

Efforts of the Japan Medical Association to Support Physicians to Provide Quality Healthcare*1

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Introduction

Japan is one of the few countries that has a universal healthcare insurance system for all citizens. Japan Medical Association (JMA) has made various efforts to support physicians in Japan to ensure the provision of quality healthcare while firmly maintaining the universal healthcare insurance system.

For us physicians to be able to protect our patients, it is essential that the healthcare we provide is safe and that the patient can undergo treatment with peace of mind. In addition, to assure that the healthcare that patients receive is safe and secure, it is imperative to have an environment where physicians themselves can practice medicine without any anxiety.

To achieve these goals, JMA not only provides Continuing Medical Education Program and various other opportunities for member physicians to enhance their skill quality, but we also offer a Professional Liability Insurance Program and a Physicians' Pension Program to support their practice. We have also been working with the government and other organizations in the medical community to establish various measures to protect physicians, including no-fault compensation systems, an alternative dispute resolution

(ADR) system that does not involve criminal lawsuits, and medical accident investigation systems.

Here, I would like to briefly review these efforts of JMA.

Background

Before I explain our specific efforts, I would like to mention Article 21 of Medical Practitioners Law (also known as Medical Practitioners Act) and explain a medical accident that led to a criminal suit as a landmark case.

Under Medical Practitioners Law, a physician who examines a dead body and finds something abnormal about the person's death has to notify the relevant police station within 24 hours. Japanese Supreme Court has made it clear that this clause also applies in case a patient dies due to the negligence of the attending physician. This means that physicians are required to report their own acts of negligence to the police. In Japan, it is not rare for someone to be presumed criminally responsible when another person dies as a result of their negligence. Thus, this poses the problem of potentially infringing on the freedom from forced confession that is guaranteed by the Japanese Constitution.

To begin with, is it really appropriate to hold

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a physician criminally responsible in case a patient dies as a result of the physician's negligence? The medical community in Japan cannot forget the lesson learnt during the criminal trial of a medical accident that occurred at Ohno Hospital in Fukushima in 2004.

Ohno Hospital is an understaffed hospital located in the countryside, with only one physician attending the obstetrics department. When this physician performed a Caesarean section on a pregnant woman, she died from massive hemorrhage due to total placenta previa. The hospital released an investigational report stating that the physician was negligent in order to facilitate the compensation payment to the patient's family by the insurance company, and the police arrested the physician for professional negligence resulting in death and violation of Medical Practitioners Law.

During the trial that followed, numerous witnesses from the medical community gave testimony in the physician's defense, and the physician was eventually found not guilty of both charges.

In July 2011, this physician and those who were involved in two other similar cases were invited to speak at a symposium we held in the JMA Building on the relationship between healthcare and criminal lawsuits. During the discussion, it was reported that physicians often lose their professional pride, confidence, and dignity when they are arrested as criminal defendants, and that it is extremely difficult for them to return to the practice even if they are found not guilty.

JMA's Three Recommendations to Protect Physicians from Medical Lawsuits

The Ohno Hospital case has become a prominent example of recent medical lawsuits in Japan. However, in the past there have also been times when physicians had to legally bear criminal or civil liability for medical practices as well as administrative responsibility including the suspension or revocation of their medical licenses. In preparation for such cases, JMA has long discussed various measures to support physicians, dating back to the philosophy of the former JMA President Dr. Taro Takemi in the early 1970's.

Based on the results of the analysis of medical accidents at that time Dr. Takemi published, "A Report on the Legal Processing and Basic Theory of Medical Accidents" in 1972, in which he pro-

posed the following three recommendations.

1. If a medical accident occurs and a thorough investigation determines that the physician was responsible, compensation should promptly be made.
2. In case of unavoidable serious damage that occurs without any professional negligence by the physician, a national indemnity system should be set up to provide relief.
3. A dispute settlement mechanism should be established as a national scheme independent of the current court system.

Professional Liability Insurance of JMA is the fruit of the first recommendation. Launched in 1973, this is an insurance program based on fault liability principles. Currently it provides policies for some 120,000 physicians among the JMA members, and this program contributes to the safe and secure provision of healthcare by physicians in Japan today.

In response to the second recommendation that mentions national indemnity systems for medical care, a no-fault compensation system was launched in 2009 for obstetric and gynecological care only. JMA was highly influential in the establishment of this system.

In recent years, claims for damage compensation against physicians has become common when faced with unexpected treatment results, regardless of whether the physician has been negligent or not. As a result, the number of medical lawsuits is increasing year after year. Consequently, the physician-patient relationship has been impaired, and the safety and security of the healthcare environment has increasingly worsened. Since 2004, JMA began considering the establishment of a no-fault compensation system to save people who have become disabled by medical accidents and to rebuild a healthcare environment that is based on the trust between physicians and patients. In 2006, JMA prepared a report entitled, "A System of Disability Compensation for Cerebral Palsy in Relation to Childbirth" as a priority issue and strongly lobbied the government to implement such a system. As a result, Japan Obstetric Compensation System for Cerebral Palsy was launched in 2009.

The Japanese government has recently also started to discuss the establishment of a national no-fault compensation system for healthcare in general. There are many patients and their families who have been unable to achieve sufficient

resolution of their medical damages and who feel dissatisfied with their physicians and other healthcare professionals. But if this vision is realized, it may gradually ease their dissatisfaction, which would greatly lighten the psychological burden of physicians and healthcare professionals.

The third recommendation, which concerns a national ADR mechanism, is still an issue under discussion. Improving the quality of care and preventing more is extremely important, and JMA actively takes various efforts to eliminate medical accidents. However, sometimes patients who have suffered medical damage and their families relentlessly demand negotiations while verbally and/or physically abusing physicians and other hospital staff. Such incidents have recently become a social problem in Japan. But, it is also true that there has not been a mechanism that fully explains the results of medical procedures to the patients and their families.

JMA is currently examining many methods to resolve disputes, including the medical ADR system. Moreover, pressure not to repeat the Ohno Hospital case is growing, and there is earnest discussion within the Japanese medical community about mechanisms to resolve medical accidents without resorting to criminal lawsuits. In June 2011, JMA also submitted a proposal to the Japanese government that a medical accident investigation system should be newly established.

JMA's Physicians' Pension Program for the Welfare of Physicians

First, let me quote from the preamble to the JMA's Physicians' Pension Program regulations, which summarizes its main purposes.

The stability of the livelihoods of physicians, who are the main providers of healthcare services to citizens, in particular the life security of physicians in their old age, is primarily the responsibility of the national government. Without stabilizing the physicians' livelihoods, improvement and expansion of national healthcare is not possible. Actually, however, we cannot expect any measures from the government in this regard. Accordingly, physicians must take it upon themselves to implement defensive measures. —

JMA's Physicians' Pension Program is the only pension program in Japan that is created

by physicians for physicians. Since its establishment in 1968, the fund has grown continually for over 40 years to become one of Japan's leading private pension funds. With a current membership of about 47,000 and operating assets of about 5.5 billion USD, it is greatly contributing to the stabilization of physician's lives in their old age and the enhancement of their welfare.

The fund has a unique characteristic since it allows members to tailor their policies to their individual lifestyles while providing life annuity insurance. It also has a mechanism that enables the pension to be used as reconstruction funds in the event of large-scale disasters like the recent Great East Japan Disaster.

JMA endeavors to improve asset operations and strengthen the operational management to further expand our Physicians' Pension Program. As part of such efforts, we select optimal operating agencies and consider appropriate asset allocation every five years from a medium- to long-term perspective to achieve healthy and efficient operations. With regard to the operational management, we strive to remain stable into the future, enhance governance and systems, and strengthen office functioning. In order to further promote this pension program, JMA is effectively utilizing its media resources such as the website, paper/electronic newsletters, and journals. We also make a constant effort to review the past activities by verifying their effectiveness.

Conclusions

In this paper I discussed some exemplary activities of JMA as our effort to secure medical care providers in Japan. We also provide Professional Liability Insurance Program and Physicians' Pension Program, and are working with the government and other organizations in the medical community to establish various measures to protect physicians, such as no-fault compensation systems, ADR systems, and a national medical accident investigation system.

JMA is the largest of all professional organizations for physicians in Japan, with a membership of over 160,000 physicians. In today's fast changing society, we shall continue to strive to protect the Japanese healthcare system by ensuring that patients receive quality healthcare and that the physicians who provide the medical care are protected.