

探討醫療常規、 醫療水準*

On the Medical Routine and
the Standard of Medical Treatments

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摘要

按醫療過失之定義，係指醫療人員違反客觀上必要之注意義務而言。惟因醫療行為有其特殊性，自容許相當程度之風險存在，故應以行為當時臨床醫療實踐之醫療水準判斷是否違反注意義務。原則上醫學中心之醫療水準高於區域醫院，區域醫院又高於地區醫院，一般診所則居於最後；專科醫師高於非專科醫師。然而，尚不得一律以醫學中心之醫療水準資為判斷標準。

又病患兩側同時施作人工膝關節置換手術，因失血量過多，引起脂肪栓塞之比例較高，尤其對80歲以上的

*請參考臺灣高雄地方法院 96 年度醫訴字第 7 號、臺灣高等法院高雄分院 98 年度醫上訴字第 1 號刑事判決。

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病人，同時施作會有較高的併發症與死亡率。醫師若欲為病患同時施作人工關節置換手術，手術前對潛在危險應有正確認知，且應注意病患年紀越大，發生之危險越高，應審慎評估方可施行。本件乙醫師對已達87歲之病人A施作兩側人工膝關節置換手術時，自應負有更高之注意義務。

The medical malpractice means that the medical personnel overruled the objectively necessary due diligence. However, since medical treatments have specialties, the risks in a considerable degree are allowed, and the standard of medical treatments during the medical praxis should be the criterion to judge whether the due diligence was overruled. Generally speaking, the standard of medical treatments in medical center is stricter than in regional hospital; the latter is stricter than in district hospital, and the general practice clinic stays the last. Furthermore, the standard of medical treatments for the doctor specialist is stricter than the doctor non-specialist. Therefore, the standard of medical treatments in medical center could not be the only one criterion for the judgement.

What's more, taking the Total Knee Replacement for both sides at the same time could lead more possibility to cause complications and to death, especially for patients, who are more than 80 years old, because of too many blood losing and causing more possibly fat embolism. Before taking this operation, the surgeon should notice the potential risk of it. Moreover, the surgeon should notice the positive correlation between the age of the patient and the possibility of risks. This surgery could not be taken without evaluating carefully. The Surgeon B had stricter due diligence as the result, when he took the Total Knee Replacement at both sides for the 87-year-old patient A.

Angle

壹、案例

被告乙係綜合醫院骨科主治醫師，因原告甲之母A罹患兩膝退化性關節炎，乙醫師明知病患A已高齡87歲，可預見如同時為其施行兩側全人工膝蓋關節置換手術，可能引發脂肪栓塞，導致更高危險之併發症及死亡機率，術前竟未審慎評估，仍為病患A同時施行，致病患A於手術完成後兩小時之當日下午，即因脂肪栓塞而血壓下降，失去意識。病患A轉至加護病房施予各種急救無效，爾後仍因併發腦部脂肪栓塞，導致多重器官衰竭及廣泛血管內凝固病變，於手術後第7天宣告不治死亡。

貳、爭點

被告乙之醫療行為是否具有過失？其所為之醫療行為是否符合醫療常規？

參、解析

一、乙醫師之醫療行為具有過失

（一）依據相關文獻及國內醫學研究，兩側同時施作人工膝關節置換手術，因失血量過多，引起脂肪栓塞之比例較高，尤其對80歲以上的病患而言，同時施作會有較高的併發症與死亡率。醫師若欲為病患同時施作，手術前對潛在危險應有正確認知，且應注意病患年紀越大，發生之危險越高，應審慎評估病患之健康狀況，並與病患充分溝通，讓病患了解手術可能帶來的併發症、危險性與死亡率，以有效降低可能發生的併發症與死亡率。

（二）乙醫師依其專業素養及多年行醫經驗，對於病患同