

The Principles of Maternal Protection Act and Its Operation: From the standpoint of Japan Medical Association

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Introduction

The new executive board of Japan Medical Association (JMA) was established in April 2010, and various committees were reorganized. The project committee “Committee on Maternal Protection Act and Prenatal Medicine” was established under the regular committees that are in charge of prenatal care and Maternal Protection Act. JMA asked Dr. Toshihiko Terao, President of Japan Association of Obstetricians and Gynecologist (JAOG), to serve as the committee chair, in order to ensure that there are no inconsistencies in the opinions between JMA and JAOG that is in charge of the actual operation of the law.

In addition, we established the “study subcommittee regarding the right to appoint Designated Physicians under Maternal Protection Act” in order to immediately respond to the problem regarding the right to appoint certain physicians to serve as Designated Physicians under Maternal Protection Act (hereinafter referred to as DPs), who are allowed to legally perform the induced abortion procedure in Japan. Dr. Shigeru Fukuda, President of Kumamoto Medical Association and the only obstetrician of all 47 prefectural medical

association presidents in Japan, was asked to serve as the subcommittee chair. We also invited Dr. Terao, Dr. Kazuhiro Shirasu (in charge of medical laws in JAOG), and obstetricians who serve as board members of prefectural medical associations to participate in the subcommittee to reflect the ideas of prefectural medical associations.

With the reform of the public interest corporation system that is in progress in Japan,^{*2} the right to appoint DPs became an issue that concerns all medical associations.

The Establishment of Maternal Protection Act: Its history

In Japan, Eugenic Protection Act, which stipulates the protection of maternal health including induced abortion, was enacted in 1948. It was then revised to exclude eugenic ideas and changed its title to Maternal Protection Act in 1996. JMA conducted an international survey regarding the law that governs the act of induced abortion among five foreign nations, namely South Korea, Taiwan, UK, Canada, and Finland, in November of 2011, and its results are summarized in **Table 1**. In Japan, we have our own

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*2 Currently the reform of the public interest corporation system is in progress in Japan, and each of the prefectural medical associations, which were all public interest incorporated associations, will choose either to remain as one or to change to being a general incorporated association that is completely non-profit.

Table 1 The legal system that concerns the act of performing induced abortion among nations

Country	Presence of the designated physician system (Yes / No), and a brief description of the law
Japan	Yes • Paragraph 14 of Maternal Protection Act stipulates that a physician designated by a prefectural medical association that is a public interest incorporated association can perform the procedure of induced abortion
South Korea	No • Paragraph 14 of Maternal and Child Health Law stipulates the exempt causes to void the illegality of abortion as stipulated in Criminal Law
Taiwan	Yes • Appointer: Department of Health, Executive Yuan
United Kingdom	No • Any physician can perform the procedure of induced abortion as long as he/she obeys Abortion Act • British Medical Association publishes “The Law and Ethics of Abortion” as a guideline
Canada	No • Any obstetrician can perform the procedure of induced abortion
Finland	No • Any procedure of induced abortion must involve two physicians • One physician determines the necessity for abortion (physical, psychological, social, etc.); can be any physician • Another physician performs the procedure of induced abortion; must be an obstetrician and belong to a public medical institution

unique system of appointing DPs. Let’s take a look at the proceedings of the second meeting of Health and Welfare Committee of House of Councilors in 1948 [unofficially translated into Japanese for the purpose of this paper].

Concerning Eugenic Protection Act, a question was raised, “Paragraph 12 of Section 3 on maternal protection states that *designated physicians must be appointed by a medical association that is an incorporated association*. Can we be sure that this medical association that is an incorporated association would be organized and managed properly in a uniform manner across all prefectures? Instead, it may be better to name the eugenic protection committees of each prefecture. What is the opinion of the originator?” Dr. Yasaburoh Taniguchi, a Diet member, answered, “Each prefecture has a medical association that is an incorporated association, which is a public organization. Since the membership is voluntary, some join the association and some do not. But a prefectural medical association is familiar with the skills of member physicians and their facilities that are under its supervision, and I believe it is necessary for such organization to appoint certain physicians. The eugenic protection committee of each prefecture is in charge of reviewing eugenic facilities, but the physicians in question here will be in charge of performing induced abortion. I believe it has to be a prefectural med-

ical association that can actually manage such task.”

The next question raised was, “Would physicians who work at public medical institutions join a medical association that is an incorporated organization? If they do not, I wonder if it would cause a slight bias in the appointment, but what is your opinion?” Dr. Taniguchi replied, “A prefectural medical association will appoint whoever has the skill and facility, regardless of the membership status of or being a public institution, so I think such concern is unwarranted. Currently, the board of a prefectural medical association consists of members from both public and private sectors. Since it can supervise all member physicians, I believe a prefectural medical association will suffice.”

A further question was raised, but Dr. Taniguchi answered that it would be reasonable to entrust the right to appoint the DPs to prefectural medical associations based on similar reasoning.

With this historical background in mind, let us now examine the significance of prefectural medical associations that have the appointment right.

Right now, JMA formulates the basic model for appointing DPs and presents it to prefectural medical associations. Prefectural medical associations have been formulating the appointment criteria based on this model. As a result, it enabled reflection on the unique characteristics and

Table 2 Opinions of prefectural medical associations in Japan with regard to Maternal Protection Act (representative ones)

- Current regulations of MPA restrict the option of corporate status choice for a pre-MA. Under which corporate status the application will be made and the timing to submit the application will be influenced by the movement of the revision. We would appreciate prompt and timely information on the contents of discussions within JMA and on the responses of the government.
- Depending on the movement of Designated Physician problem of MPA, we will have to choose either a public interest incorporated association or general incorporated association. So we need to know the outlook of the issue as early as possible. If we are to lose the appointment right once we become a general incorporated association, we hope that JMA would be able to appoint all pref-MAs in Japan for the task.
- A pref-MA should be allowed to perform the task of appointing MPA Designated Physicians, even if its corporate status is to change to a general incorporated association. If it is not possible, JMA should be entrusted with the appointment task, which actually has two major benefits: 1) the appointment criteria, which currently vary among pref-MAs, will be integrated, 2) currently a Designated Physician loses its designation when he/she moves across prefectures so one must re-apply, but, if JMA were to be in charge, he/she will simply submit the moving notice to JMA, which will save both the paperwork and the fees.
- The anxiety of our members is increasing since we will lose the appointment right if we change to a general incorporated association.
- If we change to a general incorporated association, we will lose the appointment right.
- We wish to examine the possibility of changing to a general incorporated association that is completely non-profit. But considering the problem of MPA Paragraph 14, we cannot decide our course of action.

* List of abbreviations (in alphabetical order): JMA, Japan Medical Association; MPA, Maternal Protection Act; pref-MA, prefectural medical association.

reality of the medical care system provided in each region, which also provided the benefit of avoiding the appointment criteria operation from becoming standard and rigid.

Since its enactment in 1948, prefectural medical associations have been complying with this law. And, for the last 63 years, they have fulfilled the heavy responsibility of appointing DPs, which is an extremely public task. Their achievement for fulfilling such serious social mission deserves considerable appreciation.

The Movements of Prefectural Medical Association

In 2010, JMA conducted a survey on the movements of medical associations all across Japan as we face the reform of the public interest corporation system. As of December 2, 2010, all 47 prefectural medical associations have already returned the completed questionnaires.

As for their directionality, 13 prefectural medical associations aim to become public interest incorporated associations under the new system, 10 plan to change to general incorporated

associations that are completely non-profit, 5 first plans to change to general incorporated associations that are completely non-profit and then aim to become public interest incorporated associations, and 19 are still under consideration. At this rate, we cannot deny that some prefectures will have no DPs.

To the question about the time to apply for the new corporate status, one prefecture answered that it would submit an application within Fiscal 2010. This prefecture seeks approval as a public interest incorporation association, so there will be no problem with appointing DPs across all prefectures of Japan within Fiscal 2010. However, within Fiscal 2011, 11 prefectural medical associations are planning to apply for the status of either public interest incorporation associations or general incorporated associations. This upcoming situation calls for the need to revise the law as early as possible within Fiscal 2011.

Many opinions regarding Maternal Protection Act were expressed in the space for free comments provided in the questionnaire sheet. Representative opinions are shown in **Table 2**.

Conclusion

Unless the situation does not change, it is obvious that there will be prefectures without DPs within Fiscal 2011. Revising the current law is

the only means to resolve this problem, so JMA is making appeals to the relevant administrative and legislative bodies. Additional cooperation and support from everyone involved will be greatly appreciated.