



Analysis of Medical Dispute Case: The Importance of Patient Vital Signs Assessment - Comment on "Criminal Judgment No. 4259, Supreme Court, Taiwan (2018)"

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In the process of performing medical services, medical staffs will inevitably have some confusion and doubt about the views or perspectives of the legal profession on medical disputes. This article will use the Supreme Court's criminal judgment in Taiwan as the basis, and through the adaptation and analysis of medical litigation judicial cases, share the importance of patient vital signs assessment in performing medical procedures.

Key words: medical litigation, medical disputes, Medical Care Act, vital signs

Introduction

With the rising of patient autonomy, the relationship between doctors and patients has evolved from a patriarchal model led by physicians to a consumerist model that focuses on patients' choices.¹ In addition, Taiwan has officially implemented a National Health Insurance system since March 1, 1995. Under the National Health Insurance system, not only the convenience of seeking medical treatment been significantly improved, but the burden of medical expenses for patients has also been greatly reduced. However, the medical disputes between physicians and patients are still increasing in recent years. Medical litigation has received more and more public

attention.

This article will use Supreme Court's criminal judgment in Taiwan as the basis, through the adaptation and analysis of this judicial case in medical litigation, to share the "importance of patient's vital signs assessment" in the execution of medical services.

Case Report

A middle-aged man went to a medical aesthetic clinic in Kaohsiung due to obesity to receive an ultrasonic lipolysis for non-surgical fat reduction. This is the second time for the patient to undergo the same type of non-surgical fat reduction in this medical aesthetic clinic. The patient went to the aesthetic clinic at 9:30 am on the operation day. The plastic surgeon

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(name A in this case report) informed the risk of operation and possible complications for the patient at that time. Under the well explanation, the patient received propofol-based intravenous sedation in the outpatient operating room on the second-floor at 10:15 am. The surgeon A performed the ultrasound lipolysis in the non-surgical fat reduction plan. During the ultrasound lipolysis procedure, 150 mL of the right axillary, 250 mL of the left axillary, 450 mL of the right waist, and 400 mL of the left waist were extracted, including total of 1,250 mL fat. The operation ended smoothly after one and a half hours.²

The patient was awake from anesthesia and had no discomfort at the recovery room. After taking a rest, he went to the first-floor clinic for further evaluation by the same surgeon. Doctor A asked the patient's clinical condition, and the patient said that there was no discomfort at that time. The surgeon A did not check the patient's vital signs, and he only use the conversation with patient for evaluating the clinical condition. Besides, surgeon A helped the patient to call a taxi and allowed the patient to take the taxi home at 12:10 pm.³

After returning home, the patient began to suffer shortness of breath and accelerated heartbeat in the afternoon, and felt uncomfortable gradually. Around 3:35 pm, the patient felt dyspnea and chills and called 119 for help by himself. The ambulance was arrived at 3:49 pm, and the medical staff sent the patient to medical center for further survey. When the patient arrived at the hospital, he was in a coma due to low blood oxygen concentration. In the state of shock, there was no breathing and heartbeat. After continuous cardiopulmonary resuscitation, the patient died of cardiac shock due to an acute attack of cardiovascular disease after the operation at 7:28 pm. The patient's family members heard the results were unacceptable, and the Prosecutor's Office of the Kaohsiung District Court in Taiwan subsequently prosecuted surgeon A for medical mal-

practice.⁴

Discussion

Litigation issues addressed in this case:

1. How to judge a patient's cause of death?
2. Is the defendant (Doctor A) guilty?
3. Importance of the assessment of the patient's vital signs in medical dispute cases.

1. How to judge a patient's cause of death?

Medical care is a unique scientific field requiring high professionalism from healthcare personnel. In medical dispute cases, legal personnel require the assistance of medical professionals for the judgment of patients' causes of death. Due to the uncertainty in medical practice, complexities in different disease processes, and diversity of the patient's physical conditions can lead to numerous confounding factors in providing medical treatment.⁵ Without professional medical care assessment to reveal the actual cause of death of a patient, any subsequent rebuke and argument against medical personnel will be limited to partial conjecture. In this case, the rapid progress in the patient's medical condition raised doubts from the public; it took less than 24 hours from the time the patient arrived at the aesthetic clinic to undergo an ultrasound lipolysis to his death. Therefore, the court assigned the Institute of Forensic Medicine, Ministry of Justice to conduct an autopsy of the anatomy of the patient for identifying the cause of patient's death. In addition, the Ministry of Health and Welfare in Taiwan set up a Medical Review Committee for medical appraisal, judging the medical dispute and clarifying the cause of death.

Even the same medical disputes, the medical appraisals may reveal different results in current judicial practice.⁶ However, medical care assessment remains important. In Taiwan, the Medical Review Committee mostly

performs medical care assessments for the analysis and judgment of medical dispute cases at medical center-level institutions.⁷ However, the current Code of Criminal Procedure of Taiwan does not mandate that medical personnel who conduct medical care assessments be confronted and questioned in court. Therefore, scholars have recommended that medical personnel who conduct medical dispute assessments should appear in court for confrontation and questioning. This can resolve the related doubts and problems of the medical profession encountered by judges in medical dispute cases as well as guarantee defendants' right to confront and question, allowing the judicial offense and defense of both the medical personnel and the patient to be more comprehensive.

For the judgment of the patient's cause of death in this case, medical care assessment was performed by the Institute of Forensic Medicine and the Medical Review Committee. The assessment report can enable bias-free evaluation of evidence by the judge.

2. Is the defendant (Doctor A) guilty?

Regarding criminal responsibility, in addition to the provisions of the Criminal Code of the Republic of China, Taiwan also amended and promulgated the provisions of Paragraphs 3 and 4, Article 82 of the Medical Care Act on January 24, 2018, to clarify and rationalize the determination of medical personnel's medical liability: "Only in the event that medical personnel negligently cause injury or death to patients in conducting medical practices due to a breach of medical due care, which goes beyond the reasonable exercise of professional clinical discretion, the medical personnel shall assume criminal responsibility.", and "The extent of the breach of the duty of due care and professional clinical discretion, as set forth in the preceding two paragraphs, shall be determined based on objective conditions such as the customary medical practice, medical level,

medical facilities, working conditions, and level of emergency or urgency in the locality at the time of practice in the medical field concerned." Therefore, if medical personnel negligently cause injury or death to patients during medical practice due to a breach of medical care diligence, the judgment shall be determined based on objective conditions such as the customary medical practice, medical level, medical facilities, working conditions, and level of emergency or urgency in the locality at the time of medical practice to identify whether any breach in medical care due has occurred and whether medical personnel behavior is beyond the reasonable exercise of professional clinical discretion; the medical level of the medical institution should be considered, as different levels of medical institutions have different requirements in terms of their equipment levels.⁸

The operation in this case was conducted at a primary aesthetic clinic. The biggest controversy in the litigation was based on the medical level and standard medical practice of the clinic. Because this clinic is equipped with the equipment to conduct outpatient surgery, it must have a postoperative recovery room and medical devices for monitoring blood pressure, heart rate, respiration, oxygen saturation, and body temperature. Moreover, the patient's vital signs and recovery level should be observed in the postoperative recovery room to confirm that the patient's consciousness is clear and has stable vital signs before being discharged from the clinic. However, in this medical dispute case, the surgeon (Doctor A) only assessed the patient's conditions based on the patient's dialogue, conversation, expressions, and self-report health status and assumed that the patient has stable vital signs after the patient awoke from propofol-based intravenous sedation. He even assisted the patient to call a taxi to send him home. During the postoperative care process, no objective vital signs data of the patient were recorded in the medical

record. In addition, the defendant, as the doctor in charge of the aesthetic clinic, has been engaging in medical operations such as plastic surgery and liposuction. He was well aware of postoperative care content and has the obligation to observe and care for the patient after the operation.

The court claimed that crucial records such as the medical records of the patients who underwent ultrasound lipolysis in the medical clinic and relevant data on vital signs before, during, and after the operation were all absent. Under this circumstance, it was doubtful that the defendant regularly performs monitoring, recording, and comparison of relevant data to observe whether the patient's vital signs are stable. Nonetheless, the defendant asserted that he had fulfilled his postoperative observation obligations and did not go beyond the reasonable exercise of his professional clinical discretion.

This case is adapted from the original case: Criminal Judgment No. 4259, Supreme Court, Taiwan (2018). References to past judgments are as follows: Criminal Judgment No 1, Kaohsiung District Court, Taiwan (2015) and Criminal Judgment No.4, High Court Kaohsiung Branch Court, Taiwan (2017).

3. Importance of patient's vital signs assessment in medical dispute cases

Uncertainties exist in medical care, and symptoms are diverse. The course of and changes in diseases often have variations that medical personnel cannot control or predict. Therefore, medical records often become the optimal evidence for revealing the facts.⁹ Currently, for medical disputes in Taiwan, patients mostly adopt an abnormal litigation strategy of civil suit collateral to criminal proceedings. Therefore, various scholars have discussed the plight of criminal vexatious litigation in medical disputes.¹⁰ When medical disputes would occur, medical personnel misunderstood that the judge will use an extremely stringent

attitude to adjudge them because the legal profession has only recently valued the results of medical care assessment in medical disputes. However, medical personnel are unable to convince the medical assessment personnel to exempt them from criminal responsibility when they do not even record patient's vital signs in the medical record during medical practice. For example, in this case, medical personnel should place the patient in the recovery room after the operation to monitor the patient's vital signs, such as body temperature, respiration, heart rate, blood pressure, oxygen saturation, and conscious state to observe the patient's postoperative condition. These are the most basic requirements in customary medical practice and medical level. After the outpatient operation, the patient must be fully conscious with stable vital signs before being discharged; otherwise, any postoperative complications that may occur in the patient cannot be treated immediately.

Conclusion

It is the Institute of Forensic Medicine and the Medical Review Committee, which perform the medical care assessment and clarify the cause of death. The judge will make the final judgment based on the assessment report. In this judgment, the most controversial issue, which is also repeatedly mentioned by the judge is the absence of the patient's pre-discharge vital signs measurement and record. It makes the judge believe that the defendant (Doctor A) failed to detect the possibility of the deterioration of the patient's clinical condition earlier. Furthermore, it makes the defendant's testimony unreliable. On the other hand, if the patient's pre-discharge vital signs were measured, it might avoid the malpractice litigation.

In summary, the presentation and recording of medical records when providing medical services are essential. The medical dispute case is described in this article to highlight the im-

portance of measuring patients' pre-discharge vital signs and presenting them in medical records.

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