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學習式判解評析

【醫療民事法】

頭部外傷急診留觀案: 論醫療過失行為❷

經過觀察義務違反

Observation of Head Injury in Emergency Station: On the Breach of Obligation of Observation for the Medical Negligence

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摘要

關於醫療疏失,有所謂「經過觀察義務」,我國實務上較未提出檢討,日本近年經常將此種義務作為爭訟之標的。目前醫院護理因人力普遍不足,常會由看護員或家屬負責注意病人狀況,若病人發生病情惡化,何種情況下需由醫院方負責,即會成為問題。本文將介紹日本關於此義務之相關判決,並整理幾種醫院必須提高觀察監看強度之情況,否則即有可能違背經過觀察義務,以供參考。

There is a so-called "obligation of observation" in relation to medical negligence, which hasn't been reviewed in juridical praxis in Taiwan, but has often been the issue of

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關鍵詞:昏迷指數(coma scale)、經過觀察義務(obligation of

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litigations in Japan in recent years. Currently, hospitals often face shortages in nursing staff, leading caregivers or family members to take on the responsibility of monitoring the patient's condition. When his condition worsens, it would be questionable, under which circumstance the hospital should be held accountable for the deterioration in his health. This essay aims to present relevant judgments on this obligation in Japan and categorize various scenarios, in which hospitals muss intensify their monitoring and supervision efforts, as failing to do so could potentially breach the obligation of observation.

膏、案件概述

一、案件經過

A於2007年2月19日因在健身中心蒸氣室滑倒,頭部右眉 部分受有3公分外傷,曾於同日晚上20時36分至甲醫院急診 室。A到院時意識清楚,經B醫師初步診療後於同日晚上21時 為頭部X光檢查、給與止痛藥等藥物治療、進行右眉傷口清潔 與縫合,後建議A留院觀察,但未立即安排做電腦斷層掃描檢 查。A於同日晚上23時59分欲如廁時,發生意識昏迷無法叫醒 之狀況,B醫師經家屬叫喚到場檢視發覺A意識昏迷、瞳孔放 大,即為其安排腦部電腦斷層掃描,並通知當日神經外科值班 醫師C會診,發現A有頭部硬腦膜外出血,而再由D醫師為A施 行緊急腦部手術。A於手術後並未清醒,且持續昏迷,終於同 年12月15日死亡。本案經A家屬提起民事訴訟,地方法院判決 院方處置雖有部分過失,但無法證明與病人A死亡間有因果關 係,而駁回原告請求¹。嗣後案件經上訴至高等法院,高等法

¹ 臺灣臺北地方法院98年度醫字第15號民事判決。