

Laws on Medicine

Lecture No.10 (in Classroom 22, on Wednesday, December 3, 2008, at 15:00-16:40)

Chapter 10: Protection of Personal Information and Medical Service

- 1) What sort of influence has Personal Information Protection Law exerted on medical service?
- 2) How should a way of thinking be about the protection of personal information in medical service?

● Faculty of Law, University of Tokyo

nhiguchi@j.u-tokyo.ac.jp Norio Higuchi and Yasuji Kodama

Supplement to Last Class: Supreme Court Judgment of Jul. 19, 2005; (1) Import

- For the purpose of medical treatment, a doctor took an emergency patient's urine for medical examination which proved positive for an antihypnotic, and reported that effect to a police officer. To that end, the police officer seized said urine, and in consideration of all the facts including such act, there is no illegality in the process for the police officer to have seized urine of said patient.

Supreme Court Judgment of Jul. 19, 2005;

(2) Process That Led to Urine Collection

- Based on the fact that if said stab wound reached a kidney, bloody urine was to be necessarily passed, the doctor explained to the accused about a urine examination, and which was strongly rejected by the accused.
- In the diagnostic imaging like a CT scan conducted in advance, there was air beside the kidney and an intraabdominal hemorrhage didn't seem to exist, but the doctor thought there was a good chance bleeding did not yet happen as in an acute phase, decided urine sampling was required, and tried to persuade the accused by explaining the situation. Still the accused did not accept this by saying he would go home, but the doctor continued the persuasion on the accused for another 30 minutes; the doctor in the end decided to administer anesthesia to the accused and conduct a suture surgery, which the doctor explained to the accused, telling about inserting a urine collection tube. The accused without refusing had an anesthetic injection.
- While the accused was asleep under anesthesia, the doctor implemented a suture surgery and collected urine by inserting a catheter. Though there was no blood in the collected urine, since the accused was in an excited state and was telling that he stabbed in the back of himself with a cutting instrument, the doctor thought of a possibility of drug influence, ran drug testing, and found positive reaction of amphetamine.

Supreme Court Judgment of Jul. 19, 2005;

(3) Consent to Collection

- (Under all the facts in the above,) the doctor, with the purpose to administer medical treatment on an emergency patient, took urine sample from the accused and ran a drug examination on the collected urine, and which can be deemed necessary for the medical reason; even though the doctor were not acknowledged to have obtained the consent from the accused, the above acts done by the doctor cannot be deemed illegal as medical practice.

Supreme Court Judgment of Jul. 19, 2005;

(4) Legitimate Act

- When the doctor detected an ingredient of an illegal drug in the patient's urine that was collected in the process of required treatment or examination, for the doctor to notify the investigation agency of said information should be permitted as a legitimate act and should not be against the doctor's duty of confidentiality.

Under Personal Information Protection Law

For instance, how does the audience consider the following 3 examples ought to be handled under Personal Information Protection Law ?

No.1: A certain medical institution sends out New Year's greeting cards to its patients. Is it all right to continue this?

No.2: A certain doctor is thinking, about medical care for his patient, of hearing the opinions of another doctor being more experienced, who works for a hospital in the adjacent town. What should he do?

No.3: At a certain pharmacy, when a pharmacist was about to hand out a prescription-based medicine, some problems occurred to him. A member of the patient's family was there to receive the medicine. It had been customary to provide some explanation about the medicine before handing it out; but was it all right to do so? Further, the pharmacist had a doubt about the prescription (e.g., prescribed quantity, or type of medicine prescribed). Could he contact the doctor who issued the prescription?

Privacy and Personal Information

Are the concepts of these two identical, or how different are they?

Why has Personal Information Protection Law been established instead of a privacy protection law?

Has the right to control personal information been recognized in Personal Information Protection Law?

Jurisprudence dictionary

Privacy: “Matters that belong purely to a private life and personal affairs such as conditions inside the family and a bedroom of husband and wife” (Hiroshi Kaneko, et al., ed., *Abridged Dictionary of Jurisprudence*, 4th edition, Yuhikaku, 2004)

Personal Information Protection Law

Personal information: “Information about a living individual, which includes name, date of birth and other descriptions that enable to distinguish a specific individual.” (Subsection 1 of Sec.2)

From Newspaper Article: Text pp.180-183

Points the seven examples show:

① Huge influence, broad influence

② Overreaction

Also in the U.S.; HIPAA horror stories

③ View on principles and exceptions

Exceptions determine everything. → Big cost on many people

The proper way of making a law is to let the principle determine the rule. (Meaning of discretionary provision)
Only those corresponding to the exception make a move.

④ Law is something unreasonable, absurd, and cold.

Cynicism, pessimism toward a law

Background for Enacting Personal Information Protection Law

Handling of personal information and deterioration in leakage problems in an information-intensive society/
information society

Data base Large-scale leakage Easy In a flash
Anywhere Irrevocable

EU-ordered global standardization

Characteristics of Medical Information

- 1 Relatively thin correlation with economic transaction
- 2 Computerization of medical information; leakage problem is grave
- 3 Public nature of medical information; privacy nature
Difficulty in balancing the usage and protection

Why do patients wish for the protection of their medical information?

- ① Anxiety about their diseases to be known
- ② Discrimination after their diseases are known
- ③ Breakdown of a relationship of mutual trust; actually treatment is slipshod too.

Way to Make Rule for Protection of Personal Information

- 1) Free use rule
- 2) Disclosure rule
- 3) Opt out rule
- 4) Opt in rule
- 5) Prohibition rule

Personal Information Protection Law

2) for an inside use, 4) for an outside proffer, exceptions to subsist

Doubt about Personal Information Protection Law

Formality (straightforwardness) of way of making rules

① Sorting of the inside/outside, and distinctive feature of information

② No consideration on the public nature of medical information

Irrationality of the opt in rule

③ Jump at once that exceptions can be used without permission

Guideline by Ministry of Health, Labour and Welfare

To rectify shortcomings of Personal Information Protection Law:

- ① To include information about a decedent
- ② Any more than 5000 cases being nonsense
- ③ Handling by tacit consent through disclosure

The central aim is to prevent the leakage of data base and to enhance consciousness about the importance of medical information.

Respect for an individual, and no one-size-fits-all treatment

Protection of Personal Information without Strategy

Unreasonable cost for the protection of personal
information

What for

Because the law is there.

About Examples Stated Earlier

Example no.1: Right or wrong about sending out New Year's greeting cards from a medical institution to its patients.

Example no.2: A case a certain doctor, about medical care for his patient, hears the opinions of another doctor who works for another hospital.

No.3: A case in which, at a pharmacy, a member of the patient's family came over with a prescription to receive the medicine, plus, the pharmacist, having a doubt about the content of the prescription, tried to contact the doctor.