

Special Feature

Should medical accidents be judged in criminal court?—Establishing a new patient safety system in Japan

The Significance in Publishing This Special Feature

This issue of Japan Medical Association (JMA) Journal that features the JMA Research Institute Symposium, which was held in Tokyo in July 2011, shows an original article on problems of Article 21 of Medical Practitioners Act, the JMA proposal for the establishment of a new patient safety system in Japan, case study reports of medical accidents that were tried by criminal court, and comments by the international guest.

There are several features on disputes involving medical care in recent years. Inadequacy of the procedures for obtaining informed consent and patient dissatisfaction with the status of health care services provided under Japan's national health insurance system, for example, are issues that have repeatedly caused controversy. On top of the increasing number of arbitrations and civil suits arising from discontent with treatment outcomes, the arrest of attending physicians and the transformation of medical accidents into criminal cases due to the intervention of the police in cases where undesirable treatment outcomes occurred are extremely serious events that have happened in quick succession in recent years.

Medical accidents have frequently been reported by the mass media and public concern over patient safety has increased. Under such social conditions, medical professionals must continue to make efforts to avoid the occurrence of medical accidents as far as possible. For this reason, the JMA has produced and distributed to all its members the Manual of Patient Safety Measures for Medical Professionals (2007) and the Strategic System for Reducing Medical Accidents: Patient Safety Learned from Case Studies (2010) for use in promoting patient safety measures in medical care institutions.

In this Symposium, three medical accident cases that had been tried by criminal court and had stirred up enormous public debate were examined in detail; in each of these cases, the verdict was not liable for professional negligence.

At present, with general civil disputes showing signs of quieting down slightly, a drop in the cost of civil cases has been acknowledged, resulting in medical association membership fees being reduced in April 2010. However, the post-trial realities of the clinical practices of the three physicians that were arrested and tried in criminal court are that one returned to his original profession, although at a different workplace; one switched from being leading surgeon of the University Hospital to being a general practitioner in private practice; and one has had difficulty returning to clinical practice. The effect on a physician's career is not limited to the impact of irrational treatment immediately after the medical accident in question is turned into a criminal case; we must assume that there will be a truly major impact over the long term.

The JMA has implemented enrolment in the physicians' professional liability insurance program for its members since July 1973, with the collection of membership dues. Major features of this program are that it is implemented as a social responsibility of the JMA, which is itself the insurer, and that all class-A members are covered by it. A liability review board was also established as an even-handed, neutral body to render reasonable judgment on physician responsibility. In this way, physicians' liability insurance unique to the JMA emerged equipped with a system to support members in dispute resolution.¹ This program has been maintained through the years by each independent medical association fulfilling its respective role: municipal medical associations act as points of contact, prefectural medical associations coordinate, and the JMA has overall control through a neutral and fair examination committee. Here too, the increase in the number of medical accidents being tried by criminal court has resulted in medical associations being forced to raise their membership fees. In addition this has resulted in a tendency for medical professionals to take a defensive

approach to patient care, including refusing to accept emergency cases, which has caused the prolongation of transport times. The increase in the number of patients with emergency medical condition has also been reported.

In this symposium, Professor Norio Higuchi of the University of Tokyo Faculty of Law gave a keynote speech about Article 21 of the Medical Practitioners Act, which provides the basis for turning individual medical accidents into criminal cases, and its associated problems. This was followed by an opportunity for symposium participants to think together about the reality of criminal proceedings, with the physicians, lawyers, and other persons involved in the trials describing how their respective medical accidents were built into criminal cases. The symposium was also an occasion for discussing the enormous effects suffered by the physicians concerned and the limitations of the role that criminal proceedings can play in investigating the causes of medical accidents. Wataru Mizutani, an attorney at law and JMA Research Institute Senior Researcher, explained the current situation and issues involved in criminal trials concerning medical accidents. Akira Maemura, a journalist who covers medical

issues for Nikkei Inc., provided press comments. Norihisa Takasugi, an executive board member of the JMA, provided commentary following the presentation of a summary of a report by the JMA's Exploratory Committee on Medical Accident Investigations that examined the basic concept on the establishment of the medical accident investigation system and the designing of the system to be spread nationwide. Afterwards, Akira Teraoka, Chairperson of the JMA's Exploratory Committee on Medical Accident Investigation, and the author co-chaired a panel discussion that examined the significance of establishing a medical accident investigation organization and a roadmap for amending Article 21 of the Medical Practitioners Act.

I hope this special JMAJ issue will serve for the medical and legal professionals of the world as the guide when addressing the problems concerning medical accidents and their criminal trials.

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Reference

1. Kinoshita K. Professional liability insurance program of the Japan Medical Association. *JMAJ*. 2007;50:390–396.