*Loose application of 2002 Medical Accident Regulations.* In this case, the mediators referred to the Medical Accident Regulations to calculate standards for compensation. They make an estimate based on these standards by calculating the totals for various standards, such as medical expenses, funeral expenses, etc. In this case the mediators were estimating that the hospital carried 40% of the responsibility, so they then

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<sup>1064</sup> Medical Dispute Mediation Committee Member.

<sup>1065</sup> Medical Dispute Mediation Committee Member.

<sup>1066</sup> Medical Dispute Mediation Committee Member.

<sup>1067</sup> Mediation Committee Employees, Interview No. 39 Gastric-Polyp Case Mediation Follow-Up, 2015.

<sup>1068</sup> Thanks to Benjamin Liebman for highlighting this point.

took 40% of the total compensation owed based on the abovementioned standards and then gave that as the estimate for compensation in this case. Even though, as stated above, mediation committees do not have the responsibility or the authority to carry out investigations that would decide the degree of responsibility, they still consider what this responsibility might be based on their own opinions when discussing the amount of compensation with the parties involved.<sup>1069</sup>

The application of the Medical Accident Regulations and calculation of responsibility results from a somewhat arbitrary mix of mediators guiding the conversations based on these (or other) standards, the hospital's desired compensation amount, and the patient's and/or family's expectations for compensation. As unsystematic as this process may be, this is also exactly what the MDMC is supposed to be doing: offering a faster way to resolve doctor-patient disputes using existing laws and regulations as a guide. Speed and the desire to end disputes are achieved at the expense of the potential rigor of the court process.

*Actively discouraging use of courts.* During this case both mediators and the insurance company lawyer all discouraged the patient's family from taking this case to court because it would take too long and represent "another form of hurt."<sup>1070</sup> Discouraging other avenues does not violate the People's Mediation Law, which prohibits mediators from stopping complainants from using other channels for dispute resolution.<sup>1071</sup> However, actively discouraging another form of dispute resolution might also distort the complainant's impression of its potential advantages, such as a potentially

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<sup>1069</sup> Medical Dispute Mediation Committee Member, Interview No. 83.

<sup>1070</sup> Full Mediation (Death of Elderly Woman Following Surgery to Remove Gastric Polyp), Interview No. 38, 38.

<sup>1071</sup> "The People's Republic of China People's Mediation Law [中华人民共和国人民调解法]."

higher compensation for death if the courts were to find the hospital responsible.<sup>1072</sup> It is important to note that the mediation committee also uses the same compensation standards a tort case would (including the death compensation),<sup>1073</sup> but it is at the discretion of the mediators to choose which standards to consider, and ultimately they do not have the power to compel hospitals to compensate according to these standards; the standards simply act as reference materials.<sup>1074</sup>

*Use of language in agreements that does not cast blame on hospitals.* In the final agreement for this case, as in almost all mediation agreements, the word for “compensation” (*peichang*, 赔偿) is not used because it implies fault, so instead the agreements use a different word for compensation 补偿 (*buchang*)<sup>1075</sup>, which carries a meaning of compensating for reasons of providing aid or subsidizing. This is used to save face for hospitals, an aspect of mediation that has also been identified elsewhere.<sup>1076</sup>

*Fast and convenient dispute settlement, especially for non-residents of city.* There were only three days that passed between the patient’s death and the mediation, which was settled on the first attempt. One of the MDMC staff remarked that in cases of death,

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<sup>1072</sup> For example Article 28 of SPC’s interpretation that guides compensation for damages awarded in tort cases provides death compensation. See “Supreme People’s Court, “Interpretation of the Supreme People’s Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury [最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释],” Article 28.

<sup>1073</sup> Medical Dispute Mediation Committee Member, Interview No. 83.

<sup>1074</sup> It might appear to be in conflict to use two different standards at the same time, especially when the death compensation award is higher under the tort standards. A mediator clarified that they do not use these documents (Medical Accident Regulations and supreme court’s interpretation for tort cases) as a court would and that these documents are primarily used for reference as they consider compensation calculations; their primary job is not to investigate and ascertain responsibility and to strictly apply the standards. Further, as one mediator clarified, the tort standards are technically classified as a judicial explanation, not law, so she said this would not be in conflict with the Regulations. To an outsider, this may seem confusing, but the main point to understand is that they use existing standards as reference materials and are not compelled to follow them exactly or implement them because ultimately mediation is negotiation, so whatever the parties agree to, whether in line with standards or not, can be acceptable. Medical Dispute Mediation Committee Member.

<sup>1075</sup> Mediation Committee Employees, Interview No. 39 Gastric-Polyp Case Mediation Follow-Up, 039.

<sup>1076</sup> Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 231.

such a quick settlement was rare. However, notably in this case the patient's middle-aged son was in town from Shenzhen and it was also in his interest to settle the dispute quickly so he could return home. Even though the settlement was convenient for the son and he wanted to settle quickly, the hospital's willingness to agree to the settlement so quickly in only a span of three days – far too short to develop evidence for a case – raises questions about whether this decision drastically favored the hospital.

#### Case 2: Delayed Diagnosis of Colon Cancer

The patient was a 58-year-old male who had visited the implicated hospital with the symptom of rectal bleeding. The doctor gave him a preliminary diagnosis of hemorrhoids. A couple of months later a physician at another hospital diagnosed the patient with colon cancer. The patient together with his wife demanded compensation from the first hospital for the delayed diagnosis. This first hospital, where the patient had initially sought treatment, is a private hospital, and its president is from a well-known and influential family of physicians in the city. The responsible physician attended the mediation with no other attendant from the hospital.<sup>1077</sup> The agreement was concluded for the amount of RMB 12,000 (\$1,738). Whether this number was appropriate is one of the primary subjects for the analysis in the proceeding paragraphs.

*Haphazard notification of rights during mediation.* A mediator began by articulating some of the general principles of the People's Mediation Law, but unlike the lead mediator in the previous case, he did not review as carefully the rights and rules of the process, including the ability of complainants to apply for judicial recognition of the agreement within thirty days of signing the agreement.

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<sup>1077</sup> Interview 32a Mediation Committee Consultation with Private Hospital, 2015.

*Medical records actively rejected during mediation.* Unlike the complainants in the previous case, in this case the patient brought the medical records to mediation. However, the mediator actively refused to consider them when the patient wanted to use them to prove the doctor's initial, incorrect diagnosis and demonstrate the time that lapsed before receiving the correct diagnosis. As mentioned above, mediation does not prioritize the facts of cases.

*Rationale for compensation based on sympathy, not laws or responsibility.* In this case, the final figure for was not based on any laws, regulations, or degree of responsibility; it was negotiated based on how much each side was willing to give in. The following is an excerpt from the mediation when the complainants and physicians are separated into different rooms:

**PATIENT:** How much do you think he's [the physician] able to give?

**MEDIATOR 1:** About RMB 10,000

**PATIENT:** No way!

**MEDIATOR 1:** I am also just estimating.

**PATIENT WIFE:** (*getting upset*) I could go to court.

**PATIENT** (*to his wife*): Don't get so upset. What do you think they're thinking? He [the doctor] said something about how this hospital has [financial] difficulties.

**MEDIATOR 1:** That's a separate issue.

**PATIENT WIFE:** I never wrongfully accused him [the doctor]. I want to go to court for a medical accident.

**PATIENT:** There are two types of mistaken diagnoses: Error in diagnosis and delay in diagnosis. I'm very frank and straightforward, regardless of the outcome.

**PATIENT WIFE:** How much can they afford to pay us?

**MEDIATOR 1:** [The question should be] How much *should* he be responsible for?

*MEDIATOR 1 picks up his phone and leaves the room. A few minutes later back with the patient and his wife, the conversation continues.*

**PATIENT WIFE:** RMB 15,000. If they don't give us RMB 15,000, we will go to court.

**MEDIATOR 2:** From our perspective, RMB 10,000 is already pretty good.

**PATIENT:** How can they [implicated hospital] have given me [Chinese] medicine for two months to address this problem? Late stage cancer chemotherapy is so difficult. I had to do five days of chemotherapy – so painful. I usually have really good energy.

*Here the patient's wife threatens to "nao," as in yinao.*

**MEDIATOR 1:** Don't go "nao" (cause trouble).

*The patient looks like he is about to cry. MEDIATOR 1 leaves.*

*MEDIATOR 1 comes back in and pats the patient on the back like the case has already been decided.*

**MEDIATOR 1:** [He agreed to] 12,000, so take it. *Mediator pats patient on the back.*

*Everyone seems to suddenly agree that this is okay. There seems to be a sense of relief for the situation.<sup>1078</sup>*

During the negotiation the factors that were considered from the patient's side was how much the hospital was most likely able to give; not how much they owed the patient according to any sort of standard. The mediator highlighted this point to the patient, but at the same time, there was not any rigorous evaluation because, as the mediator himself emphasized earlier in the mediation, this case would not be viable in court because the delay likely did not cause additional harm to the patient. The doctor rationalized providing compensation by saying "We can give you some subsidy from the perspective of sympathy, but not from the angle of misdiagnosis."<sup>1079</sup> One interviewee classified this type of compensation as based on humanitarianism [人道主义] or humanistic care [人文关怀].<sup>1080</sup>

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<sup>1078</sup> Full Mediation (Delayed Colon Cancer Diagnosis), Interview No. 41, 2015.

<sup>1079</sup> Full Mediation (Delayed Colon Cancer Diagnosis).

<sup>1080</sup> Shanghai Legal Employee, Interview No. 36.

By rewarding compensation based on sympathy, the same issue of throwing money at patients to appease them continues, cloaked in terms of benevolence. The danger of this is that patients who experience any sort of problem in the hospital might feel entitled to compensation, regardless of whether or not the hospital carries any fault and whether that fault caused any harm (the two requirements for a tort claim to be valid).<sup>1081</sup> Compensation based on sympathy continues the culture of yielding to patients rather than educating them on what foundations they should seek compensation – a culture that that contributed to *yinao* to begin with. On the other hand it could also be argued these patients should have received more money and the mediation committee may be a way in which hospitals can avoid higher compensations, but since there was no rigorous evaluation of harm done to the patient, it is difficult to ascertain if they were undercompensated or should not have been compensated at all.<sup>1082</sup> In another section below I provide a general analysis on the soundness of this case medically.

*Use of yinao and litigation as threats.* The patient's wife threatened to resort to *yinao* or sue the hospital in court if the physician did not agree to RMB 15,000 (\$2,177). However, when the physician offered RMB 12,000 (\$1,738), the patient and his wife agreed to it immediately. The use of the threat demonstrates that even if patients do not resort to *yinao*, it is a tool they can potentially use to threaten hospitals during mediation. It also highlights the ability of MDMCs to deter people who might have otherwise resorted to *yinao*; without the MDMC it is possible these patients would have done it. The wife's use of litigation as a threat is also interesting because it resonates with the American adversarial suing culture, which is not as often associated with China. Without

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<sup>1081</sup> The Standing Committee of the 11th National People's Congress [第十一届全国人民代表大会常务委员会], "The People's Republic of China Tort Liability Law 中华人民共和国侵权责任法," Article 57.

<sup>1082</sup> Thanks to Benjamin Liebman for this counterpoint.

any other data on the use of this type of threat, it is difficult to interpret what this means, but it at least means that the complainants viewed the court as a viable enough alternative to use it as a threat; there is not a complete lack of faith in the court system.

*Insurance coverage and socioeconomic background.* This case raises several systemic issues about the health care system that affect how patients may pursue their cases. For example, patients may pursue cases based on their need to pay medical expenses. The patient in this case was an Eastern City resident and a former factory worker who had been laid off a few years ago with poor retirement benefits. He held residency-based health insurance.<sup>1083</sup> If he had had a better work unit, he would have had better insurance coverage for his illness. Throughout the mediation process, he and his wife emphasized the expense of chemotherapy for them: one round of chemotherapy cost them RMB 15,000 (\$2,173) alone, and they had to pay for 12 rounds of it, totaling RMB 180,000 (\$26,075).<sup>1084</sup> Assuming this family had been more financially able or if they had had better insurance coverage, they may have not pursued mediation if they had believed there was no real harm caused by the delay in diagnosis, but for them it was a way to potentially help cover their costs. This raises larger issues in China's health care insurance system coverage (covered briefly in Chapter 6).

*Medical rationale for the case.* The patient had mid- to late stage cancer,<sup>1085</sup> and thought that if the doctor had detected the cancer sooner, it would have been benign or less serious, which, according to the mediator who is a former doctor, does not make

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<sup>1083</sup> In China, there are three types of basic health insurance: the Urban Employees' Basic Medical Insurance (UEBMI) for urban workers, the Urban Residents' Basic Medical Insurance (URBMI), which provides coverage for urban residents not enrolled in the employee insurance program, so this includes students, retirees, and other dependents. In rural areas, rural residents receive coverage under rural new cooperative medical scheme (NCMS). For more information see: Eggleston, "Health Care for 1.3 Billion."

<sup>1084</sup> Full Mediation (Delayed Colon Cancer Diagnosis), Interview No. 41.

<sup>1085</sup> Full Mediation (Delayed Colon Cancer Diagnosis), 41.

sense from a medical perspective.<sup>1086</sup> If this case had been heard in court, the patient would have to show that negligence occurred and that this negligence caused harm to the patient;<sup>1087</sup> both conditions must be met. In this case, even if the doctor had delayed the test beyond what prevailing standards recommend for ordering colonoscopies, it would have been highly unlikely that delaying the diagnosis by one or two months would have harmed the patient, since most colon cancers are slow growing, usually taking around 10 to 15 years to grow.<sup>1088</sup> Therefore, in a court of law, this case would probably not have been compensated. Despite this relatively clear rationale that the mediator alludes to, the patient still receives compensation. Again by doing this, patients are not taught the correct reasons for pursuing complaints.

*Quality and standards of care in China.* At the same time having mid- to late stage colon cancer detected at age 58 may speak to larger issues about medical care in China. The dialogue of this case implies that the man had likely never had a colonoscopy before, which in the United States, for example, is recommended beginning at age 50 as a preventative measure.<sup>1089</sup> According to the American Cancer Society, “It can take as many as 10 to 15 years for a polyp to develop into colorectal cancer. Regular screening can often prevent it by finding and removing polyps before they have the chance to turn into cancer. Screening can also find colorectal cancer early, when it is most like to be

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<sup>1086</sup> Full Mediation (Delayed Colon Cancer Diagnosis), Interview No. 41.

<sup>1087</sup> The Standing Committee of the 11th National People’s Congress [第十一届全国人民代表大会常务委  
员会], “The People’s Republic of China Tort Liability Law 中华人民共和国侵权责任法,” Article 57.

<sup>1088</sup> “Can Colorectal Polyps and Cancer Be Found Early?,” accessed March 31, 2017,  
<https://www.cancer.org/cancer/colon-rectal-cancer/detection-diagnosis-staging/detection.html>.

<sup>1089</sup> “Final Update Summary: Colorectal Cancer: Screening - US Preventive Services Task Force,” accessed  
March 31, 2017,  
<https://www.uspreventiveservicestaskforce.org/Page/Document/UpdateSummaryFinal/colorectal-cancer-screening>.

curable.”<sup>1090</sup> While the doctor is not at fault for causing or worsening this patient’s cancer, the health care system overall failed this patient by not implementing preventative measures that could have potentially given him a much higher survival rate had the cancer been detected earlier.<sup>1091</sup>

### Case 3: Woman Seeking Compensation for Fractured Vertebra after Chair in Waiting Room Collapsed

A nanny took a child into the local community health clinic<sup>1092</sup> for a vaccination. After the vaccination, she followed instructions to wait at the health center for 30 minutes with the child. But while she waited, the chair she sat in broke, causing a vertebral compression fracture. The nanny’s family requested RMB 40,000 (\$5794.33) in compensation. Due to the fracture, the nanny was placed on bed rest for three months and was unable to attend the mediation herself. The nanny’s daughter, who was in her 20s, attended the mediation along with a distant middle-aged female relative of the nanny who employs her to take care of the child. The director of the community health clinic attended the mediation with another female employee and two female insurance managers from the People’s Insurance Company of China (PICC), the insurance provider for the hospital. Three mediators participated in this session.

The main point of conflict during the mediation centered on the standards used for compensation. The standards published by Eastern City for nursing fees and nutrition fees were all well below the market price the family had paid for these services. For example, the family hired a nurse to attend to the bed-ridden nanny for RMB 170 (\$24.63)

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<sup>1090</sup> “Can Colorectal Polyps and Cancer Be Found Early?”

<sup>1091</sup> “Can Colorectal Polyps and Cancer Be Found Early?”

<sup>1092</sup> In Chinese called 卫生院 (health center) or 社区医院 (community clinics). These types of centers offer simple services like vaccines and can treat colds and fevers. See: (Full Mediation Committee - Spinal Fracture Resulting from Clinic Chair that Broke), Interview No. 81, 2016.

per day for three months; however, city guidelines allotted RMB 50 (\$7.24) per day. The nanny claimed RMB 4,800 (\$695.32) in lost income, but because she was paid monthly in cash, there was no official documentation of her income, so as a result, the insurance company would only compensate to the absolute lowest standard set for Eastern City, RMB 1700 (\$246.26). The hospital and insurance company agreed to pay for the expenses for the three months of bed rest only, but the family expressed concern about future expenses due to continuing health problems that may arise due to this issue. The hospital and insurance company flatly refused to pay for future cost. The family rationalized that because they were already doing their best to save on costs, such as refusing a surgery that would have cost RMB 60,000 (\$8,691.5), that the insurance company and hospital should not shortchange them on other expenses.

The family wanted RMB 51,200 (\$7416.74)<sup>1093</sup>, but the insurance was only willing to compensate as much as RMB 15,000 (\$2,172.87),<sup>1094</sup> and the hospital expressed willingness to pay additional compensation because they felt some of the estimates by the insurance company were also too low when taking market prices into consideration.<sup>1095</sup> This mediation became heated with the older female relative becoming so angry she threatened to place the bedridden nanny on the doorstep of the hospital.<sup>1096</sup> Eventually the case was settled through the mediation committee after a few more meetings for RMB \$35,000 (\$5,070.04), and the hospital had already paid for previous medical expenses prior to mediation.<sup>1097</sup>

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<sup>1093</sup> Full Mediation (Compression Fracture), Interview No. 80, 2016, 2.

<sup>1094</sup> Full Mediation (Compression Fracture), 3–4.

<sup>1095</sup> Full Mediation (Compression Fracture), 5.

<sup>1096</sup> Full Mediation (Compression Fracture), 5.

<sup>1097</sup> Eastern City Mediator, Interview No. 85.

*Thorough notification about the process and rights of mediation.* A mediator, the same mediator in the first case, began by thoroughly reviewing the basic principles and rights parties had under the People’s Mediation Law and reminded them of their ability to obtain judicial recognition within 30 days after signing the agreement. She also emphasized that mediation is free and that parties had the right to seek other avenues for dispute resolution such as arbitration, administrative mediation, or going to court.

*Issues in medical records not salient.* This case was somewhat unusual because it does not concern the actual practice of medicine, but an accident within a medical setting – a type of “nonmedical” (非医疗) case that this committee has accepted in the past.<sup>1098</sup> Because the facts of the accident itself were clear, the facts in the medical records were not as salient to the debate as they were in the previous two cases.

*Debated Compensation Standards.* The same compensation standards used for tort cases<sup>1099</sup> were applied to guide estimating compensation for this case. Mediators and insurance representatives used provincial and city guidelines to calculate the exact figures, such as the standard for nursing fees, nutrition, average income to compensate for lost work, etc.<sup>1100</sup> The case highlights the issue of government-set standards not being in line with market prices, which the complainants felt were unfair and added to their frustration.

*Leading role of insurance company during mediation and lack of advocacy for complainant side.* The clinic came with its insurance company representatives, and, unlike in the first case, the patients were aware of the presence of the insurance representatives. The insurance company took control of claiming which standards would

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<sup>1098</sup> *Book on Analysis of the Committee Work*, n.d.

<sup>1099</sup> Supreme People’s Court, “Interpretation of the Supreme People’s Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury [最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释].”

<sup>1100</sup> Full Mediation (Compression Fracture), Interview No. 80; MDMC Mediator, Interview No. 84, 2017.

be used and how they would be compensated. The mediators tried to counter the insurance company, disagreeing with some of the standards and low figures they were using as well as the RMB 15,000 the insurance company proposed. While the mediators tried to moderate the debate and ensure the patients were not treated unfairly, unlike the hospital, the patients did not have any professional advocates lobbying on their behalf. Mediators are supposed to be neutral third parties and can only represent the patient side to a point. They also cannot force the insurance company or the hospital to agree to certain standards.

*Lack of understanding of possible compensation that could be awarded in court.*

The insurance company told the patients that the courts would compensate them even less. This made the older female relative upset and felt that court still represented another option. Again, the problem is that the daughter and JIEJIE did not understand what they were legally entitled to, the strengths and weaknesses of pursuing court versus mediation, and did not have an informed representative to navigate this system.

*Threatening with yinao.* As in the previous case, there is a threat of *yinao*. The female relative threatened to place the bed-ridden nanny in front of the hospital, to which the insurance company representative replied, “You don’t want to do illegal things.”<sup>1101</sup> Following this threat, one of the mediators remarked that people feel they can get more compensation the more trouble they make,<sup>1102</sup> reflecting the culture of “big commotion, big compensation; small commotion, small compensation; no commotion, no

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<sup>1101</sup> Full Mediation (Compression Fracture), Interview No. 80, 5.

<sup>1102</sup> Full Mediation (Compression Fracture), 5.

compensation.”<sup>1103</sup> However, the insurance company representative’s admonition to the female relative to not engage in this illegal activity also demonstrates the awareness that these types of behaviors are now illegal and that the insurance company felt no need to appease the patient due to this threat. This may imply that criminalization of *yinao* not only prevents these incidents in large hospitals, but prevents these threats from having power over the mediation process, helping to ensure that hospitals do not have to cave into patient threats – the common practice used prior to *yinao*’s criminalization in order to preserve social stability. On the other hand, the relative’s use of these types of threats demonstrate that citizens may still feel these threats are viable, and it is not general awareness that these types of activities are now illegal.

*Issue of future complications caused by injury.* There was also some confusion and uncertainty over how to handle future costs incurred by this injury. The clinic director and insurance company refused to consider these potential expenses. However, it is understandable that this would be a concern for the patient’s family. Surgery, for example, might be a consideration upon reexamination of the patient in the future. A mediator clarified that in these types of cases if the patient experiences continuing issues and needs reimbursement, he or she would have to open another mediation case or go to court.<sup>1104</sup>

*Forgiving language used for compensation in agreement.* Again, even though the clinic is clearly at fault for supplying a chair in so poor of condition that it collapsed, the

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<sup>1103</sup>“大闹大赔，小闹小赔，不闹不赔。” See reference to this in the following:“Explanation of Draft of ‘Medical Dispute Prevention and Management Regulations (Draft)’ [关于《医疗纠纷预防与处理条例（送审稿）》的起草说明].”

<sup>1104</sup> Eastern City Mediator, Interview No. 85.

terminology used in the agreement for compensation is the softer *buchang*<sup>1105</sup> instead of *peichang*, the latter of which would imply more fault for being responsible for the damages incurred.

### Aggregate Case Analysis

To analyze the cases together, I consider their basic characteristics, the procedures of the mediation process, and the outcomes of the cases. The table below summarizes the different factors in each category.

**Table 18: Mediation Case Analysis**

<b>BASIC CHARACTERISTICS</b>			
	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
Type of Hospital	City-level, Public 3A	Private Specialty Hospital	Community Health Center
Type of Case	Death	Delay in diagnosis	Non-medical injury/disability
Patient socioeconomic background	Patient's family: elderly, retired husband and middle-aged son is not a resident of Eastern City	Patient is laid-off former worker	Patient's family from an average economic background
<b>PROCESS</b>			
	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
Reminder of rights, responsibilities, and legal effectiveness under people's mediation law	Yes	Haphazardly	Yes
Presence of Medical Records	No	Yes (but not used)	Yes (but not debated)
Presence of Insurance Company	Yes (but unknown to patient)	No	Yes
Compensation Standards Used	Medical Accident Regulations	None (based on sympathy)	Personal Injury Compensation Standards
Medical Expert Consultation	No	No	No
Actively discouraging patients from going to court	Yes (mediator and insurance)	Yes	Yes
Number of mediators present	3	2	3
Threatened by patient/family to nao	No	Yes	Yes
<b>OUTCOMES</b>			
	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
Agreement Concluded	Yes	Yes	Yes
Time to Make Agreement	First time mediation	First time mediation	10 interactions (incl. mediation and one-on-one discussions)
Amount of agreement	RMB 150,000 + medical fees	RMB 12,000	RMB 35,000 + medical fees
Compensation word used in agreement	补偿 (buchang)	补偿 (buchang)	补偿 (buchang)

<sup>1105</sup> Eastern City Mediator.

## Basic Characteristics

This collection of cases informs us that both private and public hospitals from the primary to tertiary level all use their local MDMC. Each of these cases presents a different type of issue – from possible negligence causing death, delay in diagnosis, and issues of injury while in a hospital setting not related to medical activity. Some scholars may dispute whether or not the last case should be handled by an MDMC because it is not within the purview of medical care, medical goods, and informed consent,<sup>1106</sup> but I include it because it was handled by the MDMC, reflecting the reality of the cases it manages.

The economic backgrounds of the patients and their families speak to larger questions of who uses mediation. The first observation is that families from average to strained economic circumstances may take more advantage of mediation than wealthier families for a couple of reasons: first, because the process is free; and second, if hospitals are still willing to settle for a relatively small amount of money even if there is a possibility of no malpractice involved, it is a way for patients and families to gain extra money to relieve some financial stress. The families in the latter two cases clearly came from average and strained economic circumstances. It is unclear what the financial circumstances were in the first case, but the patient's husband as a retired railroad worker, was likely not wealthy.

A second observation is that mediation fits the needs of China's highly mobile, internal population. Of all cases, the first case concerning the death of an elderly woman following surgery was the most fitting for court: it could have benefitted from a medical review to assess when and how the patient went into shock and also could have benefitted

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<sup>1106</sup> Li et al., "Comment on the Scope of People's Mediation in Medical Dispute Mediation."

from the strict application of compensation standards, including death compensation. However, pursuing this case was not practical for the patient's middle-aged son who resided far from Eastern City. The patient's husband was elderly and would likely have been unable to pursue the case alone. Mediation thus offers an important option for families that cannot be present for court cases. A legal expert involved in MDMCs in another city close to Eastern City stated that while only 30% of cases in his city's MDMCs come from patients and families that are not from the city, they comprise the majority of the cases successfully mediated.<sup>1107</sup>

### Process

The mediation process itself is important because it represents an indicator of whether or not certain standards are being consistently followed throughout the mediation process. This represents a type of procedural justice, the idea that “justice should be realized through fair procedures,”<sup>1108</sup> which is an increasingly important element to the rule of law.<sup>1109</sup> If the procedures are consistently applied, then this MDMC can be seen as a contributor to procedural justice and thus rule of law, but if not, then the fairness of the committees may be called into question. The sections below evaluate whether or not the process of mediation was consistent for each case.

*Reminder of rights and responsibilities not always ensured.* Whether or not the parties to the disputes received information about their rights, responsibilities, as well as their ability to apply for enforcement of their agreements depended on the mediator. The mediator in Case 1 and Case 3 was particularly attentive to providing this information,

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<sup>1107</sup> Shanghai Legal Employee, Interview No. 36.

<sup>1108</sup> Chen, “Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law,” 1999, 147.

<sup>1109</sup> Chen, 132–52.

while the mediator in Case 2 did not provide as much detail about the rights and processes to the parties. This is important because providing both parties equal information about their rights and responsibilities is important to achieve the principle of equality, one of the core principles of the process. Hospitals likely know their rights and responsibilities since they must be familiar with mediation and the court process when disputes arise; however, patients may not know about their right to reject one of the mediators or ability to apply for enforcement of their agreement. If patients are unaware of their rights and responsibilities, then this makes information between the parties unequal, violating the most basic principle of equality for the mediation process. Notifying parties about their rights and responsibilities during the process not only animates the general principle of equality, but it sets the stage for the law to be enforced correctly by ensuring the parties understand the process and empowering them to follow it or question it should it go awry.

*Varying roles and debatable impact of insurance companies in each case.* The role of the insurance company in the process differed in all three cases. In the first case, the insurance representatives that were part of the new pilot program participated in the mediation, but their identities were not revealed to the patient's family out of concern that they would ask for more money. In the second case, no insurance company was present, which might have been because the hospital was private and did not have insurance from PICC – they paid compensation from their own risk fund.<sup>1110</sup> In the third case, the representatives from the insurance company played a large, formal role in the negotiations.

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<sup>1110</sup> Consultation with Private Hospital on Case, Interview No. 32.

While the first case may be an example of deceiving the patient, it is important to note that at that point in time the insurance company had just entered the committee, and MDMC members were still likely familiarizing themselves with how to manage the role of the insurance company. Also in the first case, the insurance company representative did not seem to play a primary role in choosing compensation amounts and standards; he primarily encouraged resolution through mediation and explained the possibilities of how the patient may have died. Further, in the third, mediation, which occurred later, the insurance company's presence formally in the process, indicating that a formal, active role was eventually accepted.

However, the integration of the insurance company raises additional issues about upholding equality during mediation as well as the conflict of interests between insurance companies and the mission of MDMCs to provide a neutral, third party mediation service. Hospitals already attend mediation well prepared and with an arsenal of full-time lawyers supporting their position. However, the patient side in all three cases never had professional advocates such as a social workers, lawyers, or other types of representatives that could knowledgably engage relevant laws and standards to advocate on their behalves. Patients are allowed to bring representatives, but at this MDMC they tended not to bring lawyers, likely due to costs, and, to the knowledge of this study, there were no NGOs in Eastern City who could also counseling for these types of issues. One administrator remarked that sometimes those with a high-level of education will bring legal representatives, but this was rare.<sup>1111</sup> This is problematic because the introduction of the insurance companies, along with legal support hospitals already have, puts the patient at a further disadvantage in mediation as far as their knowledge about what they should

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<sup>1111</sup> Medical Affairs Office Employee, Interview No. 063.

realistically expect for compensation according to law. Medical disputes already begin with a severe asymmetry of information in medical knowledge, but the gap in legal representation for patients and families also demonstrates a serious asymmetry of knowledge of legal rights. While in the third case, one of the mediators attempted to dispute the low figures given by the insurance company, ultimately mediators cannot lean to one side too much or force standards for compensation upon the parties.

The example of the mediators trying to advocate for the patients when they thought insurance companies were being unfair highlights that the active presence of the insurance company raises a fundamental issue about the conflict of interest between the interests of insurance companies and the mission of the MDMCs. MDMCs are supposed to offer a neutral third party to mediate disputes, but as one of the mediators of the committee explained, when insurance companies participate in negotiations, they assume the contradictory roles of both mediator and compensator at the same time.<sup>1112</sup> The mediator expressed concern that this phenomenon turns the MDMC into a place where insurance companies simply mediate based on what they are willing to give, threatening the overall fairness and reputation of mediation committees.<sup>1113</sup> An official from a city close to Eastern City also agreed that that MDMCs were not places for insurance companies because they represent the interests of hospitals and are not neutral third parties.<sup>1114</sup>

One of potential advantages of placing insurance companies into mediation committees is to streamline the compensation process, but this goal was not realized when the insurance company representatives were at the MDMC. According to one of the

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<sup>1112</sup> Eastern City Mediator, Interview No. 85.

<sup>1113</sup> Eastern City Mediator.

<sup>1114</sup> Shanghai Legal Employee, Interview No. 36.

mediators, the insurance company would say delays in or failures to compensate were due to “incomplete materials.”<sup>1115</sup> However, according to several policy documents, mediation agreements are legitimate documents that insurance companies can use as the basis for compensation.<sup>1116</sup> But in practice, this is often not the case: insurance companies require many different documents and then evaluate whether or not the compensation was reasonable. However, because mediation does not often require as many documents as the insurance companies require to process claims, insurance companies often refuse to compensate what the MDMCs reward based on the lack of required documentation.<sup>1117</sup> The integration of the insurance company into Eastern City’s District X MDMC thus not only failed to streamline compensation, but also detracted from the overall quality and fairness of the mediation process. This is quite different from the US where insurance companies see out-of-court settlements as a way to reduce costs.<sup>1118</sup> The insurance company’s temporary contract to be in the committee ended in Spring 2017, and District X will pilot other insurance initiatives at the MDMC to explore how to improve the reimbursement process.<sup>1119</sup>

*Issues of arbitrariness in choosing compensation standards continue.* All three cases referred to different standards for compensation – the first followed the Medical Accident Regulations, the second was based on “humanitarianism,” and the third

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<sup>1115</sup> Eastern City Mediator, Interview No. 85.

<sup>1116</sup> Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, “Opinions on Strengthening Medical Dispute People’s Mediation Work [关于加强医疗纠纷人民调解工作的意见],” Section 2; “Medical Dispute Prevention and Management Regulations (Draft) [医疗纠纷预防与处理条例(送审稿)],” Article 49.

<sup>1117</sup> Eastern City Mediator, Interview No. 85.

<sup>1118</sup> For more information on this issue for U.S. medical malpractice insurance policies, see: Horn III, Caldwell, Jr, and Osborn, *Law for Physicians: An Overview of Medical Legal Issues*, Section: Control of Settlement, 60.

<sup>1119</sup> Medical Dispute Mediation Committee Member, Interview No. 83.

considered the compensation standards for personal injury in tort cases.<sup>1120</sup> When asked about the choice between the Medical Accident Regulations and the compensation standards used for personal injury, one of the mediators replied that these two standards are not very different or contradictory, though the MDMC tends to use the compensation standards for tort cases more often.<sup>1121</sup> Regardless of the standards used, it is important to note that MDMCs are not supposed to strictly apply compensation standards; they serve as reference materials for the committee members to help guide the formation of an agreement.<sup>1122</sup> If patients want compensation standards more strictly applied, then they would have to go to court.

The real issue of arbitrariness exists in the choice between compensation based on laws and regulations and compensation based on sympathy or humanitarianism, the latter of which can be seen as euphemisms for appeasement (息事宁人, *xishi ningren*) or “plastering over principles in order to settle differences” (和稀泥, *huoxini*).<sup>1123</sup> Social institutions like MDMCs regulate the behavior between different parties of society and are supposed to teach them the rules of interaction. If mediation committees reward compensation on the grounds of appeasement or based on the preference for the conflict to end, then they continue to teach society that physicians can be held responsible for mistakes they have not made.

*Lack of expert consultation.* The lack of medical experts to help assess the medical validity of the cases makes the decisions about compensation seem arbitrary

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<sup>1120</sup> Supreme People’s Court, “Interpretation of the Supreme People’s Court of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury [最高人民法院于审理人身损害赔偿案件适用法律若干问题的解释].”

<sup>1121</sup> MDMC Mediator, Interview No. 84.

<sup>1122</sup> Medical Dispute Mediation Committee Member, Interview No. 83.

<sup>1123</sup> Chen et al., “Retrospective Analysis of Medical Dispute Third-Party Mediation Based on the Related Literatures from 2008 to 2016,” 40, 2.3.

even when MDMCs refer to legal standards. Most MDMCs, including this one, have an “experts database” (专家库) from which they can request “expert” – physicians who specialize in the area of the case in question – to medically review the case.<sup>1124</sup> However, the MDMC did not consult experts in any of these cases, but in some cases, without an expert opinion, it is difficult to assess responsibility.

For example, when compensating under the Medical Accident Regulations, the following factors should be considered: the level of the medical accident, the degree to which medical negligence contributed to adverse consequences, and the relationship between the consequence and the original condition of the patient.<sup>1125</sup> In the first case, there was an attempt to determine the degree of fault based on these factors – at one point a mediator suggested 40% for the hospital’s degree of responsibility. However, without consulting an expert, the final amount, even though it was guided by legal standards, was still left to more arbitrary negotiation based on perceived responsibility. While on one hand, without expert consultations or more formal medical reviews, these mediations can occur more quickly, but on the other hand, a lack of consideration for the reasons underlying the decisions calls into question the quality of the MDMCs decisions. This tension between truth and the desire to quickly end conflicts represents an important tension in the mediation process.

Not only would expert consultation potentially validate the decisions of the committee, but they also provide an opportunity to strengthen doctor-patient communication and patient education. In the second case, an impartial medical expert

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<sup>1124</sup> There are also legal experts databases in addition to medical ones. See Ministry of Justice, Ministry of Health, and China Insurance Regulatory Commission, “Opinions on Strengthening Medical Dispute People’s Mediation Work [关于加强医疗纠纷人民调解工作的意见].”

<sup>1125</sup> State Council for the People’s Republic of China, “Medical Accident Management Regulations [医疗事故处理条例],” Article 49.

was not there to validate or explain that it was unlikely that a delay in the patient's cancer diagnosis caused any additional harm to the patient. It is not necessarily the responsibility of the expert to educate the patient, but it presents an opportunity for this to occur.

However, the patient in the second case was paying so much out of pocket for his treatment, he may have tried to claim damages regardless of whether or not there was a rational explanation of the hospital's responsibility. This speaks to larger issues of insurance coverage, and until China has better insurance coverage, hospitals may end up paying in these types of situations when patients face significant costs.

Another issue that detracts from the potential contributions of experts to MDMCs is the fact that patients sometimes distrust physicians, feeling that doctors all know and protect each other. Until patients no longer feel that way, the presence of experts may actually detract from the credibility of mediation – the same issue that has called into question the credibility of the medical reviews. A medical expert who attended mediations in another city where MDMCs use them more frequently explained that during mediation, the hospital, the family, and an odd number of medical experts sit around a conference table.<sup>1126</sup> Each expert offers his or her opinion on how the hospital handled the case, and then the experts vote first on whether or not the hospital carries responsibility and then again on the degree of responsibility.<sup>1127</sup> The physician acknowledged that by virtue of being doctors, experts are biased toward the medical perspective so it can seem like the process favors the physicians more.<sup>1128</sup> She expressed

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<sup>1126</sup> Director of Obstetrics, Interview No. 059.

<sup>1127</sup> Director of Obstetrics.

<sup>1128</sup> Director of Obstetrics.

the need for another form of representative at mediation like a social worker or neutral lawyer to balance the situation.<sup>1129</sup>

*Minor role for medical records, facts, and suspicions of fault.* In addition to the lack of expert consultation, there is also a lack of using the medical records to decide the facts of cases, which would also be helpful for determining the degree of fault, though, again, deciding this exactly is not the responsibility of the committee. After the first case, one of the mediators who was a retired doctor commented that she felt the hospital had responsibility because health care workers did not discover that the patient was in shock soon enough – the patient likely had gone into shock two or three hours prior to doctors realizing it.<sup>1130</sup> However, she did not play any significant role in determining the degree of fault; the hospital medical affairs office representative led the calculations for compensation instead.<sup>1131</sup> This again speaks to the issue of the tension between decisions based on truth and the desire to end the conflict as well as the mediator’s intended neutral role – those with medical knowledge are supposed to guide cases but cannot accuse or compel hospitals to follow their opinions. As highlighted above, usually in this MDMC mediators do not inform the patient directly if they feel the hospital has fault in order to avoid intensification of the conflict.<sup>1132</sup>

*Active discouragement of using courts.* In all of the cases, the mediators and sometimes the insurance company representative discouraged patients or their families from pursuing a lawsuit because it would be long or disadvantageous. There is a lack of sophistication in directing different types of cases toward different avenues. For example,

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<sup>1129</sup> Director of Obstetrics.

<sup>1130</sup> Mediation Committee Employees, Interview No. 39 Gastric-Polyp Case Mediation Follow-Up.

<sup>1131</sup> Full Mediation (Death of Elderly Woman Following Surgery to Remove Gastric Polyp), Interview No. 38.

<sup>1132</sup> Medical Dispute Mediation Committee Member, Interview No. 83.

some cases such as those that would benefit from a rigorous medical review may be much better served in court rather than in mediation (assuming the medical review is done fairly and not to protect the interests of local doctors). Citizens are already hesitant to use China's court system and the active discouragement of using it may be a disservice to patients whose cases may actually benefit from it.

*Mediation takes place in a culture of threatening yinao.* These cases show that mediation exists in the culture of *yinao*, as complainants resorted to threats in order to advance their interests. In the second case, the patients tried to use it as a threat while attempting to bargain the amount of compensation. In the third case, the patient's relative left mediation, threatening the hospital with placing the bed-ridden patient in front of the clinic. However, in neither case were these threats decisive factors in the outcomes, showing that while the culture of *yinao* still exists, hospitals, at least the two in this study, no longer fear it so much that it sways their decisions. In the third case the insurance company's confident admonition to the patient that her threats were illegal demonstrates awareness and faith in the criminalization of *yinao*.

### Outcomes

Mediation performs strongest in its ability to achieve the desired outcome of ending disputes, which is also reflected in official statistics that boast a national success rate of 85%<sup>1133</sup> (percentage of disputes that ended in signed agreements). In all cases analyzed here mediation settled the disputes – two were settled on the first attempt. Mediation can settle cases that vary in level of severity– from a serious case of accidental death to a two-month delay in a cancer diagnosis. It can also settle at a variety of

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<sup>1133</sup> “National Health and Family Planning Commission Circular on the 2016 Work Situation for Protecting Medical Order [国家卫生计生委办公厅关于 2016 年维护医疗秩序工作情况的通报].”

compensation points, from as little as RMB 12,000 (\$1,738) to as high as RMB 150,000 (\$21,770). While this range may speak to the broad capabilities of the mediation committee, it also raises the question of whether or not the committees should be dealing with such a range of issues without any expert consultation. To the knowledge of the author, none of the complainants has since revisited the committee to request more money since their initial settlements.

All mediation agreements employed face-saving language for hospitals – using *buchang* instead of *peichang*. While patients and/or their families did not complain about this language in the cases above, this choice of language became an issue in one of the consultations discussed further in the sections below.

### **Consultations 咨询**

Most reports about MDMCs focus on mediating, but the committee also provides free consultation services for both hospitals and patients who want to better understand the medical dispute resolution process and their potential options. Consultations reveal other roles filled by MDMCs as well as potential cases that never go to mediation, which largely remain unobserved by studies focusing only on data and summaries of mediations.

#### Consultation 1: Making Official the Agreement for Delayed Diagnosis

An elderly man accused a private hospital of delaying his diagnosis of colorectal cancer by 80 days (this, coincidentally, is the same private hospital discussed in Mediation Case 2 – also a delayed diagnosis). The hospital recognized no error, especially because the physicians had asked the patient to stay at the hospital for a more in-depth examination. However, due to the patient’s strained personal circumstances (his

wife was undergoing treatment for breast cancer) and economic hardships, the patient decided not to stay at the hospital for the procedure. Later, he went to another hospital for his symptoms and was diagnosed with cancer, so he returned to the original hospital claiming that they had delayed his diagnosis.

This case sits somewhere between a mediation and a consultation. The parties had already settled the case amongst themselves for RMB 20,000 (\$2,897), but hospital representatives went to the MDMC for assistance in drafting the agreement. Also, in Eastern City, all medical dispute agreements between hospitals and patients for RMB 5,000 or more must be notarized by the committee.<sup>1134</sup> Notably, the success rate of mediation committees includes these types of pre-settled agreements, which comprise more than half of the agreements this MDMC's success rate.<sup>1135</sup> This is important to note because when official statistics show a high success rate of mediation, many of those agreements in those success rates were not mediated. There are several notable points about this case.

*Compensation was motivated by government pressure and based on sympathy.*

During the consultation with the hospital representatives, the hospital president said that even though there was no negligence in the case, the hospital would still compensate the patient out of sympathy for his and his wife's hardships. But when asked whether the hospital would compensate if the family did not face personal and financial difficulties, the hospital president replied that they still would compensate regardless of these circumstances because the family had called 12345 (the Citizen Hotline discussed in Chapter 3). The city government informed the hospital that it wanted this dispute to be

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<sup>1134</sup> Mediation Committee Director and District Bureau of Justice Office Assistant Director, Interview No. 28.

<sup>1135</sup> Mediation Committee Director and District Bureau of Justice Office Assistant Director.

resolved, so the hospital agreed to do this on the basis of “humanitarianism” and “compassion” by giving the patient RMB 20,000 (\$2,897). The pressure by the city government to settle the dispute demonstrates the continuing phenomenon of emphasizing “appeasement” (息事宁人). This is the same type of behavior that led to *yinao* – as patients saw hospitals compensate for disruptive behaviors, they had more incentive to resort to *yinao* to obtain money, regardless of the question of fault. When MDMCs indulge dispute settlement for the sole reason of ending disputes, they simply become a new destination for these types of settlements rather than distinguishing themselves as institutions with certain standards for dispute settlement.

*Use of favorable language toward hospitals makes patients feel the situation is unfair.* The hospital president and doctor reviewed the agreement carefully and edited it to include phrases like, “the hospital expresses understanding and sympathy,” and compensation (*buchang*) is based on “the patient’s circumstances.”<sup>1136</sup> The following week the wife of the patient came to sign the agreement. Even though she signed it, she still seemed upset because the agreement indicated that the hospital carried no fault when she believed that they did.<sup>1137</sup> This is important because in a way it detracts from the mediation institution itself; mediation committees are supposed to be a neutral third parties, but if the only way for patients to receive compensation is to sign agreements that they feel favor the hospital in principle, then this might hurt the reputation of the committee in the long-run. It also calls into question the idea of “success” as more than just a conclusion of the agreement – this case would be considered a success even though the patient left somewhat dissatisfied.

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<sup>1136</sup> Consultation with Private Hospital on Case, Interview No. 32.

<sup>1137</sup> Mediation for Delayed Cancer Diagnosis (private hospital), Interview No. 33, n.d., 33.

*Medical rationale for the case and need for patient education.* This case also highlights the failure of mediation or the policy environment in general to provide patient education. In interviews for this study<sup>1138</sup> and other studies<sup>1139</sup>, the lack of patient understanding of risk and high expectations was identified as a source of conflict. In this case, the patient did not receive the appropriate education on this issue, namely that a delay in diagnosis likely did not contribute to or worsen her husband's cancer.<sup>1140</sup> If the wife had received education on the issue from a third party, she may have left the mediation feeling less dissatisfied with the agreement.

*Physical set up of mediation committees favors hospitals by regularizing interactions with hospitals and committee members.* This consultation was the first interaction with the private hospital and the mediation committee.<sup>1141</sup> The hospital had expressed satisfaction with the MDMC's service, and by virtue of interacting with the head of the MDMC at least a couple of times (once to consult about the agreement, once to sign), they had developed some personal rapport with each other. By the next time they met for Case 2 (above), they were familiar with each other. Because MDMCs are district-based and serve only the hospitals in their district, by design they tend to interact more often with the same groups of hospital representatives over time, which naturally can lead to the development of personal relationships. While this was likely not the intention behind the design of the committees, it may endanger their impartiality.

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<sup>1138</sup> OBGYN Group, Interview No. 014, 014.

<sup>1139</sup> Tucker et al., "Patient-physician Mistrust and Violence against Physicians in Guangdong Province, China: A Qualitative Study."

<sup>1140</sup> "Can Colorectal Polyps and Cancer Be Found Early?"

<sup>1141</sup> Consultation with Private Hospital on Case, Interview No. 32.

## Consultation 2: Mother seeking consultation after 13-year-old son dies of leukemia

A woman in her 30s walked into the office for a consultation after District X Health Bureau had sent her there.<sup>1142</sup> She recounted the story of her 13-year-old son who had recently passed away from leukemia. She broke down into tears several times as she explained his last few weeks: At the end of her son's fourth inpatient stay for chemotherapy, he showed signs of a lung infection. He was discharged, but when he came back for his fifth round of chemotherapy, he had developed pneumonia. He died one month later. She questioned why doctors did not address the lung infection sooner, and why they had to stop the chemotherapy because of it. Her son had been treated at one of the branch hospitals of the city's provincial-level hospital. She had visited the hospital's Doctor-Patient Communication Office before, but the hospital denied any responsibility. She said that they used a lot of technical terms to explain the situation to her that she did not understand.<sup>1143</sup>

The mediator presented her with her options: 1) first to return to the doctor-patient office; 2) then pursue mediation if both parties agreed; 3) apply for a medical damages review at the Eastern City Medical Association; 4) pursue the case in court. She had a difficult time understanding the details of the process, but the mediator explained it patiently until she understood. She expressed the desire to do mediation and to apply for a technical review of the case.<sup>1144</sup>

The mediator further explained to her that this hospital, as a provincial-level hospital, was powerful. Mediators had mentioned this hospital in past conversations

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<sup>1142</sup> Woman in Tan Coat Consultation, Interview No. 037, 2015.

<sup>1143</sup> Woman in Tan Coat Consultation.

<sup>1144</sup> Woman in Tan Coat Consultation.

before because it always refuses mediation.<sup>1145</sup> Because it is a provincial-level hospital, the city-level government has no authority over it, unlike in other cases when the city-level government can pressure city, district-level, or private hospitals to mediate and settle disputes. In responding to the statement about the hospital's power, the mother said, "We are just common people. The child is gone. What use is money?" She emphasized she did not want money and did not want to create a disturbance or expand the case; she wanted to do a Medical Damages Review. She explained, "We just want some reassurance."<sup>1146</sup>

The mother also had questions about insurance coverage for her son's medical expenses. The mediator called in the PICC lawyer who had been stationed at the MDMC as part of the pilot program to answer some of her questions about insurance. PICC was not her insurance provider, but he was able to inform her of some basic information and basic rights. The lawyer warned her that her insurance provider would likely try to shirk responsibility for the expenses. He said that if the company refused, she should take them to court, because once they are taken to court, they must pay. He assured her that the court would award compensation because there are some articles in insurance company contracts that the courts do not approve of. The insurance company representative, like the mediator, very patiently explained all of this information to her.

After receiving information about insurance coverage and the dispute resolution process, the mother felt relieved, taking a deep breath and patting her chest. She said that people at the committee had the "heart"[人心] to deal with her. She left her contact information with the mediator, who proceeded to call the implicated hospital on her

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<sup>1145</sup> Mediation for Delayed Cancer Diagnosis (private hospital), Interview No. 33.

<sup>1146</sup> Woman in Tan Coat Consultation, Interview No. 037.

behalf to see if they would be interested in mediation. The hospital refused, and said she should go to court. The mediator called back the mother and told her this news, and said her next step is to go to the Eastern City Medical Association to apply for a medical accident review.

### *Analysis*

This case highlights several important issues about the role of the MDMCs as patient advocates (albeit limited), the politics of powerful hospitals, the role of *yinao* in shaming sincere patients and families, and the role of the insurance company as information providers. The sections below explain each of these factors.

*MDMC employees as system navigators and advocates for patient.* This case illustrates the role in advocacy that the MDMCs can play. The mediator provided information about the options that the patient has, which she was initially unclear about and needed someone to explain to her several times. He then called the hospital on her behalf. This interaction shows that MDMCs can fulfill a needed role of an advocate for navigating the dispute resolutions system, which is ever-changing and confusing for patients. However, as the mediation cases show above, this advocacy can only be limited because in mediation itself, the parties must remain neutral third parties.

*Professional advice supplied by insurance company.* Further, in addition to explaining the options to the patient, the insurance company lawyer provided professional advice to the patient on how to claim coverage. While this is not directly related to a medical dispute, it shows the importance of having professional advice in ensuring patients are able to claim what they are rightfully entitled to. While insurance companies do not typically fulfill this role for the patients, this unique situation demonstrates the

need for reducing the knowledge asymmetry in order to relieve stress on patients and their families as they grieve and figure out the costly finances of health care.

*The principle of voluntariness can backfire against complainants who have disputes with powerful hospitals.* This consultation reveals the likely unforeseen consequence of voluntariness, one of the key and celebrated principles of mediation<sup>1147</sup>, being a problem; in the past mediation received criticism for forcing parties to accept it;<sup>1148</sup> now powerful hospitals take advantage of being able to refuse mediation. This is important because an avenue meant to provide a better option for patients can actually be denied to them. Because the MDMC offers a space with employees qualified to moderate communication between patients and doctors, this case would have likely benefited from mediation because the patient wanted a clearer explanation of what happened and the rationale behind the decisions the doctors made. But powerful hospitals in a way have no incentive to go to mediation: the costs of pursuing litigation are not as difficult for hospitals to bear as they are for patients, so refusing mediation and forcing patients to consider pursuing a court case may actually cause patients to drop their cases since pursuing them is so difficult.

*The culture of yinao shames patients and families sincerely pursuing disputes.* During the interaction, the mother emphasized that she was not there for money or to cause a disturbance. Her fear of the mediator distrusting her intentions shows that *yinao* not only has a negative impact on health care workers, but also on patients and families with sincere concerns.

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<sup>1147</sup> “The People’s Republic of China People’s Mediation Law [中华人民共和国人民调解法],” Article 3.1.

<sup>1148</sup> Lubman, *Bird in a Cage: Legal Reform in China after Mao*, 222.

### Consultation 3: Advocacy for Cases with Recurring Issues

Over the course of several months, one of the mediators managed a case for a woman who had already settled a dispute, but needed continuing assistance as she experienced recurring medical issues resulting from her medical accident. The woman in her early 50s had gone to a military hospital to have minimally invasive surgery to remove uterine fibroids. She chose this hospital based on its provocative advertisement on *Baidu* for quick surgical removal of uterine fibroids (hysteroscopic myomectomy). The advertisement boasted, “Small incision, quick recovery.”<sup>1149</sup> Even the mediator who was a retired doctor said the advertisement was so convincing that she would believe the advertisement if she had seen it.<sup>1150</sup> The patient decided to do the procedure because she reasoned that it would be better to do it in her early 50s rather than wait until she was older. However, two things went wrong. First, the laser used in the procedure accidentally cut through the patient’s small intestine. Second, when she started having complications from this accident, there was a delay in admitting her into the hospital.<sup>1151</sup>

This military hospital at fault for the accident paid for all of this woman’s expenses at the provincial-level hospital, where she had a follow-up surgery to close the wound and where she also stayed in the ICU for part of her recovery. Two months after she was discharged from the hospital, a second issue arose: she was in pain and vomiting due to intestinal obstruction (when digested material cannot pass normally through the bowel<sup>1152</sup>) and abdominal adhesions (tissue bands that form between abdominal tissues

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<sup>1149</sup> Full Mediation (Delayed Colon Cancer Diagnosis), Interview No. 41.

<sup>1150</sup> Full Mediation (Delayed Colon Cancer Diagnosis).

<sup>1151</sup> Full Mediation (Delayed Colon Cancer Diagnosis).

<sup>1152</sup> “Intestinal Obstruction: Causes, Symptoms, and Diagnosis,” accessed May 11, 2017, <http://www.healthline.com/health/intestinal-obstruction?m=2>.

and organs<sup>1153</sup>). For these more recent symptoms, she was receiving care at a third hospital. She had not received reimbursement from the initial hospital for these costs, and the mediator was trying to help her determine how to claim them.

The mediator remarked that in this type of case, a one-time compensation is not suitable. The woman's quality of life had been seriously affected by the accident – she can only eat liquid or soft foods and cannot sit up for long lengths of time.

*Problem of advertising in medicine and quality of care.* This issue brings to attention the larger issue of advertising in medicine in China. This case came just a few months before the case of Wei Zexi became national news – a young man who recounted of how Baidu's promoted search results deceived him into seeking treatment at a hospital that turned out to be a sham.<sup>1154</sup> Shortly before he died, he documented his experience online,<sup>1155</sup> which led to public outrage against medical advertising on *Baidu* and an official investigation into the matter.<sup>1156</sup> This issue highlights that while so much of the debate around medical disputes focuses on demonizing profit-seeking patients, patients are subject to a larger context of injustices in the health care system. Preventing and resolving medical disputes, as emphasized in the previous chapter, involves more than improving dispute resolution institutions like MDMCs; it necessitates better standards for advertising and quality of care.

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<sup>1153</sup> “4 Best Ways to Take Control of Abdominal Adhesions,” Health Essentials from Cleveland Clinic, December 31, 2014, <https://health.clevelandclinic.org/2014/12/4-best-ways-to-take-control-of-abdominal-adhesions/>.

<sup>1154</sup> Austin Ramzy, “China Investigates Baidu After Student’s Death From Cancer,” *The New York Times*, May 3, 2016, <https://www.nytimes.com/2016/05/04/world/asia/china-baidu-investigation-student-cancer.html>.

<sup>1155</sup> Zexi Wei, “What Do You Think the Biggest Evil Is? [你认为人性最大的「恶」是什么? ],” Zhihu, February 26, 2016, <https://www.zhihu.com/question/26792975/answer/88170767>.

<sup>1156</sup> Ramzy, “China Investigates Baidu After Student’s Death From Cancer.”

*Mediators as advocates in navigating the system.* The mediator in this case advocates on behalf of the patient, helping her navigate her potential options for dispute resolution and managing her communications with the hospital responsible for the initial accident. This role of the mediator is extremely important for this woman who is unable to lead a normal life due to the accident and therefore unable to advocate on her own behalf. Again, this example illustrates the importance of MDMCs as places where patients can receive information on how to navigate this system. Mediators, like this one, often go beyond their job requirements to serve this purpose, and this crucial function they perform, to the knowledge of this author, goes unobserved by statistics and current studies on their effectiveness. However, it could also be argued that as a third-party institution meant to mediate disputes, MDMCs should not provide advocacy services. The next chapter explores the potential role of civil society to fulfill this function.

## **Conclusion**

The work of the MDMC in Eastern City's District X provides insight into China's path towards rule of law as well as its progress in improving health care. The above cases show that while the MDMC offers complainants increased access to and advocacy in medical dispute resolution; it does not consistently ensure equality and procedural justice for all parties involved, especially at the expense of patients and their families.

The MDMC's free, fast, and convenient services make medical dispute resolution more accessible than the relatively longer and expensive court process; however, ironically, faithfully upholding the principle of voluntariness actually decreases access to mediation for patients and families with disputes against powerful hospitals that do not hesitate at the costs of litigation and are not subject to local pressures from city

governments to pursue mediation. In some states in the United States, mediation for medical disputes is actually required by law before adjudication;<sup>1157</sup> perhaps medical dispute cases are actually well suited for compulsory mediation. In China, if both parties are required to mediate at an MDMC before court, this would give all patients and families, regardless of the hospitals they have claims against, the ability to access this institution. There is of course a difference between compelling mediation to occur and compelling outcomes; while requiring the former has advantages for increasing access to mediation; the latter should still be kept voluntary in order to avoid coercion in the mediation process – an issue that tarnished the reputation of mediation in the past.

This study also found that the MDMC fell short in providing reliable procedural justice to parties to disputes for the following reasons: the MDMC did not consistently notify parties about their rights and responsibilities; it did not consistently apply any one set of standards or rationale for compensation; and it did not follow or have procedures for summoning experts to evaluate cases or for handling facts of cases. Of course it can be argued that mediation by nature is not supposed to be as procedurally rigorous as adjudication, but this does not mean there should not be any procedures that guide the process. Consistently following basic rules builds credibility to the mediation process by teaching society the bounds of acceptability for cases and providing citizens reliable expectations for the dispute resolution process. For example, if hospitals are not supposed to compensate for the purpose of silencing complainants, mediation committees should consistently uphold that standard so that over time their repeated refusal to compensate

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<sup>1157</sup> Such as Washington, DC and Wisconsin. See: “Information on: Mediation in Medical Malpractice,” accessed April 14, 2017, [http://www.dccourts.gov/internet/public/aud\\_mediation/mediatemedical.jsf](http://www.dccourts.gov/internet/public/aud_mediation/mediatemedical.jsf); “Wisconsin Court System - Medical Mediation Panels,” accessed April 14, 2017, <https://www.wicourts.gov/courts/offices/mmp.htm>.

for the sake of appeasement establishes a new set of expectations for complainants about legitimate types of claims.

Admittedly, there are significant challenges to achieving heightened procedural rigor in the MDMCs. The most obvious is the weak procedural obligations outlined in existing laws and regulations. The People's Mediation Law says almost nothing about the details of the procedures mediators should follow, allowing room for vast discretion for individual mediators.<sup>1158</sup> Local guidelines for this particular MDMC also offer little guidance aside from advising mediators to mediate on the basis of equal discussion, mutual understanding, and yielding.<sup>1159</sup> Until recently, these vague guidelines left decisions to request expert consultation to the discretion of the mediators. In the province where this MDMC is located, new regulations have begun to address this issue, stipulating that for claims worth between RMB 20,000 and RMB 100,000, mediators should seek expert consultation.<sup>1160</sup> For cases worth over RMB 100,000, MDMCs should organize medical damages reviews with the consent of both parties.<sup>1161</sup>

Not only does the lack of a strong legal framework prevent MDMCs from achieving a greater degree of procedural justice, but also, as seen in the first consultation case, pressure from the local government to end disputes even if it means appeasing the complainant with money represents an additional challenge to mediation. If local

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<sup>1158</sup> Article 22 of the People's Mediation Law broadly outlines procedures mediators are supposed to follow during mediation: "People's mediators *may* adopt various means to mediate disputes among the people in light of the actual circumstances of disputes, hear the statements of the parties concerned, explain the relevant laws, regulations and state policies, patiently persuade the parties concerned, propose solutions on the basis of equal negotiations and mutual understanding between the parties concerned, and help them reach a mediation agreement on free will." See: "The People's Republic of China People's Mediation Law [中华人民共和国人民调解法]," Article 22. English translation provided by: "China - The People's Mediation Law of the People's Republic of China (Order of the President of the People's Republic of China No.34).," International Labour Organization, August 28, 2010, [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=85806&p\\_country=CHN&p\\_count=1183](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85806&p_country=CHN&p_count=1183).

<sup>1159</sup> Province X Doctor-Patient Dispute People's Mediation Committee Management Measures

<sup>1160</sup> Province X Medical Dispute Prevention and Management Regulations.

<sup>1161</sup> Ibid.

governments continue to exert pressure on hospitals to end disputes in this way, and MDMCs must facilitate these agreements, this hurts the credibility of MDMCs because it turns them into institutions that appease patients out of fears of social instability. MDMCs also displayed an inclination against revealing information to patients in order to prevent escalation of conflicts. There needs to be a general cultural shift away from fear of short-term instability in order to allow MDMCs to reinforce their procedures for dispute resolution. Benjamin Liebman has termed this perceived trade-off between stability and following rules and laws as the law-stability paradox in the Chinese system.<sup>1162</sup>

The cases above also illustrate that equality, one of the main principles for mediation, has yet to be fully realized in MDMCs for several reasons. The presence of insurance companies tips the interaction in their favor, as they simply use MDMCs as forums to voice the maximum amounts they are willing to give. Even without insurance companies, the interaction is still not equal due to the severe information asymmetry existing between patients and hospitals – hospitals have both medical knowledge and legal knowledge with their legal teams; however patients and their families generally have no advocate in dispute resolution. The ability of mediators to be advocates to both patients and hospitals in navigating the dispute resolution system represents an important contribution of the MDMCs. However, this advocacy can only go so far because as third-party institutions, the MDMCs are supposed to be neutral, not advocates for either side during the dispute resolution process. Until China develops a culture of hiring legal counsel or enables a civil society that provides advocates, patients remain at a disadvantage during dispute resolution. Further, the city district-based nature of MDMCs

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<sup>1162</sup> Liebman, “China’s Law and Stability Paradox.”

increases their chances of having regular interactions with hospitals and developing relationships with them, which could over time unintentionally create a bias towards hospitals in the district.

In the area of quality of care, the cases in this study showed several issues in quality. In the first mediated case, the hospital missed the initial signs of the patient going into shock. In two cases from the same private hospital, patients complained of delay in diagnosis ranging from 60 to 80 days. The third mediated case revealed poor quality of a clinic's facilities, with a chair breaking on a patient. The case of the woman whose son died of leukemia showed poor communication between the doctors and the patient's family, with the woman complaining about doctors explaining the situation in terms she did not comprehend.

It is difficult to know whether or how these disputes impacted the quality of care in the hospitals where they occurred. One of the mediators was confident that quality improvements were made within hospitals after mediation, but uncertain about the extent to which lessons learned were shared with other facilities because hospitals want to protect their public images.<sup>1163</sup> Egregious cases in the US are also generally sealed to protect reputations of hospitals as well.<sup>1164</sup> In interviews with physicians and hospital administrators, they said that hospitals make quality improvements internally following these types of disputes.<sup>1165</sup> One hospital official gave an example of changing the standards of care after a case from orthopedic surgery went to court. In this case, the physicians had followed the standard of care, but after the case, they realized the standard

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<sup>1163</sup> MDMC Mediator, Interview No. 088, 2017.

<sup>1164</sup> Thanks to Benjamin Liebman for pointing this out.

<sup>1165</sup> Director of Obstetrics, Interview No. 059; Medical Affairs Office Employee, Interview No. 063; Full Mediation (Delayed Colon Cancer Diagnosis), Interview No. 41; MDMC Mediator, Interview No. 088.

needed to be updated and shared this finding at a yearly meeting of orthopedists. As a result of changes in the standards, there were better patient outcomes for this procedure.<sup>1166</sup>

The MDMC in this study does not collect medically relevant statistics on their cases – they collect information on the number of people they receive in their office, the number of cases registered with them, the number of successfully mediated cases, the mediation success rate, and the amount of compensation.<sup>1167</sup> They report their data to the local justice bureau, though sometimes the local health and family planning commission also requests it.<sup>1168</sup>

The challenge of linking medical disputes to quality of care is also an issue in the American system, which has been criticized for focusing too much on altering laws for compensation instead of translating disputes into quality improvements.<sup>1169</sup> Because the Chinese hospital and government system is more centralized, it actually might be more poised to collect massive amounts of data, analyze it, and implement system-wide quality improvements. Since the MDMCs already collect information on disputes, adding this function to their data collection methods would be an easy way to generate more information about trends in disputes and could lead to improving the health care system.

Despite the shortcomings of the MDMCs, they provide a preliminary base on which medical dispute resolution can be improved over time. This particular MDMC is less than one decade old, so it is important to remember that strong institutions built on

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<sup>1166</sup> Medical Affairs Office Employee, Interview No. 063.

<sup>1167</sup> MDMC Mediator, Interview No. 088.

<sup>1168</sup> MDMC Mediator.

<sup>1169</sup> Frank Sloan and Lindsey Chepke, “From Medical Malpractice to Quality Assurance | Issues in Science and Technology,” *Issues in Science and Technology* (blog), accessed May 16, 2017, <http://issues.org/24-3/sloan/>.

procedures and principles take time to develop. The progress already made in access and advocacy is notable, and while procedures are still weak, localities have continued to pass regulations to improve them, showing promise for continued future reforms to strengthen procedural rigor in the committees.

However, without allowing a more active civil society to flourish, truly equal medical dispute resolution may not be achievable. This is because civil society can provide patient advocacy independent of the state, which in the current system is not attainable. Patient advocacy organizations hold the potential to address many of the issues the state alone is unable to fully resolve. These organizations can provide education for patients and families on health conditions, raise funds for medical research and patients in need, provide legal counseling and advocacy for pursuing a medical malpractice case<sup>1170</sup>, and offer places for emotional healing and community around illnesses.

In the current state of affairs, the Party-state is unable to fulfill these roles as it already attempts to do too much— at once it governs hospitals, insurance companies, and the court system; oversees mediation committees; and tries to provide some advocacy for patients. This observation resonates with scholarship on China being an over-responsive state,<sup>1171</sup> and additionally highlights not only the responsive part of this issue, but the breadth of issues the governing system tries to control. As the mediation committee’s experience shows, it is difficult to do all of these things well at once due to significant

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<sup>1170</sup> The need for advocacy in cases was also noted by Benjamin Liebman in 2013, so unfortunately there does not seem to have been a change since his study, and further, the trend of increasing restrictions on civil society (see next chapter) raise questions on whether this type of advocacy could be realized. See: Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” 244.

<sup>1171</sup> Liebman, 242–51.

conflicts of interests between these actors and the mission of the MDMC to be a neutral third party to mediate medical disputes.

Using the introductory framework in Chapter 1, the creation of MDMCs to respond to medical disputes illustrates adaptation of state institutions along the lines of slack and not tetheredness – while the MDMC is technically non-governmental organization and has some degree of independence, it still remains inextricably tied to government interests, and this limits its ability to move forward in advocacy efforts. While the Party-state may see fully independent civil society organizations as potential threats, these organizations could actually ease the burden on the state to perform all of these tasks, allowing the state to consolidate its institutions and thereby contributing to rather than detracting from social and regime stability. The next chapter provides close examination of how civil society is reacting to and resolving issues related to medical disputes.

## CHAPTER 9: CHINESE SOCIETY RESPONDS TO *YINAO*

This dissertation aims to understand the adaptability of the Chinese system, a term that refers not only to the government of China ruled by the Chinese Communist Party (CCP), but also to the society it oversees. The previous two chapters explored the Party-state's adaptability to address *yinao* at two levels – at the national level with legislation to address *yinao* and at the local level via the work of one urban, district-level Medical Dispute Mediation Committee (MDMC) to provide an improved channel for dispute resolution. This chapter assesses the response of Chinese society to *yinao*. The ability of Chinese society to respond and solve problems is crucial to systemic adaptability because governments and ruling parties alone cannot address every social problem.

There are two main challenges in analyzing the responsiveness of society. The first is defining society itself. The state-society dichotomy often used in political science implies the notion that state and society are separable. Such complete separability does not apply to any political system, let alone in China where according to one official, “there is no place where the government is not.”<sup>1172</sup> Society can be defined in a number of ways. First, it can be defined by the individuals that comprise it – in this study, the relevant individuals include patients and citizens (who may become patients at any time), health care workers, entrepreneurs, lawyers, and activists. There are also informal groups of individuals as well as organizations, such as NGOs representing patient needs and professional organizations for health care workers. Additionally, society can be defined by where it lives – both in the physical world as well as in cyberspace.

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<sup>1172</sup> Shanghai Legal Employee, Interview No. 36.

There is also the question of how to define the “responsiveness” of society to *yinao*. Responsiveness can be to the direct fallout from individual events – for example, thousands of online comments responding to an incident of violence against health care workers. Responsiveness can also aim to solve the problems that contribute to *yinao*, covered extensively in Chapter Four and summarized in Table 19.

**Table 19: Problems Contributing to *Yinao***

Challenges Facing Patients	Challenges Facing Clinicians
<ul style="list-style-type: none"> <li>• Poor access for rural residents to better health care in urban system, for all citizens competing to get enough time with physicians in public hospitals</li> <li>• High out-of-pocket costs</li> <li>• Poor health care literacy</li> <li>• Dispute resolution system that favors hospitals</li> <li>• Poor knowledge about legal rights and justice system</li> <li>• Unaddressed mental health issues</li> </ul>	<ul style="list-style-type: none"> <li>• High patient volume</li> <li>• Incentives to overcharge patients for medicine and tests, undervalue time spent with patients, and accept bribes from patients and pharmaceutical companies</li> <li>• Little to no communication skills training</li> <li>• Mistrust facing them generated by media coverage of corruption</li> <li>• Being placed in the middle of money and therapeutic decisions</li> </ul>

Both types of responsiveness are important. The first type of responsiveness to individual events reveals the nature of expression around *yinao*. Citizens use both online and offline spaces to express their feelings about the problem – who they feel is responsible, how the issue should be dealt with, etc. Providing space to vent is important because it provides a “safety valve” for draining off hostile and aggressive sentiments.<sup>1173</sup> It also reveals the extent to which the CCP allows a diversity of expression in response to *yinao*, because what we are able to view online is content that has not been deleted by official censors.<sup>1174</sup> The second type of responsiveness to the issues contributing to *yinao* indicates society’s ability to solve problems, which is necessary for adaptability to occur.

<sup>1173</sup> Coser, *The Functions of Social Conflict*, Proposition 2.

<sup>1174</sup> This is generally true as official censors are fast to delete any content deemed unacceptable. King et al. developed a remarkable technology that was able to catch commentary prior to official deletions. For more information on the tactics and decisions used by official censors, see: Gary King, Jennifer Pan, and Margaret E. Roberts, “How Censorship in China Allows Government Criticism but Silences Collective

This chapter examines both types of responsiveness in both individuals and organizations as well as within physical and cyber spaces. The first two sections focus primarily on the ability of individuals to express themselves: the first section covers the responses of netizens, while the second section examines the responses of health care workers. The last two sections examine how entrepreneurs and civil society groups innovate to address the problems contributing to *yinao*. Admittedly, casting such a wide analytical net hinders the ability to deeply cover any one of these areas. The goal of this chapter, however, is to provide a broad picture of the relevant social actors and their responses as an initial assessment of society's responsiveness as well as to provide a foundation for future research focusing on each of these topics.

Much of the information used for this chapter comes from Chinese academic literature because to my knowledge, there have been very few, if any, studies in the English-language literature thus far about social responses to *yinao*. In addition to research by Chinese scholars, I use a number of Chinese Internet platforms and mobile applications for this research as well as information gleaned from interviews and news media on developments in each of these areas. I argue that individuals and organizations (both formal and informal) in Chinese society, despite constraints they may face in social organization, are still capable of expressing their opinions about and solving issues contributing to *yinao*; in other words, there is evidence that Chinese society is adapting to effectively address *yinao* and its underlying issues.

### **The Debate Online – Netizens React to *Yinao* Incidents**

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Expression,” *American Political Science Review* 107, no. 02 (May 2013): 326–43, <https://doi.org/10.1017/S0003055413000014>.

Before launching into the debate around *yinao* in cyberspace, it is first important to understand the different platforms available for Chinese citizens online to express themselves. There are social media sites like the popular Weibo (the Chinese version of Twitter) and RenRen Wang (the Chinese version of Facebook, though no longer as popular as it once was). Since its inception in 2011, WeChat (a sort of hybrid of Facebook and Whatsapp), which offers many functions including personal profiles, friends' newsfeed, and instant messaging, has become one of the most widely used social media sites in the world, with a reported 938 million monthly active users as of the first quarter of 2017.<sup>1175</sup> Netizens also frequent the bulletin board systems (BBS) websites, such as Zhihu, Tianya Club, Xici Alleyway, and Kdnet (Kaidi), to express their opinions. On a BBS site, users are not restricted in the length of their posts, as they are on Weibo and WeChat, and posts are often location-based (i.e. Shanghai) or topic-based (i.e. *yinao*).

Additionally, Chinese netizens can also comment on news articles from official networks like *Xinhua News* to commercial networks like *Tencent News* and *Phoenix News*. There are also popular sites such as *Netease* (Wangyi) and *Headlines Today* (Jinri Toutiao) that aggregate popular news stories from other news networks. Stories from these aggregate sites often garner thousands of comments. For example, a news story posted on Headlines Today on the brutal murder of Dr. Chen Zhongwei by a former patient received over 23,000 comments.<sup>1176</sup> Readers of these websites often comment under usernames, not with directly identifiable information, though most websites now

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<sup>1175</sup> "Facebook Hits 2 Billion-User Mark, Doubling in Size since 2012," *Reuters*, June 28, 2017, <http://www.reuters.com/article/us-facebook-users-idUSKBN19I2GG>.

<sup>1176</sup> Chen Yuanyuan, "Guangdong Bei Kan Yisheng Qiangjiu 43 Xiaoshi Hou Qu Shi, Jinji Paicha You Qianzai Shangyi Qinxiang Renqun 广东被砍医生抢救 43 小时后去世 当地紧急排查有潜在伤医倾向人群 [Doctor Stabbed in Guangzhou Dies after 43 Hours of Attempted Rescue, Local Authorities Are Compiling a List of Potential Groups with Tendencies to Harm Physicians]," *Jinri Toutiao* (originally from *Xinjing Bao*), May 8, 2016, <http://www.toutiao.com/a6281999931759788289/>.

require registration with a phone number, which can be traced to the individual’s true identity.

**Table 20: Platforms for Online Discussion**

Type	Subtype	Function	Examples
Social Networking	Microblog	Tweeting short comments and articles	Sina Weibo
	Personal Social Networking	Adding friends, posting to platform thoughts and articles that only friends can see, instant messaging, online payment	Weixin, RenRen Wang
	Bulletin Board Systems (BBS)	Debate social and community topics, can search and view without being “friends” with other users	Zhihu, Tianya Club, Xici Alleyway, Kdnet
News	Official News		<i>Xinhua, People’s Daily</i>
	Commercial News		<i>Tencent QQ, Phoenix</i>
	Aggregate News		<i>Headlines Today, Netease</i>

In a country where it is difficult to conduct public opinion surveys and freedom of speech and assembly remain restricted, scholars and even the Chinese government itself often look to online debate as a proxy for public opinion. However, the conclusions that can be drawn from studies based on Internet expression are limited, not only because the Internet is censored in China, preventing us from seeing the full range of discussion, but also because online commentary has its own intrinsic limitations in reflecting public opinion anywhere. Studies have found that online commentary tends to generate negativity, especially if users can post anonymously,<sup>1177</sup> so researchers using online commentary as their sample must consider this negative bias. Further, scholars note that that people who tend to respond to certain types of news stories likely have a bias towards the topic to begin with.<sup>1178</sup> Online comments are not like public opinion surveys,

<sup>1177</sup> Ashley A. Anderson et al., “The ‘Nasty Effect:’ Online Incivility and Risk Perceptions of Emerging Technologies.,” *Journal of Computer-Mediated Communication* 19, no. 3 (April 2014): 373–87; Arthur D. Santana, “Virtuous or Vitriolic.,” *Journalism Practice* 8, no. 1 (January 2, 2014): 18–33.

<sup>1178</sup> Jiafa Lu, Jianhua Gu, and Shunlu Yang, “Liang Lie Yinao Shijian Wangluo Pinglun Guandian Diaocha Fenxi 两列医闹事件网络评论观点调查分析 [The Investigation and Analysis of the Networks Comments of Two Cases of Yinao],” *Medicine and Philosophy* 33, no. 454 (May 2012): 32; Cheng Hui, “Dangqian Shehui Beijing Xia de Wangmin Xinli Fenxi 当前社会背景下的网民心理分析 [Analysis of Netizens’

in which respondents answer independently of each other - one comment may influence the whole string of responses.<sup>1179</sup> Also, different websites attract different types of users based on their sociopolitical views as well as location. Just as liberal-minded users tend to read the *New York Times* and Washingtonians may be more inclined to read the *Washington Post*, Nanjingers may be more inclined to post on the BBS site Xici Alleyway<sup>1180</sup> and a more informed audience may read *Phoenix News*.<sup>1181</sup> The sample of comments therefore reflects all of these biases.

Despite the limitations of online discussion for analysis, studying it can still increase our understanding of the contours of the debate surrounding social issues. For example, in the case of *yinao*, online debate can reveal whom citizens may blame for *yinao* incidents, and how they feel these incidents should be handled. In China, the discussion posted online also shows the scope of acceptable debate around an issue, since official censors quickly delete anything deemed to be politically unacceptable or that invokes collective action.<sup>1182</sup>

There have been several studies around online commentary about *yinao* responses, whose main findings I highlight and analyze in the following paragraphs. The first study uses commentary on Tianya Club on four high-profile incidents of violence against health care workers: 1) the notorious Wenling incident in which a patient who was upset

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Mentality against the Current Social Backdrop],” *Journal of Chongqing University of Science and Technology (Social Sciences Edition)* 1 (2011): 69,72.

<sup>1179</sup> Lu, Gu, and Yang, “Liang Lie Yinao Shijian Wangluo Pinglun Guandian Diaocha Fenxi 两列医闹事件网络评论观点调查分析 [The Investigation and Analysis of the Networks Comments of Two Cases of Yinao],” 32.

<sup>1180</sup> Television Network Employee, Interview No. 25, 2015.

<sup>1181</sup> Lu, Gu, and Yang, “Liang Lie Yinao Shijian Wangluo Pinglun Guandian Diaocha Fenxi 两列医闹事件网络评论观点调查分析 [The Investigation and Analysis of the Networks Comments of Two Cases of Yinao],” 32.

<sup>1182</sup> King, Pan, and Roberts, “How Censorship in China Allows Government Criticism but Silences Collective Expression.”

following his surgery stabbed three doctors, killing one (2013)<sup>1183</sup>; 2) At Zhejiang University Second Affiliated Hospital, an angry mother and her daughter beat a nurse, resulting in head trauma and near-miscarriage (2016); 3) Two local ranking officials in Nanjing beat a nurse, resulting in partial paralysis of her legs (2014); 4) More than 100 people forced a doctor to publicly march in humiliation for 30 minutes following the death of a patient from alcohol poisoning (2014).<sup>1184</sup>

The authors used a stratified sampling method to create a sample of 400 comments for analysis and then organized their findings based on the categories of social sentiments, social awareness, and behavioral tendencies. The predominant social sentiments found in this study were anger and hostility, which were directed towards both physicians and assailants. A little under a third of the comments in the sample (123 posts) expressed anger towards health care workers, expressing that beating them was the only way their attitudes would improve.<sup>1185</sup> A similar number of netizens (119) expressed anger about the violent incidents, feeling that they would only make doctor-patient relations worse. Even more netizens (131) in the sample called for strict punishment of assailants.<sup>1186</sup> At the same time, over 30% (143) criticized doctors in general for shirking responsibilities, poor attitudes, and accepting red envelopes (bribes).<sup>1187</sup>

In the area of social awareness, the study revealed a low level of trust towards various actors in society. Netizens doubted the objectivity of media coverage of these events, suspected that the poor attitudes of physicians instigated these attacks, and

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<sup>1183</sup> Chen, “Wenling Murder and Assault of Physicians: Our Community Is Too Weak [温岭杀医事件受伤医生：我们这个群体太弱势].”

<sup>1184</sup> Changbao Pan and Juxiang Hua, “Study on Social Mentality from Internet Public Opinion of Violence against Medical Staffs,” *Medicine and Philosophy* 37, no. 4A (April 2016): 41–44.

<sup>1185</sup> Pan and Hua, 41.

<sup>1186</sup> Pan and Hua, 41–42.

<sup>1187</sup> Pan and Hua, 42.

doubted the credibility of local justice bureaus.<sup>1188</sup> Issues with the local justice bureau became especially relevant in the Nanjing case because the assailants were officials, so netizens felt that the justice system was protecting them.<sup>1189</sup> Netizens also revealed their concerns about differences in social power and inequality, expressing that patients have nowhere to turn when medical accidents occur, and that patients are a disadvantaged group in society.<sup>1190</sup> Comments also recognized that nurses also have a low social status, so when they face assault, they are powerless in protecting their rights and must submit themselves to humiliation.<sup>1191</sup>

In the area of behavioral tendencies, the authors found that a higher number of netizens in the sample tended to advocate using violence to respond to violence (*yi bao zhi bao* – 以暴制暴).<sup>1192</sup> Some conveyed the idea that resorting to violence was the most effective way to retaliate against physicians, and others even said it would be appropriate for physicians to fight back.<sup>1193</sup> Some netizens also reasoned that making a scene out of a medical dispute helps ensure the fair handling of the issue by bringing attention to it.<sup>1194</sup> Other netizens also favored strict punishment for assailants (71 posts) and having rational discourse about the issue (25), but in this sample, there were about a third fewer of these

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<sup>1188</sup> Pan and Hua, 42.

<sup>1189</sup> Changbao Pan and Juxiang Hua, “Survey on the Online Public Opinion Based on Nurse-Hurting Incidents in Jiangsu Province,” *Medicine and Society* 29, no. 3 (March 2016): 37–40.

<sup>1190</sup> Pan and Hua, 42.

<sup>1191</sup> Pan and Hua, “Study on Social Mentality from Internet Public Opinion of Violence against Medical Staffs,” 42.

<sup>1192</sup> Pan and Hua, “Study on Social Mentality from Internet Public Opinion of Violence against Medical Staffs.”

<sup>1193</sup> Pan and Hua, 42.

<sup>1194</sup> Pan and Hua, 42.

comments than those that favored *yinao* for dispute resolution (48) and using “violence to address violence” (97).<sup>1195</sup>

Another study using online news comments examined the coverage of two *yinao* incidents on two different websites. Both incidents occurred in 2011, one in Shanghai and one in Beijing. In Shanghai a deceased patient’s family arranged wreaths and assembled a funeral altar at the main door of the hospital and then charged into the hospital, attacking health care workers and injuring ten in total.<sup>1196</sup> In the Beijing incident, a patient stabbed his doctor 21 times, but fortunately the doctor survived.<sup>1197</sup> The authors collected 2,324 comments in total for four news stories, two for each incident, one from *Tencent News* and one from *Phoenix News*.<sup>1198</sup> Their analysis reveals that a plurality of the comments (40.36%) recognized that the hospital was responsible for the incident.<sup>1199</sup> Only 2.71% of the comments criticized *yinao* and 7.92% expressed sympathy for the hospitals.<sup>1200</sup> Other respondents (14.11%) felt the incident reflected broader social issues.<sup>1201</sup> The authors acknowledge that the results of their study may be particularly negative, since the study uses online commentary to news events and that other studies have shown more positive attitudes towards hospitals.<sup>1202</sup>

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<sup>1195</sup> Pan and Hua, “Survey on the Online Public Opinion Based on Nurse-Hurting Incidents in Jiangsu Province,” 42.

<sup>1196</sup> Yiman Liu, “Shanghai ‘Yinao’ Harmful Incident Investigation, Police Clearly Did Not Label It as Yinao,” *Tencent News*, February 11, 2011, <http://news.qq.com/a/20110211/000561.htm>.

<sup>1197</sup> Shangguan Lanxue, “The Price of Blood: Tongren Hospital Yinao Incident,” *news.ifeng.com*, September 23, 2011, [http://news.ifeng.com/shendu/nfzm/detail\\_2011\\_09/23/9416051\\_0.shtml](http://news.ifeng.com/shendu/nfzm/detail_2011_09/23/9416051_0.shtml).

<sup>1198</sup> Lu, Gu, and Yang, “Liang Lie Yinao Shijian Wangluo Pinglun Guandian Diaocha Fenxi 两列医闹事件网络评论观点调查分析 [The Investigation and Analysis of the Networks Comments of Two Cases of Yinao],” 31.

<sup>1199</sup> Lu, Gu, and Yang, 31.

<sup>1200</sup> Lu, Gu, and Yang, 31.

<sup>1201</sup> Lu, Gu, and Yang, 31.

<sup>1202</sup> Lu, Gu, and Yang, 32.

While online discourse is prone to negativity and extremes, netizens could direct their negativity in a number of different directions: towards the assailants, the doctors, government departments, the hospitals, etc. These studies show that the online commentary is directed at all sides of the issues, demonstrating that that within the online debate forums, there is a wide range of voices permitted by the government. There is clear disillusionment with official parties involved – the hospitals, the media, the justice departments. This disillusionment with official institutions also makes it less surprising that many netizens would condone violence, feeling it is the preferable way for dispute resolution – in the first study, many advocated *yinao* and in the second, very few condemned it.

Favoring violence and indiscipline for dispute resolution may be more than just an expression of anger; it may be challenge to future legal reform. Choosing violence for dispute resolution is certainly not unique to China: Célestin Monga observes in Francophone Africa that citizens in authoritarian systems resort to their own crafty ways to pursue their needs.<sup>1203</sup> He argues that this becomes a particular challenge when political systems open up because there is a “profound civic deficit,” and the state-resistant behaviors bred over many years are not so easily changed.<sup>1204</sup> This idea resonates in China’s case because *yinao* represents a learned behavior to cope with a system that has low social trust. This is important because even if China begins to build a more credible legal system, there may be a lag in the adjustment of citizen behavior to this new system due to the behaviors learned under the old one.

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<sup>1203</sup> Célestin Monga, “Civil Society and Democratisation in Francophone Africa,” *The Journal of Modern African Studies* 33, no. 3 (1995): 363.

<sup>1204</sup> Monga, 363.

## **Health Care Workers Respond**

Health care workers have responded to *yinao* through professional organizations and networks, changing their clinical behavior, and expressing their opinions and frustrations in online forums. While patients are an amorphous group, with members constantly fluctuating as they become ill and recover from illnesses, health care workers are a more permanent and institutionalized social group. In addition, because many health care workers are employed at public hospitals, they have ties to official government institutions. The constant and official nature of these groups enables them to organize into both formal and informal groups, which also helps facilitate more coherent responses to *yinao*. Of course, independently, physicians also respond online on the social media forums described above.

### Organizational Responses of Health Care Workers

There are several important official organizations for health care workers in China – the Chinese Medical Association (CMA – originally founded in 1915, this quasi-government association also conducts the controversial medical reviews for malpractice claims), the Chinese Medical Doctors Association (CMDA – founded in the early 2000s), the Chinese Nurses Association (CNA), and the Chinese Hospital Association (CHA). There are also websites and apps where doctors commonly post, read news in their profession, and find new information and resources for their clinical specialties. These include Lilac Garden (Dingxiang Yuan - 丁香园) and Medical World (Yixue Jie - 医学界).

In responding to *yinao* directly, professional organizations have come together in public statements condemning *yinao* and have also conducted research on the issue. In

2015 the Chinese Nurses Association and the Chinese Hospital Association released a joint statement in response to the nine violent incidents that occurred in a ten-day span from late May to early June.<sup>1205</sup> The statement condemned the violent actions and called upon relevant government entities to follow existing regulations to punish those responsible for these crimes.<sup>1206</sup>

These associations have also conducted research to assess the scope and impact of medical violence on the health care profession. The Chinese Hospital Association (CHA) conducted a nationwide survey specifically about violence against physicians (Survey of the Situation of Violent Attacks against Health Care Workers in Hospital Settings).<sup>1207</sup> About every two years since 2009, the Chinese Medical Doctors Association has conducted a nationwide survey for its white paper on the state of the medical profession in China,<sup>1208</sup> part of which focuses on medical violence.<sup>1209</sup>

Health care workers have also participated in their own protests against the violent attacks and called for better security. For example, following the Wenling incident in 2013, several hundred health care workers from the hospital where the incident occurred reportedly participated in a protest.<sup>1210</sup> These demonstrations have also

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<sup>1205</sup> Chinese Doctors Association and Chinese Nurses Association, “Zhongguo Yishi Xiehui, Zhonghua Huli Xuehui Guanyu Qianze Baoli Shangyi de Lianhe Shengming [中国医师协会、中华护理学会关于谴责暴力伤医的联合声明] Joint Statement Condemning Medical Violence from the Chinese Medical Doctor Association and Chinese Nurses Association,” Chinese Medical Doctor Association, June 10, 2015, <http://www.cmda.net/gongzuodongtai/zhinengbumen/2015-06-10/14644.html>.

<sup>1206</sup> Chinese Doctors Association and Chinese Nurses Association.

<sup>1207</sup> Jing Wu and Nuo Lu, “Survey Shows: China’s Incidents of Violent Injuries against Doctors Are Increasing Every Year [调查显示：中国暴力伤医事件逐年递增-法治频道],” Xinhua News, August 15, 2013, [http://news.xinhuanet.com/legal/2013-08/15/c\\_116961312.htm](http://news.xinhuanet.com/legal/2013-08/15/c_116961312.htm).

<sup>1208</sup> China Medical Doctor Association (中国医师协会), “White Paper on the State of the Medical Profession in China 《中国医师执业状况白皮书》.”

<sup>1209</sup> China Medical Doctor Association (中国医师协会).

<sup>1210</sup> Huai Ruogu and Li Qiumeng, “温岭数百医护人员抗议医疗暴力 [Several Hundred Health Care Workers in Wenling Protest Medical Violence],” *Beijing Times*, October 29, 2013, [http://epaper.jinghua.cn/html/2013-10/29/content\\_35619.htm](http://epaper.jinghua.cn/html/2013-10/29/content_35619.htm).

been reported in other parts of China.<sup>1211</sup> While it is difficult to trace exactly how these activities may have influenced policy decisions on *yinao*, recent policy decisions to increase crackdowns on *yinao*<sup>1212</sup> seem to reflect responsiveness to physicians' complaints.

### Behavioral Responses of Health Care Workers

The aforementioned survey from the Chinese Hospital Association revealed that 28.4% of health care workers admitted to a tendency towards prescribing treatments for patients that protect themselves from liability, and that almost 40% of health care workers have considered or are planning to change professions.<sup>1213</sup> Yet it is also important to point out that these figures are not exceptional; a recent survey of American physicians showed that 49% of physicians were often or always experiencing feelings of burn-out and that 48% of physicians plan to “cut back on their hours, retire, take a non-clinical job, switch to ‘concierge’ medicine, or take other steps limiting patient access to their practices.”<sup>1214</sup> The following sections explore the practice of defensive medicine as a result of *yinao* and potential issues facing the medical profession.

### *Defensive Medicine*

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<sup>1211</sup> “河北一医院患者家属殴打软禁医生，上百医护人员集体游行抗议 Hebei - Hospital Patient and Family Assault and Trap a Physician in His Home, Over 100 Health Care Workers March in Protest,” The Paper, December 19, 2015, [http://www.thepaper.cn/newsDetail\\_forward\\_1410944](http://www.thepaper.cn/newsDetail_forward_1410944); “Henan Luanchuan County Healthcare Workers Take to the Streets to Condemn Violent Attacks on Healthcare Workers [河南栾川县医护人员上街谴责“暴力袭医”],” Tencent News, January 25, 2015, <http://news.qq.com/a/20150125/006913.htm#p=1>.

<sup>1212</sup> National Health and Family Planning Commission, “Circular on Publication of Special Action Plan for Strict Crackdown on Illegal Crimes Interfering with Medical Institutions [关于印发严厉打击涉医违法犯罪专项行动方案的通知].”

<sup>1213</sup> Wu and Lu, “Survey Shows: China’s Incidents of Violent Injuries against Doctors Are Increasing Every Year [调查显示：中国暴力伤医事件逐年递增-法治频道].”

<sup>1214</sup> The Physicians Foundation and Merritt Hawkins, “2016 Survey of America’s Physicians: Practice, Patterns, & Perspectives,” 2016, 7, [http://www.physiciansfoundation.org/uploads/default/Biennial\\_Physician\\_Survey\\_2016.pdf](http://www.physiciansfoundation.org/uploads/default/Biennial_Physician_Survey_2016.pdf).

The practice of defensive medicine<sup>1215</sup> occurs in health care systems everywhere in response to the threat of litigation, but in China violent incidents have also contributed to defensive practices.<sup>1216</sup> In order to better understand the link between *yinao* incidents and how it affects clinical practice, I conducted a series of interviews at a 3A hospital with a group interview with hospital midwives<sup>1217</sup> and the head of the Obstetrics Department. I also shadowed a physician of Traditional Chinese Medicine (TCM) during his office hours.

When I asked the group of midwives why they felt the number of *yinao* incidents had decreased in the past couple of years, they did not mention new laws or increased police presence, but instead attributed this change to an increased caution around patients.<sup>1218</sup> In other words, they believe that their behavioral response is the primary reason that the *yinao* issue has improved.

One of the midwives recounted an *yinao* story that had traumatized the entire department. They had saved a premature baby at 26 weeks after the mother had been in a traffic accident. To the horror of the staff, the parents pursued a medical dispute against the staff of both Obstetrics and Pediatrics Departments for saving the child since the cost of the medical expenses for the premature child and likely continuing costs from further complications were impossible for the family to pay. The parents refused to remove the child from the hospital when he was ready for discharge. Moreover, the father would lie

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<sup>1215</sup> According to Studdert et al., defensive medicine is defined as a “deviation from sound medical practice that is induced primarily by a threat of liability.” See: David M Studdert et al., “Defensive Medicine among High-Risk Specialist Physicians in a Volatile Malpractice Environment,” *Jama* 293, no. 21 (2005): 2609.

<sup>1216</sup> Wu and Lu, “Survey Shows: China’s Incidents of Violent Injuries against Doctors Are Increasing Every Year [调查显示：中国暴力伤医事件逐年递增-法治频道].”

<sup>1217</sup> In China, midwives in hospitals (助产士, *zhuchan shi*) are specially trained nurses in childbirth that can independently deliver children and care for pregnant women. Obstetricians are called in when there are complications in the pregnancy or delivery.

<sup>1218</sup> *Ibid.*, 2.

down on the floor at the front desk of Obstetrics Department in protest of the hospital, hoping to attract the attention of others. Finally the hospital agreed to settle the expenses for the dispute and the parents agreed to take the child. The nurses said some parents leave their children in the hospital for several years because of these disputes over the costs.<sup>1219</sup> While a lot of the focus on the patient-doctor relationship in China centers on patients' lack of trust in physicians, incidents like these lead health care workers to distrust patients. While the caution bred by mistrust may decrease individual *yinao* incidents, it can ultimately contribute to worsening patient-doctor relations.

The head of the Obstetrics Department where these midwives practiced also echoed the cautious sentiment of her staff, stating that she determines whether or not to perform riskier procedures based on her perception of her patients. For example, she mentioned she would soon be performing a high-risk procedure on a 36-year-old woman who was 26 weeks pregnant with twins and experiencing premature dilation of her cervix (cervical incompetence). Without taking any action, the babies would likely not survive. One solution to cervical incompetence is to suture the cervix closed, but with twins, this procedure becomes much riskier, to the point that it is not advised.<sup>1220</sup> The patient was also high-risk because of her age as well as her history of heart problems. However, the physician had agreed to perform this procedure because the patient told her directly that she trusted her. I interviewed this physician both before and after this procedure, and she reported the procedure had so far been successful.<sup>1221</sup>

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<sup>1219</sup> Midwives Group, Interview No. 053, 53.

<sup>1220</sup> "Incompetent Cervix Treatments and Drugs," Mayo Clinic, accessed June 11, 2017, <http://mayoclinic.org>.

<sup>1221</sup> 2.2.16

Another physician readily admitted that he turns away suspicious-looking patients, justifying his actions with an old saying from Mencius: “A wise man does not stand beside a collapsing wall.”<sup>1222</sup> He explained that if he allowed himself to see patients who brought him trouble, it would ruin his ability to see other patients in the future; although he turns away some patients, by doing so, he is serving more.<sup>1223</sup> When asked how he determined which patients would cause trouble, he said he examines their *wu guan* (five facial sensory features – eyes, ears, nose, mouth, and eyebrows) and from this, he can determine their character.

While I shadowed this physician in his clinical practice, one of the patients did really not make eye contact with us and kept shifting his eyes back and forth during the consultation. The physician sent him to another department to seek treatment instead. Later he said that with these types of shifty people, which he encounters about once or twice per week, he adopts the strategy of saying “good-sounding” things to them, listening to them, and then telling them their condition is not within his scope of care, ultimately sending them away.<sup>1224</sup> This physician believes that he has never experienced *yinao* first hand because he can detect problematic patients. Further, like the midwives in the Obstetrics Department, he attributes his practice of caution to the decreasing number of *yinao* incidents.<sup>1225</sup>

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<sup>1222</sup> Chinese Attending Physician, Interview No. 054. Saying: *Junzi bu li weiqiang zhixia* 君子不立危墙之下.

<sup>1223</sup> 1.31.16, p. 2.

<sup>1224</sup> Morning Clinic Chinese Medicine, Interview No. 57, 2016.

<sup>1225</sup> Chinese Attending Physician, Interview No. 054.

Even though the officials have attributed state policies to recent decreases in *yinao* incidents,<sup>1226</sup> these interviews suggest that it is also possible that part of the reason the number of incidents may be decreasing is because health care workers over time have become increasingly skilled at practicing defensive medicine and avoiding these disputes. Regardless of whether the state adapts its policies or not, the health care workers affected by *yinao* have taken it into their own hands to adapt to the situation, and future policy changes must take into account the culture of defensive medicine currently present in Chinese health care.

It is important to note, however, that even though health care workers felt that they individually became more skilled at avoiding disputes, it is difficult to assess how this form of adaptation impacts the system overall. For example, if one physician tells a problematic patient to go elsewhere, even though the problem is no longer his, he simply shifts the patient to another physician. It is unclear how this buck-passing may impact this system overall: while it may deter some patients who sought to attempt *yinao* for profit, it may make some others even angrier or dismay patients from pursuing care at all.

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<sup>1226</sup> National Health and Family Planning Commission, “2016年2月24日国家卫生计生委例行新闻发布会文字实录 - 中华人民共和国国家卫生和计划生育委员会 [February 24, 2016 National Health and Family Planning Commission Routine Press Conference Transcript]”; “National Health and Family Planning Commission: Serious Attacks against Physicians and *Yinao* Incidents Overall Show a Decreasing Trend [卫计委：严重伤医和医闹事件总体呈现减少趋势],” China News, February 24, 2016, <http://www.chinanews.com/gn/2016/02-24/7771034.shtml>.

## *Potential Threats to the Future of the Medical Profession*

Physicians have also expressed in mainstream and social media<sup>1227</sup> the desire to leave the profession and have discouraged others from entering it. In 2013 Dr. Yu Ying from Peking Union Medical College Hospital, one of the most prestigious hospitals in China, attracted lots of media attention when she resigned, citing both personal reasons and issues in the health care system.<sup>1228</sup> Medical World, one of the most popular health care sites and online forums for health care workers, published a nurse's heartfelt story upon her resignation from a public 3A hospital, documenting the hardships of her profession and expressing her relief at how she no longer has to fear violent incidents.<sup>1229</sup> Physicians on Tianya Club, in postings responding to violent incidents against health care workers, expressed that young doctors should quickly leave the profession, and the older ones should simply bide their time and retire as soon as possible.<sup>1230</sup>

However, there is no definitive evidence that there has been a general trend of attrition in health care workers due to *yinao* based on available data.<sup>1231</sup> Data on

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<sup>1227</sup> Pan and Hua, "Study on Social Mentality from Internet Public Opinion of Violence against Medical Staffs," 43.

<sup>1228</sup> Li Feiran, "Emergency Department Superwoman Not Playing with the System Anymore [急诊科女超人不和体制玩了-中国青年报]," *China Youth Daily*, June 19, 2013, sec. 10, [http://zqb.cyol.com/html/2013-06/19/nw.D110000zgqnb\\_20130619\\_1-10.htm](http://zqb.cyol.com/html/2013-06/19/nw.D110000zgqnb_20130619_1-10.htm); Laurie Burkitt, "Bloody Attack on Doctors Triggers Protest in China - China Real Time Report - WSJ," *The Wall Street Journal*, October 28, 2013, <http://blogs.wsj.com/chinarealtime/2013/10/28/bloody-attack-on-doctors-triggers-protest-in-china/>.

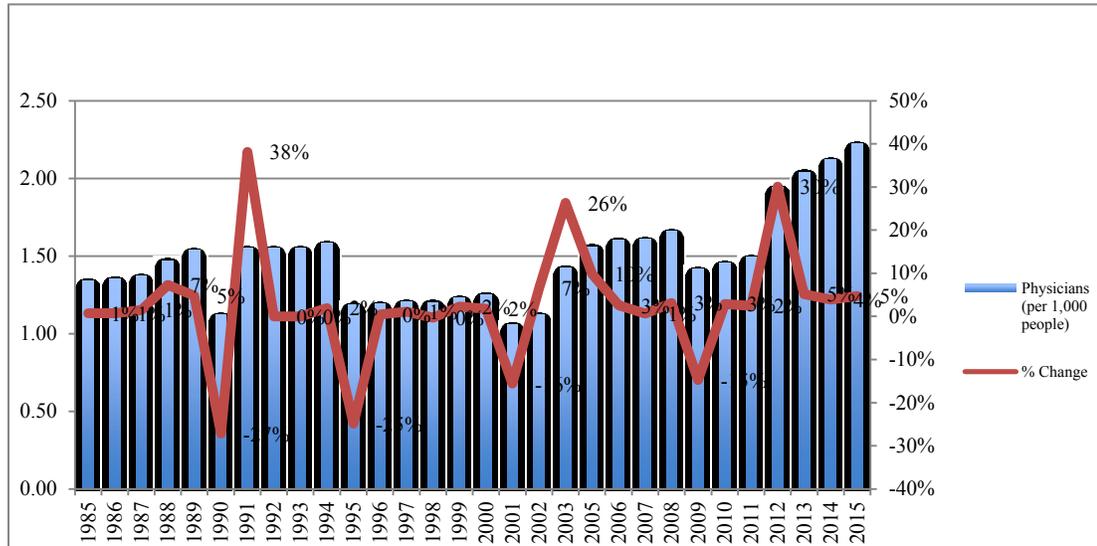
<sup>1229</sup> Xiaobing Yan, "A Nurse's Thoughts and Feelings Upon Resignation [一个护士的辞职心声]," *Yixue Jie* [医学界网站], June 11, 2015, <http://www.yxj.org.cn/article-46508-1.html>.

<sup>1230</sup> Pan and Hua, "Study on Social Mentality from Internet Public Opinion of Violence against Medical Staffs," 43.

<sup>1231</sup> According to the 2016 Health and Family Planning Statistics Yearbook published by the National Health and Family Planning Commission, the total number of health care workers (including doctors and nurses) and the ratio of health care workers per 1000 people, have in total been increasing over the past decade (see Tables 2-1-1 Number of Health Care Workers and 2-2-1 Per Thousand Population Number of Health Care Workers). However, these figures do not convey the differences in these rates based on clinical specialty, hospital type, or location (though location figures can be gleaned from local-level statistical yearbooks), so there were a declining trend in any of these specific areas, summary data obscure them. Yet even if these statistics on health care workers were decreasing, this trend could not necessarily be linked to *yinao* without further research since there are other reasons doctors may leave their profession (working

physicians per 1,000 people in China show that from 1985 to 2015, there has been a net increase in physician density (see Figure 37). The data show large fluctuations over time in China's physician density: double-digit decreases in 1990, 1995, 2001, and 2009 and double-digit increases in 1991, 2003, and 2012.

**Figure 37: China's Physician Density (per 1,000 people), 1985-2015**



The only change in data collection methodology during this period occurred in 2002, when a narrower definition for physician was used. Other than that I have found no change in methodology that can account for these dramatic changes. Another possible explanation is that in 2009, *yinao* was an especially heated issue in society,<sup>1232</sup> but it is difficult to link the decrease in the physician density ratio during that year to *yinao*. Even if physicians exited due to the public discourse and *yinao* incidents in 2009, there would have likely been lag time between when the incidents occurred and when physicians

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hours, salary, retirement, etc). See: National Health and Family Planning Commission, *China Health and Family Planning Statistics Yearbook 2016* 《中国卫生和计划生育统计年鉴2016》.

<sup>1232</sup> During this year the infamous Nanping incident in Fujian Province occurred (see: “Newest Announcement: Progress on the Nanping Yinao Incident [最新通告：南平医闹事件进展].” The year 2009 also represented a peak year in Baidu Index for searches on *yinao* (see Chapter 6 on Sources of Yinao).

exited the profession, casting doubt on the relationship between *yinao* and the decreasing physician density during that year. Despite the fluctuations in physician density, the net increase of the physician density ratio suggests that *yinao* has not caused an overall net decrease from 1985-2015 in physician density in China.

As a result of *yinao* and murders of physicians, health care workers have also discouraged others from entering the field. An iconic photo emerged on Weibo during the protests that followed the 2013 Wenling incident of a man wearing a white coat with the following message written on the back of it: “Don’t study medicine. Those who want to be promoted and get rich should walk another path. Those who fear death shouldn’t enter this door.”<sup>1233</sup> In a recent online survey of 764 physicians, 57.5% would not advise elementary school students to study medicine.<sup>1234</sup>

But once again, the data on enrollment and graduation rates do not exhibit alarming decreasing trends. Official statistics show mostly positive growth in both enrollment in medical majors and graduation figures over the past decade (Figures 38<sup>1235</sup> and 39<sup>1236</sup>). For enrollment in medical majors at the undergraduate, master’s and doctoral levels, there was a -3% growth rate in 2007 and almost no growth from 2011 to 2012, but it would be difficult to attribute these drops to *yinao*.

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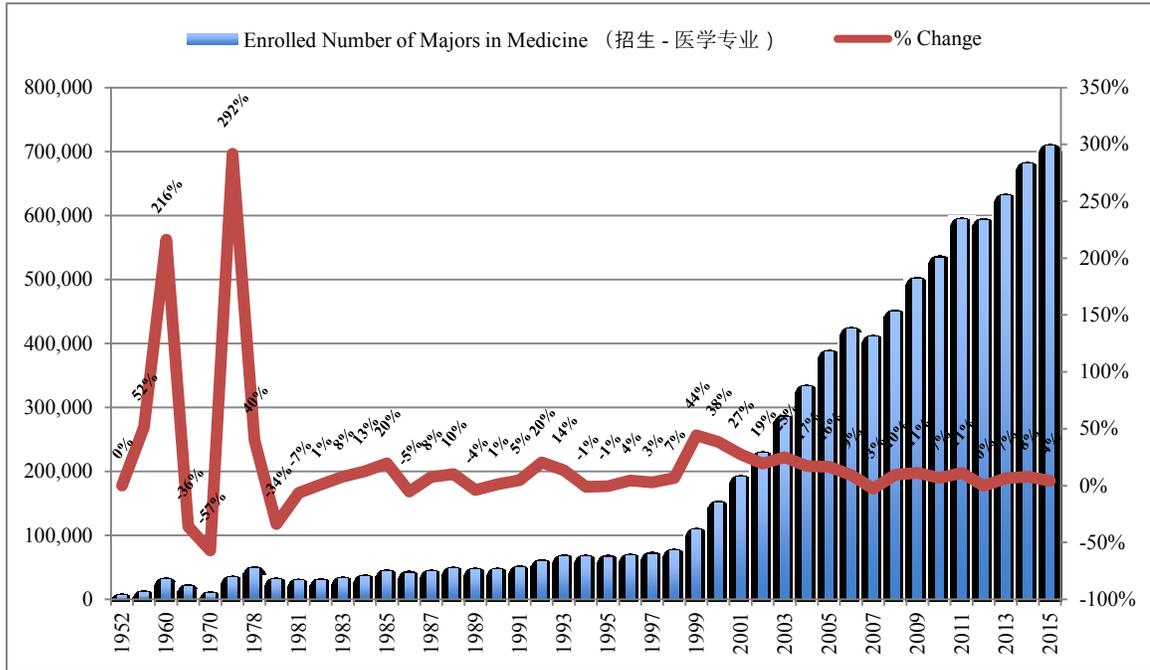
<sup>1233</sup> Burkitt, “Bloody Attack on Doctors Triggers Protest in China - China Real Time Report - WSJ.”

<sup>1234</sup> Yimaitong (Medlive), “作为医生，你会鼓励身边的孩子当医生吗？[As a Doctor, Would You Encourage Children to Become Doctors?],” Yimaitong (Medlive), June 1, 2016, [http://news.medlive.cn/all/info-news/show-128493\\_97.html](http://news.medlive.cn/all/info-news/show-128493_97.html).

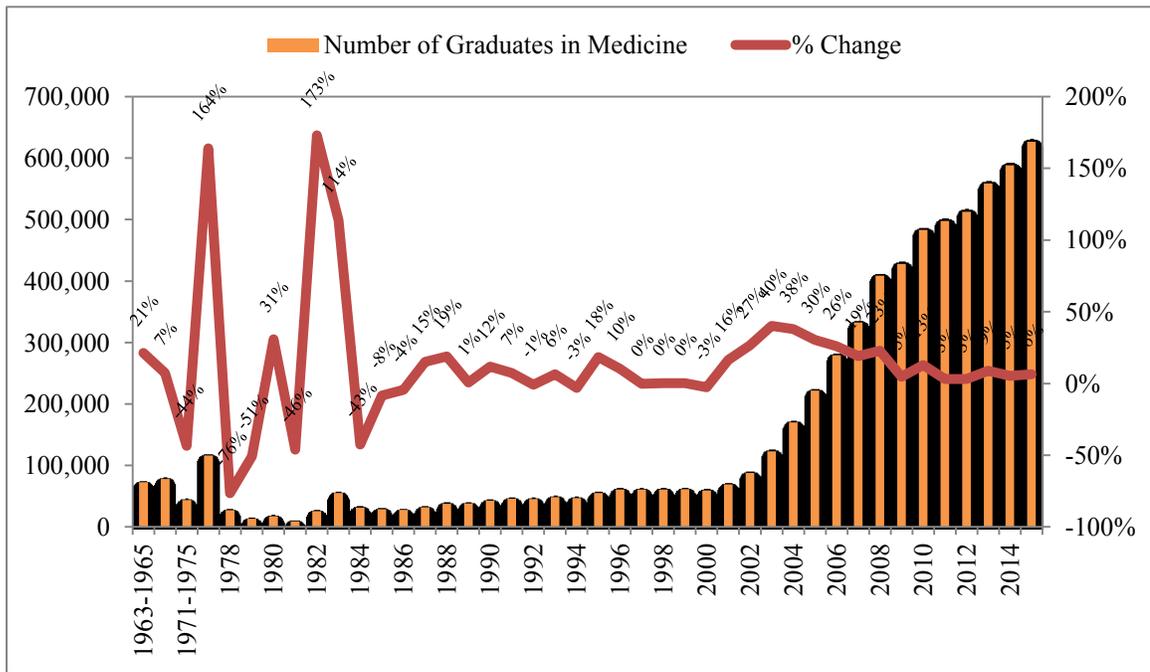
<sup>1235</sup> Data for Figure 38 based upon: National Health and Family Planning Commission, *China Health and Family Planning Statistics Yearbook 2016* 《中国卫生和计划生育统计年鉴2016》, Table 2-13-1 Students Newly Enrolled and Currently in Medical Major.

<sup>1236</sup> Data for Figure 39 based upon: National Health and Family Planning Commission, Table 2-13-2 Medical Major Graduation Figures.

**Figure 38: Number of Students Enrolled in Medical Majors  
At Institutions of Higher Learning**



**Figure 39: Number of Graduates in Medicine  
from Institutions of Higher Learning**



Besides concerns about enrollment, graduation, and attrition in the medical profession, there are also concerns that the most outstanding students no longer choose to become physicians, as the minimum standards for test score standards to enter into medicine has at times dropped and some medical programs cannot fill their slots.<sup>1237</sup> Fudan University School of Medicine Vice Dean Wang Ling cautions that this is generally not the case for prestigious schools.<sup>1238</sup>

The discussion above has shown that health care workers have responded to *yinao* by practicing defensive medicine and expressing the desire to leave the practice or advising others not to enter. Though it is difficult to assess the full scale and impact of these actions, their potential consequences on China's health care system are negative. Practicing defensive medicine can lead to higher costs for patients, breed mistrust, and make it difficult for high-risk patients to obtain care. While current available data cannot corroborate whether there is a relationship between *yinao* and fluctuations in physician density, medical school enrollment, and medical school graduation, if currently practicing physicians continue to advocate leaving the profession or outstanding students refuse to enter it due the dangers *yinao* has posed, China may not be able to meet the health care demands of its population in the future. The responsiveness of individuals in a society ultimately reflects the system the state has given them, and the types of responsiveness discussed above by physicians are not indicative of a system that enables healthy forms of problem solving and adaptation. Rather, such responses encourage self-preservation for survival in system that has largely failed to empower them.

### **Entrepreneurial Responses**

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<sup>1237</sup> “Are Outstanding Students Still Willing to Study Medicine? [优秀学生还愿意学医吗? ]” BIONNEWS, May 4, 2014, <http://www.bioon.com/trends/comment/595537.shtml>.

<sup>1238</sup> “Are Outstanding Students Still Willing to Study Medicine? [优秀学生还愿意学医吗? ]”

But the outlook is not so grim when examining how entrepreneurs have attempted to innovate ways to resolve the many issues contributing to *yinao* that government policy has been unable to address. Mobile applications and websites have provided a number of avenues to relieve pressure on the health care system. Table 21 provides some examples of these apps and the services they provide, and the subsections below explain how they address different issues in China's health care system and even *yinao* directly. Comparable apps in the US would include Zocdoc or WebMd, though as the sections below illustrate, these medical apps, unlike their Chinese counterparts, do not provide functions that are as essential for accessing the medical system in the US.

*Reducing frustration of waiting via online appointment booking.* Instead of waiting for hours for an appointment ticket number or being at the mercy of ticket peddlers selling overpriced appointments, patients can now take a number online or schedule appointments through mobile applications and websites like Weiyi (by the popular website *Guahao Wang* – literally “Take-a-Number” website) and Jiuyi160. It is important to note that not all clinical appointment hours are available via these apps (they tend to be available only for specialists),<sup>1239</sup> so the inconvenience of waiting and ticket peddlers still exist, but these apps help reduce these issues.

*Increasing Access to Physicians.* Mobile apps also increase accessibility and thereby potentially decrease in-person patient volume by offering patients the ability to talk with physicians on the phone or to send them an instant message for a fee. The fees for phone calls can range depending on the experience and popularity of physicians. A highly rated gynecologist in Shanghai, for example, charges RMB 299 (\$43.99) for a 10-minute phone call or RMB 190 (\$23.54) for a question (can include text and photos) to be

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<sup>1239</sup> Shanghai Legal Employee, Interview No. 36.

answered via instant message.<sup>1240</sup> This may seem expensive at first glance, but it offers patients access to top physicians located anywhere in China.

**Table 21: Examples of Mobile Applications and Their Functions to Improve Health Care**

FUNCTIONS APP		Good Doctor is Online (好大夫在线)	Green Apple (青苹果)	Jiankang 160 (就医 60)	Spring Rain Doctor (春雨医生)	Weiyi (微医)
MAKING APPOINTMENTS	Make appointments online	✓	✓	✓	✓	✓
	Taking a number during clinic hours	✓	–	✓	–	✓
DIRECT COMMUNICATION	Chat with doctors online	✓	✓	✓	✓	✓
	Call/video call doctors	✓	✓	✓	✓	✓
	Video Call with doctors	–	✓	✓	–	✓
FEEDBACK	Rate physicians	✓	✓	✓	✓	✓
	Purchase gifts of praise (bouquet, banner)	–	–	✓	✓	✓
INFORMATION ABOUT DISEASES	Search general information about diseases/	✓	–	✓	✓	✓
	View questions and answers of other users	✓	–	✓	✓	✓
ARRANGING SURGICAL PROCEDURES	Request to schedule a surgery	✓	✓	–	–	–
	Pay for a request for physicians to perform surgery/procedure at patient's local hospital	✓	–	–	–	–
OTHER PRODUCTS/FUNCTIONS FOR SALE	Purchase insurance (various types)	–	–	✓	–	–
	Search for caretaker	–	–	✓	–	–
	Take out a loan	–	–	✓	–	–
	Arrange to receive medical treatment abroad	–	–	✓	✓	–
SELF-DIAGNOSIS TOOLS	Self diagnosis (similar to Web MD Symptom Checker)	–	–	–	✓	✓

<sup>1240</sup> See profile of Dr. Wang Qing (汪清) (*Zhuren yishi* – Chief Physician) of Shanghai Hong Fangzi Hospital (Obstetrics and Gynecology Hospital of Fudan University) on Hao Daifu Zaixian (好大夫在线) mobile application (as of July 14, 2017).

*Encouraging long-lasting relationships with health care providers.* Even though a family doctor system in China is being developed,<sup>1241</sup> patients typically do not have long-term relationships with general practitioners. When patients fall ill, regardless of severity, many immediately seek out the best specialists. The app Green Apple was launched in 2013<sup>1242</sup> as an app whereby doctors and patients who met each other in clinic can keep in touch – the idea is to establish continuing relationships between physicians and patients that have already met.<sup>1243</sup> If patients need to follow up with the physician to ask questions or need to be referred to someone in another specialty, they can ask the physician they have already met and by doing so, begin to set up their own network, which was built on a positive interaction with a physician to begin with. By providing a platform for better communication and maintaining a relationship, the app aims to ultimately improve the patient-physician relationship in China.<sup>1244</sup>

*Placing Value on Doctor-Patient Interactions.* In addition to increasing patient access to physicians, these mobile applications also directly reward physicians for the time they spend with patients. Physicians in public hospitals typically do not get paid more or less for the time they spend with patients in their offices. For example, the ticket price for a chief physician at a public 3A hospital in Guangzhou is RMB 7 (a little over \$1); the time he spends with patients is undervalued, and his promotion and title do not

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<sup>1241</sup> “Notice on the Publication of Guiding Opinions on Family Doctor Contract Service [关于印发推进家庭医生签约服务指导意见的通知],” National Health and Family Planning Commission System Reform Department, June 6, 2016, <http://www.nhfp.gov.cn/tigs/s3577/201606/e3e7d2670a8b4163b1fe8e409c7887af.shtml>.

<sup>1242</sup> “Record of Development and Major Events,” Green Apple Health, accessed June 17, 2017, <http://www.qpgjk.com/history.html>.

<sup>1243</sup> “Exclusive Interview: The Person behind ‘Pledge of Respect for Doctors’ Xu Jiazi,” *Xinsheng Dai*, September 9, 2015, [http://www.le.com/ptv/vplay/23500034.html?ch=baidu\\_s](http://www.le.com/ptv/vplay/23500034.html?ch=baidu_s).

<sup>1244</sup> “Exclusive Interview: The Person behind ‘Pledge of Respect for Doctors’ Xu Jiazi.”

depend on his time with patients.<sup>1245</sup> However, the mobile applications change this dynamic because it places high value on the time physicians spend with patients. By adding value to the time physicians spend with patients, physicians likely have a greater incentive to offer better services.

*Empowering patients and rewarding good service.* Patients can also use these apps to search for and view ratings of doctors, which empowers them to gain knowledge on their potential providers and incentivizes doctors to provide better service. In addition to basic ratings of physicians, apps also offer patients a range of ways to express their gratitude for physicians. Spring Rain doctor allows patients to send small sums of money from RMB 2 (\$0.30) to 288 (\$43.24) to thank them for their service. For RMB 20 (\$3) each, We Doctor (Weiyi) allows patients to send physicians different symbols of thanks (bouquet, hands of a healer, benevolence, medical ethics, Hua Tuo – famous doctor of the Han dynasty). Jiuyi160 offers a similar service with different types of symbols that vary in price – from a digital bouquet of flowers for a good attitude at RMB 6 (\$.90) to a banner that reads “Superior Medical Ethics” at RMB 68 (\$10.21).<sup>1246</sup> The ability to express and receive gratitude arguably also facilitates a better relationship between physicians and their patients.

*Empowering patients with more information about health.* By enabling patients to ask questions to top physicians and providing informational articles about diseases, these apps also offer patients ways to gather more information about their illnesses, addressing the issue of poor health care literacy in China. Green Apple CEO Xu Jiazi emphasized that while doctors are not allowed to diagnose, treat, and prescribe online, they can offer

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<sup>1245</sup> Morning Clinic Chinese Medicine, Interview No. 57.

<sup>1246</sup> In order to see this function in these mobile applications, on many physicians’ profile there is an option called *song xinyi* (送心意), which means to send [a token] of one’s appreciation.

more information about illnesses to patients about a disease they already have.<sup>1247</sup> She highlights that this is important because most Chinese people lack general health awareness and need more channels to obtain reliable information.<sup>1248</sup>

*Directly taking action to raise awareness and prevent violence against doctors.* In July 2015, Green Apple launched the “Pledge of Respect for Doctors” campaign.<sup>1249</sup> When the CEO of Green Apple Xu Jiazi was asked how she thought of this initiative, she replied, “Because Green Apple Health is a communication platform for patients and doctors, one of the original intentions when we started this company was to improve doctor-patient relations. Last year there were so many violent incidents toward doctors, there were a lot of incidents of patients not understanding doctors, hurting doctors, and stabbing doctors, so we hoped to launch a campaign that would call upon the masses to respect doctors and protect doctors, so mainly it was from this point that we started this campaign.”<sup>1250</sup>

Green Apple launched the campaign with a video in which doctors from prominent hospitals in Beijing in Shanghai spoke candidly about both the hardships and sense of accomplishment they feel from their profession.<sup>1251</sup> The pledge reads:

I swear to:  
Respect doctors, Respect life.  
Reasonably communicate, resist violence.  
Mutually trust each other, mutually understand each other.  
Defend life, fight together!

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<sup>1247</sup> “Exclusive Interview: The Person behind ‘Pledge of Respect for Doctors’ Xu Jiazi.”

<sup>1248</sup> “Exclusive Interview: The Person behind ‘Pledge of Respect for Doctors’ Xu Jiazi.”

<sup>1249</sup> Green Apple Health, “Pledge to Respect Doctors,” Green Apple Health, 2015, <http://www.qpgjk.com/drvow.html>.

<sup>1250</sup> “Exclusive Interview: The Person behind ‘Pledge of Respect for Doctors’ Xu Jiazi.”

<sup>1251</sup> Green Apple Health, “Pledge to Respect Doctors.”

Within the first month of the campaign, its Weibo account was viewed 9.13 million times and 1.3 million people signed the pledge.<sup>1252</sup> Prominent social figures supported the act, including Shanghai's Party Secretary Han Zheng who was the first person to sign the pledge.<sup>1253</sup>

In other countries, providing reliable information to patients and starting social movements to pledge support for a cause tend to be launched by formal civil society organizations. For example, in the United States patients with cancer and their families can turn to the American Cancer Society or the many other organizations surrounding various types of cancers, for more information about whether or not the care they are receiving accords with prevailing standards of practice. They can also participate through these organizations in activism to raise money and awareness surrounding cancer-related issues. Though the next section discusses the role of civil society organizations in responding to *yinao*, it is important to highlight that while at first glance it may seem that a lack of civil society organizations may appear to hinder the development of social movements or resources that advocate for patients, private companies can and have filled these roles as well.

### **Civil Society Organizations**

Civil society organizations have the potential to alleviate many of the health and legal issues contributing to *yinao* that the public and private sectors cannot resolve alone. The concept of civil society in China differs from Western conceptions<sup>1254</sup> of it due to the

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<sup>1252</sup> Sisi Chen, "Video Recorded by Beijing and Shanghai Physicians 'Pledge to Respect Doctors' Rejects Violence, Over 1.3 Million People Have Signed," The Paper, July 24, 2015, [http://www.thepaper.cn/newsDetail\\_forward\\_1355857](http://www.thepaper.cn/newsDetail_forward_1355857).

<sup>1253</sup> Green Apple Health, "Pledge to Respect Doctors."

<sup>1254</sup> Renowned scholar on democracy Larry Diamond defines civil society as the "realm of organized social life that is voluntary, self-generating, (largely) self supporting, autonomous from the state, and bound by a legal order or set of shared rules." It involves "citizens acting collectively in a public space to express their

Chinese government's role in the establishment and oversight of civil society organizations (CSOs) – a term more fitting than NGO to more broadly describe relevant organizations, since many of them have some degree of government involvement. The late Karla Simon, in her seminal work *Civil Society in China*, observes that civil society in China “encompasses a variety of organizations and people, serving both mutual and public benefit.”<sup>1255</sup> She includes organizations that are both registered and unregistered with the state, those that have close ties and are essentially organized by the state (government-organized NGOs – GONGOs) and quasi-nongovernmental organizations (QUANGOs), which tend to have more autonomy and were initiated privately.<sup>1256</sup> She further includes large private foundations founded by wealthy individuals, small local charities, and religious organizations working within the official legal structure for religion as well as underground faith-based organizations that are not legal.<sup>1257</sup>

This chapter uses Simon's broader conceptualization of Chinese civil society as a starting point to explore the degree to which Chinese civil society solves issues in the health and legal sectors that contribute *yinao*. Health-related CSOs are poised to provide education, credible and patient-centered information about diseases, community, and additional funding to address the issues of poor health care literacy, lack of credible information about conditions for patients, lack of emotional and community support, and high out-of-pocket costs. All of these solutions decrease potential frustration with the

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interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state and hold officials accountable.” Civil society, according to Diamond, thus excludes “individual family life, inward looking group activities, profit-making enterprise of individual business firms, and political efforts to take control of the state. See: Larry Jay Diamond, “Rethinking Civil Society: Toward Democratic Consolidation,” *Journal of Democracy* 5, no. 3 (1994): 5, <https://doi.org/10.1353/jod.1994.0041>.

<sup>1255</sup> Simon, *Civil Society in China: The Legal Framework from Ancient Times to the “New Reform Era,”* xxxiii.

<sup>1256</sup> Simon, xxxiii.

<sup>1257</sup> Simon, xxxiii.

health care system that contributes to conflicts between patients and health care workers. CSOs engaged in legal work can aid both patients and health care workers through the dispute resolution process, raising their awareness of and access to non-violent dispute resolution institutions.

Yet several challenges exist in assessing the degree to which CSOs operate in the health care and legal spaces. The first barrier is gathering data on CSOs. Officially the Chinese government categorizes CSOs into three areas: social organizations, private non-commercial institutions, and foundations.<sup>1258</sup> According to the most recent draft legislation on social organizations, social organizations are defined as “non-profit organizations voluntarily founded by Chinese citizens to realize their collective aspirations and carry out activities according to their charters.”<sup>1259</sup> Private non-commercial institutions (referred to as *minfei* in Chinese for short) are “social organizations engaged in non-profit social service activities organized by enterprises and institutions, social organizations, and other social forces and individuals who use non-state assets.”<sup>1260</sup> *Minfei* generate their own income through fees that they charge for services and other activities instead of depending on grants and donations, unlike social organizations.<sup>1261</sup> They include not-for-profit organizations that provide social services

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<sup>1258</sup> Leslie Shieh, “Private Non-Commercial Institutions Registration and Management Provisional Regulations,” Ministry of Civil Affairs of the People’s Republic of China, October 25, 1998, 54, <http://www.mca.gov.cn/article/zwgk/fvfg/mjzzgl/200709/20070900001726.shtml>.

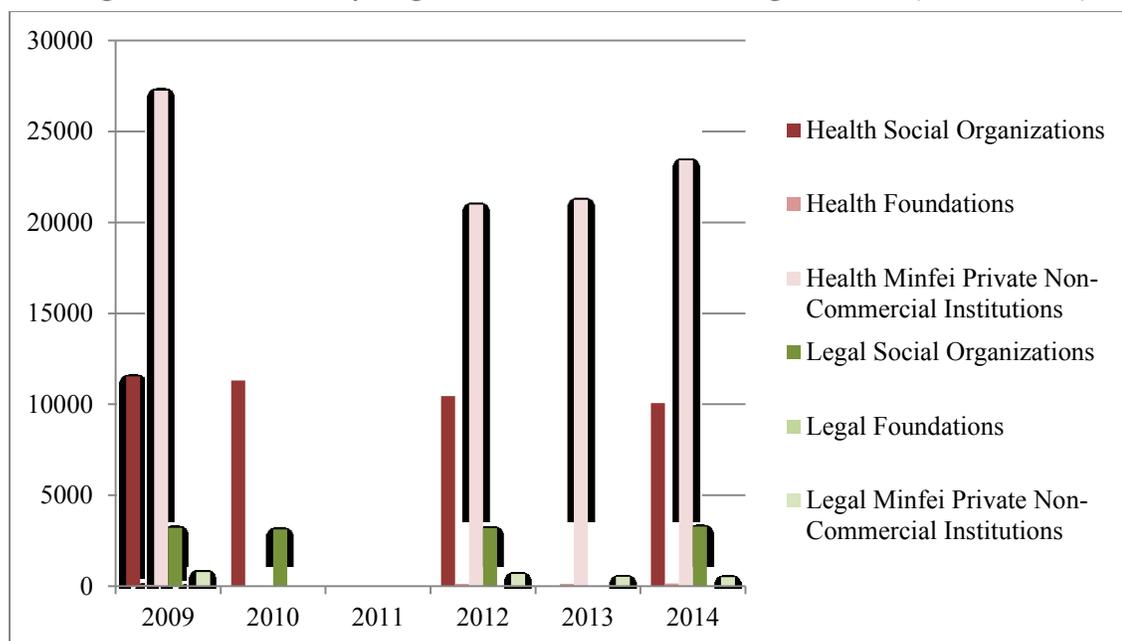
<sup>1259</sup> “Circular on the Ministry of Civil Affairs Publicly Soliciting Comments on ‘Regulations on the Registration and Administration of Social Groups’ (Draft Revision for Soliciting Comments),” Ministry of Civil Affairs of the People’s Republic of China, August 1, 2016, <http://www.mca.gov.cn/article/zwgk/tzl/201608/20160800001364.shtml>.

<sup>1260</sup> Shieh, “Private Non-Commercial Institutions Registration and Management Provisional Regulations,” Article 2.

<sup>1261</sup> Leslie Shieh, “Non-Governmental Organizations in Contemporary China: Development of Community-Based Social Service Organizations,” in *Facing China as a New Global Superpower: Domestic and International Dynamics from a Multidisciplinary Angle*, ed. Huhua Cao and Jeremy Paltiel (Singapore: Springer Singapore, 2016), 55, [https://doi.org/10.1007/978-981-287-823-6\\_3](https://doi.org/10.1007/978-981-287-823-6_3).

like community elder care organizations, hospitals, and private schools.<sup>1262</sup> Foundations refer to non-profit entities that use property contributed by individuals or organizations with the goal of engaging in public welfare activities.<sup>1263</sup> Figure 40 below shows official data from the Ministry of Civil Affairs on each of these types of organizations in the health and legal sectors. The number of *minfei* is particularly high because they include many non-profit hospitals, schools, and other service-based organizations.

**Figure 40: Civil Society Organizations in Health and Legal Sectors (Official Data)**



While these data provide a starting point for understanding social organization in issue-areas relevant to *yinao*, official data only display registered CSOs. Due to financial as well as bureaucratic barriers to registration, many CSOs,<sup>1264</sup> likely millions of

<sup>1262</sup> Shieh, 55–56.

<sup>1263</sup> “Foundation Management Regulations,” Ministry of Civil Affairs of the People’s Republic of China, March 19, 2004, <http://www.mca.gov.cn/article/zwggk/tzl/200711/20071100003953.shtml>.

<sup>1264</sup> Organizations need to have a certain number of employees, financial endowment, office, as well as support from a local government bureau, which can be difficult for smaller organizations to obtain. The same type of NGO also cannot exist at the same level of governance. So for example, there cannot be two NGOs dedicated to the same cause in the same county. For the most updated version of the laws for NGO registration at the national level, see the currently updated draft version of “Regulations on the Registration and Administration of Social Groups”: “Circular on the Ministry of Civil Affairs Publicly Soliciting

them,<sup>1265</sup> are unregistered. Guosheng Deng argues that unregistered NGOs are allowed to flourish because there are “hidden rules” governing them: the government has an unofficial policy of “no recognition, no banning, no intervention,” which enables unregistered organizations to operate as long as they do not threaten state security or social stability.<sup>1266</sup> With this in mind, in addition to providing official data from the databases of CSOs at national and local levels provided by the Ministry of Civil Affairs’ Social Organization Administration Bureau, I have also gleaned information from China Development Brief’s NGO Directory, academic sources, social media, and interviews to supplement official data with information on unregistered activities. But even with this supplemented information, many small, informal organizations likely still remain unseen beyond the communities they help.

In order to assess the responsiveness of civil society to issues contributing to *yinao*, I first consider the degree to which they exist to begin with, examining their numbers and geographic coverage. I also consider the scope of their activities based on their stated missions, their initial endowment, and their social media presence when this information is available to help assess their social impact. For social media presence, I consider whether these organizations maintain official WeChat accounts and their following on Sina Weibo or Tencent Weibo (both Chinese versions of Twitter). Due to the popularity of these platforms among China’s netizens, understanding the presence and

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Comments on ‘Regulations on the Registration and Administration of Social Groups’ (Draft Revision for Soliciting Comments).”

<sup>1265</sup> For a summary of the various estimates on the likely number of NGOs, see Guosheng Deng, “The Hidden Rules Governing China’s Unregistered NGOs: Management and Consequences,” *China Review* 10, no. 1 (2010): 188.

<sup>1266</sup> Deng, “The Hidden Rules Governing China’s Unregistered NGOs: Management and Consequences.”

following of these organizations on these platforms enables us to gauge how involved and popular these social organizations are in Chinese society.

**Table 22: Types of Health-Related CSOs**

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|---|
| <ul style="list-style-type: none"><li>• CSOs Registered at the National Level (mostly foundations)</li><li>• International NGOs</li><li>• CSOs at Local Levels (mostly related to specific diseases)</li><li>• “Illness-friend” groups (hospital- and patient-driven, on and offline)</li><li>• Grassroots Community-based Organizations with Health Programs</li></ul> |
|---|

However, it is also important to note that financial endowment and social media presence are not good measures for grassroots organizations targeting

only local communities (rather than a broader regional or national audience), so evaluating them based on high social media following and large endowments would be inappropriate. For this reason, in addition to the difficulty of obtaining information about CSOs in China more generally, assessing the responses and impact of CSOs remains a challenge. With these challenges in mind, the next two sections assess CSOs in the health and legal sectors. I examine these sectors by looking at more formal, registered organizations as well as informal groups and, in some cases, individuals who help resolve issues contributing to *yinao*.

### Health-related CSOs

Health-related organizations have the potential to alleviate many of the issues in the health care system that cause friction between patients and health care workers: poor health care literacy, lack of emotional and community support, and costs for patients and their families. During disputes, they also hold the potential to offer independent, credible, and patient-oriented information about illnesses for patients seeking to better understand their condition and the course of treatment they are receiving.<sup>1267</sup> This is important because this capability potentially mitigates conflict due to asymmetry of information

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<sup>1267</sup> Thanks to Dr. Charles Wiener for articulating this role of patient organizations.

regarding standards for treatment between patients and physicians and empowers patients to better assess whether issues they are experiencing are actually due to negligence.

*National-level Organizations: Focusing on Education and Reducing Out-of-Pocket Costs*

National level-organizations are CSOs overseen by the government (usually by one of the central ministries). Those involved in health-related work tend to be registered under the National Health and Family Commission and mainly dedicate their funds to providing financial assistance for patients, education, and health services related to poverty reduction. Examples of funding they provide include the Chinese Red Cross's financial support and educational programs for AIDS patients and their dependents,<sup>1268</sup> the Chinese Red Cross Foundation's "Little Angels" program to cover medical expenses for poor households with a child suffering from leukemia,<sup>1269</sup> and the Chinese Cancer Foundation funding for various types of medicines and treatments.<sup>1270</sup>

Despite these programs, there are indications that these organizations do not have a high level of social following, suggesting that their overall impact on society may not be strong. One study found that among families of children with leukemia in Beijing, patients were often unaware that financial assistance was available from organizations like the Chinese Red Cross Foundation. Thus, even though these foundations can decrease the financial burden on families, their impact will remain weak until they strengthen their efforts to raise awareness about their programs for those eligible to apply

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<sup>1268</sup> "Red Cross Society of China AIDS Prevention and Care Program 中国红十字会总会艾滋病预防与关爱项目," Red Cross Society of China, October 12, 2012, [http://www.redcross.org.cn/hhzh/zh/ppyw/azbfyga/201210/t20121012\\_1264.html](http://www.redcross.org.cn/hhzh/zh/ppyw/azbfyga/201210/t20121012_1264.html).

<sup>1269</sup> "Background Introduction - Chinese Red Cross Foundation 背景介绍\_中国红十字基金会," Chinese Red Cross Foundation, July 25, 2012, <http://new.crcf.org.cn/html/2012-07/1733.html>.

<sup>1270</sup> "好消息! 乳腺癌靶向治疗药物列入大病保险范围! Good News! Breast Cancer Targeted Therapy Medications Have Entered the Scope of Serious Illness Insurance!," Sohu, May 5, 2017, [http://www.sohu.com/a/138489811\\_262276](http://www.sohu.com/a/138489811_262276).

for available aid.<sup>1271</sup> Social media following also enables us to assess the degree to which these organizations are known in society more generally. Table 23 shows that only two of these organizations (China Red Cross Foundation and the mobile eye clinic Lifeline Express) have over one million followers. China's Population Welfare Fund has over 150,000 followers and the Chinese Foundation for Hepatitis Prevention and control has over 40,000 followers. The rest of these organizations have fewer than 10,000 followers or have no social media presence at all. In a country with such a large population that is active on social media, one would expect higher social media following. In the United States, for example, the American Cancer Society has over one million followers on Twitter while its Chinese counterpart apparently has no social media presence on similar Chinese social media platforms.<sup>1272</sup>

Interviews with Chinese social organizers confirm that national organizations tend not to be the most important for organization around disease because people tend not to trust them as much.<sup>1273</sup> This is because they are associated with the corruption rampant in government, with one infamous case being a Chinese Red Cross employee displaying her ostentatious and expensive lifestyle online, which caused criticism of the organization's use of funds.<sup>1274</sup>

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<sup>1271</sup> Wang Man 王曼, “Waidi Lai Jing Baixuebing Huaner Jiating de Shehui Zhichi Xitong Yanjiu’ 外地来京白血病患者家庭的社会支持系统研究 [Research on the Social Support System for Pediatric Leukemia Patients and Their Families Who Come to Beijing from Other Parts of China for Treatment],” *Chongqing Chengshi Guanli Zhiye Xueyuan Xuebao 重庆城市管理职业学院学报 Journal of Chongqing City Management Vocational College* 14, no. 1 (March 2014).

<sup>1272</sup> “American Cancer Soc (@AmericanCancer) | Twitter,” accessed September 6, 2017, <https://twitter.com/AmericanCancer>.

<sup>1273</sup> Thanks to Dr. Anne Thurston for interviewing local social organizers to provide context on this topic.

<sup>1274</sup> Chi Mo, “Everyone Talking about China: The Red Cross Needs to Depend on Itself for Restoring Its Reputation [大家谈中国：红会恢复名誉还需靠自己],” BBC Chinese, accessed July 20, 2017, [http://www.bbc.com/zhongwen/trad/comments\\_on\\_china/2014/08/140806\\_coc\\_chinese\\_red\\_cross](http://www.bbc.com/zhongwen/trad/comments_on_china/2014/08/140806_coc_chinese_red_cross).

**Table 23: Health-Related National CSOs (all affiliated with NHFPC)**

Basic Information			Health Care System Problem-Solving (based on stated mission)					Social Traction		
Name	Est.	Capital Upon Registration	Educational/Awareness/ Training Programs	Funding for Patients	Research advocacy	Improving health for rural/poor	Community building	Weixin Account (present or not)	Sina Weibo Followers	Tencent Weibo Followers
Audiology Development Foundation of China	1995	RMB 11 million	✓	✓				NA	5,824	NA
China Congenital Disability Intervention and Rescue Foundation	2011	RMB 10 million	✓	✓				NA	2,283	NA
China Health and Medical Development Foundation	2005	RMB 8 million		✓		✓		NA	NA	NA
China Health Promotion Foundation	2006	RMB 15 million	✓ (for health care workers)					✓	NA	NA
China Liver Health	2016	RMB 3 million	✓	✓				✓	NA	NA
China Medical Foundation	1987	RMB 8 million	✓ (health care workers)					NA	NA	NA
China Organ Transplantation Development Foundation	1995	RMB 8 million			✓			✓	409	NA
China Population Welfare Foundation	1991	RMB 12 million	✓	✓		✓		✓	150,181	NA
China Primary Health Care Foundation	1996	RMB 8 million	✓ (healthcare workers, patients)	✓		✓		NA	NA	NA
China Red Cross Foundation (health-oriented work)	1994	RMB 8 million		✓		✓		✓	73,121	1,138,389
Chinese Cancer Foundation	1992	RMB 8 million	✓	✓				NA	NA	NA
Chinese Foundation for Hepatitis Prevention and Control	1998	RMB 8 million	✓	✓	✓	✓	✓	✓	43,668	NA
Chinese Foundation for Prevention of STD and AIDS	1989	RMB 8 million	✓	✓	✓			✓	49	NA
Chinese Oral Health Foundation	1994	RMB 8 million	✓	✓				✓	NA	NA
Lifeline Express (mobile eye hospital train)	2002	RMB 8 million	✓ (grassroots doctors)	✓		✓		✓	2,813	1,045,468
Ma Haide (George Hatum) Foundation (leprosy)	1989	RMB 200,000	✓	✓				NA	NA	NA

## *International NGOs and Health*

Although this chapter focuses on responses by Chinese social actors, I briefly consider the role of International NGOs (INGOs) in addressing issues contributing to *yinao*. INGOs have long played an important role within Chinese society by employing Chinese nationals, alleviating some of China's most pressing development and disaster-relief issues, and funding and building capacity for local NGOs. INGOs often operate in western, rural areas,<sup>1275</sup> and have provided care for issues commonly associated with developing countries: maternal and child health, basic primary care, surgical procedures for cataracts and cleft lips/palates, and care for communicable diseases such as tuberculosis, hepatitis, HIV/AIDS, and other STDS.<sup>1276</sup> They address both supply-side and demand-side issues in the Chinese health care system, from improving quality of care by training providers and building new health-care facilities to providing needed health care goods and services, reducing costs for patients, and providing support and advocacy for patients that often experience discrimination or marginalization, such as STDs, rare disease, and disabilities.<sup>1277</sup>

While international organizations have contributed greatly to improving health care and advocacy for western and rural areas and for neglected groups of diseases, their activities have not focused as much on targeting the structural issues and types of

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<sup>1275</sup> Nearly 40% of the International NGOs working in the health care space identified by the China Development Brief are specifically dedicated to regions in Western China. Analysis by author based on available data from NGO Directory by China Development Brief, see: "NGO Directory Archive," *China Development Brief* (blog), accessed September 17, 2017, <http://chinadevelopmentbrief.cn/directory/>.

<sup>1276</sup> Of the 46 INGOs working in health care identified by the China Development Brief, 24% work on communicable diseases HIV/AIDS, Hepatitis, STDs, and tuberculosis, 13% provide procedures to improve eye health and cleft palate/lip, 26% work on maternal and childhood health. Analysis by author based on available data from NGO Directory by China Development Brief, see: "NGO Directory Archive."

<sup>1277</sup> All of these functions were satisfied by at least one INGO in the China Development Brief database. Analysis by author based on available data from NGO Directory by China Development Brief, see: "NGO Directory Archive." See Appendix for full data collection.

diseases that often foment *yinao*, such as the chasm in access to advanced care between urban and rural areas and non-communicable diseases that require invasive procedures at these advanced facilities.<sup>1278</sup> Of course this is not to suggest that international organizations have played no role in addressing these types of issues; the World Bank, for example, has contributed significant research to addressing China's structural issues in health care.<sup>1279</sup> But because we are interested in the response of Chinese society, responses of international organizations are not the main focus of this study.

### *Chinese Social Organization around Health Issues*

While China's health-related CSOs at the national level have focused their efforts primarily on providing funds for patients and health-related educational programs, locally based Chinese CSOs have become increasingly active over the past two decades<sup>1280</sup> to provide community support and advocacy for both communicable diseases like HIV/AIDS and hepatitis and non-communicable and chronic conditions like various types of cancers, often breast cancer and leukemia, diabetes, and kidney disease.<sup>1281</sup> The proclivity to organize around chronic or more long-term conditions is a common

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<sup>1278</sup> While the majority of INGOs in the China Development Brief databases are not dedicated to these causes, this does not mean that INGOs have not provided these types of advanced-care services at all. For example, Yale-China Association's partnership with hospitals in Changsha and Kunming seek to improve high-level care in those areas. Even though they are not rural, they are in parts of China that have less developed health care than others. See "Yale-China: Health," accessed September 17, 2017, <http://www.yalechina.org/health>.

<sup>1279</sup> "Report Recommends Deeper Healthcare Reforms in China," Text/HTML, World Bank, accessed September 17, 2017, <http://www.worldbank.org/en/news/press-release/2016/07/22/report-recommends-deeper-healthcare-reforms-in-china>.

<sup>1280</sup> Over two thirds of Chinese health-related CSOs in the China Development Brief were founded after 2000.

<sup>1281</sup> The dominance of these diseases in social organization appear both in academic publications on this topic in these disease areas as well as through data gleaned from MCA's local NGO database. Organizations with names that are not directly related with their cause are more difficult to find since this database only searches the name of these organizations. Bearing this in mind, searches on specific disease areas and using terms like "patient" and "patient group" yielded the most results in the diseases mentioned above: kidney disease (72 organizations), diabetes (201), breast cancer (12), leukemia (10) Cancer organizations are slightly more difficult to search due to restrictions on search terms and attributes of the Chinese language.

phenomenon as their long-term nature more readily facilitates organization.<sup>1282</sup> The role of locally based NGOs is extremely important because unlike their national and more obviously government-affiliated counterparts, if they are perceived to be independent from government influence, or even more importantly, the medical community's influence, then patients may be more likely to perceive the information they provide as credible. These organizations also stand to foster community-based support for patients.

While it is beyond the scope of this study to consider the activities of all the organizations relevant to many chronic and long-term conditions, I examine CSO involvement in breast cancer. I choose breast cancer because it is a disease that tends to lend itself to organization worldwide,<sup>1283</sup> likely because it almost exclusively affects women and its high incidence rate among them,<sup>1284</sup> so given these factors, it is reasonable to expect that China has also developed social organization in this area.

#### CSOS FOR BREAST CANCER

Organization around breast cancer in China has increased in recent years, but it still remains sparse when compared to organization around the illness abroad<sup>1285</sup> and when considering the increasing annual incidence rate of breast cancer in China.<sup>1286</sup>

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<sup>1282</sup> Xiao Lei, "Roles of Patient Organizations in Rare Disease Research and Orphan Drug Development 患者组织在寒假宁和孤儿药研究中的作用," *Journal of International Pharmaceutical Research* 44, no. 2 (February 2017): 210.

<sup>1283</sup> The pink ribbon is the global symbol for breast cancer. See [www.pinkribbon.org](http://www.pinkribbon.org) for a list of breast cancer advocacy organization worldwide.

<sup>1284</sup> Breast cancer is the most common cancer in women worldwide. In 2012, there were 1.67 million new cases of breast cancer (most updated global figure). See: "Fact Sheets by Cancer," Breast Cancer, accessed September 18, 2017, [http://globocan.iarc.fr/Pages/fact\\_sheets\\_cancer.aspx](http://globocan.iarc.fr/Pages/fact_sheets_cancer.aspx).

<sup>1285</sup> Wei Jialing 韦嘉玲 et al., "Tuanti Ganyu Dui Gaishan Kangfuqi Ruxianai Huanzhe Shehui Zhichi Shuiping de Yanjiu 团体敢于对改善康复期乳腺癌患者社会支持水平的研究 [Study on Improving Social Support of Breast Cancer Patients at Rehabilitative Stage by Group Intervention]," *Shanghai Jiaotong Daxue Xueban Yixue Ban 上海交通大学学报医学版 [Journal of Shanghai Jiao Tong University Medical Science]* 34, no. 9 (n.d.): 1275.

<sup>1286</sup> Over the past 10 years, the incidence rate for breast cancer in China's main cities increased by 37%. The death rate increased by 38.9% during this time. Breast cancer also represents one of the top ten deadliest cancers for women in China. For news about increased incidence in urban areas, see Pu Xin and

Table 24 lists all of the breast-cancer related organizations found in the MCA Bureau of Social Organization Administration database. In addition to these organizations, I also include the Pink Ribbon Campaign, which is a popular activity, but not a formal social organization and More Than Aware, a breast cancer NGO founded by expatriates in Shanghai. As Table 24 shows, most of these organizations were founded within the last decade, are located in Eastern China, and have small endowments. Most do not have official websites or significant following on social platforms.

Two of the better-known campaigns in this list for supporting breast cancer patients that were founded by individuals outside of the government or the health care system are the Pink Ribbon Campaign (中华粉红丝带乳腺癌防治活动基金会)<sup>1287</sup> and Angel Care Breast Cancer Foundation (粉红天使专项基金会).<sup>1288</sup> The Pink Ribbon Campaign is affiliated with the global pink ribbon campaign and within China, the popular magazine Trendshealth spearheads the campaign. Trendshealth recruits celebrities to raise awareness for breast cancer to pose on its magazine cover.<sup>1289</sup>

Both of these organizations offer a range of services intended to help mitigate some of the issues in breast cancer care. The Pink Ribbon Campaign offers information on preventative and daily care, mental health care for breast cancer patients, lectures,

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Tu Jun, "China Breast Cancer 10 Year Incidence Rate Rose by 37%, 中国乳腺癌发病率 10 年增长 37% , Breast Cancer PET Scan Has Arrived in Shanghai," The Paper, May 3, 2017, [http://www.thepaper.cn/newsDetail\\_forward\\_1675340](http://www.thepaper.cn/newsDetail_forward_1675340). For most updated official statistics on top 10 cancers with highest mortality rates in women, see National Health and Family Planning Commission, *China Health and Family Planning Statistics Yearbook 2016* 《中国卫生和计划生育统计年鉴 2016》, Table 10-3-3 Top 10 Cancer Death Rates for Women.

<sup>1287</sup> "Pink Ribbon Breast Cancer Prevention and Treatment Campaign [粉红丝带乳腺癌防治活动]," accessed June 28, 2017, <http://www.zhfhds.com/>.

<sup>1288</sup> "粉红天使基金 Angel Care," accessed June 28, 2017, <http://www.angelcarecn.org/>.

<sup>1289</sup> "Pink Ribbon Breast Cancer Prevention and Treatment Campaign [粉红丝带乳腺癌防治活动]."

consultations, and health trainings.<sup>1290</sup> The Shanghai-based Angel Care Breast Cancer Foundation (established 2011) offers classes, patient activities, funding to cover costs, and information on breast cancer.<sup>1291</sup> While these two organizations have the most social traction of their fellow breast cancer CSOs in China (See Table 24), they seem to have comparatively little traction compared to their counterparts abroad. For example, the most prominent American breast cancer foundation, the Susan G. Komen Foundation, has 124,000 followers on Twitter,<sup>1292</sup> whereas Angel Care has only 252 followers on Sina Weibo<sup>1293</sup> and Pink Ribbon Campaign has 9,044<sup>1294</sup> followers. While the number of Weibo followers does not necessarily indicate the impact of these organizations and may indicate that activism is more dispersed locally than concentrated in larger foundations, the reach of these organizations is scant in comparison to the Chinese population, reports of increasing cases of breast cancer,<sup>1295</sup> and the widespread use of social media in China. While breast cancer has increased in recent years, available data on existing organizations suggest they are inadequate to provide the amount of patient-driven information and community support likely needed nationwide. If social organization in an area that has received so much national and international attention still remains weak, it is likely that social organization in other disease areas that generally do not garner as much attention is even sparser.

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<sup>1290</sup> “Pink Ribbon Breast Cancer Prevention and Treatment Campaign [粉红丝带乳腺癌防治活动].”

<sup>1291</sup> “粉红天使基金 Angel Care.”

<sup>1292</sup> @SusanGKomen, “Susan G. Komen,” *Twitter* (blog), July 17, 2017, <https://twitter.com/SusanGKomen>.

<sup>1293</sup> Shanghai Municipal Charity Foundation Angel Care, “AngelCare Weibo 粉红天使基金 AngelCare 的微博,” July 18, 2017, [http://weibo.com/angelcare?from=myfollow\\_all&is\\_all=1](http://weibo.com/angelcare?from=myfollow_all&is_all=1).

<sup>1294</sup> Trendshealth Pink Ribbon Official Weibo, “Pink Ribbon Weibo 粉红丝带的微博,” Weibo, accessed July 18, 2017, [http://weibo.com/thepinkribbon?from=myfollow\\_all&is\\_all=1](http://weibo.com/thepinkribbon?from=myfollow_all&is_all=1).

<sup>1295</sup> Pu Xin and Tu Jun, “China Breast Cancer 10 Year Incidence Rate Rose by 37%, 中国乳腺癌发病率 10 年增长 37%, Breast Cancer PET Scan Has Arrived in Shanghai.”

**Table 24: Breast Cancer CSOs in China**

	Basic Information						Social Traction			
	English Name	Chinese Name	Province	Est.	Hospital-affiliated	Endowment	Weibo Followers	Tencent Weibo	Wechat account	Website
1	More than Aware	NA	Shanghai	2013	No	NA	NA	NA	✓	<a href="http://morethanaware.com/cn/#">http://morethanaware.com/cn/#</a>
2	China Pink Ribbon Campaign	中华粉红丝带乳腺癌防治活动基金会	Beijing	2003	No	NA	9,044	NA	✓(Trends health)	<a href="http://www.zhfhds.com/">http://www.zhfhds.com/</a>
3	Xuzhou Pink Ribbon Breast Cancer Rehabilitation Club	徐州市粉红丝带乳腺康复俱乐部	Jiangsu	2013	No	RMB 30,000	NA	28	✓	<a href="http://fhds.gongyi.la/Part/1">http://fhds.gongyi.la/Part/1</a>
4	Fengxian Pink Ribbon Breast Care Club	丰县粉红丝带乳腺关爱俱乐部	Jiangsu	2016	NA	RMB 10,000	NA	NA	NA	NA
5	Wujingao New District North District New City Area Community Pink Ribbon Care Women's Health Association	武进高新区北区新城社区粉红丝带关爱女性健康协会	Jiangsu	2013	NA	RMB 1,000	NA	NA	NA	NA
6	Shenzhen Pink Ribbon Breast Care Center	深圳市粉红丝带乳腺关爱中心	Shenzhen	2010	NA	RMB 0	211	23	NA	<a href="http://www.9595.org.cn/Home/Default.asp">http://www.9595.org.cn/Home/Default.asp</a>
7	Guangzhou Yuexiu District Friendship Garden Pink Ribbon Association	广州市越秀区和友苑粉红丝带协会	Guangdong	2016	Yes	NA	NA	NA	NA	<a href="http://59.41.158.36/home/pubbase/xgsTypeListDjxx/n3191500812/1">http://59.41.158.36/home/pubbase/xgsTypeListDjxx/n3191500812/1</a>
8	Juxian Pink Ribbon Volunteers Association	莒县粉红丝带志愿者协会	Shandong	2016	NA	NA	NA	NA	NA	NA
9	Hanzhong Pink Ribbon Home Breast Cancer Patient Care Association	汉中市粉红丝带之家乳腺癌患者关爱协会	Shaanxi	2015/2016	Yes	NA	NA	NA	NA	NA
10	Shanghai Pink Ribbon Angel Breast Cancer Care Center	上海粉红天使癌症病友关爱中心	Shanghai	2016 (2011 foundation)	No	RMB 100,000	252	NA	NA	<a href="http://www.angelcarecn.org/index.php?c=list&amp;cs=service&amp;">http://www.angelcarecn.org/index.php?c=list&amp;cs=service&amp;</a>
11	Wuhan Breast Cancer Patients Rehabilitation Association	武汉市乳腺癌患者康复联谊会	Hubei	2016	Yes*		NA	NA	NA	NA
12	Qingdao City Shinan District Breast Cancer Rehabilitation Association	青岛市市南区乳腺癌康复协会	Shandong	NA	NA	NA	NA	NA	NA	NA

### *Bingyou “Illness-Friend” Groups*

Formal organization around illness, however, is not the only way for society to provide support for patients; there are also informal, smaller groups that can provide this type of support as well. In China, organization around illness also occurs in *bingyou* groups. *Bingyou*, literally “illness friend,” can mean a both a hospital ward-mate as well as someone who has the same illness. *Bingyou* form *bingyou* associations, *bingyou* clubs, *bingyou* study clubs, and *bingyou* exchange groups at various levels of formality. Hospitals and patients both form them, and while some hospital-based *bingyou* groups are registered, many others are informal and organized by patients online or within hospitals. Thus, there is not a lot of existing data on them, other than what can be gleaned from social media websites and academic articles. Below is a table of registered *bingyou* organizations.<sup>1296</sup>

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<sup>1296</sup> These organizations were found with the search term “bingyou” in the MCA Bureau of Social Organization locally registered database. The search function searches the names of the organization only, so it is likely there are more than the organizations in this list that have less-direct names about their organization’s purpose.

**Table 25: Official Registered Bingyou Associations (MCA local database)**

Name in English	Name in Chinese	Disease	Organization Type	Province
Yancheng Tinghu District High Blood Pressure Bingyou Club	盐城市亭湖区高血压病病友俱乐部	High blood pressure	Social Organization	Jiangsu
Zhenjiang New District Cloud Merging Into the Sky Bingyou Care Center	镇江新区云合天晴病友关爱中心	NA	Private non-commercial institution	Jiangsu
Hangzhou Shangheng District Joy and Hope Cancer Bingyou Mutual Help Service Society	杭州市上城区乐盼癌症病友互助服务社	Cancer	Private non-commercial institution	Zhejiang
Laian County Kidney Disease Bingyou Association	来安县肾病病友会	Kidney disease	Social Organization	Anhui
Laian County Diabetes Bingyou Association	来安县糖尿病病友会	Diabetes	Social Organization	Anhui
Luan Kidney Disease Bingyou Association	六安市肾病病友联谊会	Kidney disease	Social Organization	Anhui
Anqing Kidney Disease Bingyou Association	安庆市肾病病友联谊会	Kidney disease	Social Organization	Anhui
Shenzhen Kidney Disease Mutual Assistance Organization	深圳市肾病病友互助会	Kidney disease	Social Organization	Shenzhen
Yutian County Cerebrovascular Bingyou Association	玉田县脑血管病病友会	Cerebrovascular	Social Organization	Hebei
Changli Xiehe Hospital Cardio- and Cerebrovascular Disease Bingyou Association	昌黎协和医院心脑血管病友协会	Cardiovascular, cerebrovascular	Social Organization	Hebei
Xingtai Compassion Diabetic Bingyou Club	邢台市爱心糖尿病病友俱乐部	Diabetes	Private non-commercial institution	Hebei
Xixia County Red Ribbon Bingyou Association	西峡县红丝带病友联谊会	HIV/AIDS	Social Organization	Henan
Changsha Wangcheng District Green Leaf Tumor Bingyou Assistance Center	长沙市望城区绿叶肿瘤病友帮扶中心	Cancer	Private non-commercial institution	Hunan
Chifeng Baoshan Diabetes Bingyou Association	赤峰宝山糖尿病病友协会	Diabetes	Social Organization	Inner Mongolia
Shanghai Pink Ribbon Angel Cancer Bingyou Care Center	上海粉红天使癌症病友关爱中心	Cancer	private non-commercial institution	Shanghai
Fuxin Diabetes Bingyou Association	阜新市糖尿病病友协会	Diabetes	Social Organization	Liaoning
Dalian Lushunkou District Diabetes Bingyou Club	大连市旅顺口区糖尿病病友俱乐部	Diabetes	Social Organization	Liaoning
Yingshan County Diabetes Bingyou Association	营山县糖尿病病友协会	Diabetes	Social Organization	Sichuan
Dechang County Diabetes and High Blood Pressure Bingyou Association	德昌县糖尿病暨高血压病友协会	Diabetes and High blood pressure	Social Organization	Sichuan

HOSPITAL-ORGANIZED BINGYOU GROUPS: EDUCATION AND COMMUNITY ON- AND OFFLINE

Hospital-based *bingyou* groups often provide education and community support for patients by launching group classes and activities. Again, breast cancer represents a popular area with hospitals for organizing various educational and community-building

activities: lectures given by renowned specialists and nurses about topics in recovery,<sup>1297</sup> poetry readings by health care workers,<sup>1298</sup> talent shows performed by both health care workers and patients,<sup>1299</sup> breast cancer knowledge trivia,<sup>1300</sup> mental guidance,<sup>1301</sup> group discussions among patients,<sup>1302</sup> and skits performed by patients conveying the high and low points in fighting breast cancer.<sup>1303</sup> Research has found that these types of activities and courses have a positive impact on patients, but there are generally not enough of these types of activities to meet the needs of the Chinese population.<sup>1304</sup> Moreover, while hospital-organized *bingyou* groups may help connect patients with each other, because these groups are hospital-organized, it is doubtful that they can provide credible third-party information for patients should they have doubts about the treatment they are receiving.

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<sup>1297</sup> Wei Jialing 韦嘉玲 et al., “Tuanti Ganyu Dui Gaishan Kangfuqi Ruxianai Huanzhe Shehui Zhichi Shuiping de Yanjiu 团体敢于对改善康复期乳腺癌患者社会支持水平的研究 [Study on Improving Social Support of Breast Cancer Patients at Rehabilitative Stage by Group Intervention],” 1273; Yuan Haijuan 袁海娟 and Yin Ping 殷萍, “Bingyou Lianyihui Dui Ruxianai Bingren Zhixinxing de Yingxiang 病友联谊会 对乳腺癌病人至新兴的影响 [Influence of Patients Fraternity on Knowledge-Attitude-Behavior of Breast Cancer Patients],” *Quanke Huli 全科护理* 13, no. 29 (October 2015): 2881.

<sup>1298</sup> Yuan Haijuan 袁海娟 and Yin Ping 殷萍, “Bingyou Lianyihui Dui Ruxianai Bingren Zhixinxing de Yingxiang 病友联谊会 对乳腺癌病人至新兴的影响 [Influence of Patients Fraternity on Knowledge-Attitude-Behavior of Breast Cancer Patients],” 2881.

<sup>1299</sup> Yuan Haijuan 袁海娟 and Yin Ping 殷萍, 2881.

<sup>1300</sup> Yuan Haijuan 袁海娟 and Yin Ping 殷萍, 2881.

<sup>1301</sup> Yuan Haijuan 袁海娟 and Yin Ping 殷萍, 2881.

<sup>1302</sup> Wei Jialing 韦嘉玲 et al., “Tuanti Ganyu Dui Gaishan Kangfuqi Ruxianai Huanzhe Shehui Zhichi Shuiping de Yanjiu 团体敢于对改善康复期乳腺癌患者社会支持水平的研究 [Study on Improving Social Support of Breast Cancer Patients at Rehabilitative Stage by Group Intervention],” 1273.

<sup>1303</sup> Zhu Lili 朱丽丽, Wang Lin 王林, and Yue Bu 岳补, ““Zhengjiu Rufang”: Qishi Zhengjiu Gengduo Deshi Linghun” 拯救乳房“ 其实拯救更多地是灵魂 [“Rescue the Breasts”: Actually More of What Is Saved Are Souls],” *Shoudu Yiyao 首都医药 Capital Medicine*, October 2012.

<sup>1304</sup> Wei Jialing 韦嘉玲 et al., “Tuanti Ganyu Dui Gaishan Kangfuqi Ruxianai Huanzhe Shehui Zhichi Shuiping de Yanjiu 团体敢于对改善康复期乳腺癌患者社会支持水平的研究 [Study on Improving Social Support of Breast Cancer Patients at Rehabilitative Stage by Group Intervention],” 1274–75.

PATIENT-ORGANIZED SUPPORT GROUPS: PATIENT-CENTERED INFORMATION AND  
COMMUNITY ONLINE AND OFFLINE

Smaller, unofficial, and unregistered communities of patients are the most difficult to track, but at the same time they are potentially the most impactful types of patient organizations since patients themselves organize them based on their needs and interests.<sup>1305</sup> This is important because even though there are numerous national health-oriented foundations and organizations, their ties to the state, medical community, and reports of corruption<sup>1306</sup> about their activities at times has called into question their credibility and motives. Self-established patient groups are also completely patient-driven, meaning that the information they provide is meant to be for patients; there is no ulterior motive, so the information is likely to be perceived as credible.

One example of an increasingly active patient group online for leukemia is Warm Little White Home (暖小白屋). The group's introduction statement provides an apt example of patient-oriented information and community:

We are a group of *xiaobai* ("little whites" – a playful name for leukemia patients), positively moving forward, we all have the same illness but we don't pity each other. We also can tease each other and laugh at life. Together we walk towards health. We don't have money and cannot give you direct material help. However, we have experience, we have time; all of what we have, we are willing to share with everyone. We hope this group can be noticed by all of society. We hope all of our fellow leukemia friends can obtain the most appropriate treatment, and we hope that they do not go down the wrong roads. We want them to understand more and to

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<sup>1305</sup> Chen Jingfang and Wang Huizhen, "263 Aizibing Huanzhe Shehui Zhichi Yu Fuyao Yicongxing de Xiangguanxing Yanjiu 263 列艾滋病患者社会支持与服药依从性的相关性研究 [Research on the Relationship between the Correlation of Social Support and Medication Compliance in 263 AIDS Patients]," *Journal of Nursing (China)* 21, no. 4 (February 2014): 3.

<sup>1306</sup> This was especially true of the Chinese Red Cross several years ago when one of its employees Guo Meimei posted photos of her luxurious life to social media. Chi Mo, "Everyone Talking about China: The Red Cross Needs to Depend on Itself for Restoring Its Reputation [大家谈中国: 红会恢复名誉还需靠自己]."

experience less delay. We hope everyone can be healthy and happy. This is the purpose for which we established the Warm Little White Home.<sup>1307</sup>

The group has over 4,463 followers on Weibo<sup>1308</sup> and recently launched a new website and mobile application in 2017.<sup>1309</sup> This organization provides a forum for discussion, information on medicine, general information about the illness, lectures by experts on topics related to the illness, discussion threads, and information on pediatric leukemia. The website also posts on both its Weibo and its website various articles and relevant news updates about treatments, such as posting a notification from the Chinese Cancer Foundation on the termination of one of its aid programs for a medicine used to treat leukemia.<sup>1310</sup> This group, which is not listed as registered, thus provides patient-driven community support and patient-driven information about the illness.

Informal patient groups also form offline. One academic study focused on the phenomenon of the communities created by families from outside of Beijing seeking treatment for their children with leukemia in Beijing hospitals. As highlighted previously, due to the gap in quality of care between urban and rural areas, many people seek care, especially for serious illnesses, in large cities. The study found that patients and families from outside Beijing who find themselves at the same hospital depended on each other for emotional support, information about how to find housing, information about the

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<sup>1307</sup> “The Most Primary Warmth We Give to You - Nuan Xiaobai Wu [最初的温暖 献给你们-暖白小屋],” Nuan Baixiao Wu 暖白咲舞, February 25, 2017, <https://nuanbai.wohenok.com/article/58>.

<sup>1308</sup> “The Most Primary Warmth We Give to You - Nuan Xiaobai Wu [最初的温暖 献给你们-暖白小屋].”

<sup>1309</sup> “白血病病友会 Baixue Bingyou Hui,” 2017, <http://site.henizaiyiqi.com/widget/Shuo/view/id/8967>.

<sup>1310</sup> “China Cancer Foundation Notification on Terminating Sprycel Patient Aid Program 中国癌症基金会关于终止施达赛患者援助项目的通知,” Nuan Xiaobai Wo, June 26, 2017, <https://nuanbai.wohenok.com/forum/thread/1664>.

illness, and information about potential charitable funding.<sup>1311</sup> These informal *bingyou* groups, both on- and offline, are perhaps the most directly influential on patients lives because they provide close-knit communities that offer information tailored to patient needs. At the same time, because they are not officially registered as organizations, they may be difficult for patients to find, so their overall impact on providing patients with credible information about illnesses and community and emotional support is unclear.

#### *Grassroots Community-based Organizations*

Additionally, other community organizations not directly established for health purposes also provide important services to patients. These local community organizations are poised to offer communal support and funding for patients as well as care tailored to the needs of specific communities. For example, the Yi community in Sichuan's Liangshanzhou has been hit heavily by AIDS, primarily through intravenous drug use.<sup>1312</sup> While there are many prominent official and international organizations in the area providing aid, there are also local Liangshan Yi minority NGOs such as the Liangshanzhou Civil Anti-Drugs Association and the Liangshan Yi People Women's and Children Development Center.<sup>1313</sup> The Women's and Children Development Center provides aid for medical fees and for orphans, disseminates information about government aid policies and educational information on HIV/AIDS prevention, and supplies basic food provisions and materials for orphans to attend school.<sup>1314</sup> The Liangshanzhou "Civil Anti-Drugs Association," according to Yi customs, formulates

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<sup>1311</sup> Wang Man 王曼, "Waidi Lai Jing Baixuebing Huaner Jiating de Shehui Zhichi Xitong Yanjiu' 外地来京白血病患者家庭的社会支持系统研究 [Research on the Social Support System for Pediatric Leukemia Patients and Their Families Who Come to Beijing from Other Parts of China for Treatment]," 11–12.

<sup>1312</sup> Li Guangyong, "Yi Rural AIDS Patients Social Support System Research 彝族乡村艾滋病患者社会支持体系调查研究," *Guizhou Ethnic Studies* 34, no. 149 (January 2013): 159.

<sup>1313</sup> Li Guangyong, 160.

<sup>1314</sup> Li Guangyong, 160–61.

local rules and regulations, runs a village “anti-drug patrol group,” and organizes classes for HIV/AIDS patients who are drug addicts, focusing on overcoming addiction.<sup>1315</sup>

Community organizations can thus play important roles in providing funding to reduce costs for patients and providing health information marketed in a way that is likely better understood by local communities. They are also likely more credible because they have direct visibility within the communities they serve, adding more accountability for donations and other benefits they provide. However, just like the informal *bingyou* groups discussed above, it is unclear the extent to which these groups operate throughout China. Moreover, if they tend to focus on communicable diseases only, they are likely not making a large impact upon areas in which patients need to undergo high-risk procedures and therefore may not be as instrumental in addressing issues related to the sources of *yinao*.

#### Civil Society – Legal Advocacy

No matter the strides achieved in the health care system by NGOs, private companies, or the government, disputes will remain inevitable and so there will always be a need for legal advocacy for patients. Yet in the last couple of years, legal advocacy in China has become increasingly controversial, as there have been more arrests of human rights lawyers.<sup>1316</sup> In January 2017 the new and more restrictive Foreign NGO Law went into effect, which arguably poses the greatest challenge for NGOs in the areas

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<sup>1315</sup> Li Guangyong, 161.

<sup>1316</sup> Human Rights Watch, “China: On ‘709’ Anniversary, Legal Crackdown Continues,” Human Rights Watch, July 7, 2017, <https://www.hrw.org/news/2017/07/07/china-709-anniversary-legal-crackdown-continues>; “U.N. Denounces China Crackdown on Lawyers, Seeks Release,” *Reuters*, May 5, 2017, <http://www.reuters.com/article/us-china-rights-un-idUSKBN18111D>; Journal, “China’s Latest Crackdown on Lawyers Is Unprecedented, Human Rights Monitors Say”; Ford, “China’s Widening Crackdown on Lawyers”; Jacobs and Buckley, “China Targeting Rights Lawyers in a Crackdown.”

of human rights and law.<sup>1317</sup> As a result, the American Bar Association, which promotes its Rule of Law Initiative in China, moved its office from Beijing to Hong Kong.<sup>1318</sup>

While the Chinese state aims to decrease the role of NGOs and individual lawyers in pursuing legal rights in China, at the same time it is expanding its own government-run legal aid program, which offers legal services to poor and disadvantaged groups.<sup>1319</sup>

While evaluating the entire government's legal aid program is beyond the purview of this project, it is clear from these recent developments that the government is trying to claim more of the space over legal advocacy by expanding its own programs and shutting down others or arresting independent legal advocates.

Chinese academic research specifically on how NGOs directly help patients in medical disputes is scarce. Existing research on the topic tends to focus on how NGOs can theoretically fill in the gaps in the dispute resolution process and highlights where both government and market forces have been unsuccessful in addressing the many issues that exacerbate conflict between patients and doctors.<sup>1320</sup> This includes areas such as

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<sup>1317</sup> Chris Buckley, "Uncertainty Over New Chinese Law Rattles Foreign Nonprofits," *The New York Times*, December 29, 2016, sec. Asia Pacific, <https://www.nytimes.com/2016/12/29/world/asia/china-foreign-ngo.html>.

<sup>1318</sup> A. B. A. Journal, "ABA Initiative Pulls out of Beijing amid Uncertainty Caused by Law Regulating Foreign Nonprofits," *ABA Journal*, accessed July 18, 2017, [http://www.abajournal.com/news/article/aba\\_initiative\\_pulls\\_out\\_of\\_china\\_amid\\_uncertainty\\_caused\\_by\\_law\\_regulating/](http://www.abajournal.com/news/article/aba_initiative_pulls_out_of_china_amid_uncertainty_caused_by_law_regulating/).

<sup>1319</sup> "Office of the State Council Publishes 'Opinions on Perfecting Legal Aid System.'"

<sup>1320</sup> Search results for NGOs and medical disputes resulted in primarily three articles: 贺庆功 He Qinggong, "Feizhengfu Zuzhi: Goujian Hexie Yihuan Guanxi de Jiji Tuidongli 非政府组织: 构建和谐医患关系的及推动力[NGOs: An Active Motive of Constructing a Harmonious Physician-Patient Relationship]," *Chinese Medical Ethics* 21, no. 5 (2008): 80–81, 84; 邓世仑 Deng Shilun, "Lun Yiliao Feizhengfu Zuzhi Zai Yihuan Jiufen Fangkong Zhong de Zuoyong 论医疗非政府组织在医患纠纷防空气中的作用," *Zhengfa Xuekan 政法学刊 Journal of Political Science and Law* 32, no. 3 (June 2015): 95–98; 马语莲 Ma Yulian, "Feizhengfu Zuzhi Jieru Yihuan Jiufen Jiazhi Tanxi 非政府组织介入医患纠纷价值探析 [Research on Practical Value of Non-Governmental Organizations, Involvement in Medical Disputes]," *Journal of Nanjing University of Aeronautics and Astronautics (Social Sciences)* 19, no. 1 (n.d.): 62–64.

providing patients with a reliable third party for medical information,<sup>1321</sup> offering legal consulting for potential cases,<sup>1322</sup> representing patients during the dispute resolution process,<sup>1323</sup> engaging in fundraising activities for families particularly in need,<sup>1324</sup> and potentially establishing new avenues for dispute resolution.<sup>1325</sup>

Available data collected from the Ministry of Civil Affairs' Social Organization Administration Bureau show that nearly all of the registered CSOs offering services related to doctor-patient disputes are medical mediation dispute committees (MDMCs) or variations of them,<sup>1326</sup> which are discussed at length in the previous chapter. Most of these MDMCs are founded under the auspices of local governments, though sometimes they are established by insurance companies that charge disputants for their use. This trend reflects the statement above that the government is attempting to occupy the formal space for legal advocacy in China. This is a problem because MDMCs are not advocacy organizations; they are intended to be third parties to disputes and not supposed to advocate on behalf of the patients. Below I consider several other types of organizations, groups, and individuals that can provide legal counsel for patients, but the overall

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<sup>1321</sup> 邓世仑 Deng Shilun, "Lun Yiliao Feizhengfu Zuzhi Zai Yihuan Jiufen Fangkong Zhong de Zuoyong lun 医疗非政府组织在医患纠纷防空中中的作用," 97; 贺庆功 He Qinggong, "Feizhengfu Zuzhi: Goujian Hexie Yihuan Guanxi de Jiji Tuidongli 非政府组织: 构建和谐医患关系的及推动力[NGOs: An Active Motive of Constructing a Harmonious Physician-Patient Relationship]," 81.

<sup>1322</sup> 马语莲 Ma Yulian, "Feizhengfu Zuzhi Jieru Yihuan Jiufen Jiazhi Tanxi 非政府组织介入医患纠纷价值探析 [Research on Practical Value of Non-Governmental Organizations, Involvement in Medical Disputes]," 63.

<sup>1323</sup> 马语莲 Ma Yulian, 64.

<sup>1324</sup> 贺庆功 He Qinggong, "Feizhengfu Zuzhi: Goujian Hexie Yihuan Guanxi de Jiji Tuidongli 非政府组织: 构建和谐医患关系的及推动力[NGOs: An Active Motive of Constructing a Harmonious Physician-Patient Relationship]," 81.

<sup>1325</sup> 贺庆功 He Qinggong, 84.

<sup>1326</sup> In a search of the database using "doctor-patient" and "medical dispute," the majority of results were explicitly mediation centers or other variations of research and dispute settlement centers. See Appendix for full database.

conclusion is that there are few independent organizations where patients and families can receive advocacy.

*MDMC-Sponsored Legal Counseling for Medical Disputes (Government-sponsored NGO)*

In 2015 the first legal consulting center specifically established for medical disputes, the Hubei Province Medical Dispute Legal Consulting Services Center, was established in Wuhan, Hubei province.<sup>1327</sup> The Center was jointly established by a local law firm (Hubei Weili Law Firm) and Hubei Provincial Jiangtai Medical Dispute People's Mediation Committee (MDMC) and is located within the MDMC.<sup>1328</sup> The Hubei Provincial Health and Family Planning Commission provides regular oversight of the center, the Hubei Justice Department provides overall guidance for the center's work, and the Hubei MDMC and Weili Law Firm are responsible for legal consulting services and providing experts to the center.<sup>1329</sup> The center shares its Internet platform with the Hubei Provincial Jiangtai MDMC, and it has a 24-hour phone line open to receive reports of cases.<sup>1330</sup> To my knowledge, the only data that has been published on the work of this center are from its first week of operation when the Center received phone calls and visits for over 50 cases from both inside and outside the city of Wuhan.<sup>1331</sup>

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<sup>1327</sup> “Quanguo Shoujia Yiliao Jiufen Falu Zixun Fuwu Zhongxin 23 Ri Zai Han Chengli 全国首家医疗纠纷法律咨询服务中心 23 日在汉成立 [The First Nationwide Legal Consulting Service Center Is Set Up on the 23rd in Wuhan],” Fenghuang Hubei, October 23, 2015, [http://hb.ifeng.com/economic/detail\\_2015\\_10/23/4479454\\_0.shtml](http://hb.ifeng.com/economic/detail_2015_10/23/4479454_0.shtml).

<sup>1328</sup> “Quanguo Shoujia Yiliao Jiufen Falu Zixun Fuwu Zhongxin 23 Ri Zai Han Chengli 全国首家医疗纠纷法律咨询服务中心 23 日在汉成立 [The First Nationwide Legal Consulting Service Center Is Set Up on the 23rd in Wuhan].”

<sup>1329</sup> “Quanguo Shoujia Yiliao Jiufen Falu Zixun Fuwu Zhongxin 23 Ri Zai Han Chengli 全国首家医疗纠纷法律咨询服务中心 23 日在汉成立 [The First Nationwide Legal Consulting Service Center Is Set Up on the 23rd in Wuhan].”

<sup>1330</sup> “Hubei Sheng Jingtai Yiliao Jiufen Renmin Tiaojie Weiyuanhui 湖北省江泰医疗纠纷人民调解委员会 Hubei Province Jiangtai Medical Dispute People's Mediation Committee,” 2015, <http://www.hbjtytw.com/index.php>.

<sup>1331</sup> Manager, “Falv Zixun Fuwu Zhongxin Chengli Yi Zhou Jiedai Renyuan Jin Bai Ren [法律咨询服务中心成立一周接待咨询人员近百人]Legal Consulting Services Center During Its First Week of

Because the Center is located within and co-administered by an MDMC, which is supposed to promote mediation, it is likely that it pushes this form of dispute resolution. This would make the legal consultation provided by the Center biased towards the state's policy to encourage mediation, rather than providing objective advice based on the specific facts and needs of the case. In other words, it does not advocate based on the best interest of the patient. Since the Center's inception, the site has not posted further news on its operations,<sup>1332</sup> so it is difficult to determine how widely used it is and whether complainants are satisfied with the services they receive.

### *NGOs On- and Offline*

As observed above, I have found no evidence of independent legal NGOs specifically dedicated to advocacy during medical disputes. There are, however, organizations dedicated to furthering rights for certain patient groups, usually in anti-discrimination cases, for those with HIV/AIDS, hepatitis, and disabilities. But there is also evidence suggesting that in the recent crackdown on legal advocacy over the past couple of years, some of these organizations may have been shut down.<sup>1333</sup> There are also organizations that offer legal aid and consultation more generally for a broader range of cases that can include medical disputes. One such organization is Da An (English: My

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Establishment Received Close to 100 Guests,” Hubei Province Jiangtia Medical Dispute People’s Mediation Committee, November 2, 2015, <http://www.hbjtytw.com/news/html/?461.html>.

<sup>1332</sup> As of July 6, 2017, the Hubei Jingtai MDMC has not posted news on the Legal Consultation Services Center since November 2, 2015. See: “Hubei Sheng Jingtai Yiliao Jiufen Renmin Tiaojie Weiyuanhui 湖北省江泰医疗纠纷人民调解委员会 Hubei Province Jingtai Medical Dispute People’s Mediation Committee.”

<sup>1333</sup> Examples of organizations that provide legal advocacy for certain groups include the Baiyin Handicap Association (Gansu Province), One Plus One Disabled Persons’ Cultural Development Center, Justice for All (Tianxia Gong), . The Beijing Yirenping Center was raided in March 2015 and has been inactive on Weibo since that time. The Dongjen Center for Human Rights and Education and Action has also been inactive. For information on Beijing’s Yirenping’s raid, see: Andrew Jacobs, “China Raids Offices of Rights Group as Crackdown on Activism Continues,” *The New York Times*, March 26, 2015, sec. Asia Pacific, <https://www.nytimes.com/2015/03/27/world/asia/china-raids-offices-of-rights-group-as-crackdown-on-activism-continues.html>.

Case), run by one of China's most prominent lawyers and legal scholars Xu Xin, who has over 31 million followers on Weibo.<sup>1334</sup> After receiving an overwhelming number of requests for his legal advice, Xu Xin established Da An in 2013 to provide large-scale legal consultation.<sup>1335</sup> There are over 1,000 legal volunteers (200 active) that help to manage the platform and answer questions.<sup>1336</sup> Anyone can post their cases and questions, and volunteers aim to answer questions within 24 hours of receiving them.<sup>1337</sup> While not specifically targeted to medical disputes, this organization does not have any apparent restrictions on the cases it receives. However, the organization did not respond to an inquiry about the degree to which they accept medical disputes. Ultimately patients and families have a limited number of options for medical disputes.

#### *"Little Experts"*

Likely much of the truly independent advocacy available for patients and families during medical dispute resolution comes from individuals who have navigated the medical dispute resolution process themselves. These individuals can offer legal advice to others based on their experiences. Mary Gallagher observed this phenomenon while studying legal aid for labor disputes, finding that former plaintiffs became "little experts" and helped others in their communities with similar disputes.<sup>1338</sup> Because this type of advocacy is community-based and informal, it is very difficult to measure its extent. I had

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<sup>1334</sup> Xu Xin, "Xu Xin," July 18, 2017, [http://weibo.com/poetjustice?from=myfollow\\_all](http://weibo.com/poetjustice?from=myfollow_all).

<sup>1335</sup> Xin Kuaibao, "Hugean Tui Qiang Ren Zhiyi Xu Xin Faqi Wuguzhe Jihua Pingfan Yuanan 呼格案推墙人之一徐昕发起无辜者计划平反冤案 One the Lawyers Who Overturned the Huge Case Xu Xin Launches a Plan to Redress Unjust Cases for the Innocent," Sohu News, January 4, 2015, <http://news.sohu.com/20150104/n407498357.shtml>.

<sup>1336</sup> Xin Kuaibao.

<sup>1337</sup> See Da An Weixin information by following the organization and typing a message to receive the basic facts of the organization.

<sup>1338</sup> Mary E Gallagher, "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness," *Law and Society Review* 40, no. 4 (December 2006): 807–8, <https://doi.org/10.1111/j.1540-5893.2006.00281.x>.

the opportunity to interview one such “little expert” who has been pursuing several legal cases related to a medical malpractice dispute and whose story has been neglected by official media. This plaintiff’s case is unique in that he himself is a prominent doctor in an urban 3A hospital. At the time of the interview in early 2016, he was pursuing a malpractice suit against another hospital for negligence in administering a medication to his mother that she had a known allergy to and that, according to the plaintiff’s claim, ultimately caused her death. Unlike most plaintiffs, he has the medical knowledge to evaluate cases and has experience with the legal system both from pursuing his mother’s case and from his administrative role at his own hospital related to Party discipline and inspection.<sup>1339</sup> When asked about patients and their families seeking his advice on their cases, he responded:

These past few years many people have come to my office, seeking my knowledge to help them pursue court cases. I have helped many people and have pursued cases many times; moreover, in half of them, plaintiffs have received compensation. I’m constantly doing this public service, which is, as a citizen, helping the disadvantaged groups in society – the patients – clarify whether [they] have suffered harm and whether they need compensation. There are some people, as soon as I meet them, I tell them, you should get compensation. There are others I tell them this [issue] probably won’t merit compensation; it is not the doctor’s fault. In this way I am helping the hospital defuse many problems that they either need to resolve or do not need to resolve. In reality this is doing public good, meaning we clarify what is true and what is false. There are some people [after talking to me], they don’t make commotion anymore. They think, after listening to me, I’m very earnest, because I’m helping the patient, not helping the hospital.<sup>1340</sup>

This physician’s experience reveals several important aspects of “little experts.”

The first is that even though he is not an NGO, he is technically providing the services that NGOs would ideally provide: unbiased expertise that patients believe to be credible.

Impartiality and credibility, which are related to and build upon each other, are two

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<sup>1339</sup> Plaintiff-Physician, Interview No. 89, February 2016.

<sup>1340</sup> Plaintiff-Physician.

qualities that government-related institutions, by virtue of being part of either the official medical or justice system, struggle to provide. The second notable point is that patients are accessing these important services, but not through traditional NGOs, but rather through individual networks based on personal references or Internet forums. Even though there may appear to be a dearth of patient organizations, this does not mean that patients do not receive unbiased and professional help. However, it is difficult to see and measure the extent to which these individuals and their networks exist.

### **Conclusion**

This chapter began by discussing two different types of responsiveness – expression and problem solving. The above analysis shows that citizens have outlets for expressing their opinions about *yinao* – patients and citizens express a full range of thoughts online from anti-official sentiments to pro-violence sentiments. Health care workers have also done the same and have even protested against *yinao* in order to solicit better government policies to ensure their security.

One lingering question concerns why there has been no mass collective action from patients and citizens to advocate for their rights and interests in medical disputes. While exploring the absence of collective action would necessitate a separate research project, I hypothesize that there are at least two main issues that have made collective action difficult. The first is that medical disputes generally arise as individual cases, not as collective cases. If someone's relative dies from surgery, while it may be recognized as an injustice, it is not an issue that directly and urgently affects an entire community in the way that other issues, such as a contaminated water source, would. Another hypothesis for the absence of collective action on behalf of patient interests relates to the question of

where to direct their anger, which was illustrated by the diversity of Internet comments blaming officials, hospitals, and health care workers. *Yinao*, as I have emphasized throughout this study, is a complicated problem that involves many issues in the health care, justice, and public security systems as well as the current stage of social and economic development in China. If patients were to organize collectively to express their needs, do they organize against hospitals, doctors, police, or government agencies? Because the issue is so complex, and there is not one obvious culprit (unlike a company contaminating a community's water source), this type of issue may be more difficult for collective expression and action. There are also other arguments, such as restrictions on protest, that may be used to explain the lack of collective action. But with so many instances of protests in China occurring every day, the official restrictions are unlikely to be the primary reason for the lack of social organization around patients collectively expressing their interests around *yinao*-related issues.<sup>1341</sup>

In addition to examining expression, I also chose to focus on problem solving as a form of society's responsiveness based on the assumption that a healthy society is able to address issues the government is unable to solely resolve. While this study found that entrepreneurs and NGOs have created innovative resources to ease burdens on both patients and health care workers, it also found that a society's ability to solve problems and adapt does not always move it in a positive direction. This was most evident in the responses of health care workers practicing defensive medicine, expressing desires to leave the profession, and discouraging others from entering the profession. Most people in the United States associate defensive medicine with the threat of litigation; in China,

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<sup>1341</sup> Thanks to Dr. Zartman and his students in the course Patterns of Protest and Revolt for their thoughts on the lack of collective action.

even before its litigation system has developed widespread acceptance, already it is seeing the practice of defensive medicine because of the threat of violent and chaotic medical disputes.

Civil society is a difficult area to assess, but preliminary analysis suggests that while there have been many organizations emerging over the past couple of decades to provide important funding, community building, educational services, and advocacy in health care, in the area of law, independent advocacy for dispute settlement remains limited if not declining due to the recent crackdown. Yet despite the strides made in organization around health care issues, organization in both areas still appears inadequate when considering the low social presence and attention these organizations receive online and the limited number of organizations meant to serve such a large population. Further, in both areas the most credible actors are likely small, patient-driven, independent organizations or individuals with low visibility due to their lack of registration and formality. The lack of visibility of these organizations and individuals make access to and awareness of them difficult. However, access to this type of support is crucial for providing credible patient-oriented information and for increasing awareness of the rights and resources available to patients and their families grappling with medical conditions and disputes.

Despite these challenges, this chapter has shown that actors in Chinese society are responsive and adaptive to the issues they face. Perhaps the more pressing question is not whether they are responsive or adaptive, but whether or not the Chinese state has given actors in society enough latitude to make the changes necessary to adequately resolve these pressing social issues. But how much latitude is enough? It is a vague and difficult

question to answer. Entrepreneurs have been given latitude to experiment with different ways of pricing services and increasing access, but without a better health care system that has a more rational income and pricing system, better insurance coverage, and better access in rural areas, there cannot be full progress on the factors that contribute to *yinao*. The government still plays a pivotal role and must decide which areas to give to the private sector to resolve.

In the area of NGOs, even though there are “hidden rules” that allow many NGOs to unofficially operate, the fact that they are unregistered not only limits our ability to study them, but also, as emphasized above, makes them less visible to people who need them. For example, the only truly patient-oriented legal resource for medical disputes this study found was “little experts,” which are perhaps the most unofficial and least-publicized source for help. The absence of a more flexible registration system thus hinders the ability of NGOs to help the government with the issues it is least able to tackle itself, namely providing patient-oriented community, advocacy, and information.

The question of latitude is likely one that the Chinese Communist Party (CCP) constantly grapples with. As Chinese society continues to develop and face social issues such as *yinao*, the CCP must decide the degree to which it maintains control over a plethora of social issues. This is the ultimate conundrum facing the Chinese governing system today: deciding how much power over society it must relinquish in order to maintain legitimacy with its citizenry, while at the same time, ensuring that it does not relinquish so much power that it loses complete control.

## CHAPTER 10: CONCLUSION

The purpose of this study was to understand how the use of protest in dispute resolution becomes a national phenomenon and how authoritarian states and societies respond to these behaviors and better adapt their institutions to better address the causes of these protests. This dissertation makes two arguments through analyzing the development of and Chinese state and society responses to *yinao*. First, I have argued that while many factors in the existing health care and dispute resolution systems have contributed to fomenting *yinao*, one of the most significant factors that turned *yinao* into a national phenomenon is increased access to Internet because it quickly spread the idea that certain types of behaviors are effective and legitimate.

In the second part of the dissertation, which in many ways is the core of this project, I argue that while the Chinese state has become innovative and responsive in policymaking, it still only adapts through small, incremental changes within its system's constraints because even if it attempts to make broader strides, it trips over its interconnected web of institutions and interests, rendering it unable to fully realize its goals for reform. While actors in Chinese society have become effective problem-solvers, the desire of the Chinese state to become a bloated actor in civil society, especially in the legal space, hinders meaningful and much-needed independent advocacy and the adaptation of government institutions that would make that possible.

I developed the first argument in Part One of the dissertation, Chapters 4 through 6. Chapter 4 provided a sketch of the entire complaint and dispute resolution system from when a complaint occurs within a clinic to the possibility of pursuing a case in court. It made two important, broad observations about the system. The first is that the Chinese

system heavily advocates for complaints, incentivizing and cultivating this behavior by providing many channels for complaining and by being responsive, sometimes hyper-responsive, to it. Yet while the system encourages and cultivates complaining behaviors, it provides no advocacy for patients and their families during the dispute resolution process; in fact, the system makes a full turnaround, becoming the opponent against which the patient is trying to fight. This is a paradox of the Chinese Party-state system: it is ostensibly on the side of the people, until the people's interests and grievances slam into its bureaucratic interests. In this way the system sets itself up for disappointment. This theme of the system running into itself appears in the second main point articulated in Chapter 4. Not only are local medical review boards by design biased in favor of local hospitals because their board leadership is directly drawn from them, but this pro-hospital bias<sup>1342</sup> extends far beyond the health care bureaucracy itself. Since leaders of top hospitals hold high Party ranks, they are tied to other similar-ranking leaders in other government departments through their participation together in Party meetings, further interlocking hospitals and their interests into the governing system. Meaningful reforms would need to untie this.

The system described in chapter 4 paves the way for chapter 5's analysis of *yinao*. In Chapter 5 I demonstrate that *yinao* represents a wide range of behaviors from violent to nonviolent behaviors, rendering *yinao* a particularly difficult policy issue since no one solution is appropriate for the variety of behaviors exhibited; it calls for a sophisticated group of policies that touches upon the many sources and manifestations of *yinao*. I

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<sup>1342</sup> It is important to note that when the Nationalist Party was in power they also tried to roll out a state-led health care system. The Chinese Medical Association, which predates the People's Republic of China, continued to have influence in the PRC as it formulated its initial health care plans. A pro-doctor or hospital bias may thus be a continuity over time dating rather than characterizing only the period of time (from 1980 on) covered by this study. See: Lampton, *Health, Conflict and the Chinese Political System*, 18:1, 30.

further show in Chapter 5 that available data on *yinao* suggests that hundreds of thousands of these incidents have likely occurred annually, and further, that *yinao* represents a viable form of dispute resolution because when compared to other dispute resolution institutions, it is used at least as often. The frequency with which *yinao* is used for dispute resolution also demonstrates that *yinao* has become a socially legitimate method for medical dispute resolution.

Chapter 6 tackles the question of why *yinao* became a social phenomenon by examining the many sources of *yinao*. It argues that *yinao* became a nationwide social phenomenon due to the increase in Internet usage in China during the early 2000s. *Yinao* has existed since 1986 and while many factors contributed to its development, the Internet helped to quickly perpetuate the idea that *yinao* represented an effective and socially legitimate way to pursue grievances against hospitals. Chapter 6 also adds cogency to the process that leads to *yinao* by showing how health care, justice system, law enforcement, and media variables are interrelated. The visualization of this process builds the foundation for the evaluation of policy responses in Part II: policy responses must address the wide range of variables such as media, health care, justice, and law enforcement, that contribute to *yinao* in order to resolve it.

Part Two, chapters 7 to 9, examine state and society responses to *yinao* directly as well as the sources that contribute to it. Chapter 7 on state responses at the national level argued that state policy in response to *yinao* has exhibited an increase in sophistication in the number and type of agencies involved, type of policy documents issued, and breadth of *yinao*-related sources addressed by the policies. Yet interviews revealed that in spite of the increasing policy sophistication over time, two themes in Chinese politics remain the

same: the ongoing dominance of Party directives, not government documents or laws, in being the decisive factor in adopting policies and the dominance of individual, local leaders in implementing them. Further empirical analysis on the implementation of *yinao*-related policies show that while they tend to achieve shallow implementation, they lack deep or quality implementation: policy responses like mediation committees, required medical liability insurance for hospitals, and hospital police offices have all been rolled out, but the quality of each of these institutions has varied and often fallen short. The concept of shallow implementation, or, put more bluntly, “box-checking implementation” is an especially important one in China where national leadership rolls out massive nationwide goals (hospitals need to buy medical malpractice insurance, medical dispute mediation committees need to achieve nationwide coverage, etc.). Scholars of policy implementation have long known the cross-regional variation, bureaucratic conflict, and increasing pluralization of actors involved in both policymaking and implementation.<sup>1343</sup> My analysis highlights that the depth of implementation also deserves additional attention because it may not be evident in available data or even immediately verifiable through observation. Assuming building strong institutions is an important goal for lasting stability in China, the capacity to assess the depth of policy implementation is extremely important.

Chapter 8’s dive into one medical dispute mediation committee (MDMC) further demonstrates this point. Three mediated cases show that while the MDMC offers complainants increased access to medical dispute resolution and frequently facilitates the

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<sup>1343</sup> David M. Lampton, ed., *Policy Implementation in Post-Mao China* (Berkeley: University of California Press, 1987); Lieberthal and Oksenberg, *Policy-Making in China: Leaders, Structures, and Process*; Lampton, “A Plum for a Peach: Bargaining, Interest, and Bureaucratic Politics in China”; Mertha, *China’s Water Warriors: Citizen Action and Policy Change*; Linda Jakobson and Dean Knox, *New Foreign Policy Actors in China* (Stockholm International Peace Research Institute (SIPRI), 2010).

settlement of cases; it does not always abide by a consistent set of standards for procedures, expert evaluation, and compensation. Three consultations – question and answer sessions between mediators and complainants that have not gone to or will not reach mediation – further show that well-intentioned policies run up against systemic constraints. For example, the MDMC’s purview falls over cases from hospitals in a designated geographic area (district, county, etc.), so MDMCs have repeated regular interactions with a certain set of hospitals, creating the potential for bias towards hospitals. Further, while abiding by the principle of voluntariness in theory represents a progressive step away from coercively compelled mediation characteristic of the past, voluntariness can actually backfire against patients when powerful, wealthy hospitals that do not fear lawsuits refuse to mediate. Lastly, mediators who advocate for patients play a much-needed role, but because they are ultimately neutral third-party mediators, they cannot advocate for patients in dispute resolution – this job must be provided by society.

Chapter 9 addresses how Chinese social actors are responding to *yinao* and the issues in the health and legal systems that contribute to such responsiveness. I divide responses into 1) expression – immediate reactions to *yinao*; and 2) problem-solving – the factor that ultimately shows us whether society has the capacity to address issues affecting it. Netizens tend to express anger around *yinao*, blaming a full range of the actors involved in these incidents, from those committing *yinao* to the corruption of the government and hospitals. There is evidence that health care workers have responded to *yinao* by practicing defensive medicine to reduce their chances of treating patients who may be more predisposed to resorting to *yinao*. Health care workers have also discouraged others from practicing medicine, though the extent to which this has

translated into attrition of health care workers, decreases in medical school enrollment rates, and worsening quality of enrollees in medical school remains unclear.

In the area of problem solving, mobile technology has alleviated many issues that cause frustration in China's health care system, such as increasing access to physicians, allowing physicians to set their own rates, and reducing waiting times.<sup>1344</sup> However, innovations by mobile technology can only go so far and issues such as insurance coverage and realigning value of goods and services in the Chinese health care system remain a challenge.

Preliminary analysis of civil society organizations suggests that in the area of health care, there has been many organizations emerging over the past couple of decades to provide important funding, community building, educational services, and advocacy; in the area of law, however, independent advocacy for dispute settlement remains limited if not declining due to the recent crackdown on public interest lawyers. Yet social organization in both health care and legal spaces still appears inadequate when considering the low level of social media presence and attention these organizations receive online and the limited number of registered civil society organizations meant to serve China's large population. It is likely that the most credible actors for health and legal advocacy are small, patient-driven, independent organizations or individuals. Because these types of individuals and institutions are informal, they lack visibility, making it difficult to access and be aware of them.

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<sup>1344</sup> There are many areas mobile technology has improved, but I have found no studies showing that they have enabled better record keeping and access to patient records, or treatment outcomes.

## **Implications for Theory on Adaptation**

This dissertation offers two concepts based on the preceding analysis for understanding the Chinese system's capacity for adaptation. The first is tetheredness – the extent to which Chinese Party-state institutions are tied together. Think of Chinese government and Party agencies as well as hospitals and mediation committees as people standing in a long line with their shoes tied together. The entire line can move forward without tripping only by making small incremental steps forward together, but if one individual wants to run out in front of the others, he will likely trip as he is pulled back by his laces. This element explains many of the dynamics discussed above: the intention of the Party to advocate for the people, but always falling short because it cannot prosecute itself; attempting to professionalize medical malpractice case reviews through the Chinese Medical Association (CMA), but failing to establish credibility because the CMA is ultimately tied to the Party-state; achieving only shallow implementation because institutions like MDMCs operate within a fabric of embedded hospital-political and state-owned enterprise insurance interests; and even more independent business and social organizations not able to realize their full potential since the government insists on controlling the health care and legal advocacy spaces they seek to occupy.

But tetheredness is not the only dimension of adaptation; there is also the issue of what I call slack - the laces tying an individual to the line of institutions can be loosened (given slack), so he can run out a little further without tripping or pulling down the rest of the line. Slack explains the type of adaptation seen in China – the incremental reforms – that allow institutions to remain tied to the system but with a bit more freedom to operate

on their own. My analysis implies, however, that giving institutions slack may not be enough and the real issue of adaptation for China's future may be cutting off some institutions – their tetheredness – completely.

### **Implications for Practice**

Adaptation is thus a game of understanding how to move forward while adjusting levels of tetheredness and slack and facing the challenges (or advantages) that they bring.

#### Untethering State Institutions

First, the Party-state needs to withdraw some of its oversight of public hospitals. The Party still selects the presidents of public hospitals, which directly ties hospitals and their interests to the Party-state and its interests. Public hospitals also maintain Party offices, which manage personnel selection and human resources issues, and while these functions are important, they can be devolved from the Party. By removing direct Party control over the hospitals, hospitals automatically become less politicized in their influence, helping to level the relationship between hospitals and patients and their families during medical disputes. Under Xi Jinping, however, the Party's dominance has only become increasingly reinforced. Based on my own research, I cannot compare how hospital political environments changed before and after Xi Jinping since I only conducted research during the Xi administration, but if the general political context provides any guidance on Party control in society, it does not seem that political trends would favor untethering hospitals from the Party-state.

The Chinese Medical Association (CMA) also needs to be severed from the National Health and Family Planning Commission. The CMA and its local affiliates need to be completely untethered and turned into fully professional associations in order to

build credibility. But untethering is not enough; there also needs to be some distance created between disputes and the local hospital network where they occur. The locally based medical review boards need to be dissolved; however, the idea of drawing expert witnesses from a pool of qualified specialists could actually still be useful if the pool of experts were larger and experts were better reimbursed for their time. Experts should be drawn from a wider regional pool, should not serve on cases from within their own provinces, and should be required to recuse themselves from cases if there are other conflicts of interest. So for example, under this system, a specialist from Anhui Province would assess cases in neighboring Jiangsu Province.

The reason why I propose specialists from nearby provinces and not within provinces is because tight provincial university networks feed into the ranks of hospitals and the health administrative offices across the provinces. It is highly likely for example, if someone goes to medical school in Nanjing that he will practice medicine in Nanjing or somewhere in Jiangsu province. This also should be applied to the judicial inspection physicians (*fayi*, 法医) because they are all trained in the local hospitals as well, so when a dispute arises the hospital presidents can reach out to the judicial inspection physicians directly because they consider them their former students.<sup>1345</sup>

There also should be an untethering of direct administrative oversight of local health bureaus over hospitals because having both oversight and quality evaluation roles makes health departments appear as part of a self-interested conspiracy when medical disputes emerge. Separating these functions also arguably would allow for greater room for quality improvements since it would allow for more independent evaluation. Shanghai

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<sup>1345</sup> Plaintiff-Physician, Interview No. 89, 6.

helped to resolve this issue by outsourcing quality inspections to a third-party agency.<sup>1346</sup> However, it is also important to note as in the CMA situation above, local hospital and university networks also influence quality inspection since the people from the provincial inspections know and fraternize with the personnel in hospitals; there is less pressure during inspections. Quality inspections should therefore also be outsourced to an independent party that has more distance from these local networks.<sup>1347</sup>

### Untethering Parts of Society

Another area from which the government needs to untether itself is from the insurance industry and civil society. The government needs to untether itself from its desire to be so involved with legal aid and leave it to credible, third party, civil society organizations and public interest lawyers and health care organizations that possess a wealth of patient-oriented knowledge. While I am in no position to suggest how the government should design an insurance program, this study suggests that having insurance attached to mediation and having SOE insurance tied to local governments reduces the credibility of mediation (even to mediators!) and also reduces the credibility of mediation insurance in the eyes of hospitals. Allowing these parts of society to function more independently would not threaten the Party's legitimacy or stability – at least I cannot think of any viable explanation for why they would; in fact having more credible mediation and better insurance would only be advantageous.

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<sup>1346</sup> Interview No. 75 City-Level Health and Family Planning Employee, 2016.

<sup>1347</sup> While it is beyond the purview of this paper to analyze China's legal sector education and development, results of this study show that there is more need for public interest lawyers. While China has a well-publicized legal aid program, it does not appear based on my observation that they provide lawyers or advocates for medical disputes.

## Limitations

There are several important limitations to this study; while I have flagged many of them in Chapter 3 on Methods as well as throughout the dissertation, I would like to highlight a few here.

The first main limitation is the obvious lack of data on *yinao* – a topic explored extensively in Chapter 4 (Data and Definitions of *Yinao*). Having this data would have given me another way to test my findings from the qualitative analysis in Chapter 6 on the sources of *yinao*. It would have also been helpful to have data on *yinao* to see its possible relationship to access to information and education on health and legal issues to see if it was associated with increases and decreases of *yinao* events, which also would have been helpful for supporting (or disproving) Chapter 9 on Social Responses, which argues that information and education from civil society offers potential to decrease misunderstandings between patients and physicians.

A question I have been asked at least a couple of times about this research is the following: What if this is all just about China's health care<sup>1348</sup> being really bad? This is a fair question, especially as my dissertation deals only minimally with the quality of China's health care. On the surface this is because I am not qualified to assess quality of care, but even if I were a clinician, the project of assessing quality of care is still extremely challenging, especially in China where one might argue that data from quality assessment institutions have been compromised by local fraternizing. The poor quality of

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<sup>1348</sup> Here I am referring more to curative rather than public health in China. While China excelled in basic public health care under Chairman Mao, making the leap to providing reliable curative health care nationwide has continued to be a challenge. While it is beyond the purview of this paper to evaluate China's public health system, there are of course important public health challenges the Chinese system, an important one being addressing China's high prevalence of HPV. For more information on recent efforts to combat HPV in China, see: Fuqiang Cui et al., "Prevention of Chronic Hepatitis B after 3 Decades of Escalating Vaccination Policy, China -" 23, no. 5 (May 2017), <https://doi.org/10.3201/eid2305.161477>.

communication and the patient-doctor relationship is well known, but the standards of care itself may be harder to understand. Anecdotally, my own experience being hospitalized in China during her fieldwork (unintentionally) suggested to her that even though on the outside 3A hospitals look advanced, on the inside they lack some important medical capabilities, such as sourcing appropriate equipment and supplies and training enough skilled physicians. Research on the impact of quality and patient safety on medical disputes and *yinao* should be on the agenda for future research. But it is important to emphasize that poor health care itself does not cause violence and protest; there must be other factors involved for patients to make that choice and these other factors is what my dissertation has attempted to tease out.

Above when discussing the first limitation, I lament the lack of quantitative data on *yinao*, but at the same time, I also wish I had more, deeper qualitative data, especially interviews with patients, families, and professional *yinao* protesters. This limitation was due to access – I had asked the mediation committee if I could ask patients and families who used the committee if they would be willing to exchange their contact information, but I was (quite understandably) denied. I also had broached this topic with one of the hospital field sites, but there are many issues around interviewing patients to begin with – this is not a “China issue,” but a general confidentiality and privacy issue that would be a challenge in the US as well. If I had had more time, I would have expended greater effort applying to the necessary bureaucracies to gain access. There are several things this type of data would have provided more insight into: 1) the decision-making process of patients, families, and professional *yinao*; 2) desired outcomes (money, apology, mixture of outcomes, etc.); 3) perception of credibility of institutions; 4) hidden data – things I

have not yet identified; 5) personal stories – these are highly emotional and personal stories, and quantifying them into *yinao* data often removes this critical factor, which is not only important on a human level, but also on an explanatory level for people’s motives and decisions.

One particular piece of important hidden data I gathered was an interview with a family member in a medical dispute who had been beaten by hospital staff and he, who himself works in a hospital, said that this was quite common: “[Average citizens] are frequently beaten [by hospitals] because average citizens, when they speak, frequently are not very careful [about what they say], so as soon as they become upset, the [hospital] beats you. Average citizens in hospitals, aren’t they the ones who have experienced unfair treatment? Of course they are upset, and then the hospital says that you are “*yinao*” and uses force, including the security guards, the security guards beat you.”<sup>1349</sup>

If it is true that hospitals frequently use force against complaining patients in the name of *yinao*, this is an incredibly frightening and understudied human rights issue. Moreover, it represents a possible landmine for further social discontent because even if progress is made in health care, a system that fails to hold hospitals responsible for their abuses against patients will continue to suffer from mistrust and credibility issues.

### **Future Research**

The limitations above imply areas for future research, such as better quantitative data collection and analysis, stronger assessment of the impact of quality of care on *yinao*, and collection of deeper qualitative data from the patient, family, and professional protester perspectives. Additionally, there is also a great need for research and policy direction around developing a good malpractice insurance system in China, untethered

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<sup>1349</sup> Plaintiff-Physician, Interview No. 89.

from SOEs, and actually effective in paying patients directly. China is actually in an advantageous position because it is basically building its medical liability insurance system from scratch and can learn from the mistakes of more established medical malpractice insurance and litigation systems like that of the US.

I also encourage future research to test and refine my conceptual contributions of the mechanisms of tetheredness and slack for authoritarian adaptation. I am unsure whether they apply to other countries, but my instinct is that for Communist governments like Cuba, North Korea, Vietnam, and Laos, they will be useful for understanding how these states are or should be adapting to their changing societies. I am less certain, however, how these concepts apply to other types of governments that are (clumsily) classified as “authoritarian,” such as Iran, Saudi Arabia, or Sudan. Most importantly, I hope these concepts will be used as analytical tools by policymakers and researchers when weighing potential reforms: should institutions be cut off completely from government oversight or allowed more independence within the scope of the state? Moreover, what is the impact that society can or could have on the state’s ability to relinquish some of its responsibilities? Authoritarian adaptation is ultimately not about what the state can do, but how state and society adapt together.

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- Thesis: *“Oligarchization and Democratization in Latin America: Implications for China”*

**Georgetown University**

**Washington, DC**

Bachelor of Science in Foreign Service, GPA: 3.66

**May 2010**

- Graduated *cum laude* with School of Foreign Service proficiencies in Mandarin & Spanish
- Studied intensive Spanish at Universidad San Francisco de Quito during the summer of 2007 and Mandarin at National Chengchi University in Taipei (August 2008-June 2009)

## GRANTS & SCHOLARSHIPS

**Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship**      **Mar 2015-Mar 2016**

- Awarded \$39,880 grant to conduct 12 months of dissertation fieldwork in China

**Fudan University SIRPA Scholarship**

**Aug 2010-Jun 2012**

- Awarded full scholarship (tuition, housing, living expenses) for Master’s program at Fudan University

**Taiwan Ministry of Education Huayu Enrichment Scholarship**

**Aug 2008-June 2009**

- Awarded one-year scholarship for Mandarin language training (monthly stipend for tuition, housing, and living expenses) at National Chengchi University, Taipei during junior year of college

## PUBLICATIONS

Joseph D. Tucker, Bonnie Wong, Jing-Bao Nie, Arthur Kleinman, and the Patient Physician Trust Team (incl. **Amanda Kerrigan**). “Rebuilding patient-physician trust in China.” *The Lancet*. Volume 388. August 20, 2016.

## WORKS IN PROGRESS

“Fieldwork in Xi Jinping’s China: Updating Fieldwork Methodology for China Studies.” In Progress.

## **RESEARCH & PROFESSIONAL EXPERIENCE**

### **Albright Stonebridge Group (ASG) Summer Associate, China Practice**

**Washington, DC  
June 2016-Aug 2016**

- Managed peer research project for an American cancer research center, interviewing and conducting research on similar organizations on the challenges and successes of their commercial partnerships in China; wrote analysis based on findings that was used to inform the center's future strategy in China
- Conducted research on new policies in China's health care industry, translating them from Mandarin to English and analyzing them in weekly policy updates for clients so they could interpret new policies for their business purposes
- Used teaching and oral communication skills to improve the design and presentation of the firm's research and analytical frameworks in order to facilitate their adoption by employees and standardize research quality and analysis firm wide
- Wrote memos for clients on a variety of topics from explaining China's health care system to advising clients about what to expect for the 2016 G20 Summit in Hangzhou, China

### **Johns Hopkins Medicine International Project Team Assessor for Hospital Collaboration**

**Nanjing, China  
May 2015-June 2015**

- Collaborated with a multidisciplinary team of physicians and business leaders to execute a due diligence project on the shared value, risk potential, and long-term viability of collaboration with a Chinese hospital
- Integrated cultural and language knowledge to design and write interview questionnaires on patient-physician communication, medical disputes, workplace violence, and adverse event reporting
- Conducted semi-structured group interviews in Mandarin with the hospital leadership, local officials from the Health, Public Security, and Justice Bureaus as well as with physicians and nurses
- Authored extensive report based on analysis of interview findings to guide future collaboration to improve clinical education and quality of medical care in China

### **Johns Hopkins University SAIS Research Assistant to Dr. David M. Lampton**

**Washington, DC  
Sept 2012-Jan 2015**

- Conducted research in Mandarin and English and edited forthcoming publications and presentations on China's elite leaders, nuclear energy program, and newly formed National Security Commission
- Coordinated publication for the book *Following the Leader: Ruling China, from Deng Xiaoping to Xi Jinping* (2014), editing multiple manuscript versions, working with a team of publishers and artists to meet deadlines, and ensuring compliance with copyright laws

### **Fudan University Research Assistant to Dr. Shiping Tang**

**Washington, DC  
Dec 2010-June 2012**

- Created original dataset to quantify and define the concept of "oligarchization" in order to show how changes in the power of established elites affect democratic governance, part of Dr. Shiping Tang's project "Democratic Pathways to Dysfunction"
- Conducted research and interviews in Spanish for Latin American section of the research project

## **TEACHING EXPERIENCE**

### **Johns Hopkins University SAIS Teaching Assistant to Dr. David M. Lampton, Chinese Foreign Policy**

**Washington, DC  
Fall 2013 & 2014**

- Independently designed the format of and led two required weekly seminar-style classes (10-15 students each) on topics including the historical context of Chinese foreign policy, policy making and implementation, economic and trade policy, national security, and energy and maritime issues
- Advised students on their writing on topics such as policy recommendations for potential areas of bilateral cooperation between the United States and China and assessing China's national power
- Received 4.88/5.0 (2013) and 4.77/5.0 (2014) average ratings on teaching evaluations for "clearly and constructively explaining concepts"
- Taught separate research sessions to show students how to use Zotero with Chinese resources and databases

### **ACADEMIC CONFERENCES & INSTITUTES**

**International Studies Association 2017 Annual Convention** **Baltimore, MD**  
**February 2017**

- "Managing Violence, Justice, and Security in China's Healthcare System," Panel: Health, Human Rights, and Social Justice

**Rebuilding Patient-Physician Trust in China: A Multidisciplinary Summit** **Harvard Shanghai Center**  
**October 2015**

- Collaborated with scholars and doctors from China and the US to write a white paper to improve patient-physician trust in China, contributing to the Ethical-Legal section of the paper
- Translated the white paper and other conference materials from Mandarin to English

**Institute for Qualitative and Multi-method Research (IQMR)** **Syracuse University**  
**June 2014**

- Completed research methods training on effectively combining both qualitative and quantitative research methods, conducting fieldwork abroad, archival research, and comparative case studies
- Presented paper "Violence, Security, and Justice in China's Health Care System" and provided feedback to colleagues on their written work

### **INVITED LECTURES**

**Johns Hopkins School of Advanced International Studies (SAIS)** **Washington, DC**  
**March 9, 2017**

Guest Lecturer for Dr. I. William Zartman's course Patterns of Protest and Revolt on *yinao* (medical disturbances) in China

**Johns Hopkins Medicine International** **Baltimore, MD**  
**July 22, 2016**

Guest Lecturer, "Physician-Patient Relationship: A Foreigner's Perspective" (in Mandarin)  
 Guest Lecturer, "Impact of the Patient-Physician Relationship on Medical Professionalism" (in

**Nanjing University Affiliated Drum Tower Hospital** **Nanjing, China**  
**April 26, 2016**  
 Mandarin)

## **RESEARCH AFFILIATIONS**

*Visiting Scholar*, Fudan University, School of International Relations and Public Affairs, Shanghai, China March 2015-March 2016

*Visiting Scholar*, Institute for International Research at the Hopkins-Nanjing Center for Chinese and American Studies, Nanjing, China, March 2016-April 2016

## **SKILLS**

- Mandarin Chinese (Advanced: Reading, Writing, Speaking)
- Spanish (Advanced: Reading; Intermediate: Writing, Speaking)
- Microsoft Office (Advanced), Stata (basic Econometrics level)