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Consumers in South Korea: Referring Alternative  
Dispute Resolution for Medical Malpractice**

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## **The Relationship between Medical Practitioners and Consumers in South Korea: Referring Alternative Dispute Resolution for Medical Malpractice**

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### **Abstract**

At present S. Korea, the MAA "Korea Medical Dispute Mediation and Arbitration Agency", created in 2012 based on the Law DRMDA "The Law for Medical Malpractice Damage Redemption, Medical Dispute Arbitration", manages medical disputes, controlling both medical authentications and mediations or arbitrations. The competency of medical authentications that the MAA oversees has a unique significance, as in the situation of S. Korea the burden of proof for medical malpractice has been mostly imposed on patients. It is no exaggeration to say that MAA is the only relief option for Korean people which is officially recognized and there are virtually no alternatives. During four years since its creation, the MAA has become an object of complaints from patients.

In my opinion, in order to overcome the present weak points of the MAA, four specific points should be reconsidered. First, as the negative side effects of the MAA are mostly due to its structure of unified competency: as a functional appropriation, both functions arbitration and authentication monopolized in one hand, and as a regional maldistribution, being established only in Seoul and only in one office. Hence, its authority should be decentralized functionally and regionally. At present the MAA is fragile in front of lobbyist activity due to its great and centralized competency, and moreover there are no checks and balances to control the possible mistakes of the MAA itself, as there is no other alternative or competitive organization.

Secondly, doctors should be ensured, so that they are not so sensitive about the results of medical authentication or mediation. At present Korean Doctors mostly do not apply for liability insurance policies, as they are neither advised nor enforced to do so.

Thirdly, the burden of proof referring to medical malpractice, which has been imposed on patients in Korea, has to be converted to the doctors who make the diagnoses, as patients have no expert knowledge in this area. Fourthly, it should be legislated that every doctor should tell the truth. Fundamentally, in the present social environment they maintain silence, thus organizations of medical authentication or arbitration cannot be fairly operated.

**Keywords:** S. Korea, Medical practitioners, Medical consumers, Korea Medical Dispute Mediation and Arbitration Agency, The Law for Medical Malpractice Damage Redemption, Medical Dispute Arbitration

## Introduction

At present S. Korea<sup>1</sup>, the MAA "Korea Medical Dispute Mediation and Arbitration Agency" manages medical disputes, controlling both medical authentications and mediations. The MAA was established in April 9, 2012, according to DRMDA "The Law for Medical Malpractice Damage Redemption, Medical Dispute Arbitration" announced on April 7, 2011, and has been in place for four years until now<sup>2</sup>. This is primarily the sole institute in S. Korea which assumes absolute authority over medical authentications as well as dispute mediations. The competency of medical authentications that the MAA oversees has a unique significance, as it is the only relief option for Korean people which is officially recognized and there are almost no other alternatives.

The arbitration method this law refers to is the "administrative" ADR (Alternative Dispute Resolution), as the MAA assumes the role of a Lower Court. It estimates damage by medical malpractice in detail, and when its mediation is concluded, it equals the reconciliation by judgment. Referring to "the role of medical dispute mediation and arbitration", this law declares as its object, 1) rapid and impartial remedy for medical damage, and 2) stabilization of environment for medical treatment of medical suppliers (article 1).

The key point is that the MAA is not only qualified for mediation and arbitration, but has extended its domain to include medical authentication. Under the law the DRMDA allows the Committee of Medical Authentication to be established under the MAA, which has a far-reaching authority not only for medical authentication but the investigation of facts, existence of malpractices and causal relations (Lee Baekhyu 2011a: 91).

The ADR has been a source of heated public controversy for various reasons; Intensifying MAA committee's strict management; MAA's functionally improper appropriation; authorized legal effects granted to MAA's medical authentication and mediation, which was so comprehensive as to infringe the constitution. Moreover, it missed the conversion of the burden of proof towards the doctors, which had been a cherished desire on the side of the patients. Instead, the law permitted comprehensive immunity from the criminal responsibility for the medical suppliers, so much so that it has been appraised as an indulgence for the doctors (Kim Jaechun 2011: 88).

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<sup>1</sup> Republic of Korea: Below S. Korea or Republic of Korea abridged to Korea.

<sup>2</sup> This law (Law no.10566) operated from April 8, 2012, a year after its promulgation. Before the legislation of this law, there were Damage Redemption Procedures initiated by the Mutual-Aid Association of the Korean Medical Association (cf. Medical Law, article 31), and the Medical Inquiry- Arbitration Committee under the Health-Commonwealth minister (cf. Law of Medical Treatment, article 70ff.), but mostly not operated due to the people's mistrust. The Consumer Dispute Mediation Committee of Korea Consumer Agency (cf. Basic Consumer Rights, article 60ff.) operated more or less as a means of settling disputes, the rate of application and settlement was trivial in comparison with the whole number of medical disputes that have actually occurred. Besides, there was the Civil Mediation Procedure under the jurisdiction of the courts (Nam Junhee 2009: 408, Sin Eunju 2011).

The problem is structural, as there is no restraint framework supervising the MAA which has a so comprehensive authority. For example, according to the MAA' prescriptions, the process of re-authentication is provided (article 30), but it is uncertain how much satisfactorily are the results it gets. The Authentication Committee reports the results to the Arbitration Committee, and the latter could request the former to carry out re-authentication. For re-authentication, the committee must consist of new members who have not taken part in the previous one. However, the first as well as the second authentication is carried out in the same office and structurally there is no mechanism of restraint from outside which could supervise the authority of the MAA itself, so inevitably there is a limitation on the guaranteeing of impartiality. This is a properly irrelevant thesis to how much independently the MAA operates from improper outside pressures, or how much equitably and objectively it tries to perform its duty. Furthermore, medical authentication used to be an awkward question which could hardly guarantee perfect objectivity and uniformity as well (Baek Kyunghee 2011: 35), nevertheless the authentication the MAA gives is regarded as an absolute standard, which is a kind of despotism.

Especially, under the present Korean social environment the competency of medical authentications that the MAA appropriates has a significant meaning, since the general public can rarely get access to a second medical opinion. This is why doctors customarily evade commenting on another's diagnosis, and no proper legal process has been prepared to enforce them to do so. On the contrary, the law prescribes that patients, not doctors, should be burdened with the responsibility of proof, even though the patients are deficient in expert knowledge. So, the Committee of Medical Authentication under the MAA has become the highest authority for medical authentication, and it is not too much to say that it is the only institution permitted by law, which the people can have access to.

Actually however, this system, in the process of its legal enactment, already had the interests of both disputing sides, medical suppliers and consumers, acutely opposed to each other. The former try to reduce various kinds of burden, both material and immaterial, concomitant with medical disputes. Meanwhile the latter, who are devoid of expert knowledge as well as any possibility to receive it, have accepted this law as the only device to compensate for their weaknesses, alleviating the burden of proof by its help. There was mistrust between the two sides. It was seen as a threat to the medical suppliers, as they could get involved in an increasing number of disputes via ordinary medical treatments. Additionally to the contrary, the patients suspected the doctors would not respond sincerely, privately as well as collectively, to the disputes regarding medical malpractice (Lee Ilhak 2011: 108).

Even though just a few years passed after its establishment (2012), the MAA became the object of many complaints from unsatisfied persons who insist that the MAA represents the interests of doctors. This paper is to check the present situation of the MAA, and suggest ways to improve the situation.

## **Argument between Physicians and Consumers and Reflections on the MAA**

*Efforts of the Citizen's Solidarity for Damage Relief Regarding Medical Malpractice (Mokju 2007)*

The weak points that the MAA has at present were already pointed out in the process of enacting legislation by intense discussion between the medical suppliers and the citizens during the campaign. At the end of the 17<sup>th</sup> National Assembly, 2007, under the progressive government (President Muhyun No), the Law of Damage Redemption for Medical Malpractice, which had been passed by the Legislation-Judiciary Committee, was ready to be submitted to the General Assembly. Ordinarily, laws having been passed in the Legislation-Judiciary Committee are usually passed, but this law was to be, ultimately, rejected.

This provisional law prescribed that the medical physicians should have the burden of proof regarding medical malpractice, which was still being imposed on the patients, and let the doctors apply for liability insurance policies. It also provided an exemption which allowed doctors to receive immunity from responsibility regarding criminal prosecution, if doctors do not make great mistakes<sup>3</sup>.

However, medical physicians responded fiercely to this law, with nearly every corner of the country stating that they would close collectively. They insisted that if they were burdened with the responsibility of proof against medical malpractice, their diagnosis methodology would be forced to be passive, and the costs of medical treatment would increase, the burden of which would be imposed on patients.

This provisional law, which had previously passed the Sub-Committee of the Health and Welfare Committee of the National Assembly, was brought forward to the Standing Committee of the Health and Welfare Committee, but eventually came to be discarded by the close of the progressive government. Afterwards, in 2011, under the conservative government (President: Miungbak Lee), the DRMDA (The Law for Medical Malpractice Damage Redemption, Medical Dispute Arbitration, etc) was passed in April, 2011, on the basis of which the MAA (Korea Medical Dispute Mediation and Arbitration Agency) came to be established in April, 2012.

The DRMDA was based on the alternative version initiated by the Ministry of Health and Welfare, while the items suggested by the civil society were mostly discarded. In this process, two key points of a long discussion completely disappeared without a trace in the eventual DRMDA: alteration of

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<sup>3</sup> The law initiated in September 2005, by MP Gi-u Lee of the 17<sup>th</sup> National Assembly (Legal theory for negligence presumption etc.), theory of converting the burden of proof suggested in the proposition of Citizen's Coalition for Economic Justice, introduced in Nov. 2005, by MP Jaewan Park (Sin Hyunho 2011: 6), revised by initiation of MP Chungwhan Kim and others, in the name of the Health-Commonwealth Committee, and passed in the subcommittee for inspection for the legislative bill in July 29, 2007 (Yu Seoghee 2009).

the burden of proof from patient to the professional physicians and the introduction of liability insurance for the medical personnel.

*Discussions under the Conservative Government (2008-2011)* (Yu Seoghee 2009)

Before the establishment of the MAA, discussions for proper measure of compensation for medical malpractice continued under the conservative government and three bills were submitted to the National Assembly: 1) Medical Dispute Mediation and Damage Relief presented by MP (Member of Parliament) Zaecheol Sim, 2) that presented by MP Younghee Choe, and 3) the People's Petition introduced by Eunsu Bak. The bill proposed by MP Sim was a compromised one which approached closer to the standpoint of the Ministry of Health and Welfare, while the other two bills represent the former intention of civil society.

First of all, these three bills show different standpoints regarding the issue of conversion of the burden of proof. In particular, the people's petition was in conflict with the bill presented by Zaecheol Sim. The bill by MP Sim prescribed that the burden of proof be shared by the physicians and patients, as well as an exemption from criminal persecution, and regulation of a compensation fund. The People's petition, however, laid the burden of proof on the physicians and excluded every kind of privilege for the physicians, as it did neither include any reference to exemption from criminal persecution, nor any kind of compensation fund. Furthermore, it excluded the participation of the physicians on the relief committee for medical malpractice, and stipulated obligations of explanation as well as criminal punishment for the fabrication or alteration of medical records.

On the other hand, an example of opinions from the side of doctors which mostly opposed the bill of MP Younghee Choe and the People's Petition shows itself as follows.

- 1) Even though doctors pay every possible attention to treatment, malpractice inevitably happens due to statistical frequency. Then, if they are burdened with the responsibility of proof, how could the disadvantage of patients be compensated for, which is generated by doctor's not practicing operations?
- 2) I agree to the increase of employment due to the creation of a mediation center. Mediation is a hard process which needs a long duration of investigation. Then, MP Sim suggested the committee of mediation to be composed of more than 50 members, but in my opinion, commissions with more than 50 members do not work properly for discussions. About 10 members within MP Choe's and the People's Petition proposal seems adequate, but qualification of the chair and other commissioners is not specified and it is not even clear who speaks for them. The People's Petition excludes medical physicians from the committee, and does not permit the number of physicians to exceed

over one third of its sub-committee of experts. Then, who could inspect exactly on medical malpractice?

- 3) It seems to me improper to insist that the burden of proof for medical malpractice should be imposed on the doctors since common people do not have medical knowledge, while the very common people who are not professional are attached to the expert committee, the authority to investigate and judge the case of malpractice, of which physicians compose only a part, so that no expert physicians are readily to be interfered by such a committee.
- 4) Since the bill of MP Choe and the People's Petition permits the process of litigation independent of that of mediation, I doubt the significance of establishing the Mediation Committee.
- 5) Referring to liability insurance, the amount of risk burden should be considered by increasing medical insurance fees.
- 6) Recently there is an increase in medical disputes, not medical malpractice. In this situation, if the burden of proof is imposed on the doctors, medical lawsuits tend to rise explosively, and the doctors will lose much time being occupied with lawsuits rather than their duty of treatment. Is it not that trial used to dispute the point of issue between the plaintiff and the defendant on the evidences and witnesses? So, in order to avoid the burden of proof, doctors tend to make a defensive diagnosis, procrastinated or overdue diagnosis, so that the immense amount of wasted time on a national point of view would be hard to calculate (Lee Baekhyu 2011b: 1276).

Additionally, the following have been proposed as desirable alternatives by the same source:

- 1) In case of death, an autopsy should be conducted to proceed to a lawsuit.
- 2) Violent behavior, such as a disturbing diagnosis, the telling of lies, intimidation and demonstration, under the pretext of medical malpractice should be heavily punished, so that the doctors could perform their duty under a comfortable environment.
- 3) If liability insurance be enforced on doctors, the possible risk on the side of medical institutes or on doctors should be calculated in the medical insurance fee, or Medical Insurance Service instead of the doctors paying it as it is managed in balanced budget financing.

Such an argument for the doctor's position shows, in my opinion, their innermost feelings, as it is not logically but focuses on the point of profit of doctors. It reflects, in my opinion, an irrational convention which prevails in Korea's medical service, and the following issues should be reconsidered.



- 1) From the comments above, 1) it could be concluded that if the burden of proof is imposed on the doctors, they would not assume the duty of diagnosis.
- 2) Comment 2) demonstrates that the writer regards the organization of mediation as a mechanism creating jobs. He confused the medical examination with the function of mediation. The former should be imposed for the doctors, while the latter doesn't necessarily need to belong to them.
- 3) From comment 3) it is shown that he advocates the doctors' initiative even in the domain of mediation, and is never obedient to others.
- 4) With comment 4) the writer would not permit any other process of remedies to the Mediation's Committee. This means a complete appropriateness of the Mediation's Committee on the competency of mediation.
- 5) The above comment 5) states that doctors are unwilling to be burdened with any cost for medical malpractice.
- 6) With comment 6) the writer attributes the increase of medical lawsuits due to overdue responses of the patients, disregarding the doctors' possible mistakes or potential overdue treatment for the purpose of income.

Such vindications advocating doctors' interest is also shown in the writer's further suggestions, as he would like to punish the patients "heavily", whose complaints against medical malpractice are abused and viewed just as "a pretext".

However, all these apologies from the writer are connected, it seems, to economic interest, as the doctors would not pay for the cost of liability insurance, but transfer them to the shoulders of the patients.

*Standpoint Shown in the "Doctor's Ethics" Made by the Korean Medical Association and the Legislation in Reality*

- 1) Comparison between the "Doctor's Ethics" made by "Korean Medical Association" and the Principles of European Medical Ethics

The similar standpoint of the doctors was declared in 1997 by the "Korean Medical Association". Actually in Korea there are no "Doctor's Ethics" legislated by the National Assembly.

It is prescribed in article 19 of the "Doctor's Ethics" by the "Korean Medical Association", that doctors do not reproach colleagues except when they perform operations which could not be medically recognized. In article 20, doctors are to allow to their colleagues, when they make a mistake medically and ethically, know it and correct it.

Then, as an ethic, doctors do not reproach their colleague, which is a negative expression and does not ensure that they actively indicate their colleague's mistake. Furthermore, even if it says that doctors let their

colleagues know his or her mistake and correct it, it is just an advisement and not an obligation by law. And also it is no more than an ethic as a relationship set up among the doctors themselves, and there are no obligations with regard to the patients.

To the contrary, the Principles of European Medical Ethics (1987.1.6) defines the ethics of doctors in the interest of patients, and lets doctors legitimately cite professional qualities recognized by their peers, as shown in the following.

Article 28: The rules of fraternity have been established in the interest of the patients. They aim to prevent patients from being the victims of unfair competition between doctors. However, doctors may legitimately cite professional qualities recognized by their peers.

Article 30: It is not a breach of fiduciary duty if a doctor informs the competent professional body of breaches of medical ethical rules and professional competence of which he or she may be aware.

According to Sangho Yu (2015), Korean Doctor Ethics Principles and its general guidelines as well do not digest essentially required responsibilities of the doctors and medical services, and the prescriptions for alleged utmost services for the patients, guaranteed equipment and ethics are treated just partially, the details being meager and scanty.

## 2) Legislation Showing Doctors Diffidence Against Disclosing Medical Information

There is legislation which could be regarded to show the inclination of doctors to abstain from disclosing medical records. It is proved by the comparison of the old law and the revised one of the Medical Services Law, article 21, clause 1 and 2, as the enforced regulation of punishment against potential denial of opening medical records stealthily slipped off, which is as follows:

### I. Old Medical services Law [partly revised, no. 9906 (2009.12.31 operated)]

#### **Article 21** (reading records etc.)

1. i) Physicians or those engaged in medical services should not let those except who are prescribed by this law or besides by other laws, read records of patients, or check the details by issuing a copy.

ii) In case no one but the patient, the spouse of the patient, a direct ascendant or descendant of the patient, or a direct ascendant of the patient's spouse (the representative the patient had designated and provided there is no spouse, direct ascendant or descendant or direct ascendant of the patient's spouse) requires to check the details by reading records on the patients or getting a copy, the claim should be available unless it should inevitably not be disclosed for the patient's treatment.

2. No matter what the above clause (1) prescribes, medical physicians should admit the claim, when other medical institutions demand for a patient's treatment to be read or get a copy of the related medical records, clinical opinions and the process of treatment, or the patient requires the copy of authentication records, radiation film, etc.

3. Physicians should issue the first diagnosis records to be attached when they send urgent patients to another medical center.

**Article 88** (penal regulations)

Whoever violated the above article 21, clause (1) ... should be sentenced to less than three years imprisonment or a penalty less than 10 million Won. Persecution would be introduced provided that a charge is brought against whoever violated article 21, clause (1) (revised in 2009.1.30, 2009.12.31).

- II. the revised law in 2010.1.18 [revised according to the revision of other laws, no. 9932] (2010.3.19 operated)
- III. Old Medical services Law [partly revised, no. 9906 (2009.12.31 operated)]

**Article 21** (reading records etc.)

1. i) Physicians or those engaged in medical services should not let those except patients read the records about patients, or check the details by issuing a copy (revised in 2009.1.30).

2. No matter what the above clause (1) prescribes, physicians or those engaged in medical services should let the details to be checked by letting the medical records be read or by issuing a copy, in case corresponding to each of the following terms. However, an exception for this exists when physicians, dentists, or oriental doctors judge it inevitable not to disclose records for the patient's treatment (revised in 2009.1.30, 2010.1.18).

**Article 88** (penal regulations)

Whoever violates the above article 21, clause (1) ... should be sentenced to less than three years of imprisonment or be given a penalty less than 10 million Won. Persecution would be introduced provided that a charge is brought against whoever violated article 21, clause (1) (revised in 2009.1.30, 2009.12.31).

A comparison of article 21 in the old law with that of the new one provides the following facts:

i) Penal regulations article 88 refers to article 21, clause (1). However, the content of clause (1) differs between the old and the revised one. In the former, the content of ii) is deleted and a part of it is transferred to clause

(2), so that the penal regulations of article 88 does not apply any more to those who violate the prescriptions in ii) in the old law, that is, whoever refused the patient, the spouse of the patient, a direct ascendant or descendant of the patient, or a direct ascendant of the patient's spouse (the representative of the patient had designated and provided that there is no spouse, direct ascendant or descendant or direct ascendant of the patient's spouse), permission of checking medical records.

That is, in the above clause (2) of the revised law, even though it is prescribed that physicians or those engaged in medical services should let the details be checked ..., which seems to be similar to that of the old law, it has a great number of differences with that of the old, since the penal regulation of article 88 does not apply to those who violated this prescription.

- i. In the clause above (1), i), whoever is qualified to check the medical records becomes more restricted in the revised law, as from "who are prescribed by this law or besides by other laws" in the old law to be altered to "patients" only.
- ii. The old law with no. 9906 was instituted in 2009.12.31, and the new one with no. 9932 revised in 2010.1.18, and it began to be applied in 2010.3.19. It seems somewhat comical that the new law was revised when no more than three weeks passed after the old law had begun to be applied.

Actually, it did not seem there was any urgent need to revise the law in such a way, or any process of discussion for social agreement. Inside so brief an interval, less than three weeks, without any persuasive process of public announcement, the above article was revised, which, in my opinion, could be described as "stealthy". So, it could be suspected that the physicians who support or at least did not offer opposition to the revised article of the above law tend to shun disclosing medical information as much as possible, and whenever the opportunity is given.

### 3) Complaints Against the MAA about Authoritative, Coercive Arbitration<sup>4</sup>

After lots of contradicting arguments developed, in 2011, during the third year of the conservative government which began in January, 2008, eventually the DRMDA (The Law for Medical Malpractice Damage Redemption, Medical Dispute Arbitration, etc.) was passed in the National Assembly. However, this law nullified every discussion that had occurred in the course of decades, as it

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<sup>4</sup> DRMDA [Law no. 11141 (Law of National Health Insurance) partly revised December 31, 2011]; Enforced Ordinance of DRMDA [the Ordinance of President no. 26317, partly revised June 15, 2015]; Enforced Rule of DRMDA [the Ordinance of Health-Commonwealth Ministry, no. 321, partly revised June 19, 2015].  
[[http://www.lawnb.com/lawinfo/link\\_view.asp?cid=1B65EE1B8EAC4CF5B91BCAEB4BBCFD08](http://www.lawnb.com/lawinfo/link_view.asp?cid=1B65EE1B8EAC4CF5B91BCAEB4BBCFD08)|L# (2016.4.20 검색)]

resulted in the establishment of the MAA which appropriated every privilege of arbitration, exclusive and concentrated.

As the MAA has been operating for four years since its establishment, its shortcomings come into view by the episodes the public who visited it upload on its internet sites. It seems that the issue mostly related to the point that the MAA for arbitration includes even the authority of authentication under its dominance<sup>5</sup>, so that it is not absolutely excluded that the MAA could be imbued with self-righteous bureaucracy.

Baekhyu Lee positively appraised the establishment of the MAA, commenting that, instead of converting the burden of proof towards the doctors, the legislators provided a third objective institution which comprehended not only authentication but the authority of investigation related to medical malpractice. Furthermore, Lee insisted that the Committee for Authentication possess the competency for inquiring causality if the health-medical personnel commit an error and requesting the evidence and medical supplier's explanation, so the burden of proof on the side of patients is to be considerably lightened (Lee Baekhyu 2011b: 1273, 1277). In the same context, he argued that by means of DRMDA issues of medical malpractice are to be settled through "just and rapid" process, so the medical personnel could be occupied in a medical service in a secured environment without being annoyed by lawsuit affairs.

Actually, however, justice and rapidity are not always coexistent with each other. In a social condition where medical experts keep silent and there is no way to appeal to a higher level against the decision of the MAA which appropriates both arbitration and authentication, the conclusions the MAA draws are circulated with an unconditional authority. It is not a democratic but an authoritarian practice. The functions of the MAA are not a savior alleviating the burden of patients but could be a new burden for those still charged with the burden of proof. A fundamental solution for them is to convert it to the doctors.

This is worrying as just four years after the establishment of the MAA, various complaints from patients have come to a boil. In short, just two examples are introduced below which prove the patients' impressions that the MAA with its absolute authority was inclined towards doctors.

**Example 1.** *The MAA is an organization that gives immunity to hospitals*<sup>6</sup>

Due to doctors' indulgence and fault, large and small intestines of my wife's mother were removed, and she has not been cured. However, the MAA explained medical details to me which I could not understand, and then advised me to agree to the arbitration, both civil and criminal, giving me a reward of 7 million Korean Won (about 6,000 dollars). I wonder what difference the role of

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<sup>5</sup> DRMDA [Law no. 11141, § 3, Authentication Committee for medical malpractice, articles 25, 26.

<sup>6</sup> <http://bbs1.agora.media.daum.net/gaia/do/debate/read?bbsId=D003&articleId=5709877>.

the MAA has apart from giving immunity to the hospitals? There is no authority which takes the side of patients. Hell!

**Example 2.** *Is the judgment of the MAA proper?*<sup>7</sup>

My wife's mother suffered brain damage ... We did not have anywhere to consult, and by the advice of the hospital committed our case for mediation to the MAA. The process was authoritative and I suspect the composition of the committee was favorable to the hospital. They concluded that half of the responsibility lies with the patient who has lung cancer. They gave us 50% of the amount calculated on the criterion of her remaining survival lifetime, moreover with the condition that I should not question anymore both civil and criminal responsibility against the hospital. Among others, the very point I mostly cannot understand is the criterion of calculated survival lifetime. In August she was declared for her predicted survival lifetime, since then she has survived for one and a half years in the hospital until now. I doubt that the judgment issued from the MAA was really made by experts who were qualified.

For whoever is confronted with such a situation, I prefer to advise them not to believe the MAA, but to find other measures for mediation or to assign a lawyer to proceed with a lawsuit, even if it may cost more money.... Anyway, the point I would like to question is whether the MAA actually tries to mediate from a neutral standpoint, or whether it is supported by the solidarity of the hospitals. I just hope that the MAA works as it should do. Not to be faced with such a situation, take care of your health....

**Comparison of Medical Authentication and Arbitration between S. Korea and Germany**

*Difference between Korea and Germany on the Origin and Functions of Mediation and Arbitration Agencies*

About three years before the MAA was established, Zunhee Nam (2009: 422) suggested that in Korea, too, ADR (Alternative Dispute Resolution) should be arranged to alleviate extreme confrontations and antagonism between physicians and patients, ADR being composed of various kinds of experts, medical, legal, etc. He refers, as an example of ADR, to the Arbitration Board [Schlichtungsstellen: established in 3 places (Lower Saxony, Rhineland-Palatinate, and Saxony) by the doctors association of 9 northern states (Bundes)] and the Expert Commissions (four Gutachterkommissionen). He insists that it inevitably guarantees expert capability as well as objectivity. Just after the passage of the law DRMDA, Hyangmi Kim declared that it is desirable that expert physicians who, being well-informed and qualified for

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<sup>7</sup> <http://bbs1.agora.media.daum.net/gaia/do/debate/read?bbsId=D003&articleId=5709877>.

medical laws, could appraise the situation of accidents generally and synthetically take part in the medical authentication (Kim Hyangmi 2011: 82).

In my opinion, however, no matter how one tries to ensure expertise or objectivity of ADR as a fair organization, antagonism between physicians and patients can never be completely avoided. Actually, the MAA came to be established about three years after the suggestion for the coming ADR's vision of Zunhee Nam's paper, and in four years since its creation, as it turns out, it has been the object of many complaints. The situation is mostly due to the appropriation of competency for medical authentication and Korean doctors' convention of silence in front of the truth, which is quite dissimilar to that of Germany.

In the 1970s there was a great increase in the number of medical disputes in Germany, so that the number of doctors involved in lawsuits also rapidly increased. And, above all, the patients accused the physicians more frequently in criminal court in order to get medical records of the hospital or medical authentications of experts without being burdened with expense. As a countermeasure to this situation, the doctors association of each state in Germany came to establish the Arbitration Board and the Expert Commissions in the year 1975-1976, in an effort to settle medical disputes by the measure of ADR (Doms 1981, as cited in Nam Junhee 2009: 412).

Korea's medical, as well as social environments are absolutely different from those of Germany. First, in Germany the burden of proof is attributed to the doctors, and the opportunity for getting medical information is open to the patients. In Korea, however, the burden of proof rests mostly on the patients, and even if the doctors are accused in criminal lawsuits, the police tend not to investigate for the benefit of the patients, as the burden of proof is put on the patients by law. And the doctors tend not to tell the truth if it is unfavorable for them. That is, in Germany when the patients accuse the doctors they can get every medical record as well as medical information even without paying any fees, while in Korea the doctors conventionally keep silent about the truth, and the patients without expert knowledge have to prove everything. How can this be possible?

In Germany the doctors voluntarily made the Arbitration Board and the Expert Commissions to evade being involved in lawsuits, while in Korea the patients who could not get medical information anywhere with ease are forced to visit the MAA to ease the burden of proof which is upon them. Many Korean doctors are quite proud of the MAA, as the MAA helps patients by lightening their burden of proof, as it is declared in the purpose of legislation for the MAA. In reality Korean patients being humble and lowly, are forced to commit their case to the MAA to ease the responsibility of proof, as otherwise they have no alternative to get expert information.

Korean doctors seem to be quite diffident to the disclosing of medical information and sensitive not only to calculating the amount of damage redemption but also to the results of medical authentication. In my opinion, this is mostly due to the fact that they are not insured by liability insurance against medical malpractice. When the doctors do not have liability insurance, it

cannot be expected that a fair arbitration between the doctors and the patients would be concluded. In reality, Korean doctors are worried about disclosing medical information without reservation to medical consumers, which could increase medical disputes between the former and the latter, and the burden as well charged to the former. And the doctors suggested an apprehensive prospect that, when the medical suppliers have liability insurance, the cost would be transferred to the patients, which would increase medical fees.

However, the doctors in America, Germany, and other countries, used to apply for liability insurance politics, which is advised by their government, and it is not necessarily the case that the doctors worried about the increase of consumers' burden or they could not apply for insurance because of the increase of medical fees. Instead of patients, the doctors' income might be reduced by applying for liability insurance. But as a return they can reduce the burden of disputes to save time and concern, rather than worrying about disclosing medical information. It is the same situation with automobile liability insurance which removes the disputes among the private parties. For reference, America's introduction of medical liability insurance goes back to the 1920's.

Regardless, in Germany, which is a more open society for information, the function of medical authentication and that of arbitration are divided from each other and each of them are also definitely limited. On the contrary, as discussed above, Korea's MAA as an office possessed both the competency of arbitration and authentication, and even more authority with the calculation of damage amounts due to medical malpractice. Once arbitration is achieved, it could not be altered being validated as a judiciary settlement.

In Germany, when the Arbitration Board was composed in order to deal with compensation for medical damage, the Doctors Association made a contract with HUK, an associated insurance company. That is, the doctors and the patients do not get involved with each other, but the insurance company creates a buffer zone. The Arbitration Board judges only the existence of medical malpractice from the viewpoint of experts, and when the fault of doctors is recognized, it informs the insurance company about the damages the patient suffered and advises arbitration, suggesting available measures. Also the Expert Commission concludes about medical malpractice according to the authentication of experts, and when a doctor's fault is recognized, it provides patients with the evidence in order to claim reparations (Nam Junhee 2009: 413)<sup>8</sup>. The Arbitration Board is managed on the basis of the contract between the Doctors' Association and the HUK Associated insurance company of each state, so only the doctors who are ensured can take part in it, while the Expert Commission was established by the doctors' Association of its own accord, and every member of the Association shares in it (Bodenburg and Matthies 1982: 730, as cited in Nam Junhee 2009: 413).

In Germany there is no organization like Korea's MAA which controls the entire country as an office, but the medical arbitration office and authentication

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<sup>8</sup> Exceptionally Arbitration Board could assume arbitration when both the patient and the doctor agree.



committee separately, and they operate according to the province (Bund). For example, Norddeutschen Schlichtungsstelle (Arbitration Committee of North Germany)<sup>9</sup> controls the doctors Associations of 9 of 16 provinces (Bund)<sup>10</sup>, and plays a leading role for the medical dispute settlements in other provinces.

Another case is the Medical Arbitration Agency in North Germany which is headquartered in Hanover. It is a private corporation established by the Doctors Association, an organization being completely different from the Arbitration Court prescribed in the Civil Law (BGB), article 1025. The Arbitration Court makes up the Arbitration Committee composed by the members on the basis of agreement between both subject parties, and its process is similar to civil court, whose arbitration has the effect of a judicial decision. But the laws of a civil process do not apply to the Medical Arbitration Agency which was established by the Doctors Association on the level of provinces on the basis of medical laws. Thus, the conclusion the Medical Arbitration Agency comes to does not carry any binding force to the subjects in discord, when they do not arrive at voluntary agreements (Nam Junhee 2009: 414, Kim Hanna et al. 2014: 41).

On the contrary, Korea's patients who applied to the MAA are enforced to be in a less discretionary disposition in order to arrive at a mutual arbitration. The MAA used to force patients to sign contracts in which they swear to give up civil as well as criminal lawsuits. Moreover, the information issued by the MAA is prohibited to be used for the process of criminal persecution. It could only be used in civil disputes (article 38).

*Critical Review on the Inclined Arbitrariness of the Korean MAA and its Restriction of Information Availability*

It is said that Korean medical suppliers worried about the "misuse" of the consequences of authentication which were given by the MAA (Lee Baekhyu 2011b: 1287, Sin Eunju 2011: 153). "Misuse" in this case is related to its use for criminal cases, which gives considerable burden to the health-physician suppliers. The suppliers insisted that institutional devices should be prepared to prohibit the authentication process of the MAA as they could be exploited as a process for securing evidences on the side of patients for criminal prosecution, by withdrawing the application for Arbitration after the MAA submitted authentication (Sin Eunju 2011: 153).

Hence, some medical suppliers maintained the belief that the report of authentication of the MAA could be exploited as significant evidence for the lawsuits afterwards, so it is necessary to set limits for the reading or copying of records permitted. Practically it is not possible to prohibit fundamentally as the rights of reading and copying of records are permitted comprehensively by the DRMDA law, nevertheless the limit could be set on according to a period or the purpose of copying. This argument is based on the Code of Civil

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<sup>9</sup> <http://noprdddeutsche-schlichtngsstelle.de>.

<sup>10</sup> Berlin, Bremen, Hamburg, Schleswig-Holstein, Niedersachsen, Thüringen, Brandenburg, Mecklenburg-Vorpommern, Sachsen-Anhalt.

Procedure, Article 163, clause 2. It prescribes the restriction of request for reading from the third person until the judicial decision would be definitely made, which is a device for protecting secrets. The present law provides the limitation of statement citation<sup>11</sup>, which, as suggested, should be extended to the limitation of material evidence citation (Lee Baekhyu 2011b: 1288).

They also suggested that requests of patients for reading or copying authentication reports should be rejected in case they are just reasons that private or classified information of a health-medical institution business is endangered by the reading or copying of authentication report, or it is manifested that the patients would exploit the authentication process as a mean for ensuring evidence. Furthermore, according to this, in order to prevent the "misuse" of the authentication procedure, "mediation should be substituted by decision" on the basis of the same Law (article 39) and the Code of Civil Mediation (article 30)<sup>12</sup>. When patients protest against the result of mediation, Baekhyu Lee decided, it should be enforced on them (Lee Baekhyu 2011b: 1288). Here, we can notice that enforcement refers just to the case of the patient's protest, and not the doctor's.

On the contrary, they are very generous to the Doctors. It is prescribed that the Authentication Committee of the MAA takes charge of the authentication of medical malpractice committed by other organizations (DRMDA article 15, clause 3, no. 4). Baekhyu Lee argued that it is not desirable that health-physician suppliers are enforced to submit materials unfavorable for themselves. According to Lee, it is contradictory to the purpose of mediation and the Law DRMDA which is based on the voluntary and arbitrary dispute settlements respecting the opinion's of the subject in discord (Lee Baekhyu 2011a: 95). The authentication committed by other organizations to the MAA should be processed only on the basis of the materials voluntarily submitted.

Moreover, according to Baekhyu Lee, DRMDA provides a prescription (Article 33, clause 3) that the conclusion drawn by the Authentication Committee does not necessarily fetter the results of arbitration. That is, the Department of Arbitration, considering synthetically the report of authentication, relations among both disputing parties, etc., eventually compromises variant opinions and decides appropriateness, so that it is not necessary to announce publically the ground of their decisions. Still more, according to Baekhyu Lee (2011b: 1285), the Authentication Committee does not have the obligation to discover all the truth related to medical malpractice, and the Arbitration Committee is not necessarily fettered by the majority's opinion on authentication.

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<sup>11</sup> DRMDA, article 39; the Code of Civil Mediation, article 23 (Limitation of statement citation): the statements developed by the subjects or the interested party in the process of authentication should not be available for the civil procedure.

<sup>12</sup> The Law of Civil Arbitration, article 30: The judge in charge of arbitration should make a decision in virtue of his authority to settle equitably a dispute, considering the interest of the subjects in discord and other various conditions, and within the limit not contradicting the purport of applicants, in case the subjects in discord have not come into agreement or the content of agreement between the subjects in discord seems to be improper and without pertinent reason.

As related to the meaning of the above mentioned law, Article 33, clause 3, Baekhyu Lee also cited the Law of Civil Procedure, article 202 (Lee Baekhyu 2011b: 1285)<sup>13</sup>. He interpreted the latter as in Civil Procedure also the judges are not bound to the conclusion of authentication on the basis of the "Principle of Free Conviction [Prinzip der freien Beweiswürdigung]". And he just made an additional comment that, as the Authentication Committee set forth even their opinions related to malpractices and causal relationships as well as the grade of after-effect disability according to the results of investigations, the Arbitration Committee or the judicial court cannot help highly regarding the reports of the Authentication Committee (Lee Baekhyu 2011b: 1285). His comment seems to presuppose that the results as well as the opinions set forth by the Authentication Committee could be disregarded even improperly by the Arbitration Committee by misuse of the "Principle of Free Conviction".

In my opinion, however, Baekhyu Lee's opinion put the cart before the horse. The Law of Civil Procedure, article 202 is not in the same context with the law DRMDA article 33, clause 3 in its purport. The former prescribes that the court decides whether the claim of the facts is true or not, considering the general purport of assertion and the results of evidence investigation, with free conviction on the basis of the concept of social justice and equity, and according to logic and empirical law. The phrase "with free conviction" in the Law of Civil Procedure, article 202 does not stand with that of DRMDA article 33, clause 3, "the conclusion drawn by the Authentication Committee does not necessarily fetter the results of arbitration". Contrary to the latter, the former refers clearly to "considering the general purport of assertion and the results of evidence investigation". Still more, "free conviction" should be based on the concept of social justice and equity, and according to logic and empirical law, with which the judge is to decide whether the contention of facts is true or not. In opposition to Baekhyu Lee's contention, this does not mean "not bound to the conclusion of an Authentication Committee".

At present Korea, not only in Civil but Criminal Procedure Law (article 308), the "Principle of Free Conviction" is applied. It says that "The ability of evidence is defined by the judges". In this case, too, similar to the Law of Civil Procedure 202, the decision of the judges should be restrained by "logic and empirical laws"<sup>14</sup>. Hence, we cannot say that from the Civil or Criminal Procedure Law is drawn the purport that the "Principle of Free Conviction" refers to being "not bound to the results of an Authentication Committee". DRMDA article 33, clause 3 should not be regarded as permitting the Arbitration Committee to decide arbitrarily. Baekhyu Lee regarded "not bound to the conclusion of an Authentication Committee" as principal, and "cannot help having a high regard to the opinion of an Authentication Committee" as incidental, but, in my opinion, the priority should be inverted. If the meaning of article 33, 3 accords with Baekhyu Lee's interpretation, it is decidedly against the constitution.

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<sup>13</sup> The Supreme Court, judicial sentence 98 da 12270.

<sup>14</sup> "Quality of evidence and Ability of evidence", <http://tip.daum.net/question/83655306>.

Baekhyu Lee's opinion that an Authentication Committee does not have the obligation to discover all the truth, and the result of mediation should be enforced to the patients who protest (Lee Baekhyu 2011b: 1285), as discussed above, disclose straightforwardly the tendency of the medical suppliers covering up the truth as much as possible on the one hand, and compelling the patients to accept compulsory arbitration on the other. He is confusing two separate procedures, discovering the truth and the procedure of arbitration, to be connected with each other to the advantage of the medical suppliers. Fair arbitration should be drawn absolutely on the basis of objective truth. In the same context with Baekhyu Lee's opinion, actually the conclusion drawn from the Authentication Committee is prohibited to be used for criminal cases by the law (Article 38). Hence, Korean patients who otherwise hardly get the required medical information under the convention of doctor's silence are restricted to not being able to use the information which is available. Not to speak of arbitration, civil or criminal procedure, it is reasonable that every procedure has to be based on the truth, so this law impeding the truth to be disclosed is decidedly against the constitution. The "misuse" of medical information after withdrawing the application to the arbitration procedure, which the medical suppliers are worried about, is a "good use" on the side of the patients who are dissatisfied with the results of arbitration.

The standpoint of Korean medical suppliers varies extremely from that of the Germans. As referred to above, in case of medical malpractice, the Medical Arbitration Committee in Germany gives no more than advice for arbitration to the insurance company about the damage to the patients, and the Medical Authentication Committee decides on the basis of the expert's appraisal if there has been a doctor's fault, which is no more than a foundation for applying for damage redemption. That is, investigating the truth is a separate procedure from arbitration or damage redemption. The discords in the process of arbitration or damage redemption are absolutely irrelevant to the discovering of the truth.

### **Silence of Korean Doctors and the Estrangement of Patients from Medical Information**

As the function of medical arbitration with that of authentication coexisted in the same office, the possibility that the Korean MAA is disposed to support a side of both interested parties is not absolutely excluded. Then, any legal procedure with an unsatisfied patient allowing for an appeal has not been provided. To make the situation worse, medical experts tend not to disclose the truth not only for their own diagnosis but for others. The patients who want to get a second opinion for the first diagnosis usually could not get it easily from another hospital, except in the case where the first hospital of diagnosis officially committed another to do so. In this social environment, the burden of proof is mostly placed on the patients.

In addition, a foreign doctor's authentication used not to be recognized as legally authorized. Korean medical personnel have built a thick wall against foreign medical opinions, which makes patients fall into an abyss of despair in combination with their silence. The way to get proper information is fundamentally blocked for them. Article 3 of the Doctors Ethics Principles declared by the Korean Medical Association<sup>15</sup> shows a worldwide ideal of medical service with the prescription that "(Korean) doctors try to carefully take care of the patients not to speak of race, nationality, age and sex, occupation and position, economic capability, ideology and religion, and to make maximum efforts to assist all mankind and Korean people receive medical benefits fairly and equitably". However, the actual situation reverses within the movement of globalization, as they do not accept open-mindedly foreigner's medical authentication opinion and try to exclusively monopolize and control medical information.

In the provisional law for the Damage Redemption for Medical Malpractice discussed in the 17<sup>th</sup> National Assembly at the end of 2007, it is suggested that the doctors become immune from the responsibility regarding criminal prosecution, if the doctors do not make a great mistake. In a similar context, in the discussion for legislating laws for medical malpractice in the Korean National Assembly, according to a verbal statement, the suggestion was put forth from medical suppliers that major mistakes by doctors must be submitted to the arbitration committee. To the contrary, in Medical Law in Germany, it is realized and reflected that even a trivial mistake by doctors might bring about fatal consequences. The concept of medical malpractice itself shows a great divergence between Korea and Germany. It arouses the suspicion that Korean medical suppliers would evade responsibility as much as possible rather than approaching the issue fairly and objectively.

On the other hand, some of the medical suppliers appraised positively the "Special Law for Criminal Exemption" for medical personnel, and said that "exempting the medical personnel's criminal penalty for the case of mediation or mutual agreement has been concluded to remove psychological uneasiness, which lets the medical personnel be occupied with the medical treatment in a secured environment. Ensuring a stable environment for medical treatment eventually could prevent medical disputes in advance". However, Giyoung Kim (2011: 119) contradicted such a contention, and maintained that previous prevention could be achieved by concluding rightful authentication as a precondition and by letting it be a model followed in practical duties. Actually, the "Special Law for Criminal Exemption" for medical personnel could instigate doctors' negligence, combined with their reticence, which could be a cause which accelerates medical malpractices.

Actually, in the Nordrhein province (Bund), Germany, the average rate over several years recognized as medical malpractices attained 1/3 of the medically and legally investigated instances (Kim Giyoung 2011: 115).

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<sup>15</sup> Doctors Ethics Principle (declared by Korean Medical Association) [April 12, 1997 revised], <http://blog.naver.com/PostView.nhn?blogId=jhy4059&logNo=70165596800> (Accessed: 22 April 2016).

Furthermore, in Germany not only medical malpractices but the mistakes on the conclusions drawn by the Arbitration Organization and Authentication Committee are disclosed. Even if this does not happen often, there are judicial decisions which vary from the conclusions of the Arbitration Organization or the Authentication Committee (Kim Giyoung 2011: 119).

These kinds of institutions are not created accidentally but come into existence within social environments that are not afraid of the disclosure of truth. In German Medical Law, it is provided that doctors have to tell the truth to whoever visit them submitting medical records and otherwise can be prosecuted. As far I know the doctors who serve in the university hospital are destined to consult with any visitors. Disregarding nationality, the door is open and they do not charge any fee to the visitors. They do not request any further documents to prove the visitor's personal identity or the originality of materials, and politely respond to the questions the visitors raise. In Greece also the doctors must tell their opinions in cases where visitors submit an application with the signature of the prosecutor in the Public Prosecutors Office. That is, whoever wants to have medical information goes to the Public Prosecutors Office, and is given the signature of the prosecutor on duty on the application form to submit to the hospital. Based on this application the doctors are required to submit their opinion.

According to an investigation of Norwegian Doctors, the response rate was 67%; 57% admitted that it is difficult to criticize a colleague for professional misconduct and 51% for ethical misconduct; 51% described sometimes having to act against their own conscience as distressing (Førde and Aasland 2008) Even in an advanced region such as Europe, this shows that no less than 50% hesitated to tell the truth, but those who tell the truth are closing in at least upon 50%. The situation of Norway differs from Korea, where the doctors mostly hold their tongue and hesitate to set forth second opinions, so the public can rarely get medical information.

Article 5, clause 1, of the Law DRMDA declares as the duty of the state, the establishers of health-medical institutions, and health-medical personnel, that "the state has to found a legal and institutional basis for investigation, research and drawing up statistics in order to prevent medical malpractice". Actually, however, even the statistics for medical malpractice has never officially been performed in Korea. Korean medical consumers cannot shake the suspicion that medical suppliers would cover up the truth to provide an advantage for themselves under the wing of allegedly objective mediators or arbitrators.

As actual conditions of medical malpractices are kept under a veil, the conventional reticence of Korean doctors brings about an unchallenged Cartel between them, and promotes the "Doctors Ethics" to conceal reciprocally their own mistakes. The problem is that this practice does not refer to past mistakes, but fosters the privileged conscience as well as irresponsibility, so to neglect their duty justifying the "virtue of reticence". It is a great threat for society in the future.

**Necessity of Decentralization of the MAA's Role according to Function, Region, and Gradation**

As referred to above, there is no higher ranked organization which could control the mistakes of the MAA which has the functions of both arbitration and authentication. Fundamental reflection is needed for the mighty MAA, as it might be involved in the "misuse" of its concentrated competency to damage objectivity. Actually, mistrust against it is more or less spread that the MAA represents doctor's interests, being a means to give indulgence to them. Impending issues to reform the MAA is to decentralize its integrated competency, according not only to gradation, but also function and region, so that patients can have opportunities to get and compare various opinions privately or from various organizations.

About functional decentralization, the MAA does not appropriate the function of authentication. This means not only that the authority of authentication has to be separated from the MAA, but fundamentally it should not be appropriated by any fixed organization. This is why any kind of restriction may easily bring about self-righteousness. To ensure objectivity and transparency of authentication, the opinion of every doctor has to be regarded, not to speak of domestic or foreign origin. As such an open system provided, the authentication of the MAA itself could guarantee fairness and objectivity. By recognizing the possibility of other opinions, arbitrary decision of the MAA is sure to be reduced. This refers to the commonsense that democracy could be realized through supervising competency by citizens' inspection and restraint.

Moreover, the role of the MAA has to be decentralized towards each region. The Law DRMDA (article 6, clause 3) prescribes that the MAA could found branches in needed places on the basis of the president's ordinances, and, according to those enforcement ordinances (article 2), the MAA could establish branch offices through the decision of the Directors Council. However, the foundation of the branches is not obligated, and at present there is just an office in Seoul which blockades the opportunity for an alternate opinion. Functionally and regionally concentrated the structure of the MAA has executed authority without restraint, which originally has been a hotbed for despotism. Considering the present Korean reality where the public hardly gets other possibilities of authentication, the power of the MAA attains to an absolute superiority. This situation is quite different from foreign countries including Germany, where the foundation of branches is obligated (Kim Youngkyu 2013: 198).

The monopoly of authentication and the restriction of availability effect patients disadvantageously, and focus on the making of profit for medical suppliers. But, the more important issue is that this situation furthers irresponsibility of the latter, which fetters the patients being thrown into double jeopardy. This is a similar context with Baekhyu Lee's contention which has been discussed above. Concentrating upon the merit of restraining the disclosing of medical records and their availability according to purpose as well, Baekhyu Lee disregarded the negative effect of covering up the truth,

which foster the possibility of irresponsible and negligent treatment of the medical suppliers and the malpractice of over-treatment originated from the pursuit of profit rather than the proper treatment of patients.

### **Conclusion - The Need for Decentralization of the Present Competency of the MAA**

Even though DRMDA (the Law for Medical Malpractice Damage Redemption, Medical Dispute Arbitration, etc.) declares as its object (article 1) the rapid and impartial remedy for medical damage, and the "stabilization of an environment for medical treatment of medical suppliers", at present after four years have passed it does not seem that the MAA has got a shout of encouragement by the patients, but just a murmur of grievances.

The negative side effects of the MAA, in my opinion, are mostly due to its structure of unified competency, which is fragile in front of lobbyist activity. There is no device to control the possible fallacy of the MAA itself. Article 6-3 of the law regarding ADR prescribes that branch offices could be established according to the ordinance of the President and according to its enforcement ordinance (article 2), the MAA could found branch offices. However, the establishment of branches is not obligatory, and actually at present the MAA is managed in Seoul and only through one office. Actually, there are lots of complaints that the MAA only represents the interests of doctors. So, the present competency of the MAA is inevitably divided according to region, and function, as well as the level of judgment which makes dissatisfied patients of the conclusion of the MAA appeal to a higher grade.

Above all, however, in order to promote rapid and impartial remedies and stabilize the environment for medical practice, a matter of priority is not the alteration of an office but of the social environment as well as the legal foundation, which enforces doctors to tell the truth and let every doctor apply for insurance policies as they need so as to not occupy themselves with the affair of lawsuits.

So, in my opinion, in order to overcome the present weak points of the MAA, four specific points should be reconsidered. First, since the negative side effects of the MAA are mostly due to its structure of unified competency: first, both functions arbitration and authentication monopolized in one hand, and second, being established only in Seoul and only in one office. Hence, its authority should be decentralized functionally and regionally. At present the MAA is fragile in front of lobbyist activity due to its great and centralized competency, and moreover there are no checks and balances to control the possible mistakes of the MAA itself, as there is no other alternative or competitive organization.

Secondly, doctors should be ensured, so that they are not so sensitive about the results of medical authentication or mediation. At present Korean Doctors mostly do not apply for liability insurance policies, as they are neither advised nor enforced to do so.



Thirdly, the burden of proof referring to medical malpractice, which has mostly been imposed on the patients in Korea, has to be converted to the doctors who make the diagnoses, as patients have no expert knowledge in this area.

Fourthly, it should be legislated that every doctor should tell the truth. Fundamentally, in the present social environment they maintain silence, thus organizations of medical authentication or arbitration cannot be fairly operated.

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