

Please rate your patient experience ! Critical thoughts on emerging online hospital ratings in Swiss healthcare

by

MÉLANIE LEVY

Assistant Professor, Faculty of Law, University of Neuchâtel, Switzerland

I. Introduction

How do patients find a high-quality hospital ? By listening to the advice of their family doctor ? By browsing through hospital websites ? With a search query on Google ? Online hospital rating portals promise solutions for the agony of choosing a hospital.

The brave new world of the « rating economy » has arrived in healthcare. Over the past decade, hospital rating systems have emerged, offering their services on free websites aimed at patients or healthcare consumers. Similar to websites such as Expedia, TripAdvisor, and RateMyProfessor¹, online hospital rating sites allow patients to assess the quality of treatments and services received. These online portals also provide data and tools to compare hospitals and healthcare providers more generally, based on patients' experiences and reviews. Rating websites thus hold the potential for shaping healthcare consumers' and payers' choices, while hospitals receive feedback on how to improve their services. « *Das gläserne Spital* » is on its way !

There are, of course, various explanations underlying this phenomenon. Attempts to empirically assess hospital quality and patient safety have proliferated. Calls for increasing accountability of healthcare providers and institutions, questioning the power structure or hierarchical doctor-patient relationship, together with increasing out-of-pocket expenses, have pushed for a customer perspective in healthcare². Online product reviews and

¹ OLIVIER GUILLOD first kindled my passion for Law & Health. I will be forever grateful to him for embarking me on this intellectually fascinating and stimulating journey. OLIVIER GUILLOD's enthusiasm for the cause of health and his dedication to his many students would be highly appreciated in a Swiss version of RateMyProfessor.com.

² FINDLAY.

comparisons have become a popular trend in all areas of economic activity and service, from phones, washing machines, and cars to movies, restaurant meals, and hotels. Together with the advent of large and searchable databases, technological progress has been a key development for the rise of rating systems. User-friendly tools such as smartphones make information easily accessible. Finally, health-related Internet use has been on the rise for a while. Hospital rating websites are just one example among many.

Online hospital rating systems raise fascinating questions. An important one relates to the issue of expertise and quality measurement : « Which is considered the more reliable measure of quality : numerical data or solicited opinion ? »³ Can a website based on subjective patient reviews reflect the quality of medical treatment, or is healthcare evaluation necessarily the prerogative of experts adhering to the scientific method ? Another question here is whether human health and its restoration through hospital treatment can be evaluated, like the quality of a hotel bed or a restaurant dinner. Isn't human health more complex than the taste of restaurant food or the softness of hotel beds ?

Online hospital rating systems show that it might be time to overcome the dichotomy between expertise and quality measurement based on scientific criteria *versus* subjective patient experience and knowledge. In the spirit of today's service industry, hospital performance goes beyond a patient's medical treatment and outcome. The overall hospital experience can be rated, including whether non-medical services (*e.g.*, reception, room, food) are to the patients' taste and whether they are treated with dignity and respect.

Internet rating systems democratize quality evaluation. The silent patient is getting a voice⁴. The evolution and reinforcement of the patients' autonomy have led to their new role as customers to be satisfied. This status empowers patients since user ratings and reviews, and eventually, public shame can act as a form of social control. The question, then, is what patients do with their voice. Potential hospital or provider bashing by patients can lead to undesired consequences. Online rating systems might lead to an erosion of the essential trust underlying the doctor-patient relationship. Furthermore, the consequences for shamed individuals, as to their professional reputations and economic existence, can be as severe or even worse than a procedure in a court of law.

Rating sites have to be considered also in the context of rising competition between hospitals. Competition in healthcare supposes that consumers can compare the quality of

³ ZUGER. See also DASKIVICH ET AL ; LAGU ET AL. ; OKIKE ET AL.

⁴ KATZ.

Please rate your patient experience !

services provided⁵. Developments in Swiss law have reinforced the patient's position as a customer. Notably, the Swiss Health Insurance Act's reform in 2012 led in principle to free hospital choice throughout Switzerland. However, so far, not many patients use this opportunity. One of the reasons is the lack of comparative information about the quality of hospital treatments. Online rating sites address this gap and thus constitute a valuable tool to guarantee the free and informed choice of doctors and hospitals.

In Switzerland, healthcare digitalization and the availability of empirical healthcare data are still very much in their infancy. However, stakeholders, such as the Federal Office of Public Health and the National Association for Quality Measurement in Hospitals and Clinics, have started gathering and publishing « objective » data on hospital performance, including numbers on mortality, wound infections after operations, falls, pressure- or bedsores, and re-hospitalizations. Online hospital rating sites add the individual patient perspective to the picture. In this « Expedia-tization » of hospital performance, websites such as *comparis.ch* allow patients to assess the quality of medical treatments and other related services and present the data gathered in a user-friendly manner.

Hospital quality evaluation and patient safety are critical issues that OLIVIER GUILLOD focused on in his research. In this contribution, I discuss emerging online rating sites in Switzerland as the latest phenomenon in the drive towards more quality and safety in hospital healthcare provision. I start by situating online hospital ratings in the broader picture of reviews and public shaming on the Internet and social media in particular. Then I compare internal *versus* external quality evaluation of hospital healthcare provision in Switzerland. I also present the currently operating hospital rating systems. From a legal perspective, I discuss the importance of transparency, provided by online rating systems, for quality improvement, free hospital choice, and informed patient consent. I also critically analyze potential concerns relating to the role of online hospital rating sites as alternative mechanisms for liability and punishment, their business model, and potential bias. Finally, I conclude with a few thoughts on the future trajectory of online hospital ratings.

II. Culture of public review and public shaming

Before addressing the phenomenon and challenges of online hospital ratings, let us consider these ratings in the broader perspective of online blaming and shaming.

⁵ ROTHBERG MICHAEL B. ET AL.

In pre-modern times, the pillory was a tool for the public execution of criminal sentences, a show of public humiliation, often brutal and merciless. Criminals were exposed in a public place such as a market for all those who passed by to see. Also, there was an interaction between the individual shamefully exposed and the public, through insults and throwing of food, for example. As a state-sanctioned punishment, public shaming was widespread in various parts of the world. In his book « Discipline and Punish », MICHEL FOUCAULT traces the history of criminal punishment and the development of the modern criminal justice system⁶. He describes the spectacle of public executions on the scaffold in pre-modern times. The punishment was ceremonial, a ritual in which the audience was essential. Over time, criminal punishment has gradually ceased to be a spectacle, and whatever theatrical elements it still retained were downgraded. The exhibition of criminals, the pillory, and the public execution ended. Public shaming was replaced by punishment through incarceration in prisons, house arrest, fines, or community service. As FOUCAULT argues, punishment became a hidden part of the criminal procedure.

Today, we witness a return of public shaming, and at least symbolically, a return of the pillory. If not in criminal law and procedure, we see a re-emergence of public shaming as an Internet phenomenon, particularly on social media such as Twitter and online rating sites including TripAdvisor, offering a platform for angry, disappointed, or just displeased online users. A thoughtless joke, a sexist Tweet, a lousy restaurant meal, or an unpleasant hotel service trigger a process that resembles the practice of the pillory.

Just about every day brings a new story of Internet outrage leveled at someone caught behaving or performing « problematically », leading to denunciation and humiliation of the individual concerned. The punishment on the modern pillory does not aim at inflicting physical pain but takes the form of the virtual shitstorm. The shamed are regular people – people who, say, made a joke on social media that came out badly – or professionals who made a mistake at work or performed their services poorly for whatever reason. Public shaming in the virtual universe leaves symbolic marks, marginalizes socially, and can threaten individuals' professional reputations and economic existence.

Digitalized public shaming through online ratings and reviews is faster, more comprehensive, with a mass appeal, user-friendly as executed through the touch of a button, from the safe, warm, quiet place of an office or living room, unrelated to a local place or community. The commentators and reviewers are faceless, hidden in the anonymity of the

⁶ FOUCAULT.

Please rate your patient experience !

WWW. It is a nameless public that holds judgment. There is no accountability or adjudication regarding the accuracy of a comment, a review, or a rating published online.

How does modern-day public shaming relate to services provided in the healthcare system ? Are online hospital rating sites a threat to the medical profession, institutions, and their reputation ? Friend or foul of patients' interests in obtaining quality healthcare ? And what about the trust relationship between patients and healthcare professionals ?

III. Internal *versus* external quality evaluations

Hospital rating sites open the door for online users to voice criticism. However, negative ratings and the public shaming associated with it are only one side of the story. These portals also create an opportunity for patients to highlight unsatisfactory experiences and promote excellent hospital service. They allow for hospitals to learn from their mistakes and improve their performance. In the broader picture, the phenomenon of online rating sites is part of the development of internal and external hospital quality evaluations. Over the last two decades, policymakers, patients' organizations, and scholars have increasingly focused on quality and performance evaluation in healthcare delivery.

Online rating sites allow patients to provide a subjective evaluation of their individual hospital experience. This external evaluation has to be seen in parallel to internal hospital evaluations performed by healthcare professionals based on critical incident reporting systems (CIRS), for example. Whereas internal CIRS are a tool to measure and improve patient safety, external online hospital rating sites express customer satisfaction.

Another tool is the public reporting of hospital output data obtained based on objective scientific criteria and empirical measurements, allowing stakeholders to communicate hospital performance through numbers and statistics. This formal quality and safety evaluation through standardized metrics is also distinct from the *ad hoc* consumer reviews collected and published by online rating sites.

This section briefly presents CIRS and public reporting of hospital performance in Switzerland (III.). The following section focuses on Swiss online hospital rating sites (IV.).

A. Critical Incident Reporting Systems

Modern medicine treats more efficiently than ever. However, the complexity of its practice and organization, especially in hospitals, has the collateral effect of causing harm of

variable severity to patients. The number of preventable deaths and harmed patients in hospitals gives rise to considerable concern⁷.

An essential aspect of patient safety in hospitals is clinical risk management. Clinical risks are unintended and adverse developments in an individual patient's condition occurring in a hospital due, for example, to a medical error or a healthcare-related infection. Clinical risks can be discovered and dealt with through various mechanisms, which OLIVIER GUILLOD focused on in his research, together with the late CÉDRIC BAUME⁸.

Over the last two decades, the development of institutional monitoring and reporting systems has proven to be an essential tool to assess and reduce clinical risks. By generating information on human factors affecting patient safety, monitoring and reporting systems identify risk factors and allow for the creation of new safety standards⁹. In Switzerland, CIRS have become well-established tools to promote patient safety in healthcare facilities. CIRNET, the Critical Incident Reporting & Reacting NETwork, is the network of local error reporting systems set up by the Swiss Patient Safety Foundation¹⁰.

Even if monitoring and reporting systems allow diagnosing system weaknesses, preventing future errors does not always come along accordingly. Many healthcare professionals remain unengaged with patient safety efforts¹¹. Also, the *sine qua non* for healthcare professionals to feed these systems is the trust that critical event reports will be used exclusively for learning and improvement and that their authors will be protected both inside and outside the institution. As OLIVIER GUILLOD has shown in his work, the legal framework of CIRS, the protection of data gathered, and the privacy of healthcare professionals are still mostly unregulated in Switzerland¹².

B. Public reporting of hospital performance

Requirements that hospitals measure and publish quality and safety output data such as healthcare-related infections, readmission rates or mortality, can prompt institutions to

⁷ VINCENT/STAINES.

⁸ BAUME ; GUILLOD, Medical error.

⁹ WACHTER/PRONOVOST ; PRONOVOST/GOESCHEL.

¹⁰ See [securitedespatients.ch/cirnet/](https://www.securitedespatients.ch/cirnet/) (access : 16/02/2021).

¹¹ PATIENTENSICHERHEIT SCHWEIZ. For a more historical perspective, see BOCION ET AL. ; WACHTER.

¹² BAUME. See also the Swiss Federal Supreme Court decision 1B_289/2016 of 8 December 2016 dealing with CIRS and authorities' access to its data in judicial proceedings. In this civil liability case from the canton of Ticino, the public prosecutor demanded access to CIRS data. The Court confirmed the public prosecutor's right to access the data. For a discussion of this case and its implications, see GUILLOD/CHRISTINAT. GÄCHTER/VOKINGER also published a detailed legal opinion on CIRS in Switzerland.

Please rate your patient experience !

engage in more rapid and in-depth analyses of their performance. Public reporting creates incentives to implement patient safety standards¹³. It allows, at least in theory, to compare within and among hospitals and share best practices¹⁴. Increased patient confidence and customer choice are a hospital's reward for demonstrating performance improvement.

In Switzerland, public reporting of hospital performance data has become more common¹⁵. The National Association for Quality Measurement in Hospitals and Clinics (ANQ), created in 2009, is the main actor in this context. The task of the ANQ is to implement nationwide uniform quality measurements, create national comparative evaluations, and publish the results transparently¹⁶.

The Swiss Federal Health Insurance Act of 1994 is at the origin of ANQ quality measurements. It prescribes a contractually agreed quality assurance for service providers (hospitals) and payers (insurers and cantons). Hospital comparisons, in particular regarding costs and quality of healthcare services, must also be made. How they provide proof of quality in practice is left to the service providers and payers. The ANQ was founded for this purpose. The Association of H+ Hospitals, the insurers, and the cantons are represented equally in the ANQ, which defends its supporting organizations' common interests.

The ANQ uses several quality indicators for acute care hospitals : wound infections after operations, falls, pressure- or bedsores, relapses and hospital re-entries (re-hospitalizations), and patient satisfaction. To assess patient satisfaction, patients receive a questionnaire with six multiple-choice questions in the aftermath of a hospital stay.

After initial concerns on the part of the hospitals, the ANQ is now posting the data online. However, the ANQ attaches great importance to the fact that it does not publish hospital ranking lists. The focus is on quality development, and the ANQ considers that rankings do not serve this purpose. Instead, as it explains on its website, the ANQ aims to present the measurement results in a national comparison, inform the general public, and enable hospitals to implement a continuous improvement process. Even though data access is open to anyone, the ANQ quality indicators can reasonably be found on the website by

¹³ FUNG ET AL.

¹⁴ ROSE ET AL. Critical voices point to the shortcomings in the public reporting of hospital performance in the US context. See AUSTIN ET AL.

¹⁵ For a comparative perspective, see ; PROSS ET AL., Measuring ; RECHEL ET AL. For Germany, see PROSS ET AL., Healthcare. For France, see lexpress.fr/palmares/hopitaux/ (access : 16/02/2021).

¹⁶ See anq.ch/de/messergebnisse/ (access : 16/02/2021).

professionals only. The complexity of the data and its visual depiction on the website make it difficult to understand for laypeople.

The Swiss Federal Office of Public Health (FOPH) also contributes to the public reporting of hospital performance. The FOPH is legally mandated to publish key operating figures and medical quality indicators for Swiss hospitals¹⁷. On the one hand, the key operating figures provide an overview of the hospital structure, patients, services, healthcare professionals, and financial situation, as well as the average severity of hospitalizations for acute patients in Swiss hospitals. On the other hand, the quality indicators contain information on the number of cases, percentages (*e.g.*, cesarean section rate), mortality for specific healthcare interventions, and selected lengths of stay and transfer rates¹⁸. The indicators are intended to provide the public an insight into hospitals' activities, which are largely financed by premium- and taxpayers, and give patients and referring doctors the opportunity to make a fact-based hospital choice. Specialists inside and outside the hospitals can also rely on the indicators in comparative quality discussions. In addition, the FOPH's website provides a hospital search interface that allows users to call up the information available on hospitals by canton, by type of establishment, or by name. As with the ANQ, the FOPH does not provide a hospital ranking list.

Finally, the Federal Statistical Office (FSO) publishes the medical statistics of Swiss hospitals¹⁹. These statistics record the data of all hospitalizations in Swiss hospitals, which participate in the relevant surveys every year. The FSO collects socio-demographic information on patients such as age, gender, region of residence, administrative data regarding insurance policy or whereabouts before hospitalization, and medical information on diagnoses and treatments. While certainly informative, this data is not intended for and communicated to guide an informed patient choice as to the hospital to seek treatment in.

¹⁷ In addition, the FOPH, in collaboration with the Swiss Conference of Cantonal Health Directors, has published for the first time in 2020 a cost comparison per case of Swiss hospitals. See [bag.admin.ch/bag/de/home/versicherungen/krankenversicherung/krankenversicherung-leistungen-tarife/Spitalbehandlung/fallkosten-der-spitaeler-und-geburtshaeuser.html](https://www.bag.admin.ch/bag/de/home/versicherungen/krankenversicherung/krankenversicherung-leistungen-tarife/Spitalbehandlung/fallkosten-der-spitaeler-und-geburtshaeuser.html) (access : 16/02/2021).

¹⁸ See [bag.admin.ch/bag/de/home/zahlen-und-statistiken/zahlen-fakten-zu-spitaelern.html](https://www.bag.admin.ch/bag/de/home/zahlen-und-statistiken/zahlen-fakten-zu-spitaelern.html) (access : 16/02/2021).

¹⁹ See [bfs.admin.ch/bfs/de/home/statistiken/gesundheit/erhebungen/ms.html](https://www.bfs.admin.ch/bfs/de/home/statistiken/gesundheit/erhebungen/ms.html) (access : 16/02/2021).

Please rate your patient experience !

C. Latest developments

On 21 June 2019, the Swiss Federal Parliament passed an amendment to the Swiss Federal Health Insurance Act to improve healthcare quality and efficiency²⁰. With the entry into force of the amendment on 1 April 2021, the federal government (Federal Council) takes on the task of defining the goals to be achieved every four years with regard to ensuring and promoting the quality of healthcare services. Most importantly, the revised law contains new instruments that serve to specify and implement the government's goals. In particular, the Federal Council created an extra-parliamentary commission of experts, the Federal Quality Commission, composed of service providers, cantons, insurers, insured, patient organizations, and scientists. This commission supports the Federal Council in promoting quality in the provision of healthcare services within the framework of the law. This development, which might seem incremental, is still remarkable. Despite the complexities of the Swiss healthcare system(s) imposed by Swiss federalism, the Federal Council henceforth takes the lead in quality development for healthcare.

In addition, the amendment creates a vital role for the representative associations of service providers and insurers, as they are obliged to conclude Swiss-wide quality contracts. These contracts must be approved by the Federal Council and enable the establishment of binding improvement measures for healthcare quality. The law provides sanctions for violations of these contracts. We thus witness a critical development in Swiss healthcare evaluation from internal and external performance reporting to future substantive quality expectations and accompanying measures to achieve these expectations.

IV. Swiss online hospital ratings

The purpose of internal critical incident reporting and public reporting of hospital performance is quality improvement and patient safety. However, both tools only involve healthcare professionals and state institutions. Also, both tools generate empirical data, such as critical incidents, mortality, readmission, and nosocomial complications. Using supposedly objective quality indicators creates the image of a neutral, scientific evaluation of hospital performance based on standardized criteria. Patients are reduced to their diseases and corresponding outcomes. Individual patients' experiences and direct testimonies are not included in these two types of internal and external quality evaluations.

²⁰ See BBl 2019 4469 ; bag.admin.ch/bag/de/home/versicherungen/krankenversicherung/qualitaetsentwicklung-schweiz.html (access : 16/02/2021).

Consumer rating sites allow addressing the perceived antihumanistic assumptions inherent in quality metrics. Internet hospital rating sites go beyond patient safety and the management and communication of clinical risks and statistics. By collecting and reporting individual assessments, they allow for an external evaluation based on the subjective patient experience and customer satisfaction. External rating mechanisms give a voice to patients. How does the expression of customer opinions on online rating sites compare to quality measurements of healthcare services provided in a hospital setting? This question boils down to the status, relevance, and legitimacy of expertise and knowledge.

One might say that Internet hospital rating sites lead to a democratization of healthcare evaluation through a fragmentation of the power to assess service quality. Beyond scientific and medical experts pronouncing their judgment on the scientifically measured performance of hospitals and their healthcare professionals, patients get a chance to share their individual experiences and review the services received.

In Switzerland, the development of online hospital rating systems and direct comparisons of hospital performance is still at an early stage. A few websites have emerged in recent years that help compare the quality of hospital treatments²¹. Rating systems for healthcare professionals outside the hospital setting are expected to follow in the future.

spitalfinder.ch is the hospital finder of santésuisse, the leading industry organization for health insurers. In 2016, santésuisse launched the website together with the Swiss consumer forum. This platform enables the general public to find out about the quality of treatment in Swiss hospitals independently and comprehensively. It presents the most important quality indicators simply and understandably. The user-friendly search interface allows for direct comparisons between hospitals. All quality indicators used are based on the publicly available data provided by the ANQ and the FOPH. The data is presented without any interpretation of the content. All information is neutral, and no patients' reviews are included or added to the information provided. According to santésuisse, the website seems to be receiving increasing traffic and user numbers²².

welches-spital.ch is the online portal of the non-profit association « *Spitalvergleich Schweiz* » (Hospital comparison Switzerland). The association, founded in 2015, has no

²¹ spitalfinder.ch; welches-spital.ch; css.ch/de/home/application/spitalvergleich_qualicheck; comparis.ch/spitalvergleich. In addition, there are two less developed websites: spitalinfo.ch, the online platform of the Swiss hospital association H+; and qualitaetsmedizin.ch, the hospital comparison site of the « Initiative Qualitätsmedizin Schweiz » (access: 16/02/2021).

²² See tagesanzeiger.ch/wirtschaft/unternehmen-und-konjunktur/wie-patienten-die-qualitaet-von-spitalern-vergleichen-koennen/story/12383374 (access: 16/02/2021).

Please rate your patient experience !

connection to or conflict of interests with stakeholders in the Swiss healthcare system. The website and its hospital comparisons are run on an unpaid and independent basis, in line with the association's purpose, which seeks to « promote transparency for patients about the offers of the Swiss healthcare system ». The portal summarizes scattered key data on the quality of Swiss hospitals gathered and published by the ANQ and the FOPH. It makes it accessible and easy to understand for users. The website also offers patients the possibility to create a « best of » hospital list based on their circumstances and needs. Finally, the website provides patients and their loved ones a platform to write and share their individual experiences and reviews. Of all four rating websites, *welches-spital.ch* is the most daring one as its visuals are similar to rating sites in other areas of customer service. As such, it uses star ratings to classify hospitals and presents numbered ranking lists.

QualiCheck is the hospital rating website of the CSS health insurance company, the biggest health insurer in Switzerland. This portal uses external and internal data sets²³. In addition to publicly available data from the ANQ and the FOPH, individual assessments of patients insured by CSS (policyholders) are also included in the rating²⁴. In a newspaper article of 2019, CSS reports that so far, 50,000 individuals have consulted the hospital ratings provided by QualiCheck²⁵. In addition to increasing traffic, the CSS also reports that the time users spend on the portal increases. The health insurer has a (financial !) interest in ensuring that its patients choose hospitals with quality service. According to CSS, it is investigating the possibility that those with supplementary health insurance could financially benefit if, for example, they opt for one of the hospitals with the best price-quality ratio²⁶. However, such incentives are not permitted within the framework of social health insurance. According to CSS, health insurers also benefit from quality measurements and patients' ratings when negotiating with hospitals. In the future, CSS plans to expand the portal to assess other healthcare providers, such as rehabilitation clinics and doctors. Eventually, the aim is to offer a comprehensive evaluation portal. Or, as a CSS representative frames it : « We want to set up a TripAdvisor for healthcare »²⁷.

comparis.ch is another major provider of a hospital rating site²⁸. It offers an independent platform for rating hospital services in Switzerland, as it is not connected to

²³ css.ch/de/home/application/spitalvergleich_qualicheck (access : 16/02/2021).

²⁴ The patient questionnaire contains 21 questions in different categories (e.g., administrative procedures, doctors) : css.ch/content/dam/css/de/documents/privatkunden/meine-gesundheit/78_d_qualicheck_fragebogen.pdf (access : 16/02/2021).

²⁵ See footnote 22.

²⁶ See footnote 22.

²⁷ See footnote 22.

²⁸ comparis.ch/spitalvergleich/default (access : 16/02/2021).

any stakeholder in the healthcare system. The portal presents comprehensive information on all hospitals and the services they offer. Patients can evaluate and rate their hospital stay by using the Comparis hospital comparison tool. Through an online questionnaire, patients can assess whether they perceived the entry, the hotel industry and the exit as organized or chaotic, whether the care by healthcare professionals was inadequate or good, and whether they were satisfied with treatment quality and would recommend the hospital to others. There are grades for each sub-area from 1 to 6, and the average of all grades determines the overall rating for the hospital and its position in the ranking. Comparis collects the patients' reviews and checks them for authenticity, distinguishing between verified and non-verified users. Patients can authenticate themselves via text message or by entering a personal code received at the hospital. The verification is intended to prevent multiple evaluations and thus contributes to the avoidance of misuse. If the patient does not enter a mobile phone number or code, the rating is registered as not verified. Ratings and reviews are only published when there are more than ten evaluations per discipline and hospital. According to Comparis, it is preferable for patients to receive not just an overall evaluation of a hospital, but rather the evaluation of specific service areas such as obstetrics or orthopedics²⁹. In 2019, about 150 reviews were added every month³⁰. In the same year, the hospital comparison portal was visited approximately 6,000 times per month³¹.

V. Importance of performance data and transparency

Online hospital ratings are part of a drive towards enhanced awareness of quality standards in healthcare provision, greater provider accountability, and active patient engagement. The availability and transparency of healthcare performance data contribute to more evidence-based healthcare practice. « Greater transparency of information and consumer empowerment are hallmarks of these changing times in health care »³². Performance data and transparency in healthcare systems and the provision of medical services are crucial for various reasons, of whom three are addressed below³³.

²⁹ See footnote 22.

³⁰ See footnote 22.

³¹ See footnote 22.

³² FINDLAY. See also ROTHBERG ET AL.

³³ For a detailed analysis of the role of transparency in healthcare, see SPRECHER.

Please rate your patient experience !

A. Quality improvement

The link between transparency and quality improvement is evident. Literature shows that requirements for hospitals to report the statistics of clinical risks prompt them to engage in more rapid and in-depth analyses of such events³⁴. External hospital rating sites can push in the same direction by increasing pressure on hospitals to take patient reviews seriously and address criticism. Ratings can help hospitals understand where to direct and how to design their improvement efforts³⁵. These tools thus create the potential for patients to become powerful agents in favor of quality improvement. The effect of rating sites here is disciplinary, as hospitals want to avoid bad grades. Online ratings and reviews also have a behavioral effect, as they supposedly drive patients towards higher-quality, safer care and the institutions that can provide such care.

Beyond quality improvement itself, hospital ratings can also represent an important (collective) bargaining tool when it comes to tariffs applicable for reimbursement by social health insurance and cantons for services provided in a hospital setting. One could even imagine a tariff structure, or DRG-related bonus, for those hospitals with good scores to be financially rewarded. On the flip side, greater transparency about hospital costs and quality of services can allow the cantons and health insurers as cost bearers to put pressure on hospitals with low ratings and reviews. Such evaluations might eventually also play a role when cantons decide on the composition and configuration of their hospital list, admitting institutions to provide in-patient services reimbursable by social health insurance.

B. Free hospital choice

When choosing a hospital, a patient's first contact is usually the attending physician, often the family doctor. They make the diagnosis, recommend the procedure and suggest the hospital, likely an institution in which previous patients have had good experiences. It is not uncommon for this to be a hospital nearby. Patients' access to comparative information on hospital performance has the potential to change this traditional path of decision-making.

Transparency in the Swiss healthcare system became critical when the revised hospital financing system entered into force on 1 January 2012³⁶. As of this date, patients have free choice regarding the hospital in which they wish to seek treatment, even beyond the borders of their canton of residence. All patients with mandatory social health insurance

³⁴ BAUME.

³⁵ AUSTIN ET AL.

³⁶ I was lucky to collaborate with OLIVIER GUILLOD on a legal opinion regarding this issue. See MADER.

can get reimbursed for treatments in hospitals throughout Switzerland listed on the hospital list of their canton of residence or that of the canton where the hospital is located³⁷.

Equipped with free hospital choice, patients can fuel competition. The purpose of allowing for competition between hospitals is realized if patients turn from bad to well-performing institutions. Hospitals that offer low-quality services will run out of customers at some point, so the logic goes. However, the desired competition has hardly taken place so far³⁸. One of the foundations of a functioning market is that customers are well informed and can compare between competitors, which is still lacking. Online hospital rating sites have the potential to address this lack of information.

Another question is whether patients can and want to exercise free hospital choice. Even with more accurate information on hospital performance, the question remains how mobile patients are. Is a St. Gallen resident willing to travel to Basel for an operation if the Basel hospital has high-quality outcomes and ratings? For more complex interventions, distance is probably not the most relevant criterion anymore. Since patients have to travel to a metropolitan area for this type of intervention, ratings and reviews, in addition to case numbers expressing surgical routine, might influence their decision.

C. Informed consent

Patient consent is a critical element of OLIVIER GUILLOD's expertise since his Ph.D. research and thesis³⁹. The rise of the patient autonomy movement and the increasing legal requirements for informed patient consent are essential steps in shifting power towards the patient and creating a more balanced doctor-patient relationship. Promoting transparency in healthcare favors informed patient consent.

In its case law, the Swiss Federal Supreme Court has circumscribed the requirements to be met for informed patient consent⁴⁰. The Court has noted, in particular, that treatment risks are part of the information healthcare professionals have to communicate to their patients. Treatment risks include, for example, risks due to an operation under anesthesia. One can argue that information on treatment risks is not limited to abstract statistics (*e.g.*,

³⁷ THE COMMONWEALTH FUND, International Health Care Profiles – Switzerland, available at [commonwealthfund.org/international-health-policy-center/countries/switzerland](https://www.commonwealthfund.org/international-health-policy-center/countries/switzerland) (access : 16/02/2021). For treatment in a listed hospital, the insurer and the canton of residence cover their respective share of reimbursement up to the applicable rate for this treatment in a listed hospital in the canton of residence.

³⁸ VINCENT/STAINES.

³⁹ GUILLOD, *Le consentement éclairé du patient*.

⁴⁰ See, for example, Swiss Federal Supreme Court decision 133 III 121.

Please rate your patient experience !

mortality rates for an operation as reported in the scientific literature). The reality of risks is inherently linked to the quality performance of a specific hospital for a specific service. The concrete risk of harm also includes more institutional aspects of a hospital stay, such as nosocomial infections.

To allow patients to make a genuinely informed choice about their care, they need accurate information on hospital performance, including both empirical outcome measurements and subjective patient experiences⁴¹. Hospital ratings and reviews by other patients, accessible through online rating websites, support patients' quest to obtain the best possible treatment available based on a process of informed decision-making.

VI. Concerns : how to rate the ratings ?

A. Alternative punishment and liability mechanism

Online hospital rating sites voice patients' complaints and experiences when healthcare professionals' service has not met the expected standard. Considering the visibility, permanency, and potential impact of online ratings and reviews, the link to criminal or disciplinary punishment and medical liability claims becomes evident.

In pre-modern times, public shaming was a local and limited form of punishment. The pillory was set up in places such as a local market. The public threw rotten eggs, excrements, or dead rats at a convicted individual, and then it was over. Today, public shaming occurs in the virtual reality of the WWW. The pillory can be placed anywhere. Users only have to click, and the effect is global. Due to the Internet's anonymity, nobody is accountable⁴². One cannot predict how many individuals – potential patients in a hospital – will read a rating or review. It is impossible to know in advance how much attention a specific rating or review will attract, how wide it will spread, and how many individuals will not only read it but also repost or forward it. The line between an unnoticed brief appearance

⁴¹ BUNDESAMT FÜR GESUNDHEIT.

⁴² There are some limits, as the Swiss Federal Supreme Court confirmed in two recent cases of 2020. See Swiss Federal Supreme Court decisions 146 IV 23 and 6B_440/2019 of 18 November 2020. In these cases, the Court recognized defamation through liking or sharing a Facebook post.

on the web and a review becoming a viral sensation is sometimes thin⁴³. The publicity of ratings and reviews cannot be accurately anticipated or controlled in an age of social media.

Online ratings and reviews are a powerful and empowering tool for patients. However, rating healthcare services is a delicate endeavor because healthcare providers do not have a professional obligation to achieve a specific result. Also, the externalization of punishment and its eternalization in Google's memory are problematic. A subjective rating or review can have severe consequences for an individual's professional reputation, career, and economic existence. The consequences for the shamed healthcare professionals or hospitals can be as significant or worse than a procedure in a court of law. An audience of a few hundred or thousands might be a more severe punishment than a criminal or disciplinary conviction or the settlement of a medical liability claim in an individual case. Even though this is a consequence we seemingly accept regarding ratings and reviews about restaurant owners and Airbnb landlords, it is a concern when it comes to healthcare services.

Patients can be tempted to use public shaming on rating sites and social media instead of the criminal justice system or medical liability claims if they lack legal standing or the available evidence is insufficient. However, equal application of the law is a crucial element of a justice system that provides harmed individuals with the possibility to press criminal or disciplinary charges and to make civil liability claims. Public shaming through online ratings and reviews as a form of alternative punishment designed to go viral does not just fail to meet the rule of law ; it actively subverts it.

Rating sites and social media do not offer adjudication or closure. Critical Internet users indeed have short attention spans and a limitless supply of targets, ensuring that the time in the virtual stocks is brief. However, the Internet does not forget⁴⁴. Reviews and ratings receive eternal life in the virtual world, in stark contrast to criminal records, for example, cleared after a specific time. A fresh start is impossible if healthcare professionals face punishment through Google's eternal memory. Beyond being a form of punishment for healthcare professionals who have not performed well according to patients' ratings and reviews, these tools might also put a strain on the trust that plays a crucial role in the relationship between patients and healthcare professionals.

⁴³ The potential for a virtual shitstorm does not necessarily match the severity of a critical review or rating. It might depend on random factors such as what kind of news day it is or which blogger decides to pick up the case.

⁴⁴ On Google's memory and the right to be forgotten, see the evolving case law of the Court of Justice of the European Union : *Google Spain and Google* (C-131/12) of 2014, and *GC and Others* (C-136/17) and *Google versus CNIL* (C-507/17) of 2019.

Please rate your patient experience !

B. Business model

Another concern relates to the business model used by rating websites and their influence on the competition between service providers. Establishing and running a hospital rating website involves costs, such as acquiring, analyzing, and presenting the data. The question of how rating sites finance their services becomes highly relevant, as it can indicate potential bias in how rating results are presented and used. What are the economic or financial connections between rating sites and the service providers they evaluate ?

The business model of online rating sites, such as Expedia and TripAdvisor, is based on commissions they receive from businesses that manage to attract new customers thanks to the rating results. The same is true in Switzerland, for example, for the website *comparis.ch*, which compares different health insurers and the insurance policies they offer. However, what about financial revenues generated through a patient's choice for one hospital instead of another ? In a slightly futuristic (or apocalyptic) vision, one could imagine payments from healthcare providers or hospitals for every new patient referred to them through a rating website. Another potential source of revenue for rating websites is advertisement. In the US, some rating websites finance their services, in part, by allowing hospitals to use their ratings in advertisements and promotional materials for a fee⁴⁵. Whether this kind of commercialization of patients' choice of hospital or healthcare provider is problematic needs to be addressed in future research. It certainly pinpoints to the delicate issue of healthcare quality as a consumer good, and the related concern of access to quality services based on patients' ability to pay.

C. Risk of bias

Hospital rating sites allow patients to take an active role in choosing healthcare providers and institutions. In an environment of increasing « Expedia-tization » of hospital performance, one challenge is to ensure that hospitals compete for future patients on a truthful basis. The rating websites have to be held accountable for offering diligent services and avoiding fraud and bias. Two cautionary remarks are necessary in this context.

Beyond internal improvement efforts, hospitals can use ratings for advertising purposes. The technological aspects of guiding patients' hospital choices through rating websites might give rise to concern. There is a risk of biased competition, for instance, if one imagines private clinics hiring units of social media bots tweeting and rating their made-up overwhelmingly positive patient experience in a specific clinic. Rating sites and social

⁴⁵ AUSTIN ET AL.

media do not provide an objective image of hospital performance through numbers and statistics but share the lived (or invented and paid for) subjective experience of (imaginary) patients. How to prevent and detect this type of unfair competition and external bias ?

Also, subjective reviews might rely on potential internal bias. There are concerns regarding the discriminatory tendencies of ratings and reviews on Airbnb and other websites⁴⁶. Emerging empirical and normative research shows that rating sites and reviews submitted thereon are highly biased against women and minorities. As such, women and minorities receive lower ratings and worse reviews than their male or majority counterparts for the same service provided. While this phenomenon is concerning when it comes to restaurant reviews or Airbnb comments, it is highly problematic for ratings of services provided by healthcare professionals. Online hospital rating sites have to raise awareness for the gender and minority bias that their services might transmit and reinforce. In addition, they have to find ways to correct the bias and promote equal treatment and equality of evaluation for all healthcare professionals, no matter their gender or minority status⁴⁷.

VII. Conclusion

Transforming the hospital into a transparent space of numbers, statistics, and reviews testifying to the healthcare profession's performance is a fascinating issue. Despite the emergence of consumer-directed, web-based hospital rating systems that assess and compare hospitals' relative quality and safety, Switzerland is still far away from a competitive national ranking list, including various levels of stars à la TripAdvisor. Social media use related to healthcare performance, *e.g.*, tweets about hospital quality, is also in its infancy in Switzerland.

Due to technological limitations and patients' indolence to use existing websites, online hospital ratings remain on the fringe of quality and safety assessment of healthcare provision. Among the factors contributing to the limited use are the empirical complexity of rating hospital services and the lack of direct consumer purchase for most healthcare services. The current rating websites may still suffer from childhood illnesses affecting data comparisons and accuracy. These obstacles will be overcome by the generation of digital natives, who are used to consult the WWW's expertise on any matter, including health and healthcare provision. Since individual financial contributions to healthcare will most likely

⁴⁶ See, *e.g.*, AYRES IAN ET AL. ; COTROPIA ET AL. ; EDELMAN ET AL. ; EDELMAN/LUCA.

⁴⁷ On a personal note, it testifies to OLIVIER GUILLIOD's active engagement with gender issues and promotion of women that his chair in health law and civil law and the directorate of the health law institute at the University of Neuchâtel is brought into the future by women. *Bon vent !*

Please rate your patient experience !

increase even more due to limited public spending, the possibility to compare services will become critical on an individual level.

Emerging Internet hospital rating sites can be situated in the more general context of evaluating public services, a new governance tool empowering the individual in its relationship with the modern state. Public accountability for good customer service goes beyond the scientific, empirical evaluation of state interventions' impact on desired outcomes. It relates to customer satisfaction with state services. This issue is specifically relevant in healthcare systems, where the gap or tension between professional expertise and individual patient experience and satisfaction can be considerable. Online hospital rating sites and social media platforms acknowledge and use patients' experiences as a relevant source of knowledge and information. They thus play an important role in giving voice to patients who, in the construct of power relations between healthcare professionals, hospital administrators, and the state, are not always heard. Eventually, online hospital rating systems can represent an important course of action to enhance public trust and support for healthcare quality and patient safety efforts.

Bibliography

AUSTIN J. MATTHEW ET AL., National hospital ratings systems share few common scores and may generate confusion instead of clarity, *Health Affairs*, 34(3), 2015, p. 423-430

AYRES IAN ET AL., Race Effects on ebay, *Rand Journal of Economics*, 46, 2015, p. 891-917

BAUME CEDRIC, *Gestion des risques cliniques et responsabilité médico-hospitalière*, Neuchâtel 2015

BOCION CYRILLE ET AL., Verbreitung, Einstellung und Faktoren, welche die Meldehäufigkeit beeinflussen – Critical Incident Monitoring in schweizerischen Intensivstationen, *Schweizerische Ärztezeitung*, 87(20), 2006, p. 886-894

BUNDESAMT FÜR GESUNDHEIT, *Qualitätsindikatoren der Schweizer Akutspitäler 2007 – Bericht über die Pilotstudie – Resultate von 65 Spitälern auf freiwilliger Basis*, 2010

COTROPIA CHRISTOPHER ANTHONY ET AL., *Gender Discrimination in Online Markets*, University of Chicago, Public Law Working Paper No. 692, 2018

DASKIVICH TIMOTHY ET AL., Online physician ratings fail to predict actual performance on measures of quality, value, and peer review, *Journal of the American Medical Informatics Association*, 25(4), 2018, p. 401-407

EDELMAN BENJAMIN G. ET AL., Racial Discrimination in the Sharing Economy : Evidence from a Field Experiment, *American Economic Journal : Applied Economics*, 9(2), 2017, p. 1-22

EDELMAN BENJAMIN G./LUCA MICHAEL, Digital Discrimination : The Case of Airbnb.com, Harvard Business School NOM Unit Working Paper No. 14-054, 2014

FINDLAY STEVEN D., Consumers' interest in provider ratings grows, and improved report cards and other steps could accelerate their use, *Health Affairs*, 35(4), 2016, p. 688-696

FOUCAULT MICHEL, *Surveiller et punir : naissance de la prison*, Paris 1975

FUNG CONSTANCE H. ET AL., Systematic review : the evidence that publishing patient care performance data improves quality of care, *Annals of Internal Medicine*, 148(2), 2008, p. 111-123

GÄCHTER THOMAS/VOKINGER KERSTIN NOËLLE, Berichtssysteme in Spitälern – Rechtsfragen rund um den Schutz von Berichts- und Lernsystemen in Spitälern vor gerichtlichem Zugriff – Rechtsgutachten zuhanden des Bundesamtes für Gesundheit (BAG), 26 May 2020

GUILLOD OLIVIER, *Le consentement éclairé du patient : autodétermination ou paternalisme ?* Neuchâtel 1986 (quoted : GUILLOD, *Le consentement éclairé du patient*)

GUILLOD OLIVIER, Medical error disclosure and patient safety : legal aspects, *Journal of Public Health Research*, 2(3), 2013, e31 (quoted : GUILLOD, *Medical error*)

GUILLOD OLIVIER/CHRISTINAT RACHEL, Avis de droit – Analyse de l'arrêt du Tribunal fédéral (TF 1B_289/2016) du 8 décembre 2016 – Mandat confié à l'Institut de droit de la santé par Sécurité des patients Suisse, May 2018

KATZ JAY, *The silent world of doctor and patient*, New York 1984

KRICHELI-KATZ TAMAR/REGEV TAL, How Many Cents for a dollar ? Women and Men in Product Markets, *Science Advances*, 2(2), 2016

LAGU TARA ET AL., Website characteristics and physician reviews on commercial physician-rating websites, *JAMA*, 317(7), 2017, p. 766-768

MADER MELANIE, Financement des hôpitaux et des soins : éléments importants des révisions LAMal, marge de manœuvre des cantons et rôle de la liberté économique, *Schweizerische Zeitschrift für Gesundheitsrecht*, 2011, p. 87-124

OKIKE KANU ET AL., Association between physician online rating and quality of care, *Journal of Medical Internet Research*, 18(12), 2016, e324

Please rate your patient experience !

PATIENTENSICHERHEIT SCHWEIZ, Executive Summary – Erfassung und Analyse von Schadensfällen in Schweizer Akutspitälern – Ergebnisse einer Befragung zum Management von Never Events, 15 June 2020

PRONOVOST PETER J./GOESCHEL CHRISTINE A., Viewing health care delivery as science : challenges, benefits, and policy implications, *Health Services Research*, 45(5), 2010, p. 1508-1522

PROSS CHRISTOPH ET AL., Measuring, reporting, and rewarding quality of care in 5 nations : 5 policy levers to enhance hospital quality accountability, *Milbank Quarterly*, 95(1), 2017, p. 136-183 (quoted : PROSS ET AL., Measuring)

PROSS CHRISTOPH ET AL., Healthcare public reporting utilization – user clusters, web trails, and usage barriers on Germany’s public reporting portal Weisse-Liste.de, *BMC Medical Informatics and Decision Making*, 17, 48, 2017 (quoted : PROSS ET AL., Healthcare)

RECHEL BERND ET AL., Public reporting on quality, waiting times and patient experience in 11 high-income countries, *Health Policy*, 120(4), 2016, p. 377-383

ROSE NORBERT ET AL., Die Patientensicherheit in der Schweiz – Resultate einer Expertenbefragung, *Schweizerische Ärztezeitung*, 90(48), 2009, p. 1890-1893

ROTHBERG MICHAEL B. ET AL., Choosing the best hospital : the limitations of public quality reporting, *Health Affairs*, 27(6), 2008, p. 1680-1687

SPRECHER FRANZISKA, Transparenz : ein Grundprinzip des Rechtsstaats und seine Bedeutung im Gesundheitsrecht, insbesondere im Heilmittel- und Humanforschungsrecht, *Zeitschrift für Schweizerisches Recht*, 135(2), 2016, p. 139-250

VINCENT CHARLES/STAINES ANTHONY, Enhancing the quality and safety of Swiss healthcare, A national report commissioned by the Federal Office of Public Health on the quality and safety of healthcare in Switzerland, 25 June 2019

WACHTER ROBERT M., Patient safety at ten : unmistakable progress, troubling gaps, *Health Affairs*, 29(1), 2010, p. 1-9

WACHTER ROBERT M./PRONOVOST PETER J., Balancing « no blame » with accountability in patient safety, *NEJM*, 361(14), 2009, p. 1401-1406

ZUGER ABIGAIL, Hospital ratings : a guide for the perplexed, *JAMA*, 313(19), 2015, p. 1911-1912