

Exploration on Legal Matters of Medical damage of Medicolegal Expertise

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Abstract: The case of medical damage compensation disputes has become a hot topic of social public concern at present. China's legislation in this respect is relatively lagging behind, leading to discrepancies stay in judicial practice judgments and differences appear in different court trials on cases with the same nature, which violates the principle of justice of law. This article discusses the applicable laws and regulations to properly handle such cases from the aspects of medical damage compensation liability, evidential burden distribution and forensic testimony.

1. Introduction

As the legal awareness of Chinese citizens has gradually increased, various types of disputes between doctors and patients have been increasing. The limitations of the law itself and the imperfect legislation in our country make more difficult problems stay in the medical damage dispute cases when trialing. The particularity of medical activities and the professional problems of such cases are important reasons for the disputes over medical damages. After the promulgation of the "bylaws handling medical malpractice" and "several provisions of the civil evidence law", there is a legal basis for handling such cases. However, there are still some controversial difficulties in the definition of civil liability and the evidential burden distribution. This paper analyzes the difficult problems in the practice of examination and approval of medical damage disputes from the legal point of view, and it is expected to benefit the theoretical development and trial practice.

2. The concept of medical compensation liability

The concept of medical malpractice is different at home and abroad. The Japanese jurisprudence defines it as all personal accidents that occur when the recipient of medical treatment acts as the victim in medical-related situations. The medical malpractice in our country originated from the provisions of the "procedure for the handling of medical malpractices" issued in 1987. It refers to the incidents in which the negligence on diagnosis and treatment of medical staffs directly cause death and disability that leads to dysfunction[1]. The scope of medical malpractice in China is relatively small, and the "procedure for the handling of medical malpractices" extends the scope of medical malpractice. Article 49 of the "procedure for the handling of medical malpractices" stipulates that if it not belongs to medical malpractice, medical institutions shall not be liable for compensation. It limits personal injury to a significant extent to reach a significant level to be a medical malpractice.

It is not conducive to protecting the legitimate rights and interests of patients to stipulate that medical malpractice is the precondition for medical institutions to assume liability for compensation. It is necessary to further define the concept of liability for medical damage in order to more clearly determine the civil liability for medical damage. Medical damage compensation cases are not limited to medical accident damage. According to the law, medical institutions shall bear the responsibility for non-accident medical damage. Expanding and defining the scope of the concept accords with the basic principles of civil law and is conducive to fully protecting the civil rights and interests of patients.

3. The nature of civil liability for medical compensation

Civil liability refers to the legal consequences that the subject of civil law relationship obligations violates the rights of the subject of civil rights in civil affairs undertakes them according to law. The definition of the legal nature of civil liability is the prerequisite for the correct use of law. The legal nature of liability should be clearly defined in the trial of medical damage compensation disputes.

The doctor-patient relationship is the jural relation between the medical institution and the patient due to the diagnosis and treatment behaviors. Both the doctor and the patient are civil subjects, the relationship is established and the right and obligations are determined and autonomy of will is implemented. Medical treatment involves the protection of patients' personal rights, which can constitute the content of doctor-patient relationship. The legal nature of medical damage compensation disputes is defined by the legal nature of the doctor-patient relationship.

There are different views on the legal nature of civil liability in medical compensation disputes. Contractual liability theory believes that the doctor-patient relationship is a civil contractual relationship. The nature of civil liability for medical damage compensation disputes is defined as the contractual liability for violating civil contracts. In theory, it can be regarded as a liability for medical contract breach, but it is more difficult to use in practice and less used in practice.

The tort liability theory believes that the civil liability for medical disputes is a civil liability for tort. This view holds that medical personnel should bear civil liability for damaging patients' right to life and health because of the medical malpractice damages caused by negligence. Medical behaviors are characterized by strong professionalism. In the doctor-patient relationship, patients are in a disadvantaged position. According to the general principle of tort liability, it is difficult for patients to prove the tort facts of medical personnel in practice.

The theory of special tort liability holds that the civil liability for medical damage compensation disputes is selective. This view holds that the legal nature of the doctor-patient relationship is an atypical contractual relationship. The patient's medical treatment produces a medical service relationship. Medical institutions are not fulfilling their civil contract obligations for medical damage caused by negligence. But medical damage is a special kind of infringement. Article 4 of "bylaws handling medical malpractice" stipulates that the medical institutions shall bear the burden of proof on the tort action caused by act of medical treatment according to the causal relationship between the damage result and the medical action, which makes the liability for medical damage compensation a special tort liability in civil law.

The legal nature of medical damage compensation in China should be positioned as a tort dispute. China's contract law is suitable for the principle of liability without fault. Damages for breach of contract are limited to property losses. Medical contracts do not conform to the basic characteristics of the contract law. Medical compensation disputes are consistent with the characteristics of tort liability [2].

4. Doctrines of liability fixation for medical damage compensation

The legal responsibility of civil liability makes the determination of responsibility for medical disputes of great significance. The doctrine of liability fixation is the standard stipulation for determining the civil liability of the actor. China's rule system of civil liability consists of fault liability, no-fault liability and fair liability. When the principle of fault liability is applied, the actor's fault cannot be determined, and presumption of fault can be implemented, which presumably assumes the subjective fault of the actor according to the fact of the damage. The difference between the principle of presumption of fault and the principle of general liability for wrongs lies in the burden of proof.

The liability for medical damage compensation is a special civil liability. The "bylaws handling medical malpractice" determines that the burden of proof is suitable for the cases of medical damages disputes. Article 8 stipulates that the medical party shall bear the burden of proof on the causal relationship between medical acts and results in medical tort actions. Therefore, the principle

of liability for wrongs is applicable to medical damage compensation disputes.

The reversion burden of proof is a remarkable feature for the presumption of liability for wrongs. The liability for medical accident infringement adopts the principle of presumption of fault. Due to the complex and professional medical technology, it is necessary to determine the fault of the actor by means of the presumption of fault. Proving evidence by doctors is helpful to ascertain the facts.

Using reversion of burden of proof to presume liability for wrongs is applicable only to medical damage compensation cases. Disputes arising from accidents involving medical errors should consider the principle of fairness in civil law liability.

5. Distribution of burden of proof in medical damage compensation disputes

The burden of proof refers to the responsibility of the parties to a civil suit to prove their claims. It concludes behavioral responsibility and result responsibility. The core issue is what criteria should be allocated to meet the requirements of fairness so that litigation can be completed quickly. The inversion of burden of proof is required in special cases[3]. It takes the classification of legal requirements as the precondition standard of the distribution of burden of proof. The bearer of the burden of proof determines the evidence efforts that the parties are required to pay.

The implementation of the "bylaws handling medical malpractice" incorporates medical institutions into the scope of presumptive fault liability in the form of judicial interpretation. Medical institutions must bear the burden of proof. It embodies the legislative purpose of fully protecting the legitimate rights and interests of patients. The problem of the ability of the vulnerable groups to provide evidence has been solved, which promoted medical institutions to actively prevent and control medical damage incidents.

The provisions for the inversion of burden of proof constitutes the core of the evidence system for medical disputes, and the provisions of the "bylaws handling medical malpractice" should be correctly understood. Although the reversion of burden of proof is implemented, the inversion of the burden of proof can not be understood as the exemption of the burden of proof by patients. The plaintiff is still responsible for the burden of proof. Medical institutions do not bear all the burden of proof. Medical behavior is a high-risk behavior, and some behaviors cannot be foreseen controlled by modern medicine. In the distribution of the burden of proof, only the medical institution is required to bear the burden of proof on the causal relationship between the medical behavior and the damage result.

6. The appraisal of medical damage

The appraisal of medical malpractice is the focus of attention of both sides in doctor-patient relationship. It refers to the process that makes technical approval for medical accidents and identifying the primary responsible person and other responsible persons guided by medicine. The result of medical malpractice appraisal directly affects the nature of disputes. The "bylaws handling medical malpractice" stipulate that technical appraisal of medical malpractice shall be organized by the medical association. The right to identify medical associations should be considered from many perspectives.

The medical association is not the only legal institution responsible for the identification of medical malpractices. The medical association is an academic group. It only intervenes in the medical accident identification when entrusted by the administrative department unilaterally in administrative treatment of medical accident disputes.

The parties have the right to choose the institution that undertakes the expert medical opinion. The "bylaws handling medical malpractice" point out that the parties may decide the qualified personnel through negotiation, and if it is negotiated uncertainty, the court will designate the personnel. Forensic expertise is more impartial than medical malpractice expertise. The conclusion drawn by forensic doctors is more scientific after collecting and sorting out expert opinions. Forensic doctors are less likely to perjure an appraisal [4]. But opponents argue that forensic knowledge of the patient's condition is not comparable to that of clinical experts. The strength of

forensic technology in China is not very balanced, and the focus of medicolegal expertise and clinical medical expertise is different. Medicolegal expertise is mostly by legal medical experts, and the accuracy and impartiality are difficult to be guaranteed.

There are differences between medical malpractice appraisal and forensic appraisal. There are repeated identification and difficult conclusion due to different differences and contradictions in judicial practice, which will affect the efficiency of the trial and cause the parties to question the fairness of the judgment. The judges should play an active role in presiding over the case and provide a basis for the proper use of the law. The judges should have the right of examination, it means they can examine the legitimacy of medical accident appraisers and conclusions according to law, and change the practice of attempting nothing and accomplishing nothing in the expert conclusion.

7. Suggestions on appropriate handling of medical damage disputes

At present, there is no tort law in China to settle medical damage compensation disputes. The scope of adjustment of the "bylaws handling medical malpractice" is limited to the compensation for damage caused by medical accidents, and the scope of application is relatively small. It only stipulates compensation for mental loss caused by death and disability, resulting in different compensation standards and contents. As an administrative regulation, it is not scientific enough to settle medical damage disputes which belong to the relationship of civil law. It can not be used as a legal basis for medical damage compensation cases. In order to better protect the legitimate rights and interests of patients, it should be considered to separately formulate a law specifically dealing with medical damage disputes, or set a special chapter in the civil code. The legislative content should take medical damage as the object of settlement, clarify the rights and interests of both doctors and patients, clarify the causal relationship of medical personal injury compensation and the burden of proof.

After the promulgation of the "bylaws handling medical malpractice", the number of medical damage compensation disputes increased significantly [5]. If there is no reasonable control, the doctor will have a strong self-defense prevention mentality, which will adversely affect the normal operation of the hospitals. It is urgent to establish a liability insurance system for medical damages. After a medical accident, the insurance company shall pay the medical damage expenses that should be compensated. Establishing a sound medical damage compensation system is conducive to the balance of interests between the patients and doctors.

In expert medical opinion, the appraisal institution shall enable both doctors and patients to participate in the appraisal process throughout the whole process to ensure that both parties supervise the appraisal process, and the relevant materials submitted must be promptly feedback to improve the authority of the appraisal conclusion. The transparency of the appraisal process helps medical institutions and patients participate in the identification process and helps the appraisal more regulated.

Improving the appraisal information communication mechanism and building a platform for information exchange between medical institutions and patients to reduce the occurrence of contradictions. Expert medical opinion does not require both doctors and patients to exchange relevant information before appraisal, so the parties should have the opportunity to state their views in the appraisal process. Some systems in civil proceedings should be borrowed. The medical institution and the patient may be consulted on the procedural issues such as the reason for the appraisal, and then following procedures can be performed. If the accreditation body determines that it is missing, it is necessary to notify both parties to communicate certain issues, and information exchange can done in certain conditions.

The professional competence of the appraisers is different, and the credibility of the appraisal conclusions is largely influenced by the composition of the appraisal team. Therefore, the improvement of appraisal procedure should be done from different angles. Medical institutions and patients should have the right to express their wishes about the selection of appraisal members. If a party has hesitation about the final appraisal members, they may provide a written document to

express their views. The parties shall be informed in writing of the reasons for unreasonable reasons. When an institution chooses an appraiser, it may be agreed by both parties and referred to the court for the determination of the appraiser. If the parties do not agree, then the court will designate.

Balancing the interests of the parties in tort law will affect the development of social economy. Therefore, the balancing effect of tort law on social interests should be correctly recognized. In the medical damage compensation disputes, the victims shall be compensated by legal property rights, and the negative effect of the huge compensation of public funds on the development of medical care shall be considered. The limit compensation system should be implemented and the basic principles of the medical damage limited compensation system should be established.

8. Conclusion

This article discusses how to correctly understand and properly handle medical damage compensation disputes from the aspects of medical damage compensation liability and its rules and principles, the distribution of burden of proof, etc. The simple analysis on the future medical damage compensation disputes is done from the legal point of view, and several legislative ideas are put forward to provide useful theoretical exploration for dealing medical accident disputes compensation in China.

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