

Death during surgery in Japan

Sir

It has been reported repeatedly in the Lancet that tension between clients and health care professionals is increasing in Japan. Ken-ichi Yoshida and his colleagues raised the issue of the recent dispute between the Japanese Surgical Society and Japanese Society of Legal Medicine (Sept 7, p 805) over "unusual death" following surgery (1). However, I feel their correspondence does not make clear the cause of this dispute. A few comments might help in this regard.

First, "unusual death" articulated in the Doctor's Act of Japan does not specify the conditions for reporting to the police. There was an understanding that it meant seeing a dead body which the attending doctor had not seen before. Therefore, it has been debated if death during surgery is really a case of "unusual death" in law. Second, the 1994 guideline of the Japanese Society of Legal Medicine is misleading in defining "unusual death." The guideline considers as "unusual death," in addition to accidental death, unpredicted death relating to or possibly relating to any intervention hence it must be reported to police. To a certain extent, at least, death cannot be avoided during medical or surgical interventions, but doctors are not usually predicting the death of that particular patient they are treating. Thus, any death in hospital is more or less unpredictable. When their guideline is read literally, all death in hospital must be reported to police. Third, according to the Japanese Supreme Court, the number of lawsuits relating to medicine was 770 in 2000, and nearly doubled in the last decade (2). My personal experience as a consultant of plaintiff indicates the ratio of lawsuits by patients/relatives is roughly 1/3, and the corresponding figure from malpractice court decisions was roughly 1/2 (3). It is likely that Yoshida et al overestimated the number of lawsuits raised by relatives of patients.

The 1994 guideline of the Japanese Society of Legal Medicine was made without open hearing. I have raised this issue in the meeting of the Japan Association for Bioethics (4). So far, the Japanese Surgical Society has challenged the Japanese Society of Legal Medicine over this issue, though it is a matter of concern to all health care professionals. Some measures are undoubtedly necessary to prevent cover up of malpractice by doctors in Japan (5). Openness is the key to solving these issues. We have to protect patients' benefit, and should seek reasonable measures for public and health care professionals.

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- 1 Yoshida K, Kuroki H, Takeichi H, Kawai K. Death during surgery in Japan. *Lancet* 2002;360:805.
- 2 On lawsuits involving professionals. Internet version of information service (Shiho-no-Mado), the Japanese Supreme Court. Available from: URL: <http://www.courts.go.jp/> (in Japanese)
- 3 Malpractice court decision; 100 selected cases. *Jurist* 1996: (Supplement No. 140) (in Japanese)
- 4 Tanida N, Fukuda Y. Should all hospital death be reported to police? Critical review of the Japanese Society of Legal Medicine's guideline. Presented at the 13th Annual Meeting of the Japan Association for Bioethics, 2001 Oct 27 - 28, Nagoya, Japan.
- 5 Watts J. Japan's new guidelines to expose doctors' errors. *Lancet* 2000;356:54.