

# Laws on Medicine

Lecture No.11 (in Classroom 22, on Wednesday, December 10, 2008, at 15:00-16:40)

## Chapter 11: Ambulance and Righteousness

1) What is justice stated in the principle of medical ethics?

2) What is the dial 119 triage? What are its merits and demerits?

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# Error of Ambulance—No Ambulance Dispatched

The first trial at Kyoto Local Court where the decision made on Apr.30, 2003, *Hanrei Jiho* (*Precedent Times*), no.1823, p.94

Hearing of intermediate appeal at Osaka Higher Court on Dec. 2, 2003 (unregistered in law reports)

First phone call on Aug. 11 at 11:02:35 a.m./ 2nd around 11:35:13/ 3rd at 11:39:38/ 4th at 11:48:52, and about 11:49:28 the staff returned the call by addressing A's name (but the answering machine turned on), then about 11:54:00 the staff taking a precaution called back again (phone working but no response)/ 5th about 00:03:12 p.m./ 6th about 00:04:53 the staff called (answering machine turned on, left a warning that the police was on its way)/ 7th about 00:12:45 (warning, addressing A's name)

8th about 00:16:56, the staff called (hearing A utter a voice like yesss a few times, the staff decided it's a drunk or one being only half conscious)/ 9th about 00:26:01 (addressed A's name)/ 10th about 00:44:46 (addressed A's name), called back (answerphone turned on)/ 11th about 01:01:59 (addressed A's name)/ 12th about 01:09:38 (warning, addressing A's name)/ 13th about 01:13:12 (addressed A's name)/ 14th about 01:23:18 (A said, "Knock it off.")/ 15th about 01:31:43 (addressed A's name)

16th about 02:30:49 (to the call of A's name, a voice of "yesss" came back, but the phone cut by A)/ 17th on Aug.12 at about 05:55:27 a.m. (called A's name)/ 18th about 05:58:16 (called A's name)/ 19th about 06:58:22 (addressed A's name and heard a voice of "Yes," but cut out)/ 20th about 07:20:06



# Points in Dispute at Trial

Assumed facts/background:

- ① Abundance in crank calls
- ② Countermeasure for phone calls from the orally-challenged

Allegation of the local government being the accused:

- ① The stipulation in the Fire Service Law that an emergency service must be conducted has been designed to make a policy principle clear, not to grant its right directly to residents.
- ② Even if they were granted with the right, there is no negligence in the response of the subject staff, against the background of the reality of rampant crank calls, thus no liability.

# Judgement of the Court

- “Receiving the 8th dial-119 call, as a staff member of the command center who received or monitored the messages, it should be stated that the staff could have questioned if the phone call at that time or calls prior to that could have been from someone who could not have responded properly due to a disease and such rather than by pranks, or that the one should have been able to question.”
- The first trial: ¥1 million as a consolation money
- The trial on appeal ordered that there was no proof that the state of a disease worsened and ¥1 million was too high an amount of a consolation money for a psychological damage alone, and that it should be reduced to ¥500,00, plus an attorney's fee of ¥50,000, or ¥550,000 in sum as indemnity.



# Teachings Gained from Decisions

Should this sort of result have been foreseen...

- ◎ Would the person A have sued? It would have been resolved by talking with the local government only paying ¥500,000.
- ◎ If the person A had considered, not only about reparation in cash, but also to prevent the recurrence of the case like the one that happened to himself, and if the fire station had agreed to this idea, there was a possibility that the discussion could have included, not just the gift of money in token of his sympathy, but also future measures, which never showed up in the verdicts.
- ◆ Proposal of new remedial measures and discussion
- ◆ Is such conception impossible in judicial trials?

# Delay in Ambulance Transportation: Settled with ¥1 Mill. Payment, *Yomiuri Shimbun*, Aug. 26, 2008

Instituted on Jun.9, 2006; reconciled on Aug. 25, 2008 (Chiba Local Court)

The case of an 18-year-old male who, having caused a traffic accident singly, died although was transported to a hospital on an ambulance urgently deployed. In fear that the acceptance by a hospital might become difficult as it was an emergency accident concerned with drinking, the ambulance squad implemented the transportation after the family's arrival to the site. The family lodged a damage recovery suit alleging that, while the squad should have started the transportation promptly after their observation of the site, they actually stayed there more than necessary only to cause a delay in the hospitalization, which damnified a considerable degree of possibility to save the life.

The dispute was settled accepting the compromise recommended by the court. Other than the payment of the reconciliatory money, major reconciliation matters were as follows:

- ① The accused, having acknowledged that, regarding the ambulance transportation operation of the late A, the transportation had not been conducted promptly after the ambulance arrived at the site, expresses its regret. The accused seriously takes this death of the late A and respectfully expresses its condolences.
- ② The accused pledges itself to strive all the more hereafter to swiftly transport those requiring relief to facilities equipped with the emergency care system, and further to improve the emergency operation system.



# What This Compromise Case Indicates

- 1 Measure for the future recurrence prevention by means of a reconciliation: a pinch turned into a chance
- 2 Damage by drunkards in background of the incidence: the subject person might not have been one, but its burden was shifted onto him.
- 3 Difficulty in coalition between first aid and hospitals

# Ambulance Dispatch and Law

## Method of triage

Way of thinking for a first-aid specialist to dispatch an ambulance to where it is needed

Currently, it's on a first-come-first-served basis:  
formally in equality and practically in misguided  
equality



# Obstacle of Law

- By any chance, when a mistake happened:
  - → Intervention of criminal justice is possible.
  - Professional negligence resulting in death
  - → Governmental liability under civil affairs laws
  - → Administrative punishment on the mistaken person on duty
- It wouldn't work under such circumstances.

# Support-type Law

- To minimizing legal risk
- To express clearly that liability arising from negligence would not be held accountable
- Accountable for intentional/gross negligence
- Even if it isn't so, the acknowledgment of an error should be done carefully.
- There is no error as long as a careful procedure is set up and adhered to.



# At Scene of First Aid and Law

Increase in the jurist's involvement → Phenomena of legislating

Fields of medicine and first aid are not exceptional.

It is necessary to reconsider the way laws and jurists should be.

◎ In reality, excessive laws and excessive regulations

◎ Simplification of the intervention method (only in the sanctions-type course of action)

Ought to be mixed with the support-type scheme

◎ Measures to let jurists and laws work effectively

# Coping with Increase in Ambulance Mobilization

Text 202-205: media reporting an upsurge

○ Increase in number of mobilization → Rise in the time until the arrival  
Mobilizations for the slightly injured, and even worse cases

○ Measures each autonomous body is studying :

① To fine malicious users

② To charge a fee on malicious users and such

③ To improve a consultation service for the slightly injured and control nonurgent ambulance mobilizations.

④ To open broadly to the public the information that the ambulance mobilization is being hard pressed, and to ask for the citizens' awareness and cooperation.

⑤ To employ the method of triage and mobilize the ambulance to where it is really required.

Question: Regarding these measures, discuss merits and demerits.



# Dial 119 Triage

● Not formal equality, but practical equality (actualization of distributive justice)

★ AMA Code of Medical Ethics § 203: distribution of limited resources

★ Circumstances that must not be taken into consideration:

① Patient's economic capacity

② Patient's social worth like a position on the social ladder; occupation, age, existence or nonexistence of a family dependent

③ Special personal factors that affect success of treatment; existence or nonexistence of other disease, a patient being a foreigner to require an interpreter for an explanation, etc.

④ Patient's contributing degree to the state of own disease; alcohol addiction, being unable to stop overeating, etc.

⑤ Amount of treatment already provided to the patient; how much medical treatment one has received.

★ Circumstances that may be taken into consideration:

Factors concerning medical need;

① Benefit with medical care; ② urgency of medical need; ③ qualitative change in life provided by treatment; ④ period of maintenance/continuation of the benefit; and further, ⑤ amount of resources required to make the treatment successful.

Equal level in medical need → Consideration of the order of the initial application for treatment, etc.



# Guideline for Vaccination of New Influenza Vaccine by Conference of Experts on New Influenza , Mar. 26, 2007

## 4. Execution system for pre-pandemic vaccine

- (1) Subject of vaccination: ○For the period until the supply structure of pandemic vaccine becomes complete, in order to protect lives and livings of the people within the limited materials, the vaccination will be urgently given to those engaged in medical service and maintenance of social functions. ○It is considered that an epidemic of influenza will have several waves, each of which will last about two months. The subject of those engaged in medical service and maintenance of social functions are identified as those who bear the functions without which, as interrupted for the period of said two months, the people's lives and social functions are feared to come to a rupture.
- 1) Those engaged in medical service and such (among the following staff people, ones at the minimum required to continue the service) Point of view: those who bear the functions, deterioration of which interferes with maintaining the people's lives— those engaged in medical service, ambulance attendants, manufacturers and distributors of pharmaceuticals, and such
  - 2) Those engaged in maintenance of social functions (among the following staff people, ones at the minimum required to continue the service)
    - ① Maintenance of public order Point of view: those who bear the functions, deterioration of which interferes with maintaining social order due to worsening of a standard of public safety—firefighters, police officers, Self-Defense Force officials, Coast Guard officers, Coast Guard officers, correctional officers, and such
    - ② Those involved in lifeline Point of view: those who bear the functions, deterioration of which interferes with maintaining the people's lives at the minimum level— those in businesses of electricity, water supply, gas, petroleum, foodstuffs sale, and such
    - ③ Those concerned with crisis management of the country or local public entities Point of view: those who bear the functions, deterioration of which interferes with maintaining the people's lives at the minimum level or social order— those concerned with crisis management out of Diet members, members of local assemblies, prefectural governors, mayors/village chiefs, national service personnel/local civil servants, and such
    - ④ Those concerned with information service to maintain the people's lives at the minimum level Point of view: those who bear the functions, deterioration of which interferes with maintaining social order due to the lack of information— news organs, business of important networks and the communications industry managing these, and such
    - ⑤ Transportation Point of view: Those who transport resources necessary to maintain the lifeline of electricity, water, gas, petroleum, foodstuffs— those in businesses of railway, road passengers/freight transport, air transport, water transport



# New Influenza Vaccine

<http://www-bm.mhlw.go.jp/bunya/kenkou/kekakukansenshou04/pdf/09-09.pdf>

Who should have priority:

- ① Those engaged in medical service and maintenance of social functions, and such
- ② Infants
- ③ Medically high-risk persons
- ④ Grownups
- ⑤ The elderly

# Barrier Against Rescue Operation

—Discussion in Those Days of 2004

- Monopoly of medical profession and restrictions on rescue-squad activities
- 1 Shuji Shimazaki and Yoshihiro Yamaguchi (specialists in emergency medicine), both at Medical Faculty of Kyorin Univ.
- 2 Atsuo Yanagisawa (Faculty of Health at Kyorin Univ.: from the perspective of educating emergency medical technicians)
- 3 Norio Higuchi (as jurist)



Higuchi, auth./ed, *Case Studies on Bioethics and Law* (Yuhikaku, 2004)

## Case Studies CASE 13: EMT and Medical Practice

A is an emergency medical technician with a 20-year career. While having a meal with his family on a holiday, a male guest B, looked to be in his fifties, started suffering suddenly complaining about difficulty in breathing. Actually, as A's daughter C (10 years old) had had a chronic illness of bronchial asthma, A always carried with him the first aid bag packed with an endotracheal tube and such. But A was not on duty and in the state where no doctor's instruction was available. Urged by his family, though, A began an emergency measure revealing who he was to those around him. Nonetheless, despite having an abundant experience in tracheal intubation, he limited the aid to assisting B's breathing with artificial respiration on the ground that there was no doctor's instruction. Subsequently an ambulance arrived, but B died.

A feels uneasy about a likely question from his daughter C, "Why didn't you do everything possible?" For, he thinks he would have intubated trachea without hesitation if it had been the daughter C.

# CASE 13: Comment on Following Opinion

Taking into account that in those days of 2004 there was a strict restriction on tracheal intubation administered by an emergency medical technician, there is the following opinion as to said restriction based on a concept of medical practice:

- There is a reasonable ground for Laws on Medicine and Law Concerning Emergency Life Guards to restrict the provisions of medicine and emergency measures , and it cannot be understood that, in this example, tracheal intubation should have been conducted against these laws. Certainly , from the perspective of an emergency-affairs administration, there may be some room for a deliverer who is an ordinary person to become immune from obligation. But it is necessary to stipulate rationally and clearly situations where a person with technical capacity, but not a doctor, administers high-risk, high-return medicine or emergency measures. It is considered that an ordinary individual and a specialist will be able to provide lifesaving/rescue measures feeling more at ease if exceptions are clearly stipulated.



# What is Intended Purpose of Split of Work?

If done by an ordinary person, it's an emergency evacuation act, and because the one doesn't exercise it as a profession, it is outside the rule to ban medical practice, and which is not permitted to an emergency medical technician having a possibility of a higher degree of safety. How should this be evaluated?

→An ETM, as in the profession involved in medicine, will have many chances=Increase in risk=Thus, a strict ban

But, in this case, what would have happened if the daughter had been in the same situation?

Will there be a further exception for the ETM's family? If so, it would be a situation to approve a kind of the rescue authority/duty on the family, but deny it on others...

# Subsequent Movement

Reconsideration on split of work

Change/revision of laws in conformity with social circumstances

Laws are to move, or to be moved.

Otherwise, there is a danger that “the principle of not rocking the boat” would prevail on the pretext of laws.



# Bibliography

- Norio Higuchi
- *Sequel to Consideration of Medical Care and Law  
— Medical-Care Guidelines for Terminal Phase of  
Disease* (Yuhikaku, 2008)
- *Case Studies on Bioethics and Law*  
(Yuhikaku, 2004)