Medical Disputes and Countermeasures in Japan

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Introduction

The annual number of lawsuit cases related to medical malpractice filed with district courts has been increasing and doubled during the past decade in Japan. The duration of court deliberations for medical malpractice is much longer than general civil lawsuits.

The Japan Medical Association (JMA) created its Professional Medical Liability Insurance Program in 1973 to reduce the economical damages from which the members suffered and stimulate faster resolution of the disputes. Its foremost characteristic or the most fundamental basis is the fact that the program is working under the neutral review board. The JMA also provides the optional Special Clause Insurance that is supplementary and covers the amount in excess of the maximum coverage of the basic scheme.

It is crucial to take immediate action to prevent medical malpractice to avoid facing malpractice crises. The JMA has been also promoting CME activities for its members to support patient safety measures. The JMA has also been analyzing the past cases as part of its efforts to prevent the recurrence of medical malpractice.

The following is the outline of the JMA Professional Medical Liability Insurance Program.

1. Current Medical Lawsuits

Medical errors result in tragic consequences for both the patient and physician, and the utmost effort should be made to prevent them from occurring. A study by the supreme court on medical malpractice lawsuits in Japan showed that the number of cases has been increasing and doubled in the past decade (Fig. 1).

Considering this growing trend of pending litigations at district courts nationwide, if the number of out-of-court settlements and arbitrations is included, it is thought that malpractice related disputes are becoming frequent and common.

The average duration of court deliberations for medical litigation cases is very long in comparison to deliberations made for ordinary cases (Fig. 2). Thus, the number of pending first malpractice trial cases that remained unresolved in 2002 was 2,063. In reviewing the results of past decisions, although less than half of the decisions were against the physician, there are much more cases that have been decided against the physician if amicable settlements are included.

2. Professional Medical Liability Insurance Program

There are two types of medical liability insurances in Japan—one is the JMA Professional Medical Liability Insurance Program that is managed by the JMA for its members and the other is the general medical liability insurance program that is provided by non-life insurance companies. The liability insurance for individual employed physicians is available through medical specialty
The JMA created its Professional Medical Liability Insurance Program in 1973 to cover the economical damages from which the members suffered and make faster resolution of the disputes. It is provided for all JMA Category A Members. The members are automatically insured by paying the membership fee.

The liability limit guaranteed by this Program per year per insured party is 100 million yen (about US$950,000) with 1 million yen (about US$9,500) deductible per medical act. The annual premium for JMA Category A1 Member who is founder or administrator of medical facility is 70,000 yen (about US$670) and Category A2 Member who is employed physician is 55,000 yen (about US$520).

The JMA also provides the optional Special Clause Insurance. It is supplementary and covers the amount in excess of the maximum coverage of the basic scheme. A special feature of the Special Clause Insurance is that the maximum limit of liability has been increased to 200 million yen (US$1,900,000) per case. And for the members of Category A1 as founders and administrators of medical facilities, it will include coverage per facility. If another physician who is not a Category A member is the cause of medical malpractice at that facility, the founder or administrator is covered with this Special Clause (Fig. 3).

### 3. Medical Liability Review Board

The foremost characteristic or the most fundamental basis of this program is the fact that it is working under the Medical Liability Review Board which is an impartial and neutral third-party institution. The JMA, the prefectural medical associations, and insurance companies coordinate together in dealing with examinations by the Review Board to settle medical malpractice disputes. Medical dispute cases that are covered by the JMA Program support the decisions of the Review Board, which decides the existence of liability, the amount of liability to be paid, and other details.

The JMA, the prefectural medical associa-

* The JMA Category A1 is a group of its membership who are a founder or administrator of medical facility. The JMA Membership of Category A2 is a group of employed physicians enrolled in the JMA insurance.
tions, and insurance company have cooperated to create a system that allows the JMA Insurance Program to efficiently resolve the medical disputes for its members (Fig. 4).

For example, based on deliberations by all three parties, legal counsel will be sought at the expense of the insurance company or academic review will be made to corroborate the medical position as needed.

The number of malpractice cases referred to the JMA has been increasing. The number of cases examined by the Review Board grew from 1 in 1993 to 1.5 in 2003. Even in the cumulative total of payments alone that was made in the past is in excess. If pending cases where payments will be made in future are projected, the balance in revenue and expenditure is in a severe condition.

The specialty with highest ratio for the total number of cases handled by the Review Board over the past decade according to medical specialty is gynecology at 30 percents, followed by internal medicine, orthopedics, and surgery (Fig. 5).

4. Patient Safety

In Japan it is crucial to take immediate action to prevent medical malpractice to avoid facing similar malpractice crises. The JMA set up the Medical Safety Policy Committee in 1997. Through this committee, the JMA has supported its members in the patient safety activities and has been engaged in further CME activities together with continuous efforts to enhance member awareness of medical ethics. It will be starting the reeducation program in 2005 for JMA members who repeat medical malpractices.

To prevent medical malpractice from occurring, past cases will be analyzed and the findings will be used in recurrence prevention measures. In addition to analyzing data from JMA Professional Medical Liability Insurance, other data will be collected from the local medical associations and a nationwide survey will also be in the future plan.

The JMA has also set up a project committee which is responsible to study the compensation system for the disabilities stemming from medical care including non-fault compensation.