

Research Based On the Medical Prescription under Special Diagnosis And Treatment

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Abstract: Article 57 of the Law of the People's Republic of China on Tort Liability establishes the basic liability principle of medical tort liability as the fault liability principle, and made it clear that the judgment standard of the medical party's fault is the "medical level". However, the specific meaning and content of the "medical level" are not discussed, which makes it difficult to apply in the practice of medical trials, which has also led to the extensive discussion in the academic community. What is certain is that among the specific evaluation criteria, which is to know if the medical side has fulfilled its obligation in its explanation as is often associated with the legal evaluation of whether there is a fault.

The difference from the duty of care to be fulfilled in other specific diagnosis and treatment occasions, which is the duty of the doctors to explain throughout the entire medical process. Even after the end of the diagnosis and treatment activities, the medical side still has the obligation to explain the patient's recovery and precautions during the convalescence stage. However, for different diagnosis and treatment occasions and for different types of patients, the requirements for the medical side to explain the obligations are not the same, and the degree of description that the medical side needs to do should not be a unified standard. Therefore, when judging whether the medical party has fulfilled the specific explanation obligation, it should be discussed in a specific situation and typed. Considering that the medical side's explanation obligations are generally the same, they will not be repeated in this article, and only the medical side's explanation obligations will be discussed for special diagnosis and treatment situations (including special diagnosis and treatment objects). In view of the relatively mature development of the Japanese medical law, and the "People's Republic of China Tort Liability Law" was formulated, the medical tort liability chapter also referred to the theory of the Japanese medical law, the jurisprudence expands.

1. Obligation of explanation in the case of clinical experiment

In the opening year of 2020, Wuhan, China, bears the brunt. Pneumonia caused by a new coronavirus broke out in China on a large scale and formed a prairie trend. It quickly spread throughout the country and even directly outside the region. The virus is on the verge, its host is unknown, there are no effective drugs, and no effective therapies. As a result, qualified medical institutions throughout the country have launched research in full swing, wanting to find the effective therapies in the shortest possible time to prevent the situation from further deteriorating, therefore the need to target various therapies ("therapies" include the drugs used, is as below.) to Conduct a variety of clinical trials. At the same time, there are several unavoidable problems before the doctor:

The clinical effect, especially the safety of the therapy has not been confirmed, and it is unclear how it will affect the patient's condition at the stage of being tested;

In order to ensure the accuracy of the experimental results, other interference factors need to be excluded, and the treatment plan previously received by the patient may need to be terminated;

The test therapy may not be effective for the disease, and may even cause major consequences;

Conducting clinical trials requires the cooperation of patients;

Patients may have excessive expectations for this therapy.

Here, we do not consider medical-related issues such as the accuracy and authoritativeness of a series of clinical trials, but only discuss the medical side's obligation to explain. As mentioned above, human testing is different from conventional diagnosis and treatment, and it has the characteristics of process instability, high risk, and uncertainty of results. What range and standards should be described in order to obtain the patient before conducting the test behavior The effective agreement is of great significance to the occurrence of medical disputes and the protection of the rights and interests of the patients. It is generally believed that for clinical trials, the medical side should review the name, content, purpose, necessity, expected effect, process (including start and end times and specific steps, etc.) of the trial, the existing risks, and whether there are countermeasures for possible risks Whether there are side effects, whether there is a proven effective therapy for the patient's disease, and the advantages and disadvantages of the trial therapy compared with the existing effective therapy Personnel-related information for the patient's reference to make a choice that meets his true wishes. It can be seen that in the field of high-risk diagnosis and treatment, the degree of the obligation of the medical side to be explained is also accompanied by increased risk.

2. Obligation to explain the condition in case of undiagnosed

On January 31, 1958, A went to the defendant's hospital for abdominal pain. Gastroenterologist B conducted a diagnosis of A. He suspected that the condition of A was progressive gallbladder cancer. He believed that it was necessary for A to be hospitalized for a precise examination, and on this basis, make a definite diagnosis and decide the treatment policy. However, because of A's personality, relationship with family members, and family's degree of coordination with the diagnosis and treatment policy, if the above possibility is directly told to A, it will cause a mental shock to her, and I am afraid it will have a negative impact on treatment . Therefore, instead of explaining the above test results to A, it was decided to conduct a close inspection and then select the appropriate person from their family members to explain the test results and treatment policy. So B made a statement to A on the same day that "the gallstones were very serious and had caused the gallbladder to deform. It is necessary to perform surgery as soon as possible" and asked her to be hospitalized. But A refused the request for hospitalization on the pretext of overseas travel and work and family matters. In June of the same year, A was diagnosed with gallbladder cancer and received treatment, but died due to ineffective treatment.

Based on the above facts, the doctor B of the hospital of the widow of the defendant suspected that A had gallbladder cancer but did not explain the situation to A or his husband. This constituted the non-performance of the medical contract and required the defendant medical institution to bear the liability for damages.

The Supreme Court finally ruled to dismiss A 's widow 's claim. The reason is that when A 's occupation, family environment, personality, etc. are unclear, telling A about the possibility of progressive gallbladder cancer will cause a double physical and mental blow to it. The possibility of A correctly understanding B's explanation and whether his family will cooperate with active treatment are unpredictable. In this case, in order for A to be hospitalized for examination, Doctor B explained to him the seriousness of the condition and received the patient 's commitment to be admitted to the hospital during both consultations, but the patient suspended the visit without consulting the doctor, which caused the doctor Also lost the opportunity to explain to his family. So even if the result is that the doctor has not explained his family, he cannot blame the consequences on the doctor.

The second half of Article 55, paragraph 1, of the Tort Liability Law of the People 's Republic of China states: "If it is not appropriate to explain to the patient, it should be explained to the patient 's close relatives and their written consent should be obtained." The meaning of "not suitable" here is generally It is understood as "it may cause the patient to be psychologically unbearable, which in turn aggravates the deterioration of the condition and hinders the treatment", so at this time, indirect notification should be adopted to inform the patient's close relatives and obtain their written consent. That is to say, if it is really impossible to inform the patient himself, it is also necessary to grasp the

relationship between the patient and his family, in order to obtain the cooperation of the patient's family with the treatment, and choose the right person from his family to inform. Only in today's society, where the protection of personal information and privacy is becoming more important, can the patient's condition be explained not to himself but to his family? And if it can be explained to their family members, can the content of the description be the same as what should be explained to the patient? It can be said that these issues are not without suspense, but we will not discuss them here, and leave them for further details.

Conclusion

In summary, the requirements for the degree of explanation of the medical side under different diagnosis and treatment situations are different and cannot be generalized.

For routine diagnosis and treatment, the content of the explanation obligation to be fulfilled by the doctor is similar, which can be summarized as follows: at the diagnosis stage, the purpose, content, method, accompanying risk of the inspection and whether there are alternative inspection methods should be carried out Explained; after the diagnosis, it is necessary to explain the advantages and disadvantages of each treatment, the purpose, content, risk and efficacy of each treatment on the premise of the disease name, specific condition, treatment method and whether there are alternative therapies or multiple therapies; In the case of the case, the purpose, content, method of operation, necessity, urgency, risk and efficacy of the operation should be explained in detail; when the patient needs recuperation after discharge from the hospital, or there are other matters that need special attention, the medical side should also Give detailed information. The intensification of the contradiction between doctors and patients not only seriously interferes with the normal diagnosis and treatment activities of the doctors, but also seriously harms the interests of the patients. The ultimate victim of "defensive medical care" can only be the patient, and the degree of fulfillment of the obligation will have an important impact on the doctor-patient relationship. In his work, Huang Dingquan, a Taiwanese scholar in China, said: "The standard of interpretation is to determine the breadth and depth of the interpretation from the perspective of who. That is, it is defined by the perspective of the doctor or the patient that what is important in the medical process. Information must be informed ". That is to say, in the final analysis, the problem of explaining the standard of obligation is the "matching degree" of the description of the medical side and the needs of the patient, which is particularly reflected in the above third case "the obligation to explain the special diagnosis and treatment" obvious. It is for this reason that although the legal profession has put forward many doctrines such as "reasonable physician standard, reasonable patient standard, specific patient standard, eclectic standard" on the medical obligation of interpretation, it cannot fundamentally solve the medical obligation of interpretation in the practice of diagnosis and treatment the dilemma faced. Only by classifying the specific diagnosis and treatment situation and analyzing the individual cases can we initially solve the problem of the scope and standard of the obligation of explanation. As a doctor, you should be sympathetic to the patient as much as possible, fulfill the obligations of full description, and get the patient's understanding and approval; as the patient, you should actively communicate with the doctor and choose a person who trusts the doctor. The only way to resolve disputes between doctors and patients is to establish a sympathetic understanding between doctors and patients and cultivate a bond of trust.

Title of project

Comparative Study of Physician's Stated Obligations (2017SJB1887)

References

[1] Civil Law Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress: "Explanation of the Tort Liability Law of the People's Republic of China, Legislative Reasons and Related Provisions", Peking University Press, 2010 edition, 233

pages.

[2] According to the statistics of the China Clinical Trial Registration Center inquired by the Health Knowledge Bureau, there are at least 271 clinics on the treatment, prevention, and epidemiology of new coronary pneumonia in the period of about one month from January 23 to February 26, 2020. Trial registration. For details, please see Leng Jing: "Tea and Soy Milk Treat New Crown? The State Council stopped some clinical trials! ", Sohu.com (Sohu), www.hpzh.org (Finance World Weekly), cj.sina.com.cn (Sina Finance) and other reports. Last landing: March 12, 2020.

[3] Shen Xiao: "Standards for Investigators' Obligations in Human Experiments", in "Journal of Southeast University (Medical Edition)", pages 527-529.

[4] Chen Xianjie, editor in chief: "The People's Republic of China Infringement Liability Law Article Meaning and Case Analysis", China Legal Publishing House, 2010 edition, pages 6-7.

[5] Huang Dingquan: "New Theory of Medical Affairs Law", Law Press, 2013 edition, 167 pages.

[6] Liu Jingwei, Li Maonian: "The Law of Doctor-patient Relationship", CITIC Press, 2002 edition, 46 pages.

[7] The highest arbitration is the third small judge, Tin Pingping, 7.4.25 judgment, private collection, 49 • 4 • 1163 pages, 1530 • 53 pages, and 877,171 pages.

[8] Shen Xiao: "Standards for Investigators' Obligations in Human Experiments", Journal of Southeast University (Medical Edition), pages 527-529.

[9] Wang Yuqian, Li Hang: "Research on Medical Staff's Informing and Explaining the Obligation of Cancer Patients", International Seminar on Health Law and Bioethics, 2014.

[10] Editor-in-Chief Chen Xianjie: "Essential Meaning of the Tort Law of the People's Republic of China and Case Analysis", China Legal Publishing House, 2010 edition, pages 6-7.

[11] Osaka ground was cut to 8.5.29 judgment, judgment time 1594, 125 pages.