Reviewer's report

Title: Can Shared Decision-Making Reduce Medical Malpractice Litigation? A Systematic Review

Version: 2 Date: 21 October 2014

Reviewer: Leslie Wolf

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Major Compulsory Revisions

1. A definition of “shared decision-making” should be given early in the paper to ensure that readers have a clear understanding of what the authors mean by that term and how it differs from “traditional means of obtaining informed consent.” This is especially important as some of the US state laws seem to equate “shared decision-making” with the tools used to facilitate shared decision-making.

2. On page 5, lines 90-93, given the impact of shared decision-making on patient decision-making (supported by studies), it was not clear why reducing litigation was “important,” especially as some studies have suggested that fewer patients sue than are injured by malpractice. But two possibilities for reframing came to mind: 1) demonstrating reduction of litigation could increase uptake of shared decision-making (with the additional benefits indicated) or 2) shared decision-making presents a relatively easy tool to reducing “preventable litigation” (to borrow from the medical error literature).

3. The case on page 11, lines 211-221, is both fascinating and distressing. However, I was not sure whether it advanced the authors’ arguments regarding shared decision-making since the patient expressed her preferences, which were overridden. This doctor did not seem likely to engage in shared decision-making, no matter what the incentive. Perhaps the authors could make it clearer what this case adds.

4. There is a problem with discussing “standard of care” in the context of what lay people think (e.g., lines 330-338, p. 16). I recognize this comes from the interventional study. However, the issue of “standard of care” in malpractice is typically determined by the practice in the profession – i.e., by experts. Granted, a jury makes the final determination (based on what they’ve heard). It is at least worth putting this issue into context.

5. In the results (p. 19, line 422-424), there is the statement “Most legal-systems, and some health care providers, are slow to view that respecting information patient preferences should be the new standard of care.” This (without more) seems like an overstatement to me. My own view is that there are many ways that the legal system (at least in the United States) recognizes the obligation to respect patient preferences, even if there are exceptions to this. For example,
while certainly imperfect (especially in practice), the informed consent doctrine embraces this. I don’t think I’m alone in my view, so I would encourage the authors to provide a little more explanation as to why they reach that conclusion.

Minor Essential Revisions

6. Page 2, line 24, “Introducing” should not be capitalized

7. Page 16, line 330 – delete “from” after “beyond”

8. Page 17, lines 367. This sentence needs to be clarified. Filing a “complaint” is typically the start of “litigation,” unless the authors do not mean the filing of the formal pleading (complaint) to initiate a lawsuit. I have an idea what is mean, but I could be misinterpreting it.

9. Page 18, lines 397-399 – The discussion of Kerry O’Connell is not helpful. This is not a case that has been previously introduced, and there is insufficient information included to understand the significance.

10. The figures seem to have had some text cut-off (esp. 3rd level). This needs to be corrected.

Discretionary Revisions

11. Although I am not qualified to evaluate the quality of the systemic review, the limited number of studies for inclusion does seem to limit what can be concluded from the systematic review. I will comment that I found the description of how the systematic review was conducted quite clear. I do seem some concerns with including studies from different legal environments (US, UK, and Korea), especially given the small universe of studies. However, I’m not sure this can be avoided with any evaluation of laws (even within the United States). I do think it is important to highlight that none of the studies tested directly whether litigation was in fact reduced, even though those are studies that likely cannot be done.

12. Page 5, line 85, “Nonetheless” doesn’t seem to be the right opener. It felt more like “an additional benefit” of shared decision-making.

13. Page 10, lines 205-6, the quote does not seem connected to the rest of text. Some commentary to set it up would be helpful, if you keep it.

14. In introducing the case on pages 11-12, lines 228-251, I would suggest making clear that this set up one of the studies in the systematic review. As it stands, it was a bit confusing how it fit (as the MD seemed to engage in at least some form of shared decision-making).

15. Page 16, line 347 – is “global” used to mean “internationally” or “broadly”? Another word that does not raise the confusion may be better here.

Level of interest: An article of importance in its field
Quality of written English: Acceptable

Statistical review: No, the manuscript does not need to be seen by a statistician.

Declaration of competing interests:
I declare that I have no competing interests.