

無侵權行為 而有債務不履行 用藥不當事例

A Case on Adverse Drug Reaction
which is characterized by Non-Performance
of Contract instead of Tort

黃滄昕 Yi-Hsin Huang 編譯

平成29(ワ)年第175號損害賠償請求事件

令和6年5月8日函館地方裁判所



摘要

原告A因子宮肌瘤等症狀而於被告醫院接受被告C醫師開立口服避孕藥處方之治療，惟長期服藥6年後竟出現意識障礙，經診斷為血栓症所致癱瘓等，故原告A與其配偶B起訴被告C等違反注意義務。原告主張其血栓肇因於系爭避孕藥，被告C與其他醫師忽略系爭藥物之禁忌症，更未進行必要檢查。法院認為，依系爭避孕藥之用藥說明，原告A屬於因審慎投藥但風險仍可接受之類別，並鑑於系爭避孕藥因長期服用而累積血栓可能之效果，不排除原告A血栓症與系爭藥物無因果關

關鍵詞：共同侵權行為（joint tort）、血栓症（thrombosis）、債務不履行（non-performance）、避孕藥（contraceptive）、醫療契約（contract for medical treatment）

DOI：10.53106/241553062025080106007

係。然而，原告A之血栓症肇因於系爭藥物之最後一次處方，而該處方非被告C所開立，故原告主張被告C負侵權責任並不合理。至於被告C與其他醫師未依用藥說明書進行必要檢查，固然違反注意義務，則被告醫院基於診療契約而有債務不履行之責任。

Plaintiff A received a prescription for oral contraceptives from the physician C as the defendant at defendant's hospital for symptoms such as uterine fibroids. However, six years after taking the medication, A developed impaired consciousness and was diagnosed with paralysis due to thrombosis etc. Therefore, A and her spouse, B, sued C and others for breach of duty of care. A claimed that her thrombosis was caused by the contraceptive pill in dispute, and that C and other physicians ignored the contraindication to the drug in dispute and failed to conduct the necessary tests. The court held that, according to the instructions for the controversial contraceptive, A belonged to the category of those who were prudent in taking the drug but still had an acceptable risk, and in view of the effect that the controversial contraceptive had the potential to accumulate blood clots due to its long-term use, it couldn't be ruled out that A's thrombosis wasn't causally related to the controversial drug. However, A's thrombosis was caused by the last prescription for the drug at issue, which wasn't prescribed by C. A's claim of tort liability against C was unreasonable. As to C's and the other physicians' failure to perform the necessary tests in accordance with the drug inserts, it is clear that they breached the duty of care, and that C's hospital was liable for non-performance regarding the contract for medical treatment.

壹、事實概要

一、事件概要

原告A（初診時42歲）因月經過多等症狀至北海道八雲町經營之八雲綜合醫院（下稱被告八雲町醫院）就診，在約6年8個月的期間（2007年3月～2013年11月）接受了34次口服避孕藥處方，以治療子宮肌瘤或子宮腺肌症。2014年1月（發病時49歲）開始出現意識障礙，診斷為腦靜脈竇栓塞導致右半身癱瘓及失語症，被評為身體障礙一級（極重度）。A與丈夫B以八雲町及主治醫師C為被告，主張「侵權行為」及「債務不履行」，求償約28,000萬日圓。

二、雙方主張

原告方主張，A血栓症的發病是由於C及其他醫師持續開立處方藥物所導致，C及其他醫師忽略藥品說明書中禁忌症對象，未經必要的檢查和觀察其病情就隨意開立藥物，且未說明血栓症風險，違反說明義務。即使發病前最後一次處方並非C開立，因其他醫生是基於C的方針對A開具本件藥物，可認為「共同」進行了本件藥物的處方，應視為共同侵權行為，被告醫院應承擔使用者責任。

對此，被告方則主張，A血栓症的發病並非由於本件藥物的處方所致，且被告醫院的醫師們並無任何注意義務違反，即便有注意義務違反，也與血栓症的發病無因果關係。

三、判決經過

函館地方法院（2024年5月8日）判決如下：

（一）被告八雲町醫院應支付原告A共194,447,629日圓，及自2023年11月18日起至支付完畢之日止，按年利率5%計算之利息。