醫事法學教室

## 醫療器材故障 之民事責任

Civil Liability for Medical Device Failure

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### 摘要

病人於醫院就診時發生損害,並非肇因於醫師醫療行為之過失,而係醫師所使用之醫療器材故障所致,因器材是否具備安全性並非其注意義務之範圍,故個別醫護人員不構成侵權行為,並可能因而造成病人之求償障礙。惟醫療機構內配置足夠、隨時可供使用、具備安全性之醫療器材,以及對醫療器材定時為保養、維護,本屬醫院應盡之契約上給付義務,若醫院疏於踐行上述義務,導致醫療器材故障,醫院即應對醫療契約當事人或受契約保護效力所及之人,負債務不履行之損害賠償責任。此外,醫療器材之維護、保養亦為醫院應盡之交易安全義務及組織義務,就此等義務之違反,病人得依侵權行為規定向醫院求償,且基於醫療器材故障屬醫院可掌控風險之範圍,應改由醫

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關鍵詞:附保護第三人作用契約效力(validity of attached third party role contract)、組織責任(liability of organization)、僱用人責任(enterprise liability)、舉證責任轉換(conversion of burden of

proof)

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院就其已對醫療器材盡維護、保養義務一節負舉證責任,從而發生舉證責任轉換之訴訟法上效果。

When the patient went to the hospital for treatments, but some damage occurred to him, which not caused by the medical treatment of the doctor, but because the medical devices used by the doctor were malfunctioning. But the safety of medical device is not included in the duty of care of the physician who is engaged in medical treatment, so that the single medical staff don't constitute any infringement; if the patient wants to ask the hospital to take the enterprise liability for the illegal act of the individual medical staff, there might be an obstacle to the claim. But the contractual obligation of hospital is that the hospital should not only be equipped with adequate, ready-to-use and safe medical devices, these medical devices should also regularly be maintained. However, if the hospital is negligent for the maintenance of these medical devices. and, as a result, the medical devices are malfunctioning when the physician engages in medical treatment, the hospital shall be liable for damages caused by the nonperformance of obligation to the medical contract parties or the person affected by the contract protection. In addition, the maintenance of medical device is also an obligation of transaction security and liability of organization to the hospital. According to paragraph 184 section 1 Civil Law, the hospital should be liable for an infringement in case of violation of liability of organization. Moreover, the failure of medical device is within the scope of controllable risk of the hospital, so the hospital should bear the burden of proof for the maintenance obligations of the medical device, and make the effect of the conversion of burden of proof in the procedural law.

# 壹、案例

新生兒A之母親B前往醫院生產,由婦產科醫師甲、值班護士乙負責接生,因發生肩難產情況,甲醫師即採取真空吸引輔助方式吸出新生兒A,當時A無呼吸、無哭聲,甲醫師欲以嬰兒甦醒器急救,卻發生機器彈簧片彈開而無法供應氧氣,延誤急救時間,導致A腦部永久病變。A起訴主張嬰兒甦醒器未保持隨時可正常操作之狀態,醫院應就甲醫師、乙護士之過失負損害賠責任等情;被告則抗辯甲醫師僅負責醫療接生行為,對於醫療器材之正常使用並無注意義務,而嬰兒甦醒器雖然是由值班護士乙負責點收,乙護士與前任值班護士交接時確實有清點設備,當時嬰兒甦醒器氧氣充足,機器彈簧片彈開之情形非乙護士可預見,亦無過失,醫院亦毋庸負責等情。

### **貳、爭點**

- 一、嬰兒甦醒器無法正常運作,甲醫師或乙護士是否有過 失?
- 二、醫院是否應就嬰兒甦醒器無法正常運作,負損害賠償 責任?

### 參、解析

#### 一、民法第188條僱用人責任之適用疑義

民法第188條第1項規定:「受僱人因執行職務,不法侵害他人之權利者,由僱用人與行為人連帶負損害賠償責任。但選任受僱人及監督其職務之執行,已盡相當之注意或縱加以相當之注意而仍不免發生損害者,僱用人不負賠償責任。」則僱用人侵權責任之成立要件為:僱用人與受僱人間有僱傭關係、受

僱人不法侵害他人權利、受僱人執行職務、僱用人對受僱人之 選任及監督其職務之執行有過失,且該過失與損害結果間有因 果關係;而僱用人選任監督之過失及與損害間之因果關係均由 法律推定,僱用人得舉證加以推翻。於醫療侵權行為責任體 系,醫院依民法第188條規定負侵權行為責任之前提,必須以 其所屬之個別醫護人員有不法侵權行為,亦即被害人如欲請求 醫院負侵權責任時,必須先具體指明其損害係何特定醫師或負 責人之行為所致,且必須指明個別之醫護人員確實有過失,醫 院始須負僱用人之侵權行為責任。

本件醫護人員對A實施急救之過程,因嬰兒甦醒器彈簧片 彈開,無法供應氧氣而為使用,致急救過程延宕造成A之永久 性腦部損傷,而甲醫師負責接生之醫療行為,就嬰兒甦醒器是 否隨時屬於正常可使用之狀態等情,顯然不屬於甲醫師負責之 範圍,甲醫師就此自無注意義務存在,故無過失可言。而婦產 科值班護士乙於交班時之交接範圍,包含醫療器材之點收、確 認交班時嬰兒甦醒器等醫療器材處於正常運作狀態,倘交班時 嬰兒甦醒器即已無法正常運作,乙護士卻未確實檢查而未發現 醫療器材故障情事,乙護十就此即有過失,醫院即應就乙護十 之過失負連帶賠償責任。然而,如該嬰兒甦醒器於交班時尚能 正常運作,而是在使用過程中突然發生故障,此可能係肇因於 醫療器材本身製造、設計不良,或疏於保養之故,未必為乙護 十所能事前察覺、防免,如乙護十於交班時確實有點交醫療器 材之數量及確保處於可使用之狀態,應認乙護十已盡其注意義 務,至於醫療器材製造過程之瑕疵或負責保養器材之人有疏未 維護保養之過失,則不屬於乙護士之過失,此種情況下,若於 A起訴時無法確認醫院內係由何人、何單位負責醫療器材之維 護、保養,而僅主張醫院應就甲醫師及乙護士之侵權行為負僱 用人之連帶賠償責任,則因此部分均非屬甲醫師及乙護十注意 義務之範圍,難認甲醫師及乙護士有過失存在,醫院即毋庸