

COMPLETION REPORT

A Study on Japanese Experiences in Developing a Viable Obstetric Compensation System for Cerebral Palsy:
Lessons for Reforming Malaysian Medical Malpractice System

Dr. Puteri Nemie Jahn Kassim

Professor

Ahmad Ibrahim Kulliyyah of Laws

International Islamic University Malaysia

Malaysia

Children having cerebral palsy will incur life-long disabilities which require high costs of medical and nursing care. This imposes tremendous burden on the family of the affected children, whether financially or emotionally. It is understandable for the affected families to initiate court litigation in order to alleviate the financial burden and at the same time to overcome the emotional pain associated with the permanent and lifetime implications which cerebral palsy entails. However, suing for such injuries in court and identification of medical malpractice is not an easy task for the families. Further, court litigation tends to be tedious, lengthy and unpleasant. The hazards of litigation have prompted several countries to find the available alternative from court litigation, such as the implementation of a no-fault compensation system, to settle these types of claims. While court litigation encourages the practice of defensive medicine and fosters confrontational attitudes between doctors and patients, no-fault compensation systems, on the other hand, seek to offer improved relationship and strengthened collaborative doctor-patient relations. Rehabilitation can proceed in a more timely fashion, and not hindered by the long wait until legal action in the courts is resolved. This would certainly ease the pressure and stress on medical practitioners with regard to escalating insurance premiums, the availability of liability and the threat of litigation. Thus, it is very much applauded that the Japan Obstetric Compensation System for Cerebral Palsy was established in January 2009, with the aim of helping children with such disability to improve their quality of life and to provide monetary compensation in order to lessen the economic burden on the family. The system also aims at improving the quality of maternity care and analyzing the causes of accidents in order to prevent similar cases to happen in the future. Therefore, the system has been featured as the one with two vital pillars such as compensation and causal analysis/prevention. This system clearly depicts social solidarity in encouraging collective responsibilities for the mishaps suffered by the community. Such responsibility is seen as asserting some sense of accountability amongst members of the public including medical profession to collectively be responsible for the mishaps suffered by the community. In addition, unlike other no-fault compensation system, the Japanese system focuses not only on monetary compensation but causal analysis/preventive action as well. The affected babies and families are provided with causal analysis report which is crafted by taking families' comments and questions into consideration so that the report would meet their satisfaction. Those reports are collectively studied and the annual report for prevention of cerebral palsy is compiled through the study. The report for prevention serves as a material in the meeting of academic associations of obstetricians and midwives. This uniqueness deserves further observation in terms of its effect not only on easing conflicts but on the quality and safety improvement in obstetric

care. Thus, implementing a no-fault scheme such as the Japan Obstetric Compensation System for Cerebral Palsy depicts principled social or community solidarity and mutual aids to personal injury which includes a recognition of “community responsibility; comprehensive entitlement; full rehabilitation; fair and adequate compensation; and administrative efficiency.”

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