

醫師的注意義務與 防衛性醫療行為

Due Diligence and Defensive Medical
Treatments of Physicians

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摘要

病患或家屬於就診時的主訴，乃正確醫療行為之一環，若依病患或家屬就診時之主訴，以及病患臨床所呈現之徵狀，不足以使醫師依其專業知識與經驗，合理懷疑病患罹患特定疾病時，醫師縱未進行特定檢查以確診該疾病，仍不違反醫療常規，故以醫療常規作為醫師責任的客觀規範，清楚明確。實務見解有採取「醫療水準」替代「醫療常規」作為醫師注意義務的判斷基準，本文認為由於醫療水準空泛，無遵循標準，易造成醫師為避免事後的醫療糾紛，而執行防衛性醫療行為，恐會造成醫療資源浪費。

The chief complaint of the patient and the family members is one of the elements for rightful medical treatment. If it – including the clinical symptoms – lacks clarities to make

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the physician to diagnose what kind of illness the patient got, it would be not against the medical routine that the physician didn't take any certain examination. Therefore, the medical routine as the criterion due diligence of physicians would be usual and clear. Taking the medical standard as the replacement of the medical routine to be the criterion of due diligence of physicians in the legal practice would in contrast lead to defensive medical treatments because avoiding the medical lawsuits and to wastes of medical resources, due to the medical standard is still too vague and unable to be obeyed.

壹、案例¹

甲年僅39歲，因頭痛數日，前往小型診所看診無效，嗣改至乙醫院由丙醫師看診，甲妻丁主張就診時曾主訴甲頭部局部已連日因不明原因劇烈疼痛及頸部僵硬，經服藥後並無改善，惟丙醫師僅就脊椎部位照攝X光及抽血檢查，經檢查無異常後，即以一般肩頸疼痛、筋膜炎處理，開立止痛及肌肉鬆弛藥劑，並未安排施作電腦斷層血管攝影（computed tomography angiography, CTA）、傳統血管攝影檢查（digital subtraction angiography, DSA）或核磁造影（magnetic resonance imaging, MRI）等檢查，致甲於就診當晚，因腦部動脈瘤（aneurysm）破裂，陷入昏迷後送院急救，經多次手術仍未痊癒，成為半植物人。甲主張丙醫師疏未注意甲就診時已主訴頭痛劇烈多日、肩頸酸痛等腦部動脈瘤之典型徵兆，致未發覺甲之腦部動

1 本文參考臺灣花蓮地方法院103年度醫字第4號、臺灣高等法院花蓮分院105年度醫上字第1號民事判決改寫而成。惟該判決並未敘及防衛性醫療問題，併此敘明。