

Agencies censured for violating mental patients' privacy rights

By Park Eun-myo
Staff reporter

A controversy over whether public interest should override privacy rights has erupted recently after a government human rights panel accused the police and other authorities of abusing medical records of psychiatric patients for administrative purposes.

The National Police Agency (NPA), under the suggestion of the Board of Audit and Inspection, acquired psychiatric treatment records of 25,510 individuals from the National Health Insurance Corporation (NHIC) earlier this year. Between May and June, the police notified 12,887 of those suffering from either Alzheimer's or schizophrenia that they should take a driver's license aptitude test to maintain their license.

Of those notified, 3,000 took the test, which led human rights groups to claim that the police and the state medical insurance provider were infringing on patients' privacy.

"This is a clear violation of the Constitution that guarantees privacy," said Yuk Sung-chul, an official with the National Human Rights Commission. The commission was created as a central government body last year to protect human rights.

"The police broke the law by requesting and utilizing medical records," Yuk said.

The mandatory aptitude test examines hearing ability, eyesight, color-blindness and other physical and mental functions authorities say are necessary to ensure safe driving. Healthy people are obliged to take the test every seven to nine years.

People with alcohol or drug addictions, or those with acute or chronic psychiatric or neurologi-

cal illnesses who received more than six consecutive months of in-patient care, should take the test once a year for the first two to three years of treatment. They are required to take test less frequently as they recover.

Song Ong-dal, director of the Family Association for the Mentally Ill quoted a 43-year-old man who was asked to take the aptitude test again within seven months because he had schizophrenia. "It's unfair, and it's humiliating."

Psychiatrists said the controversy also heightened the social stigma attached to mental illness. "Your psychiatrist's office was the last resort, the only place where you could confide," said Kim Jae-hun, a psychiatrist and director of the Korean Neuro-Psychiatric Association (KNPA).

Mental patients, who already have difficulties adapting to everyday life, are finding their situation worsened by having to struggle for confidentiality. "Now people in desperate need of professional help are afraid to seek it because they don't believe it's safe," Kim said.

"Patients tend to give up their driver's license rather than go through all the hassles," he added.

Some people, who had not disclosed their treatment to family members, suffered domestic repercussions such as divorce requests, after spouses found their treatment records enclosed within the aptitude test notification sent by some driver's license test centers, human rights advocates said.

The police contended the action was constitutional and was based on Article 10 of the Act on the Protection of Personal Information Maintained by Public Agencies. According to the Act, the police have the right

to request personal information from other government agencies when public interest is at stake, officials said.

"It was completely legitimate that test centers mailed treatment records with the notification," said Lt. Kim Yong-wook of the NPA. "We can't be responsible for people who open others' mail. There is law against that. Besides, we are supposed to send out all relevant materials with notifications."

As the police are responsible for the safety of everyone on the road, including that of people with psychiatric illness, they had no choice but to request the information to administer the aptitude test, he said.

Activists have criticized the police, however, for acquiring records of those who are undergoing, or who have undergone, more than six months of simple drug treatment without being hospitalized.

"Just because you stopped going to your psychiatrist doesn't necessarily mean you have fully recovered from the illness," Kim at the NPA said. "Doctors are bound by doctor-patient confidentiality. So we had to turn to the health insurance corporation." It was also the NHIC that considered six months of treatment significant, he added.

The health insurance corporation is also blamed for passing on medical records to the police when it had no such legal obligation, and when there was no clear evidence that not releasing the information would constitute a clear threat to others.

"We refrained from handing over that information," said Kim Sam-young, a senior NHIC official. "But we consulted an independent counselor, and he thought the public's safety was

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compelling enough a reason to relay the treatment records." In addition, the police requested records of patients with more than six months of treatment, regardless of the specific nature of the treatment, he said.

Some legal experts support the police agency's stance. Kwon Kwang-jong, a lawyer who advised the health insurance corporation on the matter, said passing on patients' records to the police was not a human rights violation because they were used for public safety purposes. "Public interest is the priority here," he said.

With the controversy receiving high public attention, the police and the state health insurance provider are volleying responsibility back and forth.

NPA and NHIC officials claimed that the Ministry of Government Administration and Home Affairs (MOGAHA), which drafted a bill for the Act, said neither agency

committed illegal acts.

But a ministry official said the ministry only offered an interpretation of the Act, in which it stated the police were not in violation of the law in asking for the records from the NHIC, and that the NHIC acted properly by seeking independent consultation.

"It seems that the government agencies have taken a very broad interpretation of a clause from the Act," said Ryu Jee-tai, professor of law at Korea University. The clause in question, which limits the extent to which individual privacy can be protected, fuelled much controversy among legal scholars when it was legislated in 1994.

"The best option is to remove the clause from the Act," Ryu said. "Currently, there are not enough case studies to clarify when the clause can and should be applied."

Experts suggest a more cautious attitude when dealing with personal information under the Act to help foster an environment in which administrative goals and the protection of privacy can both be met. They also emphasize the

need to for centralized and systematic management of the aptitude test.

The human rights commission said related officials at the NPA and NHIC should be reprimanded. They are demanding that the names and records of the mental patients be deleted, and that the patients be compensated for these social infringements.

The NPA said it suspended the aptitude test administration after the human rights commission's action. It stated, however, that it would not follow the commission's recommendation because it had not contravened any law.

"We hope that this case will put pressure on government officials not to release personal information to other agencies, unless it is absolutely necessary," said Yuk of the human rights commission.

"The incident has made people anxious about their privacy," said Kim of the KNPA. "But there is hope that the controversy might serve to protect privacy more effectively."

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