

# 論民事過失之 內涵、要件與標準 ——以積痰送醫案為例

Case about Delivering to the Hospital Due  
to Accumulation of Phlegm: The Content, the  
Elements and the Standards of Civil Negligence

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## 摘 要

侵權行為之過失係指行為人雖非故意，但按其情節應注意，並能注意，而不注意；或對於構成侵權行為之事實，雖預見其能發生而確信其不發生者而言。一般侵權行為之注意義務程度應以善良管理人之注意為標準。本文擬介紹一則原告主張長照機構護理人員與陪病員違反注意義務而有過失，致生損害於住民而應負損害賠償責任之判決。本件爭點涉及民事過失之內涵、要件與標準，本文擬藉此判決探究之。

Negligence in Tort means that an agent, although not intentional, should paid attention to the circumstances

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關鍵詞：長照機構（long-term care institution）、迴避可能性（possibility to avoid）、善良管理人注意義務（duty of care of a good administrator）、預見可能性（possibility to foreseen）、護理人員（nursing staff）

DOI：10.53106/241553062023040078011

and could have paid attention, but failed to do so; or that constituting the tort was foreseen to occur but was believed not to occur. The extent of the duty of care for general infringement should be based on the standard of care of a good administrator. In this paper, a case would be introduced, in which the plaintiff claimed that the nursing staff and the patient's companions of a long-term care institution breached their duty of care and were negligent, causing damage to the resident and should be liable for it. The case which would be analyzed here involves the content, elements and the standards of civil negligence.

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## 壹、案例事實

X長照機構之住民A咳嗽有痰，該機構之護理人員甲於2018年4月3日上午11時16分為A抽痰，並為其挖出膿痰；於上午11時23分，甲致電緊急聯絡人A之子B，告知其母A有咳嗽、積痰與呼吸不順等情形，須送醫治療，惟A生命徵象穩定，並無使用救護車緊急送往醫院急診之必要，循一般就醫程序掛號門診即可，B稱其工作中無法前來，請甲代為連絡車輛及人員，安排前往就診。於同日中午12時10分，甲為A進行第二次抽痰，抽出大量黏稠痰，並給予氧氣2L / 分，當時A呼吸19次 / 分，血氧飽和度為92%~94%。於下午13時44分，甲委託無醫療專業之陪病員乙搭乘計程車陪同A至Y醫院門診就醫，A於計程車上持續咳嗽後無聲息，經計程車司機發覺A狀況有異並告知乙，復將A直接送往Y醫院急診室，A到院前已無呼吸心跳，經急救後，因腦部缺氧而受有損害。B主張甲未通知救護車，並指派未具醫療專業之陪病員乙將A送醫，違反注意義務，而乙於陪同A搭乘計程車過程中，未察覺A停止呼