

Laws on Medicine

Lecture No.6 (in Classroom 22, on Wednesday, November 5, 2008, at 15:00-16:40)

Chapter 6: Face-to-Face Care; Article 20 of Medical Practitioners Law

1) What is the doctor's duty of responding to call-up and of medical care?

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Supplement to Last Class

Why does the doctor have a duty of medical care?

Why doesn't the attorney have a duty to accept a commission?

Article 20 of Medical Practitioners Law

“A doctor, without conducting a medical examination in person, shall not treat a patient, or issue a medical certificate or a prescription, and without attending a childbirth in person, shall not issue a birth certificate or a certificate of stillbirth, and without making an autopsy in person, shall not issue a death certificate. However, this shall not apply to a death certificate to be issued when a patient under a medical care dies within 24 hours since consulting a doctor.”

The gist of Article 20 of Medical Practitioners Law lies in prohibiting doctors from certain deeds without a medical examinations, attendance, or examination in person.

- ① For an ordinary patient, to provide a treatment, and to issue a medical certificate and prescription
- ② For a pregnant woman, to issue a birth certificate or a certificate of stillbirth
- ③ For a corpse, to issue a death certificate. An autopsy is exceptionally unnecessary in the case provided for as, “however, this shall not apply to a death certificate when a patient under a medical care dies within 24 hours since consulting a doctor.”

In violation of Article 20, a maximum fine of ¥500,00 is imposed (Article 33, paragraph (2) of Medical Practitioners Law).

Significance of Article 20 ①

- a) The section that has been prescribed to seek a patient safety by preventing an unfounded medical treatment (i.e., No-EBM, no evidence-based medicine); specifically, the part to prohibit a treatment and the issuance of a prescription for an ordinary patient without a face-to-face care.
- b) The section to prevent an adverse effect to society by making inaccurate certificates related to medicine in absence of a medical examination, attendance, and autopsy; specifically, the part, as for an ordinary patient, that refers to a medical certificate, certificates of childbirth and stillbirth, and a death certificate.

Doubt about Common View

First, what is a relationship between the section to seek a patient safety and that to prevent an adverse effect to society?

Secondly, as a point in doubt possibly related to the first question, from a private-statute perspective, what is an effect of Article 20 of Medical Professions Law? To bring an effect in the eye of the private statute into question is necessarily connected to a scene where influence upon a patient becomes a problem.

Within the said regulation, as for the section to seek a patient safety, a patient's consent produces some sort of effect, but in the section to prevent an adverse effect to society, a patient's consent has no relevance: Can there be such a variance?

Third, Article 20 of Medical Professions Law="Relic, hoary with antiquity"; pros and cons of its application to present-day medical care; e.g., scenes of telemedicine and treatment at home

【Examples of Problems Against Article 20】

- ① Case in the Taisho period; about a barmaid employed by the proprietor of a restaurant, a doctor upon the employer's request issued a certificate to him, without medical examination, stating she had no trouble of such infectious diseases as trachoma, tuberculosis, Reye syndrome, venereal disease, and epilepsy. The Supreme Court ruled that the issuance of a medical certificate without examination prohibited by Medical Practitioners Law should include not just the issuance to subject patient, but also to the third party.
- ② A doctor examined a patient on Jul. 26, 1913 and prescribed dosage for 3 days. On Aug. 18, the doctor received a request for a house call from the patient's father based on a poor condition of the patient, but, having his hands full, he found it difficult to comply. So he heard of the patient's condition from the father and handed powdered drug of a 3-day dosage to the father. The Supreme Court reversed a judgment of "guilty" and remanded the case.
- ③ Case where, after the war, in order to make an absentee voting in an election possible, a doctor without conducting medical examination issued a certificate indicating that a certain person was in a state of being unable to go to a polling station on the day of an election. In 1955, the Supreme Court ruled that this kind of certificate also constituted a medical certificate, coming under a violation of Article 20 of Medical Practitioners Law.
- ④ In the 1970s, a prefectural governor, trying to apply suspension from work on a staff member for the period of one year, while medical examinations by two doctors were required to implement the measure, it was deemed to be an examination by just one doctor; the act of the doctor who wrote a medical certificate without actual examination was judged unlawful (against Article 20 of Medical Practitioners Law), thus the suspension from work came to be cancelled.

Patters of Utilizing Article 20 in Malpractice Suit

- ⑤ Osaka District Court in 1975. In this case, there was a man who had a high fever close to 40, whose wife walked 5 minutes to a doctor's clinic asking for a home call. The doctor, however, was seeing patients and prescribed and had her bring back an antipyretic acetaminophen, telling he would be available for a home call in the evening. He had no acquaintance with the patient, just heard what the spouse had had to say. As she came home and had her husband take the antipyretic, which reduced down his fever, but then he took a sudden turn for the worse, complaining of a chill. He was carried to a large hospital, and died within that day. The bereaved family tried to use the fact of the prescription done against Article 20 as the means to prove an error, but Osaka District Court handed down the decision that, as standards of medical care by a general practitioner, there was no mistake in having prescribed acetaminophen that had been widely used to date by doctors in general as a safe antipyretic/painkiller producing no harmful side effects.
- ⑥ Decision of Osaka Higher Court in 1984. A patient, who was hospitalized for having received a serious injury in a traffic accident such as a fracture in his leg, complained of pain but was relieved with an intravenous injection of buscopan. The following day, the patient requested of a nurse for the same injection to ease the pain. Upon the consultation from the nurse, a doctor, different from the one on the previous day, being informed of the previous day's situation, instructed the nurse of an injection without examination. But the patient died of shock. Grounded on a breach of Article 20, the bereaved family insisted on the doctor's error, but Osaka Higher Court dismissed the claim stating: "A doctor's medical examination of a patient is not only limited to such ways directly conducted to a patient in person as palpation, auscultation, percussion, interview, looking (visual inspection), but is also able to rely on appropriate methods that are recognized to qualify for the basis of a diagnosis of a disease in contemporary medicine. Thus in a case like this where no particular change was anticipated in the light of medical knowledge and experience, the treatment that was conducted based on the patient's desire and the nurse's report as the result of the former examination does not represent a treatment without a preliminary examination, and cannot be found to be the breach of Article 20 of Medical Practitioners Law."
- ⑦ Chiba District Court in 2000. With a consultation by an aunt of the patient's, a psychopathologist prescribed a liquid medicine based on his diagnosis of paranoid schizophrenia, and was sued for a breach of Article 20 as an illegal act by the patient's party. The court denied the formation of an illegal act stating: While this act perfunctorily appears to be a breach of Article 20, the number of cases are not negligible in the country for doctors to prescribe a drug for a psychopathic patient with no consciousness of own disease in response to the consultation from the patient's family, and legal and institutional systems have not been fully in place for such a patient to receive appropriate medical service, and to deny this customary practice is to lead concerned patients and their families to cruel outcomes.

⑧ Exercise in textbook. A patient, who consulted a physician in vicinity for the treatment of an ulcer of the stomach and received medication for a few months, suspended seeing the doctor for a half year as the treatment was effective. Subsequently, however, the patient was seized with an acute pain in the stomach and consulted the doctor by phone who, having listened to the symptom, said in response, “I’ll prescribe the same drug as before, so come pick it up.” The patient’s spouse came over to the hospital, obtained the prescription, and bought the drug at a pharmacy. Whether or not the physician’s act in this case represents the breach of Article 20.

A provisional answer to this: If the treatment was continued until the day before, an instruction by phone cannot be found to be a treatment without a preliminary examination; but to prescribe the identical drug after an interruption over a few months, without examining again, is considered illegal. A precedent in the 3rd year of the Taisho period is quoted.

⑨ In relation to an insurance policy or for a reason of a law suit, there are situations where a medical certificate gets requested of a hospital to which one was once admitted. At which time, a doctor then in charge of the subject sometimes does not work for the same hospital any longer due to the a job transfer and death. While the patient's chart is preserved, is it against Article 20 for a substitute doctor to write a medical certificate by taking a look at this chart? It is legitimate because just the entry to the certificate has been acted on behalf of the original doctor who had prepared the chart.

⑩ Emergency Life Guards Law provides that unless specifically instructed by a doctor, certain emergency lifesaving measures must not be conducted (Article 44 of Emergency Life Guards Law). The content of these measures is designated to Article 21 of Ordinance for Enforcement of Emergency Life Guards Law and the notice by the Minister of Health, Labour and Welfare based on the same article. In recent years, certain acts such as AED (automated external defibrillator) have been removed from the list of designation , which broadens a scope of measures that can be conducted on the sole decision of an emergency medical technician. Yet ,as for a patient in cardiopulmonary arrest , the following are classified as the measures to be done under “specific instructions of a doctor”; transfusion to establish an intravenous line using a certain medicine, establishment of an airway by a certain instrument, and administration of a certain medicine. However, as there is no guarantee that a doctor is around at an emergency site (which is rather rare), an emergency medical technician is supposed to seek for a doctor’s directions via a phone call and such. And which means that this doctor provides concrete instructions based on the explanation through the phone about a patient the doctor has not examined even once. Is that not against Article 20 of Medical Practitioners Law?

Reconsideration of Article 20 of Medical Practitioners Law

【What Comes into Sight from Actual Applications】

What does it appear in sight from specific examples of the application of Article 20 of Medical Practitioners Law?

Point 1 Judging only from examples shown in precedents, it is unlikely that the principle of the face-to-face diagnosis and treatment is kept consistent for the purpose of seeking patient safety by excluding unreliable medical care. Rather, an impression is that more positive applications have been practiced in scenes to exert a harmful influence upon society.

Point 2 Within a limited number of precedents, the court appears to be negative about combining the breach of Article 20 of Medical Practitioners Law with an effectiveness covered in private statute. And which is opposite to the case of Article 10 of the same law.

Telemedicine

“One morning, the sound of crying and wheezing breath of a baby child was a wake-up call. The girl didn’t stop crying and her temperature was found to be 40. An emergency hospital was 40 km away and it was a snowstorm outside. The mother started up the computer and searched over the Internet for any pediatric specialist familiar with asthma. She found one, accessed to the web site, and provided the medical record by punching in the medical insurance information. After the confirmation of the insurance information, and as the result of studying the medical record, the specialist appeared on the screen and gave an instruction to try a drug. Pursuant to that instruction, the parents visited a pharmacy on the Internet and obtained a prescription which the specialist issued through the Internet, and that was received by the nearest pharmacy only to deliver the drug in one hour.”

A barrier of Article 20 of Medical Practitioners Law

Telemedicine

- What are its objective and value?
 - 1 Is it for a remote place/the distant provinces?
 - 2 Or is it rather for securing the quality of medical service?
 - 3 Is it for patients' convenience?

“Grand Design toward Computerization of Field of Medical Care Covered by Health Insurance” by Ministry of Health, Labour and Welfare in Dec. 2001

- 1) You can obtain an easy-to-understand information about your own symptom and sickness sitting at home. Further, in case you visit a medical institution, you can also get information for selecting which one is the best fit to your situation.
- 2) At a medical institution where you visit having transmitted information about your symptom and made a reservation in advance, your waiting time will get short and medical examination will become efficient due to an estimate for necessary checkups.
- 3) You also can easily acquire the so-called second opinion, listening to opinions of other medical specialists. Additionally, telemedicine will become possible with which you can ask for a judgment of a specialist without visiting a medical institution.
- 4) As a result of an expanse of medical information, the latest and standardized medical service will be conducted across every medical institution in the country. Medical mishaps will decrease. When incident examples are widely collected and come to be shared by medical institutions all over Japan, treatments that might lead to accidents due to lack of information would not be repeated elsewhere. Also, a computer is equipped with a safeguard function to check human errors and oversights.
- 5) The amount of time for communication between medical professions and patients will become longer as computerization cuts down time taken up for affairs outside treatment.
- 6) Medical efficiency will bring about a reduction in medical expenses of the whole country. As electronic standardization helps medical administration become efficient and reduce mishaps in medical practice, social cost related to medical service will be cut back as a whole.

Merits in Computerization

First, it'll enhance convenience for the patient side and reduce risk of medical mishaps (No.1,2,3,4,5 in the above).

Second, it'll make the provision of medical service more efficient for the medical institution side, enabling to aim at the prevention of mishaps, and medical service of higher quality (No. 4,5 in the above).

Third, these will result in gains for the whole society. The idea is perfect in that higher-quality medical service will be provided to people efficiently, and, at the same time, at reduced medical costs.

Environmental Arrangement toward Computerization

- 1 Who to bear cost
- 2 Protection of the informationally deprived
- 3 Protection of private information

In broader perspectives:

- 1) Reconsideration of doctor-patient relation
- 2) Intensification of competition (beyond spatial distance)
- 3) Reconsideration of the present state of regulations

Home Care and Article 20 of Medical Practitioners Law

- 1 Active uses of telemedicine, consultations via phone
- 2 Hindrance to death at home
Death certificate and police intervention

Various Medical-related Advice Service

- The relationship to Article 20 of Medical Practitioners Law presents issues.
- Correspondents, representative overseas, and their families
- Again the question is, What is this regulation for?