

胃癌術後第三天死亡 判院方無過失

Hospital Found Not at Fault for Stomach
Cancer Death on Third Day after Surgery

黃滄昕 Yi-Hsin Huang 編譯

平成7年（ワ）第99號損害賠償請求案件

平成13年11月13日宇都宮地方裁判所



摘要

病人C於被告Y開設之醫院接受胃癌手術，過程中意外在膽囊底部發現腫塊，故一併切除膽囊。C術後有低氧血症狀，G醫師停止投與鎮痛藥並安裝心電圖監測儀；術後第3天，C呼吸費力而失去意識，雖經供氧等急救措施仍死亡。A醫師鑑定認為，肺栓塞是術後急性死亡首應考慮的原因，而C術後病徵都指向肺栓塞；B醫師反而認為，C術後尚未出現肺栓塞的特徵表現，尚不能診斷有肺栓塞。法院認為肺衰塞雖然難以診斷，G醫師也並未觀察到明顯病徵，惟若排除其他死因之可能，仍應認定C死於肺栓塞；其次，C的身體狀況、病史與臨床過程並非具有肺栓塞因子，也難以預見其病發，

關鍵詞：告知同意（informed consent）、肺栓塞（pulmonary embolism）、說明義務（duty to inform）、醫療水準（medical standard）、鑑別診斷（differential diagnosis）

DOI：10.53106/241553062024100096007

且依當下醫療水準，預防術後急性肺栓塞非醫療常規；最後G醫師雖未事前告知切除膽囊，但得推測事前若有告知C仍會同意，且被告Y有明確建議解剖以查明死因，亦遭家屬拒絕，故不能認定G醫師違反說明義務。

C underwent surgery for gastric cancer at a hospital run by defendant Y. A lump was accidentally found at the base of the gallbladder and the gallbladder was removed; C suffered from postoperative hypoxemia, so physician G stopped administering painkillers and installed an electrocardiogram monitor; on the third day after the surgery, C suffered from respiratory distress and became unconscious, and died despite the provision of oxygen and other emergency medical care; Physician A determined that pulmonary embolism was the first cause of acute postoperative death to be considered, and that all the postoperative symptoms of C pointed to pulmonary embolism; Physician B, on the other hand, considered that C had not yet developed the characteristics of pulmonary embolism, and could not yet be diagnosed with pulmonary embolism. The court held that although pulmonary embolism is difficult to diagnose and physician G did not observe any obvious symptoms, if other causes of death are ruled out, C's death should still be determined to be due to pulmonary embolism; secondly, C's physical condition, medical history, and clinical course did not have the factor of pulmonary embolism, and it was difficult to predict the onset of the disease, and according to the standard of medical treatment at the present time, it is not a common medical practice to prevent acute pulmonary embolism in the post-surgical period; and finally, even though physician G did not inform C of the removal of the gallbladder, he could have made an assessment if C had been informed of it in advance. Moreover, physician

G's explicit recommendation for an autopsy to find out the cause of death was rejected by the family, so it is not possible to conclude that physician G breached his duty to inform.

壹、事實概要

一、事件概要

病人C（58歲女性）於被告Y開設之醫院接受胃癌手術，術後第3天突然死亡，C的繼承人共7名（後總稱原告X方）因而對Y提起損害賠償之訴。C於Y醫院接受健檢時被診斷出初期胃印戒細胞癌，為進一步檢查，於1993年10月21日入院，11月5日由G醫師進行手術。手術中除了按計畫切除了胃幽門約二分之一部分，由於在膽囊的底部發現預期之外、約小指頭大小的腫塊，因此膽囊也被切除。G醫師在本件手術後解釋，除了最初計劃切除的胃部外，因為在膽囊也發現了病變，因此決定同時切除膽囊，手術順利成功。

C於術後隔天（11月6日）上午10時的血壓132/74mmHg，下午14時的體溫38.4度，血壓130/70mmHg。術後第2天（11月7日）上午6時30分的血壓110/70mmHg，但下午13時血壓降至90/60mmHg，下午18時出現嘔吐症狀，血壓92/52mmHg，下午21時的血壓86/50mmHg，血壓出現下降趨勢。對此，G醫師指示從晚間22時15分後停止對C的鎮痛藥注射，並為C安裝心電圖監護儀。術後第3天（11月8日）午夜零時，C血壓為92/58mmHg。上午7時50分C依照醫師指示從床上下來排尿時，突然無法站立，護理師趕到後將她安置在床上。此時C的臉部和唇部蒼白，感到噁心，呼吸稍顯費力，表示「昨天就感到不適」，不久之後無法回答問題，眼球呈現單點凝視狀，意識淡化、呼吸停止。醫師趕到後雖採取供氧等緊急措施，但C