

Student Contribution

Self-Diagnosing Medical Malpractice: How Japan's Physician Self-Reporting Procedures Undermine Legal Deterrence and Medical Care

Andrew N. Ackley,

All physicians face the risk of medical malpractice, but doctors in Japan confront the risk of criminal charges for professional negligence. In addition to the burden of criminal sanctions, Japan's Medical Practitioners Law requires physicians to report "unnatural deaths"—which include deaths potentially caused by medical malpractice—to police within twenty-four hours. The language of the rule leaves the physician's legal duty ambiguous as to the extent and content of reporting. This Comment examines the physician duty in three forms of its evolution. The first approach comes from a string of lower court cases that have emphasized the importance of the physician-patient relationship and extended the physician duty to investigation and reporting to the patient's family. This broad duty treads on constitutional self-incrimination. A second approach comes from Japan's Supreme Court's 2004 ruling that upheld the Medical Practitioners Law against constitutional scrutiny. The Court only minimally defined the physician duty, yet emphasized the physician's role in society in order to justify state control over medical practitioners. The Court's unrestrained reasoning sets up a slippery slope for state control over physicians and other private actors. A third approach to the physician duty, the 2007 proposal by Japan's Ministry of Health, Labor, and Welfare, may relieve the systemic malfunctions of the investigation and prosecution of malpractice, but the proposed investigation commission would also codify self-incrimination. Suspect legal and policy reasoning in this evolution of the physician duty has overextended physician obligations and hindered both the deterrent effect of Japan's malpractice laws and medical care for patients. A more limited role for physicians in criminal medical malpractice investigations will better balance the private rights of doctors and the public interest in quality healthcare.