醫事法學教室

特殊體質併發症 之告知義務範圍 及醫院責任之認定

The Range of Duty of the Disclosure of the Complication of the Special Constitution and the Identification of the Responsibility of the Hospital

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摘要

本件涉及醫師告知義務與醫院責任認定等問題。在告知義務範圍界定之部分,向來有基於專業原則與病人原則不同之標準,前者以理性醫師在個案情況下均會告知之範圍為斷;後者以病人就決定是否接受醫療行為所需之資訊為考量。如採後者,在界定醫師是否已遵循告知說明義務時,須以病人業已告知自己具有特殊體質,醫師始有就該特殊體質可能引發之併發症為說明之可能。在醫院責任部分,如有病歷欠缺之情形,無照護觀察過失之舉證責任應轉由醫院負擔;若醫院本身有人員配置或組織管理上欠缺之過失,病方亦可獨立對醫院為侵權責任之請求。

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關鍵詞:告知義務(duty of the disclosure)、具體病人標準(concrete standard of patients)、理性病人標準(the standard of reasonable patients)、理性醫師標準(the standard of reasonable physicians)、醫院侵權責任(the tort liability of hospitals)

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This case handles problems like duty of the disclosure and the identification of the responsibility of hospitals. There are by the range of duty of disclosure always different standards which are based on professional rule or on patient rule. The former depends on that a reasonable physician could disclose information in each single case, while the latter depends on information a patient require to accept a medical treatment. By defining whether a physician obeyed duty of disclosure by taking the latter as the criterion, the patient should inform about the special constitution. Therefore, it could be possible that the physician informs the patient about the possibility of complication which was caused by the special constitution. If it was lack of histories of patients, the burden of proof that there was no fault of care would be transferred to the hospital. If there were faults of staffing or managements to the hospital, patients could complain about the tort liability to it by their selves.

壹、案例事實

甲從事空軍戰鬥機維修工作,維修過程中受傷導致右手壓碎性傷害,而至乙醫院就診,經丙醫師告知進行整型重建手術之風險、成功率、手術方式、預後情況後,將手術同意書交由甲帶回家詳細閱讀。甲閱讀後簽署手術同意書,由丙醫師對甲進行手術,丙醫師將甲之左腳腳趾移植至右手拇指,手術過程順利;手術結束後,甲留於加護病房觀察期間麻醉清醒後尚無異狀,方由丙醫師為其拔管,但拔管1小時後,醫護人員發現

¹ 本文案例取自於臺灣高等法院99年度醫上更(二)字第2號判決。

甲因心室顫動引發缺氧性腦病變,經急救無效而死亡,此1小時內並無有關甲在加護病房內情況之病歷紀錄。事後經鑑定結果,始發現係因甲平常工作時長期接觸及吸入化學劑料,而有職業病之特殊體質,在麻醉恢復嘔吐時引起心室顫動,終致死亡結果。

試問:甲之家屬主張丙醫師在手術前未告知因甲之特殊體質,麻醉甦醒時之嘔吐有引起心室顫動之風險,已違反告知説明義務;且加護病房醫護人員未及時發現甲嘔吐引發心室顫動之情況,乙醫院、丙醫師應連帶負侵權行為之賠償責任,有無理由?

武、爭點

- 一、醫師告知説明義務之範圍如何界定?是否及於病人特殊體質可能引起之額外風險?
- 二、在欠缺病歷紀錄之情況下,如何認定醫護人員是否有 對手術後在加護病房內觀察之病人善盡觀測照護義務?義務之 主體為何?

參、解析

一、告知說明義務範圍之認定

(一)說明範圍之界定標準

關於告知説明義務範圍之界定標準,向來有專業原則(professional rule)與病人原則(patient rule)二説。採「專業原則」者,認為基於醫療專業之自主性,醫師應説明之範圍應由醫師為專業醫學上之判斷,即以理性的醫師在個案的情況下都會告知病人的資訊為標準,又稱「理性醫師標準」,藉此界定告知説明事項之範圍,以免花費過多不必要的時間説明一