

探討法院 對民事上過失之認定

Discusses the Court to Recognizing
of on the Civil Error

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摘 要

按所謂相當因果關係，係指依經驗法則，綜合行為當時所存在之一切事實，為客觀之事後審查，認為在一般情形上，有此環境、有此行為之同一條件，均會發生同一之結果者，則該條件即為發生結果之相當條件，行為與結果即有相當之因果關係。本件被告醫師考量病人A當時已施打抗凝血劑，如逕將暫時性雙腔導管拔除，勢將造成其出血不止之嚴重後果，乃決定不予拔除導管，而囑咐護理人員採取導管兩側蝶翼縫針傷口處之少許似膿體，以做細菌培養，並加強清潔傷口及換藥，給予抗生素，以防細菌感染，依上開說明，未立即拔管，自無違反醫療常規。本件己、庚、丁等醫師對病人A在L醫院就診期間之治療行為，均無過失，亦核與病人A之死亡間無相當因果關係，自無損

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害賠償責任可言，L醫院亦無債務不履行可言，則毋庸與之負連帶損害賠償責任。

According to the so-called suitable causal relation, is refers according to the law of experience principle, the comprehensive behavior at that time existence all facts, for objective afterwards examined, thought in the general situation, had this environment, has this behavior the identical condition, had the identical result, then this condition namely for had the result the suitable condition, the behavior and the result namely had quite the causal relation. The physician as the accused in this case took it into consideration that the patient A had taken anticoagulant and it could lead serious consequences like continuing to bleed, if he removed the double lumen catheter. Therefore, he commended the nursing staff to simple the Abscess on the both sides of the wounds in order to culture Bacteria, to clean the wound, to change dressings and to give antibiotic in order to prevent form infections, instead of removing the catheter. All the physician did, didn't obey any medical norms. The medical treatments of the other physicians like D, F and G to the hospitalized A had furthermore no fault and no corresponded relation with the A's death. As the result, D, F and G didn't have any responsibility for it. Moreover, the Hospital L had no non-performance of obligation and therefore had no joint responsibility for it.

壹、案例

原告甲係病人A之配偶，原告乙、丙係病人A之子。病人A因冠心病合併心肌梗塞、糖尿病腎病變併發急性腎衰竭等病症，至被告L醫院就診，由被告己醫師為病人A之主治醫師，



進行洗腎事宜；心肌梗塞部分之治療則由被告丁醫師負責。嗣病人A於施行血液透析治療前，護理人員發現暫時性雙腔導管植入處有紅腫及化膿現象，隨即告知值班之被告庚醫師處理，庚醫師當下未拔除導管，仍繼續洗腎，其後負責洗腎事宜之己醫師對此傷口化膿之感染情形亦未作處置，致病人A病情加重乃轉往T醫院就診。而病人A於進行第二次之雙腔導管植入前，己醫師並未告知病人A在同一處再次植入雙腔導管是否有增加受感染之機率；於施行血液透析治療時，庚醫師獲悉病人A已有細菌感染情事，然對其後應如何為適當之處置，亦未告知病人A，因而造成病人A在該院診治時已受金黃色葡萄球菌（MRSA）感染，以致轉診至T醫院後引發敗血症，併心因性休克、細菌性敗血症而死亡（臺灣宜蘭地方法院93年度訴字第298號、臺灣高等法院95年度醫上字第24號民事判決、最高法院97年度台上字第1300號民事裁定）。

貳、爭點

一、病人A前開之死亡結果，是否與被告己、庚、丁等醫師之行為有因果關係？

二、又L醫院與被告己、庚、丁等醫師是否須負連帶損害賠償責任？

參、解析

一、按所謂相當因果關係，係指依經驗法則，綜合行為當時所存在之一切事實，為客觀之事後審查，認為在一般情形上，有此環境、有此行為之同一條件，均會發生同一之結果者，則該條件即為發生結果之相當條件，行為與結果即有相當之因果關係。反之，若在一般情形上，有此同一條件存在，而