

【醫療刑事法】

腹腔鏡膽囊切除手術失誤案： 腹腔鏡膽囊切除術 誤截斷總肝管案

Error in Laparoscopic Cholecystectomy :
Laparoscopic Cholecystectomy with
Inadvertent Amputation of Common Hepatic Duct

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摘 要

本案原審判決及二審判決基於不同之理由，均未採納醫審會認定被告無過失之鑑定意見。原審及二審基於對手術紀錄之不同解讀，對被告於施行手術中誤夾告訴人之總肝管時，是否有清楚區分總肝管、膽囊管、肝臟邊緣、膽囊頸等位置之事實認定雖不同，然均導出被告行為有過失之結論。自兩份判決之論述方式可見，實務對醫療過失的審查模式仍是遵循修法前之常態，將醫療法第82條所規定之「逾越合理臨床專業裁量」直接作為違反注意義務審查之一環，並沒有如

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關鍵詞：注意義務（due diligence）、臨床裁量（medical discretion）、
醫療法第 82 條（Article 82 of the Medical Care Act）、醫療過失
（medical negligence）

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立法原意因修法而對醫療過失呈現兩階段審查，難認「逾越合理臨床專業裁量」要件入法實質上有變動醫事人員的注意義務程度，或有利行為人的責任減輕。

For different reasons, the first instance and the second instance judgment didn't adopt the Medical Review Board's opinion that the Defendant wasn't negligent. Based on the different interpretations of the surgical records, both of them conclude that the Defendant was negligent, even though they differed in whether or not the Defendant had clearly distinguished the location of the common hepatic duct, the cystic duct, the edge of the liver, and the neck of the cystic duct when he mistakenly clamped the Claimant's common hepatic duct during the surgery. As can be seen from the justification of the two judgments, the mode of examination of medical negligence in practice still follows the norm before the amendment of the law, and the "exceeding reasonable clinical professional discretion" stipulated in paragraph 82 of the Medical Care Act is directly used as a part of the examination of violation of the duty of care, and there is no legislative intent to present a two-stage examination of medical negligence due to the amendment of the law. It is difficult to recognize that the inclusion of the element of "exceeding reasonable clinical professional discretion" in the law has actually changed the degree of the duty of care of medical personnel or favored the conduct of the agent.

壹、案例事實與判決要旨

一、案例事實

被告係任職於振興醫院之合格醫師，告訴人於2019年3月23日因上腹疼痛前往振興醫院就診，發現其膽囊內有1顆2公分之膽結石，經診斷為急性膽囊炎而住院，被告於同年月26日12時45分許，為告訴人實施腹腔鏡膽囊切除手術擬切除膽囊（下稱本案手術），惟其在施行本案手術時，原應於確定總肝管（common hepatic duct, CHD）、膽囊管（cystic duct）及肝臟邊緣（liver margin）等組織所在之位置（即卡洛特式三角（triangle of Calot））、膽囊頸等位置後，將金屬夾子夾在膽囊管與膽囊交接處，進而在該處燒灼截斷以取出膽囊，然被告竟於施行本案手術時，誤將兩個金屬夾子夾在總肝管上，致告訴人之總肝管於手術過程中一併遭截斷，而受有總肝管截斷之傷害，並在術後因為總肝管遭截斷，使膽汁無法經由總肝管正常排入十二指腸，而受有黃疸之傷害。告訴人因此於2019年4月3日前往臺北榮民總醫院（下稱榮總）一般外科就診檢查後，於同年月8日由振興醫院出院並轉至臺北榮總，經榮總醫師即本案鑑定證人診斷為「急性膽囊炎經腹腔鏡膽囊手術切除後，併發總肝管截斷」，而於同年5月17日9時許，由鑑定證人為告訴人進行總肝管腸吻合手術。

二、原審見解¹

（一）本案手術之手術紀錄雖記載被告在手術過程有分清楚卡洛特式三角，且膽囊血管及膽囊管都有區分並以金屬夾子夾好再切斷，然被告於準備程序時自陳施行本案手術時發現告訴人膽囊位置有沾黏之情形，且因為沾黏很多沒有辦法分辨很

1 臺灣士林地方法院110年度醫易字第1號刑事判決。