

Laws on Medicine

Lecture No.7 (in Classroom 22, on Wednesday, November 12, 2008, at 15:00-16:40)

Chapter 7: Monopoly of Medical Profession; Article 17 of Medical Practitioners Law

- 1) What is medical practice? What is medical profession?
- 2) What are problems with monopoly of the medical profession or bureaucratic sectionalism as to medical administration?

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Supplement to Last Class

Barrier to face-to-face care

Telemedicine

Home care

Various medical-related advice service

Reconsideration from aspects of access, quality, and cost

Example of Contemporary Subject

- Undertaking and issues of admissions of the elderly with high medical needs to the home for them requiring special care <http://www.ryokufuu.com/backnumber/tokuiryo.htm>
- To think of dealing with the elderly with high medical needs at a home for them requiring special care, the key issue is the nursing structure, the essential factor without which the problem cannot be fully addressed, because “medical practice” is allowed only for nurses to conduct under a doctor’s instruction, but not for registered caregivers. Our facility has a capacity for 100 people with 38 care workers, but only 3 were nurses as per criterion. That is to say, 3 nurses bore medical practice to cover 100 users, and there were days when nurses could not be posted not only for night duty but also for the daytime. For these occasions, we had no choice but to take a measure of continuously working on holidays in the forms of an urgent summons and a duty roster system. But an increase in the number of users with high medical needs brought about a limit to this kind of structure, and presented a variety of difficult cases. Thus, we have made an improvement in the system by increasing nurses up to 5 to enable at least one nurse to always post during the daytime irrespective of Sat., Sun., and holidays, which has put our system for offering nursing treatment in place albeit at minimum. Accordingly, a nurse is always available during a day-shift time zone capable to provide nursing treatment, and additionally, in an emergency on holidays, a nurse enables to make a technical decision and a contact with a proper doctor, which has resolved a time lag incurred under the previous structure of communication, in absence of a nurse, from a care worker to a nurse, and who in turn used to call up a doctor. Further, the system of a nurse always stationing in the daytime brings forth a psychological effect relevant to a sense of security not only for other types of job our staff workers are engaged in, but also for users themselves and their families.

Article 17 of Medical Practitioners Law

“Any person who is not a medical practitioner shall not practice medicine.”

Article 31: “punish with imprisonment for not more than 3 years, or a fine of ¥1 million or less, or two concurrent sentences.”

Four points in question

①

②

③

④

Medical Profession

“Upon conducting the relevant deed, to practice with an intention to repeatedly continue the deed (medical practice) that endangers or potentially endangers a human body unless practiced with the doctor’s medical judgment and skill.”

○ Medical judgment + Medical skill

Danger = Abstract danger

○ Profession: sufficient with an intention to repeatedly continue

Concept of Medical Profession/Practice

- Criticism of the broad interpretation
- Progress in medical skills; possible for a nonprofessional...
- Home care and medical care
- Being deemed justified about the family
- Other nonprofessionals ?
Friends, teachers, helpers

Four Reasons

- ① Progress in medical skills; dissemination of medical knowledge
- ② Complexity of medical service; unreasonableness of the monopoly of medical practice
Split of work, and also an overlap in reverse
- ③ Promotion of home care; education and training of nonprofessionals
- ④ Personal right to decide of a patient; self-responsibility as the other side of the coin
There are scenes where paternalism does not constitute the patient's interests.

Split of Work among Medical Professions

① Doctor v. nurse

② Midwife v. nurse

But the structure does not apply to internal examination problems.

③ Doctor v. emergency medical technician

Ambulance Squad

- Currently, an alliance between the pumper and ambulance (so-called PA alliance) is implemented to enhance the lifesaving rate at a few local fire defense headquarters.
- An emergency measure conducted by the personnel riding the pumper, who has completed a short-term course on first aid, is not positioned as first aid operation under the regulations of Fire Service Law.
- In order to enhance the lifesaving rate, shouldn't an emergency measure conducted by the first responder be also positioned clearly as a first aid operation under Fire Service Law?

Reference: Article 2, paragraph (9) of Fire Service Law

First aid shall mean to convey those who require to be urgently conveyed to (ellipsis) medical institutions or the like by an ambulance squad to medical institutions or the like (including an administration of first aid as being urgent and unavoidable during the time period until the sick and wounded are placed under the doctor's control).

The enforcement ordinance of Fire Service Law: "An ambulance squad shall be composed of one ambulance vehicle and three ambulance attendants or more." (Article 44, paragraph 1); "An ambulance prescribed in the preceding paragraph shall be installed with facilities suitable to convey the sick and wounded, and be equipped with instruments and materials necessary to conduct first aid." (the same Article, paragraph 2)

Common sense of Cabinet Legislation Bureau → "What is preposterous but cannot be helped" should be all the more "low."