

本期企劃

從地方法院民事醫療判決 看最新發展趨勢

一引用最高法院次數觀察

Recent Trends from District Court Civil Medical JudgmentsBased on Citation of Supreme Court Decisions

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摘要

對於醫療判決實證研究可從多面相去進行觀察,例如 從醫療層面觀察涉訟科別、醫療疏失主張類型或獲判 勝訴類型;或者從法律層面觀察,注意義務、告知說 明義務、因果關係及舉證責任。透過較長期之研究去 分析地方法院與最高法院判決間的關聯性,本文挑選 最高法院具有開創性之判決,藉此展望將來司法實務 可能發展之方向。

There are many perspectives to do empirical research on the medical judgments. For example, from the medical perspective on the one hand, it could be observed which division it is in litigations, what kind of the medical

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關鍵詞:因果關係(causality)、告知説明義務(duty of disclosure)、注意義務(duty of care)、實證研究(empirical research)、舉證責

任轉換(shift of burden of proof) **DOI**: 10.3966/241553062021060056001



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negligence would be complained and in what kind of situation would win the litigation. From the legal perspective on the other, the duty of care and of disclosure, the causality as well as the burden of proof would be the objects of the observation. By analyzing the connecting relationship of the judgments between District Courts and High Courts over a long period of time, some pioneering judgments of Supreme Court would be picked out to present the prospect of the possible tendency in the future.

壹、前言

醫療崩壞是近年來常聽見的名詞,意味著醫療環境的惡化而影響醫療品質,惟惡化原因眾說紛紜,大抵來說不外乎是健保給付、醫院經營管理、各科青黃不接、醫療暴力及醫療糾紛,其中又以醫療糾紛為主因,導致內、外、婦、兒科乏人問津,進而造成惡性循環,如人才流失或醫療品質下降。然而,年輕醫師如何「擇其所愛」,將某一領域別當作一生執業的專業,其變項甚多,醫療訴訟的法律風險能否成為左右選科之變項,必須有實證研究作為基礎,方能得出科學上依據;因此,每年醫療訴訟之各科分布,雖然是落後指標(因案件自發生至一審審結需時甚久),也許可供對照各個專科招生缺人之對比,就可以略知一二。本文整理過去4年內民事醫療判決之各科分布及請求事由,以實證破解醫療訴訟造成「五大皆空」之都市傳說,並摘錄目前地方法院5年內引用最多次數之最高法院判決見解,來說明目前普遍地方法院所採取之主流見解以及展望末來可能的發展趨勢。