

ACT ON REMEDIES FOR INJURIES FROM MEDICAL MALPRACTICE AND MEDIATION OF MEDICAL DISPUTES

Act No.10566, Apr. 7, 2011
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CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to promptly and fairly redress injuries caused by medical malpractice and create a stable environment for medical services of public health or medical professionals by providing for matters regarding the mediation and arbitration of medical disputes.

Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "medical malpractice" means a case in which any harm is inflicted upon a person's life, body, or property by diagnosis, examination, treatment, prescription or preparation of medicines, or other practices (hereinafter referred to as "medical conduct, etc.") conducted for a patient by a public health or medical professional (including persons permitted to provide such services pursuant to the proviso to [Article 27 \(1\) of the Medical Service Act](#) or the proviso to [Article 23 \(1\) of the Pharmaceutical Affairs Act](#));
2. The term "medical dispute" means a dispute arising in connection with medical malpractice;
3. The term "public health or medical professional" means a person who works for a public health or medical institution as a medical practitioner or nursing assistant under the [Medical Service Act](#), a medical technician under the [Medical Technicians, etc. Act](#), an emergency medical rescuer under the [Emergency Medical Service Act](#), or a pharmacist or herb pharmacist under the [Pharmaceutical Affairs Act](#);
4. The term "public health or medical institution" means a medical institution established pursuant to the [Medical Service Act](#), a pharmacy registered pursuant to the [Pharmaceutical Affairs Act](#), the Korea Orphan Drug Center under the [Pharmaceutical Affairs Act](#), a public health clinic, public health and medical care center, or public health branch clinic established pursuant to the [Regional Public Health Act](#), or a public health infirmary established pursuant to the Act on the Special Measures for Public Health and Medical Services in Agricultural and Fishing Villages, etc.;
5. The term "operator of a public health or medical institution" means a person who runs a medical institution under the [Medical Service Act](#), a person who runs a pharmacy under the [Pharmaceutical Affairs Act](#), the head of the Korea Orphan Drug Center, the head of a *Si* (including an Administrative City Mayor under the [Special Act on the Establishment of Jeju Special Self-Governing Province and the Development of Free International City](#); hereinafter the same shall apply), *Gun*, or *Gu* (referring to an autonomous *Gu*; hereinafter the same shall apply) who runs a public health clinic, public health and medical care center, or public health branch clinic under the [Regional Public Health Act](#) or a public health infirmary under the Act on the Special Measures for Public Health and Medical Services in Agricultural and Fishing Villages, etc.;
6. The term "public health or medical professional associations, and public health or medical institution associations" means medical practitioner associations and medical institution associations established pursuant to the [Medical Service Act](#), the Korean Pharmaceutical Association, and the Association of Korean Oriental Pharmacy established pursuant to the [Pharmaceutical Affairs Act](#).

Article 3 (Scope of Application)

This Act shall also apply to cases where a person who is not a national of the Republic of Korea claims against a public health or medical institution for medical malpractice.

Article 4 (Principle of Good Faith)

The Korea Medical Dispute Mediation and Arbitration Agency under [Article 6](#) shall endeavor to ensure that mediation or arbitration proceedings are conducted in a prompt, fair, and efficient manner, and parties to a dispute shall attend proceedings in good faith with mutual trust and understanding when they participate in mediation or arbitration proceedings.

Article 5 (Responsibilities, etc. of the State, Operators of Public Health or Medical Institutions, and Public Health or Medical Professionals)

- (1) In order to prevent medical malpractice, the State shall prepare legal and institutional grounds for survey and research, the preparation and announcement of statistics, education, the development of

- guidelines, etc.
- (2) In order to prevent medical malpractice, an operator of each public health or medical institution and each public health or medical professional shall ensure to maintain facilities, equipment, and human resources with no defect and shall fulfill his/her duty of care in management as necessary.
 - (3) Any operator of a public health or medical institution specified by the Minister for Health and Welfare shall establish and operate a committee on the prevention of medical malpractice and shall take other necessary measures to prevent medical malpractice.
 - (4) The organization and operation of the committee on the prevention of medical malpractice under paragraph (3) and other necessary matters shall be prescribed by Ordinance of the Ministry for Health and Welfare.

CHAPTER KOREA MEDICAL DISPUTE MEDIATION AND ARBITRATION AGENCY

SECTION 1 Establishment, etc.

Article (Establishment of Korea Medical Dispute Mediation and Arbitration Agency)

- (1) In order to settle medical disputes in a prompt, fair, and efficient manner, the Korea Medical Dispute Mediation and Arbitration Agency (hereinafter referred to as the "Mediation and Arbitration Agency") shall be established.
- (2) The Mediation and Arbitration Agency shall be a legal entity.
- (3) The Mediation and Arbitration Agency may establish branches wherever necessary, as prescribed by Presidential Decree.
- (4) The Mediation and Arbitration Agency shall be duly formed when it completes the registration of its establishment with the registry office having jurisdiction over its principal place of business.

Article (Articles of Association)

- (1) The Mediation and Arbitration Agency shall stipulate the following matters in its articles of association:
 1. Objectives;
 2. Name;
 3. Matters regarding its principal place of business and branches;
 4. Matters regarding executives and employees;
 5. Matters regarding the operation of the board of directors;
 6. Matters regarding the Medical Dispute Mediation and Arbitration Committee under [Article 1](#);
 7. Matters regarding the Medical Malpractice Appraisal Board under [Article 25](#);
 8. Matters regarding advances for damages under [Article 47](#);
 9. Matters regarding its business and execution thereof;
 10. Matters regarding property and accounting;
 11. Matters regarding the amendment of articles of incorporation;
 12. Matters regarding the enactment, amendment, and repeal of internal regulations;
 13. Other matters prescribed by Ordinance of the Ministry for Health and Welfare.
- (2) When the Mediation and Arbitration Agency intends to amend its articles of association, it shall obtain approval from the Minister for Health and Welfare thereof.

Article (Business Affairs)

The Mediation and Arbitration Agency shall conduct the following business affairs:

1. Mediation, arbitration, and counseling of medical disputes;
2. Appraisal of medical malpractice cases;
3. Advances for damages;
4. Research on systems and policies, the preparation of statistics, education, and public relations activities with regard to medical disputes;
5. Other business affairs specified by Presidential Decree with regard to medical disputes.

Article (Prohibition of Use of Similar Names)

No person who is not the Korea Medical Dispute Mediation and Arbitration Agency under this Act shall use the name "Korea Medical Dispute Mediation and Arbitration Agency" or any similar name.

Article 1 (Executives and Terms of Office)

- (1) The Mediation and Arbitration Agency shall have not more than nine directors, including the president of the Mediation and Arbitration Agency (hereinafter referred to as "president"), chairperson of the Medical Dispute Mediation and Arbitration Committee under [Article 1](#) (hereinafter referred to as "chairperson"), and a chief appraiser of the Medical Malpractice Appraisal Board under [Article 25](#) (hereinafter referred to as "Chief Appraiser"), and one auditor.

- (2) The president shall serve as a standing executive, while other executives shall be non-standing.
- (3) The president shall be appointed by the Minister for Health and Welfare from among persons who have good knowledge and experience in the mediation of medical disputes.
- (4) Directors shall be commissioned by the Minister for Health and Welfare at the request of president from among persons who have good knowledge and experience in mediation of medical disputes.
- (5) An auditor shall be commissioned by the Minister for Health and Welfare.
- (6) The term of office for each executive shall be three years, but no executive may be reappointed for a further term of office.

Article 11 (Executive Duties)

- (1) The president shall represent the Mediation and Arbitration Agency and administer all business affairs of the Mediation and Arbitration Agency.
- (2) If the president is unable to perform his/her duties due to an unavoidable cause or event, the chairperson shall act on behalf of the president.
- (3) The chairperson shall administer all business affairs of the Medical Dispute Mediation and Arbitration Committee under the command of the president, and a chief appraiser shall administer all business affairs of the Medical Malpractice Appraisal Board under the command of the president.
- (4) If both the president and chairperson are unable to perform their duties due to an unavoidable cause or event, a chief appraiser or other director shall act on their behalf in the order stipulated by its articles of incorporation.
- (5) An auditor shall audit business and accounting of the Mediation and Arbitration Agency.

Article 12 (Grounds for Disqualification of Executives)

No person falling under any of the following subparagraphs shall be qualified for an executive of the Mediation and Arbitration Agency:

1. A person who is not a national of the Republic of Korea;
2. A person who falls under any subparagraph of [Article 33 of the State Public Officials Act](#).

Article 13 (Board of Directors)

- (1) The Mediation and Arbitration Agency shall have a board of directors to deliberate on, and resolve, important matters regarding business affairs and the operation of the Mediation and Arbitration Agency.
- (2) The board of directors shall be comprised of the president, chairperson, chief appraiser, and other directors.
- (3) The president shall convene a directors' meeting and shall preside over the meeting.
- (4) An auditor may attend a directors' meeting and express his/her opinions.
- (5) A directors' meeting shall adopt a resolution with the attendance of a majority of incumbent members and by the affirmative vote of a majority of members present at the meeting.
- (6) Necessary matters regarding the organization and operation of the board of directors shall be prescribed by Presidential Decree.

Article 14 (Secretariat)

The Mediation and Arbitration Agency may establish a secretariat to carry out administrative affairs and assist the Medical Dispute Mediation and Arbitration Committee and the Medical Malpractice Appraisal Board in their business affairs.

Article 15 (Financial Resources)

- (1) Expenses necessary for the establishment, operation, and business affairs of the Mediation and Arbitration Agency shall be covered with the following financial resources:
 1. Contributions from the Government;
 2. Revenues from the operation of the Mediation and Arbitration Agency.
- (2) The Government shall provide contributions necessary for covering expenses of the Mediation and Arbitration Agency within budget.
- (3) Necessary matters regarding the payment and use of the Government's contributions under paragraph (2) shall be prescribed by Presidential Decree.

Article 16 (Supervision)

- (1) The Minister for Health and Welfare shall guide and supervise the Mediation and Arbitration Agency and may issue an instruction or order to the Mediation and Arbitration Agency in regard to its business.
- (2) The Mediation and Arbitration Agency shall prepare a business plan and a budget every year for approval from the Minister for Health and Welfare and then prepare a report on the settlement of accounts along with an auditor's letter of opinions thereon and submit them to the Minister for Health and Welfare. Necessary matters regarding the procedure for approval and reporting in such cases shall be prescribed by Ordinance of the Ministry for Health and Welfare.
- (3) The Minister for Health and Welfare may require the Mediation and Arbitration Agency to report matters regarding its business, accounting, and property or may audit such matters.

Article 1 (Statutory Treatment as Public Officials in Application of Penal Provisions)

Executives and employees of the Mediation and Arbitration Agency, mediators of the Medical Dispute Mediation and Arbitration Committee under [Article 1](#) and persons who assist mediators, and appraisers and investigators of the Medical Malpractice Appraisal Board under [Article 25](#) shall be construed as public officials for the purpose of applying any provision of [Articles 12 through 132 of the Criminal Act](#).

Article 1 (Application Mutatis Mutandis of the Civil Act)

Except as otherwise provided for in this Act, the provisions regarding incorporated foundations in the [Civil Act](#) shall apply *mutatis mutandis* to the Mediation and Arbitration Agency.

SECTION 2 Medical Dispute Mediation and Arbitration Committee**Article 1 (Establishment of Medical Dispute Mediation and Arbitration Committee)**

- (1) The Mediation and Arbitration Agency shall have the Medical Dispute Mediation and Arbitration Committee (hereinafter referred to as the "Mediation Committee") to mediate or arbitrate medical disputes.
- (2) The Mediation Committee shall deliberate on, and resolve, the following matters:
 1. Matters regarding the organization of a mediation panel under [Article 23](#);
 2. Matters regarding the enactment, amendment, and repeal of rules governing proceedings of the Mediation Committee;
 3. Other matters that the chairperson brings to the Mediation Committee for deliberation.

Article 2 (Organization and Operation of Mediation Committee)

- (1) The Mediation Committee shall be comprised of the chairperson and not less than 50, but not more than 100 mediators, all of whom shall be non-standing members: *Provided*, That it may have standing mediators to prepare mediation statements under [Article 37](#) (2).
- (2) The president shall appoint or commission mediators from among persons who fall under any of the following subparagraphs:
 1. Two-fifths of the full number of mediator positions shall be filled with judges, public prosecutors, or qualified attorneys-at-law (two or more persons who have good knowledge and experience in legal systems of foreign countries shall be included herein);
 2. One-fifth of the full number of mediator positions shall be filled with persons recommended by public health or medical professional associations or public health or medical institution associations, among persons who have good knowledge and experience in public health and medical services (two or more persons who have good knowledge and experience in public health and medical services in foreign countries shall be included herein);
 3. One-fifth of the full number of mediator positions shall be filled with persons recommended by nonprofit non-governmental organizations under [Article 2 of the Assistance for Non-Profit, Non-Governmental Organizations Act](#), among persons who have good knowledge and experience in consumers' rights and interests;
 4. One-fifth of the full number of mediator positions shall be filled with persons who serve or have served as an associate or higher-ranking professor or with an equivalent position in a university or an officially recognized research institute, but who are not public health or medical professionals.
- (3) The chairperson shall be commissioned by the Minister for Health and Welfare at the request of the president, from among persons who are qualified under any subparagraph of paragraph (2).
- (4) If the chairperson is unable to perform his/her duties due to an unavoidable cause or event, the mediator designated by the chairperson shall act on behalf of the chairperson.
- (5) The term of office for each mediator shall be three years, but a mediator may be reappointed for a further term of office consecutively.
- (6) The Mediation Committee shall adopt a resolution with the attendance of a majority of incumbent members at a meeting and by the affirmative vote of a majority of members present at the meeting.
- (7) Necessary matters regarding the organization and operation of the Mediation Committee shall be prescribed by Presidential Decree.

Article 21 (Grounds for Disqualification of Mediators)

No person who falls under any subparagraph of [Article 33 of the State Public Officials Act](#) shall be qualified for a mediator.

Article 22 (Guarantee of Status of Mediators)

- (1) Every mediator shall perform his/her duties independently and shall not be bound by any instruction with regard to examination and judgment on a medical dispute.
- (2) Except for any of the following cases, no mediator shall be removed or dismissed from his/her office against his/her will:
 1. If a mediator falls under [Article 21](#);

2. If a mediator is unable to perform his/her duties due to a physical or mental disorder.

Article 23 (Mediation Panel)

- (1) The Mediation Committee may establish a mediation panel comprised of five mediators for each sector, for each type of subject matter, or for each region in order to carry out business affairs of the Mediation Committee efficiently.
- (2) The head of a mediation panel shall be appointed by the chairperson, from among mediators who are judges, public prosecutors, or qualified attorneys-at-law.
- (3) A mediation panel shall be comprised of two persons from among persons who fall under [Article 20](#) (2) 1 (one judge shall be included herein) and one person each from among persons who fall under each of subparagraphs 2 through 4.
- (4) A mediation panel shall adopt a resolution at a meeting with the attendance of a majority of mediators, including the head of the mediation panel, and by the affirmative vote of a majority of mediators present at the meeting.
- (5) A mediation panel shall conduct the following business activities:
 1. Decision-making on mediation or arbitration of medical disputes;
 2. Determination of damages for medical malpractice cases;
 3. Preparation of mediation statements;
 4. Other matters prescribed by Presidential Decree.
- (6) A decision made by a mediation panel pursuant to paragraph (4) shall be deemed a decision made by the Mediation Committee.
- (7) Attorneys-at-law and other persons specified by Presidential Decree may be retained to assist mediators in carrying out their business affairs.
- () Necessary matters regarding the organization and operation of a mediation panel shall be prescribed by Presidential Decree.

Article 24 (Exclusion, etc. of Mediators)

- (1) If a mediator falls under any of the following subparagraphs, he/she shall be excluded from the performance of duties as a mediator:
 1. If a mediator, him/herself, or a person who is or was his/her spouse is a party to the dispute currently on mediation (hereafter referred to as the "instant case" in this Article);
 2. If a mediator is or was a relative to a party to the instant case;
 3. If a mediator presented a statement or expert opinion with regard to the instant case;
 4. If a mediator is or was involved in the instant case as the representative of a party;
 5. If a mediator works or has worked for the public health or medical institution in which the instant case arose;
 6. If a mediator works or has worked for a legal entity or an organization identical or *de facto* identical with the public health or medical institution in which the instant case arose;
 7. If a mediator works or has worked for a public health or medical institution that belongs to a legal entity or an organization identical or *de facto* identical with the public health or medical institution in which the instant case arose.
- (2) If there is a ground to exclude a mediator from the mediation of a case, the mediation panel to which the mediator belongs shall rule to exclude the mediator *ex officio* or upon the mediator's application.
- (3) If a party to a case has a ground to believe that it is impractical to expect impartial performance of duties from a mediator in charge of mediation of the case, the party may file a challenge against the mediator with the mediation panel for the case.
- (4) The decision on a challenge shall be made by the mediation panel designated by the chairperson of the Mediation Committee, and neither the mediator at issue nor party shall protest against the decision.
- (5) If a mediator falls under paragraph (1) or (3), he/she may be exempt from the performance of his/her duties in the instant case without permission from the mediation panel.
- (6) In receipt of a challenge under paragraph (3), the mediation panel to which the mediator at issue belongs shall suspend mediation proceedings until a decision is made on the challenge.
- (7) As to persons who assist a mediator pursuant to [Article 23](#) (7) and appraisers and investigators under [Article 26](#), paragraphs (1) through (6) shall apply *mutatis mutandis*.

SECTION 3 Medical Malpractice Appraisal Board

Article 25 (Establishment of Medical Malpractice Appraisal Board)

- (1) The Mediation and Arbitration Agency shall establish a Medical Malpractice Appraisal Board (hereinafter referred to as the "Appraisal Board") to settle medical disputes in a prompt and fair manner.
- (2) The Appraisal Board shall be comprised of not less than 50, but not more than 100 appraisers, and

a chief appraiser shall be a non-standing executive who shall be commissioned by the Minister for Health and Welfare at the request of the president from among persons who have good knowledge and experience in public health and medical services.

(3) The Appraisal Board shall conduct the following business activities:

1. Investigation of facts necessary for the mediation or arbitration of medical disputes;
2. Discovery as to whether medical conduct was negligent and whether a causal relationship exists;
3. Investigation of whether a residual impairment remains;
4. Appraisal of medical malpractice cases requested by other agencies.

Article 2 (Appraisal Panel)

(1) The Appraisal Board may establish an appraisal panel comprised of standing and non-standing appraisers for each sector, for each type of subject matter, or for each region in order to carry out its business affairs efficiently.

(2) An appraiser shall be appointed or commissioned by the president with recommendation of the Appraiser Recommendation Committee comprised of nine members (hereinafter referred to as the "Recommendation Committee") from among any of the following persons:

1. A person who has been qualified as a medical specialist for not less than two years or a person who has been qualified as a dentist or a herb doctor for not less than six years;
2. A person who has been qualified as an attorney-at-law for not less than four years;
3. A person who has been qualified or licensed as equivalent to subparagraph 1 or 2 by a foreign authority for not less than five years;
4. A person who has good knowledge and experience about consumers' rights and interests and who has served as an executive of a non-profit non-governmental organization under [Article 2 of the Assistance for Non-Profit, Non-Governmental Organizations Act](#) for not less than two years.

(3) A member of the Recommendation Committee shall be commissioned by the president from among the following persons. In such cases, three members shall be commissioned from among those who fall under subparagraph 1, and two members shall be commissioned each from among those who fall under each provision of subparagraphs 2 through 4:

1. A judge, public prosecutor, or qualified attorney-at-law recommended by the National Court Administration, the Ministry of Justice, or the Korean Bar Association;
2. A person recommended by a public health or medical professional association or a public health or medical institution association, among persons who have good knowledge and experience in public health and medical services;
3. A person recommended by a non-profit non-governmental organization under [Article 2 of the Assistance for Non-Profit, Non-Governmental Organizations Act](#), among persons who have good knowledge and experience in consumers' rights and interests;
4. A person recommended by the Korean University Education Council, among persons who serve or have served as an assistant or higher-ranking professor (excluding public health or medical professionals).

(4) The chairperson of the Recommendation Committee shall be elected by and from among Committee members.

(5) A meeting of the Recommendation Committee shall adopt a resolution with the attendance of a majority of incumbent members at a meeting and by the affirmative vote of a majority of members present at the meeting.

(6) The term of office for an appraiser shall be three years, but an appraiser may be reappointed for a further term of office consecutively.

(7) The full number of appraisers in each appraisal panel shall be comprised as follows:

1. Persons who fall under paragraph (2) 1 or 3 (limited to persons who are qualified or licensed by a foreign authority as a medical specialist, dentist, or herb doctor): Two persons;
2. Persons who fall under paragraph (2) 2 or 3 (limited to persons who are qualified as an attorney-at-law by a foreign authority): Two persons (one public prosecutor shall be included herein);
3. A person who falls under paragraph (2) 4: One person.

() The head of an appraisal panel shall be appointed by a chief appraiser from among persons who fall under paragraph (2) 1.

() Each appraisal panel shall have one or more standing appraisers.

(10) Each appraiser shall perform his/her duties independently and shall not be bound by any instruction in regard to appraisal of medical malpractice cases.

(11) [Articles 21](#) and [22](#) (2) shall apply to appraisers *mutatis mutandis*.

(12) Investigators may be appointed from among medical doctors, dentists, herb doctors, pharmacists, herb pharmacists, nurses, and other persons specified by Presidential Decree in order to assist appraisers in performing their duties.

(13) Necessary matters regarding the composition and operation of the Recommendation Committee and the organization and operation of appraisal panels shall be prescribed by Presidential Decree.

CHAPTER MEDIATION AND ARBITRATION OF MEDICAL DISPUTES

SECTION 1 Mediation

Article 2 (Petitions for Mediation)

- (1) A party to a medical dispute (hereinafter referred to as "dispute") or his/her representative (hereinafter referred to as "petitioner") may file a petition for the mediation of the dispute, with the Mediation and Arbitration Agency, as prescribed by Ordinance of the Ministry for Health and Welfare.
- (2) A party may appoint any of the following persons as his/her representative: *Provided*, That a person under subparagraph 4 may be appointed as a representative only if no person falls under subparagraph 1:
 1. The legal representative, spouse, lineal ascendant or descendant, or sibling of the party;
 2. An executive or employee of the legal entity, if the party is a legal entity;
 3. An attorney-at-law;
 4. A person to whom power of attorney is granted by the party in writing.
- (3) If a petition for mediation under paragraph (1) falls under any of the following subparagraphs, the president shall reject the petition:
 1. If a lawsuit has already been filed with a court in regard to the dispute brought for mediation;
 2. If a petition for mediation has already been filed with the Consumer Dispute Mediation Committee under [Article 60 of the Framework Act on Consumers](#) in regard to the dispute brought for mediation;
 3. It is obvious that the petition for mediation itself is not for medical malpractice.
- (4) In receipt of a petition for mediation, the president shall notify the Mediation Committee and the Appraisal Board thereof, respectively, and shall serve the petition for mediation on the respondent.
- (5) In receipt of the notice of a petition for mediation under paragraph (4), the chairperson shall designate the competent mediation panel and shall assign the case to it without delay.
- (6) In receipt of the notice of a petition for mediation under paragraph (4), a chief appraiser shall designate the competent appraisal panel and shall assign the case to it without delay.
- (7) In any of the following cases, the chairperson or chief appraiser shall notify the president of relevant facts without delay. In such cases, the president shall reject the petition for mediation:
 1. If the petitioner evades investigations or refuses to make an appearance twice or more;
 2. If the petitioner commits a violation under [Article 12 \(2\) of the Medical Service Act](#) or an act under [Article 314 \(1\) of the Criminal Act](#) on the pretext of the medical malpractice case after filing the petition for mediation;
 3. If a lawsuit is filed after the petition for mediation is filed.
- (8) Mediation proceedings shall commence when the respondent on whom a mediation petition is served pursuant to paragraph (4) notifies the Mediation and Arbitration Agency of his/her intention to accede to mediation. If the respondent fails to notify the Mediation and Arbitration Agency of his/her intention to accede to mediation within 14 days from the day on which the petition for mediation is served, the president shall reject such petition for mediation.
- (9) When a petition for mediation is rejected pursuant to paragraph (7) or (8), the president shall notify the chairperson and chief appraiser thereof without delay.
- (10) A petition for mediation for a dispute under paragraph (1) shall be filed within any of the following periods, as relevant:
 1. Ten years from the day on which the act that caused medical malpractice ends;
 2. Three years from the day on which a victim or his/her legal representative becomes aware of the relevant injury and the wrongdoer.
- (11) If it is obvious that a petitioner designated a wrong person as a respondent, the competent mediation panel may decide to permit the petitioner to correct the respondent upon the petitioner's application.
- (12) Where a decision to permit a correction under paragraph (11) is made, a petition for mediation against the new respondent shall be deemed filed when the application for correction under paragraph (11) is filed, while the petition for mediation against the previous respondent shall be deemed rejected when the application for correction is filed.

Article 2 (Investigation of Medical Malpractice Cases)

- (1) If an appraisal panel deems it necessary, it may require a petitioner, respondent, interested party to a dispute, or reference witness to make an appearance to make statements or may demand such person to submit data and goods necessary for investigation.
- (2) An appraisal panel may demand a public health or medical professional of the public health or medical institution in which medical malpractice has arisen or the operator of a public health or medical institution to explain, in writing or orally, the conditions of the patient when the acts that

- resulted in malpractice were conducted and the reasons why he/she selected to conduct such acts.
- (3) An appraiser or investigator may enter the public health or medical institution in which a medical malpractice case arose and investigate, inspect, or photocopy relevant documents or goods. In such cases, an appraiser or investigator shall carry with him/her an identification card indicating his/her authority and produce it to a relevant person.

Article 2 (Appraisal Statement)

- (1) An appraisal panel shall prepare an appraisal statement within 60 days from the filing date of a petition for mediation and forward it to the competent mediation panel.
- (2) Notwithstanding the provisions of paragraph (1), an appraisal panel may extend the period by 30 days only once, if the appraisal panel deems it necessary. In such cases, it shall notify the competent panel of the grounds for the extension and the deadline clearly.
- (3) An appraisal statement under paragraph (1) shall state the details and outcomes of fact-finding investigations, whether medical conduct was negligent and whether a causal relationship exists, the degree of residual impairments, and other matters specified by Presidential Decree, on which the head and appraisers of the competent appraisal panel shall print their names and affix their seals or signatures.

Article 3 (Oral Statements, etc.)

- (1) A mediation panel shall permit a petitioner, respondent, or interested party to a dispute to make an appearance before the mediation panel and make statements.
- (2) Appraisers who belong to an appraisal panel shall attend the competent mediation panel and explain the results of appraisal of the instant case, and the mediation panel may demand the appraisers to reappraise such case with the grounds and the deadline therefor clearly specified, by the affirmative vote of a majority of the mediators.
- (3) In receipt of a demand from a mediation panel for reappraisal pursuant to paragraph (2), a chief appraiser shall organize a new appraisal panel, which shall be comprised of appraisers who have never participated in proceedings of the previous appraisal.
- (4) If necessary for an appraisal panel newly organized pursuant to paragraph (3) to conduct an appraisal, it may ask public health or medical professionals who do not belong to the Mediation and Arbitration Agency to give advice.

Article 31 (Date of Appearance)

- (1) Parties to a dispute shall be notified of the date of appearance.
- (2) Notification of the date of appearance shall be given by serving a summons or by other reasonable means.

Article 32 (Closed Mediation Proceedings)

No mediation proceedings by a mediation panel shall be open to the public: *Provided*, That proceedings may be open to the public, if the mediation panel resolves to do so by the affirmative vote of a majority of mediators.

Article 33 (Mediation Decisions)

- (1) A mediation panel shall make a mediation decision within 30 days from the filing date of a petition for mediation of a case.
- (2) Notwithstanding the provisions of paragraph (1), a mediation panel may extend the period by 30 days only once, if the mediation panel deems it necessary. In such cases, the petitioner shall be notified thereof with the grounds and the deadline therefor clearly specified.
- (3) A mediation panel shall take into consideration the competent appraisal panel's opinions of appraisal in making a mediation decision.

Article 34 (Written Mediation Decisions)

- (1) A mediation panel shall state each mediation decision in writing, including the following matters, on which the head and mediators of the mediation panel shall print their names and affix their seals or signatures:
1. Case number and case name;
 2. Names and addresses of parties and their representatives;
 3. Text of decision;
 4. Purport of petition;
 5. Reasoning of decision;
 6. Date of mediation.
- (2) The reasoning of a decision under paragraph (1) shall indicate judgment to the degree that the contents of the text can be accepted as reasonable.

Article 35 (Award of Damages)

When a mediation panel makes a mediation decision pursuant to [Article 33](#), it shall award damages, taking into consideration the harm inflicted on a patient's life, body, and property by medical malpractice, the degree of negligence by the operator or a public health or medical professional of a

public health or medical institution, the patient's faults, etc.

Article 3 (Notice of Results of Mediation)

- (1) When a mediation panel makes a mediation decision pursuant to [Article 33](#), the president shall serve each certified original of the mediation decision on the petitioner and the respondent respectively within seven days.
- (2) In receipt of a service under paragraph (1), the petitioner and respondent shall notify the Mediation and Arbitration Agency of whether each of them consents thereto within 15 days from the date of the service. In such cases, a party shall be deemed to consent thereto if he/she does not show his/her intention within 15 days.
- (3) Mediation shall be successfully concluded when both parties consent, or are deemed to consent, to the mediation decision.
- (4) Mediation successfully concluded pursuant to paragraph (3) shall be as effective and enforceable as judicial compromise.
- (5) If no negligence on the part of medical professionals has been found as a result of mediation of a dispute, but it is suspected that medical malpractice in the instant case was caused by a defect of any of the following goods used by the relevant public health or medical institution, the president shall explain such facts to a petitioner and shall inform the petitioner of procedures through which he/she can obtain remedies for his/her injuries, as prescribed by Presidential Decree:
 1. A drug, herb, or herbal product under [Article 2 of the Pharmaceutical Affairs Act](#);
 2. A medical device under [Article 2 of the Medical Devices Act](#);
 3. Food under [Article 2 of the Food Management Act](#).

Article 3 (Settlement by Agreement while Mediation Proceedings are Pending)

- (1) A petitioner may settle his/her case by agreement with the respondent while mediation proceedings are pending after he/she files a petition for mediation under [Article 27](#) (1).
- (2) When a case is settled by agreement under paragraph (1), the competent mediation panel shall discontinue the mediation proceedings and shall prepare a mediation statement in accordance with the terms and conditions agreed by the parties.
- (3) A mediation panel shall verify each party's intentions before preparing a mediation statement.
- (4) A mediation statement prepared pursuant to paragraph (2) shall be as effective and enforceable as a judicial compromise.

Article 3 (Inspection and Photocopying of Appraisal Statement, etc.)

- (1) A petitioner or respondent may file an application with the Mediation and Arbitration Agency to permit him/her to inspect or photocopy the appraisal statement, the written mediation decision, the mediation statement, and other records regarding appraisal.
- (2) Necessary matters regarding the subject matters of the inspection or photocopying under paragraph (1) and the methods and procedures for filing applications therefor shall be prescribed by Ordinance of the Ministry for Health and Welfare.

Article 3 (Application Mutatis Mutandis of the Judicial Conciliation of Civil Disputes Act, etc.)

Except as otherwise provided for in this Act, the [Judicial Conciliation of Civil Disputes Act](#) shall apply *mutatis mutandis* to mediation proceedings.

Article 4 (Relationship to Lawsuits)

A lawsuit may be filed in regard to a medical dispute without undergoing mediation proceedings under this Act.

Article 41 (Prohibition of Disclosure of Confidential Information)

No person who serves or has served as a mediator, appraiser, investigator, or executive or employee of the Mediation and Arbitration Agency shall divulge confidential information he/she has learned while conducting his/her duties in the course of mediation or appraisal procedures.

Article 42 (Interruption of Prescription)

- (1) A petition for mediation under [Article 27](#) (1) shall have an effect of interrupting prescription: *Provided*, That the foregoing shall not apply to cases where such petition is voluntarily withdrawn or rejected.
- (2) The prescription interrupted pursuant to the body of paragraph (1) shall recommence in any of the following cases:
 1. Where mediation is successfully concluded or where a case is settled by agreement while mediation proceedings are pending as referred to in Article 37;
 2. Where either party or both parties express their intention not to consent to a mediation decision.

SECTION 2 Arbitration

Article 43 (Arbitration)

- (1) Parties to a dispute may agree to submit to a final decision made by a mediation panel to file a petition for arbitration.
- (2) A petition for arbitration under paragraph (1) may be filed even while mediation proceedings are pending. In such cases, a document or an argument submitted or made in mediation proceedings shall be deemed submitted or made in arbitration proceedings.
- (3) Parties may agree to choose a mediation panel, as prescribed by Presidential Decree.
- (4) As to the procedure for arbitration, the provisions governing the procedure for mediation in this Act shall apply primarily, and the [Arbitration Act](#) shall apply *mutatis mutandis* supplementarily.

Article 44 (Effect of Arbitral Award)

- (1) An arbitral award shall be as effective and enforceable as a final judgment.
- (2) As to an appeal against an arbitral award and the revocation of an arbitral award, [Article 36 of the Arbitration Act](#) shall apply *mutatis mutandis*.

CHAPTER MEDICAL LIABILITY MUTUAL AID ASSOCIATIONS AND COMPENSATION FOR INEVITABLE MEDICAL ACCIDENTS

Article 45 (Establishment and Operation of Medical Liability Mutual Aid Associations)

- (1) A public health or medical professional association and public health or medical institution association may establish and operate an association for medical liability mutual aid (hereinafter referred to as "mutual aid association") for the compensation of injuries caused by medical malpractice, with authorization from the Minister for Health and Welfare.
- (2) A mutual aid association shall be a legal entity.
- (3) A mutual aid association shall operate a mutual aid program under which damages for medical malpractice shall be indemnified.
- (4) The operator of a public health or medical institution may join a mutual aid association run by a public health or medical professional association or public health or medical institution association as a member and shall pay mutual aid fees prescribed by the mutual aid association when it joins the mutual aid association.
- (5) Necessary matters regarding the establishment and operation of mutual aid associations shall be prescribed by Ordinance of the Ministry for Health and Welfare.
- (6) Except as otherwise provided for in this Act, the provisions regarding incorporated associations in the [Civil Act](#) shall apply *mutatis mutandis* to mutual aid associations.

Article 4 (Compensation for Inevitable Medical Accidents)

- (1) The Mediation and Arbitration Agency shall conduct a program for compensation of injuries caused by medical accidents in the course of childbirth regarding which the Committee for the Deliberation on Compensation for Medical Malpractice determines that such injuries were unavoidable although public health or medical professional fulfilled their duties of care (hereinafter referred to as "program for compensation of medical accidents").
- (2) The Minister for Health and Welfare may partially subsidize expenses incurred in the program for compensation of medical accidents under paragraph (1) within budgetary limits.
- (3) The Mediation and Arbitration Agency may require the operator of each public health or medical institution or other persons specified by Presidential Decree to bear some of expenses incurred in the program for compensation of medical accidents under paragraph (1).
- (4) The organization and operation of the Committee for the Deliberation on Compensation for Medical Malpractice under paragraph (1), the scope of the operators of public health or medical institutions under paragraph (3), the ratio of sharing financial resources for compensation, the scope of compensation, the guidelines and procedure for the payment of compensations shall be prescribed by Presidential Decree.

Effective Date: Apr. , 2013

CHAPTER ADVANCES FOR DAMAGES

Article 4 (Advances for Damages)

- (1) If a victim in a medical malpractice case fails to receive money, although he/she falls under any of the following subparagraphs, he/she may file a claim for the money receivable with the Mediation and Arbitration Agency to pay it vicariously: *Provided*, That the foregoing shall apply only where the judgment is final and conclusive if the case falls under subparagraph 3:
 1. where mediation has been concluded successfully, an arbitral award has been granted, or a mediation statement has been prepared under agreement pursuant to [Article 37](#) (1) while mediation proceedings are pending;
 2. where a mediation statement has been prepared pursuant to [Article 67 \(3\) of the Framework Act on](#)

Consumers;

3. Where a court has prepared a deed of assignment for execution that orders the operator or public health or medical professional of a public health or medical institution or any other person who is found to be a party to pay money in civil proceedings.
- (2) The operator of a public health or medical institution shall bear expenses necessary for the advance for damages under paragraph (1), and necessary matters regarding the amount of such expenses and the method and management of the payment of such expenses shall be prescribed by Presidential Decree.
- (3) The Mediation and Arbitration Agency shall establish a separate account for the advance for damages, as prescribed by Ordinance of the Ministry for Health and Welfare.
- (4) Notwithstanding the provisions of [Article 47 \(3\) of the National Health Insurance Act](#), expenses to be borne by the operator of a public health or medical institution may be paid in the manner that the National Health Insurance Corporation pays some of medical care benefits, which shall be paid otherwise to the relevant medical care institution, to the Mediation and Arbitration Agency. In such cases, the National Health Insurance Corporation shall pay some of medical care benefits, which shall be paid to the relevant medical care institution, to the Mediation and Arbitration Agency instead of paying it to the medical care institution. Amended by Act No. 11141, Dec. 31, 2011
- (5) In receipt of a claim to pay an advance under paragraph (1) vicariously, the Mediation and Arbitration Agency shall examine the case and shall pay it in accordance with the standards prescribed by Ordinance of the Ministry for Health and Welfare.
- (6) Where the Mediation and Arbitration Agency pays an advance for damages pursuant to paragraph (5), it may demand an operator of the relevant public health or medical institution, or a public health or medical professional to reimburse it.
- (7) In demanding to reimburse an advance pursuant to paragraph (6), the Mediation and Arbitration Agency may write off the advance as a loss if it is impossible to have it paid off.
- () Necessary matters regarding the eligibility for, the scope of, and the procedure and method for paying advances for damages under paragraph (5), the procedure and method for demanding reimbursement under paragraph (6), and the scope of uncollectable advances and the procedure for the write-off of such advances as losses under paragraph (7) shall be prescribed by Presidential Decree.

Article 4 (Furnishing of Data)

The Mediation and Arbitration Agency may request a public health or medical institution or a related agency to furnish it with data necessary for the reimbursement of advances and the write-off of advances as losses.

CHAPTER SUPPLEMENTARY PROVISIONS

Article 4 (Service)

As to the service of documents under this Act, the provisions regarding service in the [Civil Procedure Act](#) shall apply *mutatis mutandis*.

Article 5 (Expenses for Mediation, etc.)

- (1) The Mediation and Arbitration Agency may require a person who files a petition for the mediation or arbitration of a dispute to pay fees.
- (2) The Mediation and Arbitration Agency may recover expenses incurred in appraisals requested by other institutions.
- (3) Necessary matters regarding the amounts of fees under paragraph (1) and the amounts of expenses for appraisal and the method for reimbursement of such expenses under paragraph (2) shall be prescribed by Presidential Decree.

Article 51 (Victim's Intention in Conclusion of Mediation, etc.)

- (1) Where mediation under [Article 36](#) (3) is successfully concluded or a mediation statement is prepared under agreement while mediation proceedings are pending pursuant to [Article 37](#) (2), the public health or medical professional who perpetrated negligence in the conduct of business under [Article 26 of the Criminal Act](#) shall not be publicly prosecuted against the victim's express intent: *Provided*, That the foregoing shall not apply to cases where a victim's life is threatened or a victim becomes disabled or suffers from a fatal or incurable disease as a consequence of a bodily injury.
- (2) Paragraph (1) shall also apply to cases where an arbitral award on settlement under [Article 31 of the Arbitration Act](#) is prepared in arbitration proceedings under Chapter III Section 2.

Enforcement date: Apr. , 2013

Article 52 (Delegation or Entrustment of Authority)

- (1) The Minister for Health and Welfare may delegate part of his/her authority under this Act to each Mayor, Do, Governor or the head of each *Si Gun Gu*, as prescribed by Presidential Decree.

- (2) The Minister for Health and Welfare may entrust part of his/her authority under this Act to the Mediation and Arbitration Agency, as prescribed by Presidential Decree.

CHAPTER PENAL PROVISIONS

Article 53 (Penal Provisions)

- (1) Any person who divulges confidential information he/she has learned in the course of conducting his/her duties in violation of [Article 41](#) shall be punished by imprisonment for not more than three years or by a fine not exceeding ten million won: *Provided*, That such person may be publicly prosecuted only when the victim or his/her representative files a complaint about such violation.
- (2) Any person who refuses, interferes with, or evades the investigation, inspection, or photocopying under [Article 2](#) (3) shall be punished by a fine not exceeding 30 million won.

Article 54 (Fines for Negligence)

- (1) Any person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding five million won:
1. A person who uses an identical or similar name, in violation of [Article](#) ;
 2. A petitioner or respondent who fails to make an appearance without a justifiable ground upon receiving a summons to make an appearance under [Article 2](#) (1);
 3. A person who fails to submit data or goods necessary for the investigation under [Article 2](#) (1) without a justifiable ground upon receiving a demand to submit such data or goods;
 4. A person who fails to accede to a demand to explain under [Article 2](#) (2) without a justifiable ground upon receiving such demand.
- (2) Fines for negligence under paragraph (1) shall be imposed and collected by the Minister for Health and Welfare, each Mayor/Do/Governor, or the head of a *Si/Gun/Gu*, as prescribed by Presidential Decree.

ADDENDA

Article 1 (Enforcement Date)

This Act shall enter into force one year after the date of its promulgation: *Provided*, That [Articles 46](#) and [51](#) shall enter into force two years after the date of its promulgation.

Article 2 (Preparation for Establishment of Committee)

- (1) The Minister for Health and Welfare shall organize a preparatory committee for establishment (hereinafter referred to as the "Preparatory Committee") to carry out administrative affairs for the establishment of the Mediation and Arbitration Agency within three months from the promulgation date of this Act.
- (2) The Preparatory Committee shall be comprised of not more than nine members (hereinafter referred to as "incorporators"), including the chairperson of the Preparatory Committee (hereinafter referred to as "Preparatory Committee Chairperson").
- (3) The Preparatory Committee Chairperson and incorporators shall be appointed or commissioned by the Minister for Health and Welfare, from among persons recommended by the heads of public health or medical professional associations and the heads of public health or medical institution associations, persons recommended by nonprofit non-governmental organizations under [Article 2 of the Assistance for Non-Profit, Non-Governmental Organizations Act](#), and competent public officials.
- (4) The Preparatory Committee shall prepare articles of association and shall obtain approval thereof from the Minister for Health and Welfare before this Act enters into force.
- (5) Upon obtaining approval pursuant to paragraph (4), the Preparatory Committee Chairperson shall complete the registration of the establishment of the Mediation and Arbitration Agency and shall transfer administrative affairs to President.
- (6) When the Preparatory Committee Chairperson and incorporators complete the transfer of administrative affairs pursuant to paragraph (5), they shall be deemed relieved of, or dismissed from, their office.

Article 3 (Applicability to Medical Disputes)

This Act shall apply to medical malpractice cases that arise in connection with medical conduct completed on or after the date this Act enters into force.

Article 4 (Transitional Measure concerning Authorization for Mutual Aid Associations)

A person who filed a report on a mutual aid service pursuant to Article 31 (1) of the previous [Medical Service Act](#) in force before this Act enters into force shall be deemed to have obtained authorization under [Article 45](#) (1): *Provided*, That such a person shall satisfy the requirements under this Act and shall obtain authorization under [Article 45](#) (1) within one year after this Act enters into force.

Article 5 (Transitional Measure concerning Mediation of Disputes)

The mediation of disputes on medical malpractice arising from medical conduct made before this Act

enters into force shall be governed by the previous provisions.

ADDENDA Act No. 11141, Dec. 31, 2 11

Article 1 (Enforce ent Date)

This Act shall enter into force on September 1, 2012. (Proviso Omitted.)

Articles 2 throu h 21 O itted.

