Chapter 2 - V

The Struggle Between States and Digital Platforms Over Public Health

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Introduction

In this volume, "Proposal 2"[1] examines a case of an "informational epidemic", which is called "Infodemic", wherein the polluted information environment surrounding infectious diseases adversely affects public health. Alarmingly, physicians,[2] who are entrusted with safeguarding public health, were complicit in propagating this infodemic. While this is scandalous in itself, the issue becomes even more disconcerting when considering a World Health Organization (WHO) study highlighting the greater difficulty in rectifying misinformation[3] spread by physicians compared to that disseminated by governments[4]. This paper explores the potential roles and responsibilities of the State, digital platform operators (DPFs), and physicians in addressing this complex issue and examines the legal and institutional frameworks that can be implemented to mitigate its effects.

The medical profession, which serves as the focal point of this discussion, has long been associated with

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1 According to the findings of the Reuters Institute, "(H)igh-level politicians, celebrities, or other prominent public figures produced or spread only 20% of the misinformation in our sample, but that misinformation attracted a large majority of all social media engagements in the sample" and show Donald Trump's use of Twitter (now X) as an example (J. Scott Brennen *et al*. "Types, sources, and claims of COVID-19 misinformation", *Reuters Institute Fact Sheet April 2020*, on line. DOI: 10.60625/risj-awvq-sr55) (Last viewed on 2 November, 2024. (Hereafter, the date of the last view of the website is the same). For a discussion of the relationship with politics, see Tomoyuki Miyata, "The Trump Administration's New Corona Response and Conservatives (トランプ政権の新型コロナ対応と保守派)", *Tokyo Foundation Institute for Policy Studies* (2020), https://www.tkfd.or.jp/research/detail.php?id=3404. On the dangers of the connection of populist politics with public health, see Toru Yoshida, "Virus as a Social Construct: Anti-Vaccine, Populism, and Trust (社会的な構成物としてのウイルス—反ワクチン・ポピュリズム・信頼)", *Gendai Shiso*, vol. 48-16 (2020), pp. 145-152.

2 While physicians are not the sole healthcare professionals responsible for public health as, all healthcare professionals must be involved, this paper primarily focuses on physicians, who hold the highest legal authority within the healthcare professional hierarchy in Japan.

3 "While misinformation refers to the accidental spread of inaccurate information, disinformation is not only inaccurate, but intends to deceive and is spread in order to do serious harm" (United Nations, *Countering disinformation,* https://www.un.org/en/countering-disinformation). See also United Nations General Assembly, Resolution: Countering disinformation for the promotion and protection of human rights and fundamental freedoms (2022), A/77/287.

4 Borges de Nascimento, Israel Junior, *et al*. "Infodemics and health misinformation: a systematic review of reviews." *Bulletin of the World Health Organization*. vol. 100-9 (2022), pp. 544-561. DOI: 102471/BLT.21.287654

"privileges" and "authority." Legally, only physicians can practice medicine exclusively. Socially, "medical paternalism," in which physicians apply superior expertise to unilaterally decide patients' treatments, has raised concerns, paving the way for the development of informed consent practices. Politically, medical associations wield significant power as interest groups, often exerting considerable influence over political parties. In contrast, during the COVID-19 crisis, physicians emerged as heroes, valiantly combating the virus on the front lines. Medical professionals and organizations implemented vaccination programs in alignment with government policies, collaborated in the preparation of hospital infrastructure, and provided critical care. The Covid-19 pandemic highlighted a distinct facet of the medical profession, serving the public interest in safeguarding public health, which is a markedly different role from routine clinical practice.

Following the concept of this series[5], the state can be likened to the giant monster Leviathan, a creature of immense power confronted by a rival force, a Behemoth, representing today's DPF. In this analogy, the medical profession can be seen as a "veteran monster," a powerful entity that, despite being held by Leviathan, is capable of engaging in a dynamic interplay with it. Its profound knowledge and expertise, societal significance, integral role in national governance, and organizational strength enable it to wield influence and assert its authority within a broader public health governance framework.

Returning to the example discussed above, the COVID-19 infodemic primarily unfolded on social networking platforms controlled by DPFs. Public health emphasizes advocacy, encompassing education and awareness, and relies heavily on communication channels such as these platforms. While DPFs may initially seem to have nothing to do with public health, they are "new monsters" that can facilitate the dissemination of health-related information and, in many ways, control its flow. Although DPFs do not wield the same authority as physicians, they have an undeniably profound influence on public health, exerting both positive and negative effects. Notably, during the infodemic, DPFs acted swiftly to optimize the information environment, even going as far as regulating or banning certain physicians' comments on their social networking platforms. This unprecedented control underscores the pivotal role social media plays in shaping public discourse on health.

When misinformation proliferates on social networking platforms, a critical question arises: how can the Leviathan, as well as the traditional and emerging "monsters," respond to this threat effectively as public health stewards? Is Japanese law ready to respond infodemic?

5 See also Volume 1 of this series, Tatsuhiko Yamamoto (editor-in-chief) Pauline Türk, Haluna Kawashima (ed.), *Platforms and States: How to Settle the Battle of Monsters,* Keio University Global Research Institute, 2025. This metaphor is derived from Tatsuhiko Yamamoto, " 近代主権国家とデジタル・プラットフォーム―リヴァイアサン対ビヒモス (The Modern Sovereign State and the Digital Platform: Leviathan versus Behemoth) " Hajime Yamamoto (ed.), *Basic Theory of Constitutional Law* (憲法の基礎理論), Shinzansha, 2022, pp. 147-181.

1 The Premise of Freedom of Expression

(1) State's Oath

The State is the main guardian of the people's health, as underscored by Article 25, Paragraph 2 of the Constitution of Japan, which mandates that "the State shall endeavor to improve and promote social welfare, social security, and public health in all spheres of life." Consequently, the State may directly impose restrictions on physicians' speech to combat misinformation and protect public health. These legal measures are intended to prevent physicians from disseminating false or misleading information.

However, the State's restrictions on physicians' speech appear to be neither effective nor legally acceptable. People cannot be expected to believe an announcement from the government attempting to refute misinformation that condemns the government itself. Furthermore, significant challenges are associated with implementing such restrictions on freedom of expression, as guaranteed by Article 21 of the Constitution of Japan. Questioning recommended measures against infectious diseases or proposing alternative treatments, even if they diverge from official government positions or established medical standards, constitutes protected speech under the principle of freedom of expression. Counter-speech that challenges government speech is a hallmark of a mature democracy. Restricting speech because its content is bad or inaccurate should be avoided, as it risks enabling the authorities to restrict dissenting voices that they find inconvenient. Although content-based restrictions on freedom of expression, such as those targeting obscene or violent speech, may be legally permissible, they must demonstrate substantial justification and adhere to the principle of proportionality to ensure that such measures are necessary and pose as few restrictions as possible[6]. The constitutional guarantee of freedom of expression represents a solemn commitment by the State to its citizens, and often enjoys stronger protection than other fundamental rights.

The dissemination of public health information by physicians cannot be curtailed simply because the content differs from government policies. Any such restriction must pass strict controls, such as if the restrictions are necessary to save lives and protect public health, a hidden ulterior motive exists, or the intended objectives could be achieved through less intrusive means. The State's restriction on physicians' freedom of expression is a last resort when a strong need for it is presented, and, whether it is constitutional is highly questionable.

(2) DPFs' Ethos

DPFs, which derive their revenue from advertising tied to user-generated expressive content ("posts") and user engagement ("attention"), fundamentally rely on providing an open forum for free expression that encourages broad participation. Providing a free speech space in which anyone can easily participate is the lifeline of their business model[7]. Emerging tech monsters who see their raison d'être in realizing freedom

6 Nobuyoshi ASHIBE, 憲法学 III　人格各論［増補版］(*Constitutional Law III: Theories of Personhood [enlarged edition]*) (Yuhikaku, 2000), pp. 403 *et seq.*

7 On this point regarding the freedom of expression, see, Tatsuhiko YAMAMOTO, " 思想の自由市場の落日：アテンション・エコノミー× AI (The Fall of the Free Market of Ideas: Attention Economy × AI)" *Nextcom*, 44 (2020), pp. 4-14.

of expression, underpinned in a business ethos and viability centered on a free speech space, should want to minimize restrictions on user posts within their managed social networking services.

However, following the spread of misinformation about COVID-19 on social networking sites, which led to an infodemic, major DPFs began to control speech.

In December 2021, Twitter (now X) published its "Policy on Misleading Information about COVID-19," announcing it would request the deletion or temporary suspension of accounts sharing clearly false information in light of widely available and reliable sources. Examples of such posts include conspiracy theories such as "the pandemic is a hoax," "the government and pharmaceutical companies are concealing vaccine-related adverse effects," and "vaccinated individuals are experiencing magnetic reactions." Posts that provide information that is scientifically accurate or incorrect but does not pose an immediate or direct health risk would be subjected to softer penalties, such as warnings, removal from the "recommended" section, or disabling of retweets, though, the criteria for determining whether information is accurate remain ambiguous.

YouTube's Medical Misinformation Policy applies to content on preventive medicine, including interventions for infectious diseases. For example, videos promoting substances that briefly gained attention as COVID-19 treatments but do not have confirmed medical efficacy, such ivermectin or chloroquine, are removed as misinformation. The accuracy of such content is assessed based on statements and guidelines issued by public health authorities, such as WHO and government organizations in charge of public health.

DPF measures involving the immediate removal of misinformation can be highly effective countermeasures against infodemics. However, they also raise several concerns. First, DPFs may arbitrarily determine what qualifies as good and bad information, leading to users being mistakenly excluded from the social networking service discourse space or labeled as propagators of misinformation. For physicians, being flagged as a source of misinformation could severely undermine their professional credibility and reputation as experts.

Second, the policy for dealing with misinformation can change at the discretion of DPFs. For example, in December 2022, following its acquisition by Elon Musk earlier that year, Twitter ended its application of COVID-19 misinformation countermeasures[8]. Ultimately, a DPF's commitment to public health depends on its intentions as a private company.

(3) Physicians' Oath

Does freedom of expression also protect against misinformation by physicians? The "free market of ideas" theory is one reason why freedom of expression is so strongly protected[9]. This theory posits that the circulation of diverse opinions is essential for eliminating false information and revealing truth. It argues that

8　BBC News Japan, "Twitter suspends policy regulating misinformation about new coronavirus" (November 30, 2022), https://www.bbc.com/Japanese/63804414.

9　Regarding the theory of the free market of ideas in the U.S. presented in Japan, see Keigo Komamura, "多様性の再生産と準拠枠構成 (Reproduction of Diversity and Conforming Frame Construction)" Keigo Komamura *et al.* (eds). I 表現の自由－状況へ *(Freedom of Expression – Towards a Situation),* Shougakusha, 2011, pp. 3-40. Although many matters need to be examined regarding physicians' freedom of expression in relation to the free market of ideas theory, such discussion is beyond the scope of this paper.

the decision of what is "correct" expression should not be left to the convenience of government, but to the free "competition" of ideas in open discourse. Applying this theory to public health, it suggests that the more physicians use social networking sites the better, as they will share various perspectives and spark debate that will help us find the truth. The dissemination of varied information, even if contentious, can serve a vital function in the pursuit of "truth" in public health.

However, our gut feeling is that this is not the case. The efficacy and safety of vaccines and treatments, as well as the efficacy of masks in preventing infection, are not matters for casual public debate but should be guided by scientific expertise (although the extent to which policy reflects experts' views remains a political question). Therefore, those who call themselves experts, such as physicians, are expected to base their public statements on scientific evidence and refrain from sharing information that lacks such a foundation.

Physicians recognize this responsibility. The World Medical Association states that, unlike in the time of Hippocrates, when physicians were responsible only to their patients, physicians today also have a broader responsibility to society including a specific duty to contribute to public health[10].

Physicians have a professional responsibility to not only promote the health of their clients but also encourage society to act in ways that advocate public health. Although the principle of medicine affirms that everyone has the right to make informed decisions about their health, ensuring access to accurate personal and public health information and improving health literacy are necessary for these choices to be made in reality[11]. The World Medical Association has also stated that physicians "must actively participate in educational efforts to improve the health literacy of non-specialists."[12] The information that physicians are called upon to disseminate should empower individuals to make informed, health-promoting decisions and must be firmly rooted in evidence-based science.

2 How Can the Government Oversee Physicians' Speech?

(1) A Possible Exception to Professional Speech

The idea that the content of information experts provide should be scientifically valid and that experts' freedom of expression should be restricted is known in the United States (the birthplace of the free market of ideas theory) as "professional speech." This concept appears to be supported by both academic societies and courts[13]. Physicians provide medical treatment because they "profess" their advanced medical knowledge,

10 The World Medical Association, *WMA Statement on Physicians and Public Health*, 1995 (Bali), revised 2006 (South Africa) and in 2006 (Taipei).

11 Health literacy regarding public health is defined as "the knowledge, willingness, and ability to obtain, understand, evaluate, and use health information" and is "essential for maintaining and promoting people's health and for decision making that contributes to them" (Atsushi ASAI, " ワクチン接種の混乱やデマから考えるヘルスリテラシーの重要性 (The Importance of Health Literacy from Vaccination Confusion and Hoax)", *Nursing Today Booklet 17,* Japan Nursing Association Press, 2022, p. 28).

12 *Supra*. note 10., The World Medical Association.

13 Robert Post, "Informed Consent to Abortion: A First Amendment Analysis of Compelled Physician Speech," 2007U. ILL. L. REV. 939, 947 (2007).

cultivating a "mutual and subjective relationship of trust"[14] with their patients. This "relationship of trust" can only be established if physicians provide their patients with clear and scientifically grounded information. Thus, by examining the source of physicians' "privilege" in terms of their professional responsibility, restricting their speech can be justified[15].

Therefore, does the professional speech exception to freedom of speech apply to the American case discussed in "Proposal 2" in this book? Unfortunately, recent developments in the United States suggest "no." For instance, in California, the "Misinformation Act"[16] would allow the State Medical Board to suspend the licenses of physicians who intentionally publicize information that contradicts scientific evidence and deviates from standard medical practice. However, the state legislature interpreted the professional speech exception to apply only to the confidential relationship between a physician and patient, and determined that a physician's speech to the general public on television or a social networking site would be covered by the usual freedom of speech protections[17]. The possibility of disciplinary action against physicians under the new law is limited to cases in which physicians intentionally provide false information to their patients[18]. From this example, we can imagine that freedom of expression serves as an extremely high hurdle, even when it concerns physicians' speech.

(2) Discipline Physicians

The aim of California's Anti-Misinformation Act was to discipline physicians responsible for misinformation through disciplinary action targeting their medical licenses. Japan has also adopted a system through its own medical licensing framework to deal with those who lack the necessary qualifications to be physicians[19]. The Minister of Health, Labor, and Welfare (MHLW) grants medical licenses only to those who demonstrate the necessary knowledge, skills, and ethics through formal medical education and a national examination, and may also revoke or suspend these licenses if such qualities are deemed unmet. Only those with a valid medical license are allowed to call themselves physicians (title monopoly) and lawfully practice medicine (practice monopoly). Therefore, the suspension or revocation of a license bars them from medical practice for the sentenced duration.

14 For a definition of the medical profession in Japan, see Akiko Nozaki, "医事法の基本原理 (Basic Principles of Medical Profession Law)", *Medical Law Study*, No. 1 (2019), p. 36.

15 See Hiroshi Matsuda, 知の共同体の法理—学問の自由の日米比較 *(The Jurisprudence of the Community of Knowledge: A Japan-U.S. Comparison of Academic Freedom)*, Yushindo, 2023, pp. 226-229.

16 California Assembly Bill 2098, passed September 30, 2022.

17 This understanding was based on the American case law understanding of professional speech. Yoshihito Inoue, "プロフェッショナル・スピーチ"（専門職言論）の類型化の意義：知識コミュニティ理論からのアプローチ (The Significance of the Typology of 'Professional Speech' (Professional Discourse): An Approach from Knowledge Community Theory), *Hiroshima Hōgaku* 43-4, 2020, pp. 166-204, DOI: 10.15027/49259.

18 Although the new law was passed, a lawsuit was filed by an opposing group of physicians and a stay was ordered, noting that prohibiting it as "misinformation contrary to the standard of care and at variance with contemporary scientific consensus" would discourage physicians from freely discussing the issue (US District Court, Eastern District of California, Case 2:22-cv-02147-WBS-AC, January 25, 2023).

19 It should be noted that there are some significant differences between the U.S. and Japanese licensing systems. For example, the State Medical Boards in the U.S. are responsible for granting, renewing, and disposing of licenses which are, by contrast, the role of the Minister of public health in Japan.

After hearing the opinions of the Medical Ethics Council, which is composed of medical professionals such as physicians, the MHLW may decide to issue a warning, suspend a practice for up to three years, or revoke a physician's license if the requirements listed in the Medical Practitioners' Act are met (Article 7). The law states that the MHLW must "hear the opinions of the Medical Ethics Council"; therefore, one could reasonably assume that the opinions of the Council will be directly reflected in the decision.

According to the Medical Practitioners' Act, disciplinary action may be taken against physicians who are unable to perform their duties properly owing to reasons such as disability (as specified by ministerial regulation), addiction to narcotics, being sentenced to a fine or more severe punishment, or committing a crime or performing a wrongful act related to medical practice, as well as those who have "acted in a way that damages their responsibility as a medical practitioner." However, in reality, only physicians convicted of criminal offenses are subject to disciplinary action[20], and "damages the responsibility as a medical practitioner" is understood as performing criminal acts[21].

Thus, physicians' speech is extremely difficult to regulate within Japan's disciplinary framework. First, the existing licensing system does not readily accommodate disciplinary action in cases where a physician spreads misinformation on social networking services, as such conduct does not directly qualify as an act that "damages the responsibility of a physician." Government-imposed sanctions must rely on pre-established rules; therefore, suddenly reinterpreting the law and disciplining physicians for sharing misinformation could be deemed unlawful.

Second, explicitly revising the Medical Practitioners Act to state "disseminating information without a scientific basis" as a ground for disciplinary action poses risks. Because physicians' speech receives robust protection as freedom of expression, if lawmakers were to take adverse action against a physician because of an error in a post on a social networking service, it would raise suspicion of a violation of that freedom.

3 Pride of the Old Monster - Autonomous Discipline

(1) Rules of Conduct for Physicians

As discussed above, neither the government nor DPFs appear to be suitable or proactive actors for disciplining physicians who disseminate misinformation for various reasons. However, if we cannot rely on either national regulations or DPF controls, the only way to ensure appropriate physician speech is to rely on physicians' self-restraint. What form might such a system take?

France provides an illustrative example of a system in which physicians regulate their own speech.

20 Ministry of Health, Labour and Welfare of Japan, "Medical Ethics Council (Subcommittee)". https://www.mhlw.go.jp/stf/shingi/shingi-idou_127786.html.

21 Since the number of punishments is also small, strong criticism has been made as to whether the system is being operated appropriately to ensure compliance with "medical ethics." Norio HIGUCHI, Norio), " 医師の基本的責務 A-9 医道審議会の組織と機能 (Physicians' Basic Responsibilities: A-9 Organization and Functions of the Medical Ethics Council)" Japan Medical Association, *Basic Knowledge of Medical Ethics*, 2018 Edition. https://www.med.or.jp/doctor/rinri/i_rinri/a09.html.

Although the State (Minister in charge of Public Health) also licenses physicians in France, physicians themselves oversee professional conduct after they have been licensed. The body responsible for this discipline is the *Ordre des médecins*, a professional organization for physicians. The *Ordre des médecins* follows the Code of Medical Deontology which comprises ethical and professional standards drafted by the *Ordre* itself and subsequently incorporated into the national legal system (Public Health Code) by government decree, thus officially elevating it to the status of a biding rule[22].

Let us briefly examine what the Code of Medical Deontology prescribes as the moderation of speech that physicians should observe as professionals. First, as stated by the World Medical Association, physicians are generally responsible for public health, which requires them to participate in government health and hygiene efforts and health promotion initiatives (Public Health Code, Article R.4127-12). Furthermore, when communicating health-related information as part of public health campaign, physicians "must present only verified data, exercise caution, and remain mindful of the potential impact of their statements on the public," regardless of the means of communication (Article R.4127-13 of the same code). Thus, physicians who disseminate public health information must exercise restraint and remain conscious of how their messages are received. Moreover, as outlined in Chapter 2-III of this book[23], the 2020 revision of the Code of Medical Deontology introduced a provision to reconcile physicians' freedom of expression with professional moderation. Physicians "may also communicate, by any means including the Internet, to the general public or other healthcare professionals for educational or public health purposes concerning matters within the physician's specialty or broader public health concerns" (Article R.4127-19-1, paragraph 3). Physicians are free to speak out on public health issues, but not allowed to communicate "unconfirmed hypotheses as established facts."

Thus, in France, the professional ethics that physicians impose on themselves provides a framework for their speech, requiring them to consider how it will be received by ordinary people and whether it is based on scientific evidence. These rules allow physicians' speech to be regulated without the State arbitrarily restricting the freedom of expression or allowing DPFs to dominate the speech environment. Professional ethics is said to consist of rules that explicitly set out "how professionals should behave"[24] to fulfill their social responsibilities and maintain their credibility. The third approach to regulating physicians' speech is through institutionalized professional ethics, which seeks values that differ from both the government's policy-based perspective and DPFs' commercial perspective.

(2) Institutionalization of Discipline

To ensure that physicians' speech remains appropriate, it is not sufficient for them to create rules and be committed to them; there must also be a mechanism to monitor compliance. In France, a system exists

22　A few studies have been published in Japanese on the legal positioning and authority of the French Medical Order; see especially Tetsu Isobe, "A Study on the rule-making authority of the French Medical Order (フランス医師会の命令制定権に関する一考察)" Yuichiro Sato and Tomoyo Konishi (eds.), *Encounter of Medicine and Law* (医と法の邂逅　第一集), vol. 1 (Shogakusha, 2014), pp. 69-102.

23　Guillaume Rousset, "Digital Platforms and Health Advertising: How Are Users Protected Under French Law", Tetsu Isobe *et al.* (ed.), *Platforms and Social Foundations: How to Engage the Monsters,* Keio University Global Research Institute, 2025, pp 57 *et seq.*

24　Naotake Kato (ed.), 応用倫理学辞典 *(Dictionary of Applied Ethics)*, Maruzen Publishing, 2008, p. 352.

wherein physicians themselves investigate and sanction colleagues who breach these rules. The *Ordre des Médecins* has a disciplinary tribunal composed of physicians who serve as "judges," an organization independent of the board of the *Ordre* itself. This disciplinary tribunal hears cases of violations of the Code of Medical Deontology and imposes disciplinary actions on offenders, including expulsion from the medical association and suspension of membership. Unlike the Japanese Medical Association, the French *Ordre des Médecins* is a mandatory organization that all physicians must join; therefore, those who have had their membership status revoked cannot practice medicine, even if they retain their medical license. Through this structure, the French system entrusts the creation of universally binding rules, monitoring of their observance, and disciplinary process for violators to a unified professional body that includes all physicians.

However, the *Oedre des Médecins* does not function as a closed guild. Because the Code of Medical Deontology has the force of a government decree, it remains under the control of the Cabinet. In addition, the third instance of the disciplinary tribunal is conducted by judges of the Supreme Administrative Court (*Conseil d'État*), thereby ensuring a legal check. Furthermore, as ordinary citizens, including patients, can petition the *Ordre des Médecins* for disciplinary action against physicians, the system is open to the public. The involvement of governmental bodies and citizens reduces the exclusivity of professional organizations; yet, the discipline of physicians ultimately remains within the self-regulatory framework of the professional body itself. This feature distinguishes France's approach and contrasts markedly with Japan's government-led model of physician discipline.

(3) Discipline of "Anti-Vaccine" Physicians

Let us examine a French case in which a physician's speech on the Internet questioning the government's vaccination policy was deemed to have exceeded the bounds of moderation.

In France, childhood vaccinations are legally mandatory, and the government's vaccination policy was subject to much public debate even before the COVID-19 pandemic. Starting in 2014, the gastroenterologist and cancer specialist Henri Joyeux used his personal blog and Twitter to express his opposition to the government's recommendation that girls from the age of 9 receive the HPV vaccine and the government's proposal to increase the number of compulsory vaccinations for infants from 3 to 11. He launched two online petitions that collected over one million signatures titled "No to mass vaccination with the HPV vaccine!" and "Compulsory vaccinations: the French are being deceived by the law and pharmaceutical companies!"

Although this occurred before the 2020 revision of the Code of Medical Deontology, it was a pivotal case in which the Disciplinary Tribunal addressed the question of what moderation is required when physicians publicly challenge governmental health policies. The first instance of the Disciplinary Tribunal ruled that Dr. Joyeux's speech against the government's vaccination policy constituted a breach of medical deontology and decided to expel him from the *Ordre des Médecins*. However, on appeal, the second instance reversed that decision, deciding that Dr. Joyeux had neither questioned the safety nor efficacy of vaccination as a whole, but rather "merely called for its careful use."

The case reached the Supreme Administrative Court for a final decision[25]. The judges ruled that Dr. Joyeux, although a well-known physician, had used provocative and misleading language and did not display the necessary caution in communicating with the public. Consequently, the second-instance verdict was overturned and remanded for retrial purposes. Dr. Joyeux's blog shows that he is not "anti-vaccine" or a conspiracy theorist opposed to vaccines themselves and that he did not necessarily intend to confuse the public through misinformation. However, the deontological rule that physicians must "remain mindful of the potential impact of their statements on the public" is not conditioned by motive. Because physicians can gain authority from society through their title and therefore bear an obligation to make "responsible statements,"[26] the language used in Dr. Joyeux's petitions was considered excessive and misleading for the public. His choice of words was condemned for "informing" people in a psychologically manipulative manner that induced "consent," not because he had conveyed content opposed to the government's position.

4 How to Prevent Infodemics

Let us outline the possible responses available to so-called "monsters" in Japan. Serious doubts have been voiced regarding the constitutionality of the Leviathan, the State, broadly regulating the content of physicians' speech. However, the new monster, DPFs, who pursue commercial interests, cannot feasibly replace the old monster, physicians, and become the main guardians of public health with sole responsibility for controlling health-related speech. Thus, it would be more appropriate to first expect physicians to set limitations on their own proper speech. They should recognize their professional duty to disseminate scientifically based information as part of public health ethics and establish a self-regulation system. In other words, they should institutionalize the deontology of the public health profession[27].

Owing to the historical circumstances of "voluntary establishment and voluntary membership" of the medical association, in Japan, there is no single organization to which all physicians are required to belong[28]. Therefore, one option is to create an organization with "compulsory establishment and compulsory membership" centered on the medical profession that has a set of deontological rules and an oversight system to regulate public health discourse, adapted to the age of social networking services. It will also be necessary to establish a system of external control and integrate the organization into the health governance system.

However, this idea would fundamentally change Japan's legal framework for physicians, likely provoking strong resistance given the historical context. Therefore, another proposal would be for various voluntary

25 Conseil d'Etat, 4ème et 1ère chambres réunies, no 4236288.

26 François Tomé, "Médecins et expression médiatique vus à travers un panorama de jurisprudence du Conseil d'État, juge de cassation des décisions disciplinaires des jurisdictions ordinals", *Les tribunes de la santé*, n° 75, 2023, p. 31.

27 Satoshi Kodama, " 公衆衛生倫理学とは何か (What is Public Health Ethics?)" in 入門・医療倫理 III 公衆衛生倫理 *(Introduction to Medical Ethics III: Public Health Ethics)*, Akira Akabayashi and Satoshi Kodama (ed.), Keiso Shobo, 2015, p. 19.

28 Ayako Kamisato (Tokoro), " GHQ 占領期における医師会の設立・加入体制の構築経緯 (The History of the Establishment and Membership Structure of Medical Association in the GHQ Occupation Period)", *Japanese Journal of Medical History,* vol. 50, no. 2 (2004), pp. 243-274.

organizations, such as medical societies and academic medical bodies, to work together to draft guidelines regarding physicians' speech and thoroughly disseminate those standards among physicians. Although this may not be the quickest or most efficient approach, it is the most appropriate method and a challenge for leading physicians' organizations to work together to reaffirm medical professionalism.

The above idea focused on physicians does not negate the efforts of DPFs. However, it would be necessary to avoid the risks that emerge from the measures that DPFs take on their own. Consequently, collaboration among the State, medical professionals, and DPFs is possible. Google's criteria for misinformation are based on announcements by WHO or the State health authority, and WHO has an agreement with Google to jointly combat misinformation[29]. It may be possible for existing medical organizations to provide science-based information to DPFs to use for fact-checking or prioritize its visibility on social networking sites. However, simply deleting information is not necessarily a good solution with regard to freedom of expression and public health. Online information can help patients compare and evaluate medical facilities, and physicians can benefit from sharing the latest research developments and case studies with peers. The problem is less about the content of the information itself than about whether physicians communicate that information in a misleading manner, especially in terms of wording, and the clear distinction between what is based on scientific evidence and what is not, as illustrated by the Supreme Administrative Court in the Dr. Joyeux case. Several initiatives can be used as references for reliable communication methods, such as fact-checking activities by private organizations.

Ultimately, each of us must receive and process information. Assuming that absolute certainty does not exist in the ever-advancing field of medicine, we must be aware of the tools we can use to distinguish between reliable and questionable information.

Having mentioned the American case in the "Proposal," we have now surveyed the French legal framework and contemplated possible responses in Japan to counter the threat of an infodemic. Although it may seem slightly disjointed, neither viruses nor misinformation heeds borders. When formulating strategies against an infodemic, medical professionals, who serve people as frontline-guardians of public health, will hopefully take the lead by reevaluating their deontology in the DPF era while also remaining attuned to international trends.

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29 The Mainichi Japan, "WHO working with Google to combat virus misinformation" (3 February, 2020) https://mainichi.jp/english/articles/20200203/p2g/00m/0in/077000c.