

GUIDELINES CONCERNING THE ACTIVITIES OF MEDICAL ASSOCIATIONS UNDER THE ANTIMONOPOLY ACT

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General Secretariat, Fair Trade Commission

With regard to the activities of medical associations, particularly regional medical associations, there are some cases that have been judged to be violations against the "Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade" (hereinafter referred to as "the Antimonopoly Act"), with regard to activities concerning the so-called "appropriate positioning of medical institutions." The Fair Trade Commission (hereinafter referred to as "the FTC") has undertaken a questionnaire-based survey of the activities of medical associations in order to gain a full grasp of such associations, and, taking advantage of this opportunity, has compiled principles concerning the relation between the activities of medical associations and the Antimonopoly Act into guidelines for such activities. The intent of these guidelines is to prevent activities that infringe upon the Antimonopoly Act from occurring by presenting reference examples to specifically clarify the FTC's principles concerning the application of the Act in the various activities of medical associations.

Given that in many cases it is considered necessary to make an individual judgment as to whether specific activities of medical associations actually infringe upon the Antimonopoly Act, in such cases individual consultations shall be undertaken through general consultations or a prior consultation system established by the FTC.

1. Actions Concerning Restrictions on the Opening of New Businesses

(1) Principles

In the event that a doctor attempting to open a new practice applies to join a medical association, if the medical association denies the application and unjustly restricts the opening of the new practice, or unjustly restricts the establishment of a split practice or the expansion of an association member's practice, this shall in principle be a violation against the Act. However, the provision of information regarding the status of activities about other medical institutions and other advice within a reasonable scope shall, in principle, not be a violation against the Act.

(2) Reference Examples

The following examples have been provided for reference in order to judge whether a

violation has occurred. (At the end of each article, the number displayed refers to the relevant article of the Antimonopoly Act, for example, §8-1-1 refers to Section 8, Subsection 1, Paragraph 1 of the Antimonopoly Act)

· Actions That Are Violations in Principle

1-1 In the event that a person attempts to open a new practice, to unjustly restrict the opening of that practice by restricting the number of medical institutions in a specific area through regulations or internal regulations, or the establishment of distance regulations or others. (§8-1-3)

1-2 In the event that coordination is undertaken between a person attempting to open a new practice and already existing medical institutions in the vicinity, but the person does not comply with the coordination, to deny admission into the medical association of the person attempting to open a new practice. (§8-1-3)

1-3 To unjustly restrict the establishment of a split practice or the expansion of an association member's practice, by methods such as placing limits on the number of medical institutions or beds in one specific region pertaining to the establishment of the split practice or the expansion of a practice, or to impose distance regulations or others. (§8-1-4)

1-4 To collect high medical association joining fees or other charges that are aimed at restricting the establishment of new practices, or which bring about that effect. (§8-1-3)

· Acts That Are Possible Violations

1-5 To demand a recommendation from a neighboring association member as part of the application process for candidates to join a medical association.

In the implementation of the application process, if effects acknowledged to be the same as those mentioned in 1-1 or 1-2 should arise, in principle this will be a violation. (§8-1-3)

1-6 To request an alternative location for medical institutions applying for establishment, or to arrange for replacement premises.

In the event that either the request or the arrangements are compulsory or made under duress beyond a request or mediation, this shall in principle be a violation. (§8-1-3)

1-7 To adjust the medical specialty of the medical institution.

In the event that such adjustment is made with no rational reason to avoid duplication of medical institutions specializing in the same area of medicine in the nearby surroundings, in principle this shall become a violation. (§8-1-3)

1-8 To collect irrationally high joining fees or other charges under normal social circumstances.

In the event that effects acknowledged to be the same as those mentioned in 1-4 should arise, in principle this will become a violation. (§8-1-3)

· Actions That Are Not Violations in Principle

1-9 To provide advice within a rational scope in response to consultations with persons attempting to open a new practice, including the provision of information concerning the distribution of existing medical institutions, regional characteristics and population distribution.

1-10 To carry out surveys, research, instructions and other acts pertaining to the provision of appropriate medical care, including the distribution of medical institutions.

1-11 To collect charges based on rational calculations and joining fees within a normally socially accepted scope.

2. Actions Concerning Unjust Interference with the Operations of Medical Institutions

(1) Principles

In the event that a medical association as a group engages in unfair discriminatory behavior or exerts unjust pressure on the business activities of specific medical institutions that are establishing a practice and may or may not be members of the medical association, this shall, in principle, be a violation against the Act.

(2) Reference Examples

· Actions That Are Violations in Principle

2-1 To interfere unjustly in the commissioning of activities from an administrative organization to an association member or non-member. (§8-1-3, §8-1-4)

2-2 In the case of designation of a medical institution for eugenic protection, to give discriminatory treatment to non-members for no rational reason. (§8-1-3)

2-3 In the case of designation of medical institutions that accept health insurance, to interfere unjustly with the designation of non-members. (§8-1-3)

2-4 In the case of joint purchase of medicines and medical equipment, and other joint business operations, to force members to use certain medicines or equipment, or to unjustly discriminate against specified members concerning the use of such medicine or equipment. (§8-1-4)

2-5 To unjustly pressure providers of medicines and medical equipment not to sell goods to either specified members or non-members. (§8-1-5)

3. Actions Concerning the Compilation of Tables of Charges for Uninsured Treatment and Tables of Charges for Written Documents

(1) Principles

In the case that the medical association decides charges for uninsured treatment and for written documents, this shall be, in principle, a violation against the Act. In addition, in the case that membership fee standards, including standard fees, are decided, this too shall become a violation.

(2) Reference Examples

· Actions That Are Violations in Principle written

3-1 The medical association decides charges for uninsured treatment and for documents. (§8-1-1, §8-1-4)

3-2 Membership fee standards, including standard fees for uninsured treatment and for written documents are decided. (§8-1-1, §8-1-4)

· Actions That Are Possible Violations

3-3 To decide indicators, which can be utilized to set common fees, concerning workload and technical difficulty level. In the event that such a decision on the unit price of indicators is acknowledged to have the same effect as mentioned in 3-1 or 3-2, it shall become a violation. (§8-1-1, §8-1-4)

· Actions That Are Not Violations in Principle

3-4 To provide to all members documents that show fair and objective comparisons of prices for medicines and medical equipment.

3-5 To direct individual members to display tables of charges or to ensure that the tables of charges are uniform, within a rational scope.

4. Acts Concerning Medical Examination Times and Advertising

(1) Viewpoint

Although there may be cases in which consultation hours are decided by the medical association and restrictions are applied to advertisements stricter than those provided by Medical Law, to the extent that medical examination times are within a rational scope, and their compliance is not forced, in principle this shall not be a violation against the law, and the above restrictions concerning advertisements shall be viewed in the same manner.

(2) Reference Examples

· Actions That Are Possible Violations

4-1 To stipulate restrictions on consultation hours.

In the event that the content of the restrictions is not rational or their compliance is forcibly

imposed, in principle this shall not be a violation. (§8-1-4)

4-2 To impose restrictions concerning advertising.

In the event that the content of the restriction is not rational or their compliance is forcibly imposed, in principle this shall be a violation. (§8-1-4)

· Actions That Are Not Violations in Principle

4-3 To stipulate medical examination times for an out-of-hours emergency roster of hospitals in the event that such a system is implemented or attempted to be implemented.

4-4 To stipulate guidelines for medical examination times that bear in mind the health of the doctors and other health-care staff and do not force members to comply with these measures.