

探討法院 對刑事過失之認定*

Discussion on Confirmation
of Criminal Negligence by Courts

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摘 要

按醫師在執行手術及全身麻醉前，應對病人實施適應症系統評估，即應注意病人是否有糖尿病、心臟呼吸器官疾病等全身性疾病及凝血功能、動脈血含氧量等；術中則需建立足夠靜脈輸液通路，應監測各種生命現象，特別注意輸液之補充，以避免產生併發症；術後應對病人體內循環系統之運作加以評估及對生命跡象加以監測。法院對醫療糾紛案件，均會調查醫師於術前、術中、術後是否有疏未注意之行為，致病人傷害或死亡，依此而認定是否有過失。本件主治醫師被告甲於術中及術後、麻醉醫師被告乙於術中有為病人A為足夠體液補充之注意義務，依當時情形並無不能注意之情事，卻疏未注意，致病人A之體液補充因不足致死亡，被告甲、乙就此顯有過失。

*請參考臺灣臺北地方法院 91 年度訴字第 730 號刑事判決。

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The physician shall evaluate indication systematically to the patient before taking a surgery and general anesthesia. In other words, the physician shall notice that whether the patient systemic disease, like diabetes, heart and respiratory diseases, coagulation and the oxygen content of blood in artery. Moreover, the physician shall keep intravenous administration routes during the surgery, monitoring the biological phenomena to avoid complications, especially the supplement of infusion. What's more, the physician shall after the surgery evaluate the functioning of the patient's circulatory system, and monitor the biological phenomena. Therefore, the court will investigate into medical lawsuits by noticing that whether the physician has had faults before, during and after the surgery. It deems finally the negligence of the physician by doing so. The physician B has the responsibility to supply the infusion for the patient A during and after the surgery, while the anesthetist C shall during the surgery do so. There was no excuse for negligence and the patient A was dead as a result because of insufficiency of the infusion; the B and the C were negligent for it obviously.

壹、案例

被告甲為外科醫師，被告乙係特約麻醉科醫師。病人A曾至甲之診所進行腹部抽脂手術，兩週後，復至該診所再進行背部、臀部、腹部抽脂及切除多餘皮膚手術，甲及乙於術前疏未對病人A之全身性疾病、凝血功能等詳加檢查，即施行前揭手術及麻醉；於手術進行中，甲未注意出血量，並未給予病人A足夠體液補充，乙亦疏未對A為足夠體液補充。手術結束後，

甲未注意對病人A體內循環系統之運作加以評估及對生命跡象加以監測，率將病人A交由護理師丙獨自護理，未交代護理師丙應注意上開事項即離去，致病人A術後因輸液不足，併發血管脂肪栓塞而死亡¹。

貳、爭點

本案例之爭點為：甲及乙於術前、術中、術後是否有疏未注意之行為？

參、解析

一、抽脂手術應注意事項有：（一）病人是否罹有全身性疾病，如糖尿病、心臟呼吸器官疾病等；（二）藥物過敏史；（三）凝血功能；（四）手術出血量；（五）動脈血含氧量；（六）心電圖監測；（七）吸出物監測。

二、又外科醫師及麻醉科醫師於從事抽脂手術之全身麻醉前，應注意病人是否有糖尿病、心臟呼吸器官疾病等全身性疾病及凝血功能、動脈血含氧量等；術中則因抽脂手術常伴隨大量體液流失，須建立足夠靜脈輸液通路，故從事該手術之外科醫師及麻醉科醫師應監測各種生命現象，特別注意輸液之補充，而甲及乙於術前，卻未對病人A為血糖測試、血型、血紅素及一般生化等抽血檢查，此業據甲於偵訊中自承。乙於偵訊中亦坦認在術前並無取得病人A之血糖測試資料、血型、血色素及一般生化報告。參之甲亦坦認曾於診療記錄單上病人A過去病史欄有血糖過高、心跳快等記載。綜上，足認甲、乙於術前未對病人A為全身性疾病、凝血功能等檢查，致無從檢視

1 原判決在人物編號安排上漏用「甲」，直接從「被告乙」開始編碼，本文重新調整原判決編號安排。