

Research on the Identification of Medical Damage Cases

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Abstract: Medical disputes are acute social problems caused by many factors. With the further deepening of the reform of the medical system, doctor-patient conflicts have become more prominent, and their common manifestation is the dispute over the attribution of medical accidents. How to prevent disputes, alleviate medical conflicts, properly deal with medical tort cases, and improve and refine the legal mechanism of doctor-patient conflicts are particularly important. For a long time, due to the complex and professional characteristics of medical damage cases and the status difference between doctors and patients, and the application of medical damage compensation law involving a large number of professional and complex evidence issues, it has become the primary problem for the district court to accurately grasp the evidence of the case in medical tort litigation, and rationally use the evidence to make a fair judgment. The crux of medical disputes lies in the evidence problem. In view of the strong professionalism in medical disputes, expert opinions and expert assistants' opinions often become the core evidence, and their accurate examination and judgment become the top priority in the settlement of medical damage cases. At present, the appraisal of medical damage faces many specific difficulties and challenges. Therefore, this paper advocates the introduction of a reasonable dialogue mechanism between technology and rules, such as evidence-based evidence from the medical perspective of technology, auxiliary rules construction.

Keywords: medical damage cases, evidence, appraisal opinion, expert assistants

1. Introduction

Medical disputes are acute social problems caused by multiple factors. With the further deepening of the reform of the medical system, doctor-patient conflicts are becoming more and more prominent, and their common manifestation is the dispute over the responsibility of medical accidents. How to prevent disputes, alleviate medical conflicts, properly handle medical tort cases, and strengthen and perfect the legal governance of medical disputes are particularly important. In the affiliated hospital of the author's medical school, most of the doctor-patient conflicts are caused by disputes over the access to evidence and how to preserve it. For example, patients and their families questioned the existence of suspicious medical supplies deliberately forged and sealed in medical institutions, and altered disease course records. The bad practices in the practice of medical damage compensation litigation and the absence of evidence rules related to medical damage compensation aggravate the contradictions between doctors and patients. In judicial practice, for example, some courts emphasize

that the patient is the weak one in handling medical damage litigation, and thus favor the patient, or the behavior of the patient "making a scene" makes the appraisal organization and the court afraid, because the appraisal organization and the court are afraid of the patient shifting the battlefield. The absence of evidence rules, such as how to implement the presumption of fault, the continued existence of the "dual" mechanism of identification, the lack of understanding of medical forensics, so that the quality evaluation instead of fault evaluation, derived to find the "problem" of the hospital and so on. The above medical damage compensation litigation system intensifies the antagonistic relationship between doctors and patients. The current medical system problems make doctors also victims. Doctors not only have limited ability to repeatedly communicate with patients about diagnosis results and treatment measures, but also have to deal with patients' doubts about disease outcome, treatment effect and treatment plan ability, as well as the pressure of hospital income generation and the assessment task of superiors. With the continuous deepening of the reform of the national medical and health mechanism, how to deal with the performance appraisal model in the form of DRGs medical insurance payment has become another problem for modern hospitals and medical staff [1].

The core crux is the evidence problem in the liability of medical malpractice. On the one hand, the professional characteristics of medicine determine the information asymmetry between doctors and patients, and the lack of trust between doctors and patients. Once the communication between doctors and patients about medical risks is not smooth in advance, or the two sides lack effective communication after the event, medical conflicts are easy to occur. On the other hand, the rapid development of medical technology not only makes people have higher expectations for the accuracy and cure of medical diagnosis and quality, but also brings new risks arising from new technologies. When treatment results do not meet patients' expectations, doctors may be more responsible, resulting in a sudden increase in medical confrontation. When patients have unsatisfactory treatment results in medical treatment, some patients even accuse medical behaviors of medical accidents or medical errors and demand compensation without any identification. In fact, few medical disputes can be identified as medical accidents through the appraisal of medical accidents. Xiao Qinglun, a famous expert in medical reform, once pointed out that China's medical reform needs to improve the medical literacy of the people. It needs to make them understand that when the public is ill, medical personnel can only use the level of diagnosis and treatment technology, which also includes the advanced level of equipment of medical institutions themselves, and treat patients with science and knowledge, but they cannot guarantee that the patients will be well treated.

In the case of medical damage compensation, evidence is the key issue of litigation. In the process of mediating medical disputes in the affiliated hospital of the author's medical university, it was found that first, in most cases of disputes or disputes, the appraisal procedure of medical damage would be started. Therefore, the number of appraisal opinions of medical damage liability litigation is numerous and increasing year by year. The second is the existence of the form of "dualization of appraisal" for a long time, the current judicial practice in China has the phenomenon of "confusion of appraisal system", there is no objective standard for each case to use the appraisal of which kind of institutions; Third, due to the technical professionalism of medical disputes and other reasons, the problem of "authentication instead of trial" is relatively prominent. Medical damage appraisal opinions often determine the final trend of the case trial results [2].

2. Analysis on the Challenges and Dilemmas of Medical Damage Appraisal

The technical appraisal opinion of medical damage is the only "man-made" evidence among the eight types of evidence stipulated in the Civil Procedure Law. The appraisal of medical damage has gradually formed a mode in which medical societies master the technical appraisal of medical accidents and judicial appraisal institutions master the judicial appraisal of medical faults. The dual mode of medical damage appraisal has Chinese characteristics. This is the embodiment of the

development of China's medical and health services and the reform of the judicial appraisal system, as well as the social result of the current distrust in the judicial field. In the doctor-patient dispute litigation, the two sides mainly struggle in the appraisal opinion, and the litigation is protracted. The dispute focus of continuous appeal is the disagreement of the appraisal opinion, which is also the important reason why the trial practice of medical litigation lasts longer than that of general cases. The dualistic mode of medical damage appraisal continues to exist, and the voices of law and medicine circles calling for reform are becoming more and more powerful. Medical disputes in practice often focus on the "distrust" of the opinion of damage appraisal. There are both technical and normative factors behind it. This article will analyze the dilemma of medical damage appraisal opinions from the perspective of representation, technology and regulation [3].

2.1. Challenges Faced by Medical Damage Appraisal

2.1.1. Accurate Positioning of Medical Damage

The essence of identification can fully feel the confusion and specific difficulties in the practice of medical damage identification through the above review of the theoretical status and practical cases of medical damage identification. In medical damage disputes, judges often have difficulty in grasping the medical technical standards, and have been relying too much on the technical identification of medical damage, and even have the phenomenon of no examination, no judgment without identification. The Judicial Interpretation of Medical Damage issued on December 14, 2017 does not take into account the objective fact that patients have relatively weak litigation ability by reversing the burden of proof, and instead adopts the burden of proof to solve the problem. That is to say, the proof obligation of causality and medical fault is transformed into the obligation of applying for medical damage appraisal, and the patient assumes the obligation of filing the appraisal. Therefore, the patient should undertake to file an application for medical damage appraisal according to law in the lawsuit. The patient needs to pay the appraisal fee in advance. If the appraisal cannot be carried out due to failure to pay the appraisal fee, the patient will bear the adverse consequences. Therefore, there are many similar cases in practice, once the patient does not apply for and pay the appraisal fee in advance to start the medical damage appraisal, the patient will bear the adverse legal consequences. In practice, in the absence of judicial appraisal of medical damage, it is clear that the medical party should bear the obligations according to the existing legal provisions, and the violation of the aforementioned obligations can directly indicate that the medical party has violated the obligation of diagnosis and treatment. Therefore, as long as there are these behaviors and the patient is harmed, the judge can directly assume that the medical institution is at fault, and then directly claim compensation to the medical institution. Without the need to initiate the medical damage appraisal, is the medical damage appraisal a necessary link in litigation and dispute mediation? It should be understood that the expert's appraisal opinion is an important evidence of litigation in civil trial, but it is not a natural basis for case determination. The judge should not only examine its form, but also examine the relevance and legality of the appraisal opinion according to relevant legal provisions.

2.1.2. Reasonably Draw Lessons from the Appraisal Opinions of Medical Damage

Facts have proved that the court should not completely rely on the appraisal opinion, but examine the appraisal opinion of medical damage as a kind of evidence, and determine the strength of its proof and whether to adopt it through qualitative debate in the court, which reflects that the "appraisal" is no longer the "conclusion" in the process of court trial, which is also the real realization of the transition from "appraisal conclusion" to "appraisal opinion". It is a further refinement of the current laws and regulations on the review and identification of the relevant procedures of judicial appraisal. When the originality, authenticity and integrity of the medical records provided by the doctor and the

patient are in dispute, it is necessary to identify the identity of the medical records involved first, that is, the authentication of physical evidence. Authentication is the basic proof of evidence and the premise to judge whether the evidence is admissible or not. After the preliminary judgment of the electronic medical record involved, it is confirmed that there are many modifications in the electronic medical record, which leads to the loss of authenticity and originality of the medical record data, it is obviously impossible to conduct judicial identification of medical fault and causal relationship based on the electronic case. The court needs to fully respect the analysis of medical malpractice appraisal opinions on medical professional problems, especially the causal relationship between the fault in the diagnosis and treatment behavior and the patient's damage results, and it needs to take the appraisal opinions as the basis for judgment. According to the law, the appraisal opinion of medical injury is only a kind of litigation evidence in civil trial, and the court still needs to cross-examine evidence, judge and choose, which is not a natural basis for deciding the case. In the substantive review and judgment of the appraisal opinion, the judge should not be influenced by the opinion, so the judge should not only learn from the reasonable components of the appraisal opinion, but also logically discard the unreasonable opinions based on the effective evidence, carefully analyze the causal relationship between the medical behavior and the death result, and determine the corresponding degree of responsibility and cause participation legally and reasonably according to the case situation. In essence, the expert's opinion is also a kind of evidence, which can reflect the real situation of the case, relate to the facts to be proved, and the source and form are legal, so it can be used as the evidence of the case. As for whether the appraisal opinion is accepted by the court, whether it can be used as the basis for determining the facts of the case, and whether the case needs to be re-authenticated, it depends on the cross-examination of evidence provided by both parties and the certification of the court [4].

2.2. Dilemma Analysis of Medical Damage Appraisal

2.2.1. From the Perspective of Representation: The Problem of "Distrust" in Medical Damage Appraisal

The distrust of medical damage appraisal opinion is reflected in several aspects in practice. First, the reappraisal rate of medical damage appraisal application is high; Second, the appeal rate of both sides against the medical damage appraisal opinion is high; Third, based on the interpretation of media reports, the public has "distrust" about the appraisal opinion. The lack of authority, credibility and neutrality of medical damage appraisal leads to public distrust, which further affects the mediation and settlement of doctor-patient conflicts. The distrust of medical damage appraisal is an important reason for the appraisal to become the bottleneck of the litigation process. In the practice of doctor-patient conflict mediation, medical dispute mediation committees mostly analyze the causal relationship of contradictions in the form of expert consultation. Most of these experts have relevant practical experience in medicine and law. The purpose of people's mediation committees is to resolve disputes without fully understanding the facts of the case. Different from mediation, litigation and trial require the court to determine the liability of compensation according to the evidence and judge whether there is fault in the diagnosis and treatment. Therefore, it is necessary to recognize the facts in the form of identification. The appraisal opinion of medical damage is the key evidence in the proof link of the trial. Once both parties disagree with the appraisal opinion and refuse to accept the judgment, they will frequently apply for the appraisal again [5].

2.2.2. Standard Perspective: The Technical Standards of Medical Damage Appraisal Are not Unified

At present, there is no further refinement and guidance for the identification of medical damage in Chinese law, which leads to the continuous existence of the "dual" mechanism of medical tort identification, which affects the local courts to use different laws when trying medical tort cases and disputes, and even the phenomenon of "different judgment in the same case", which affects the judicial justice. The dualistic mode of medical damage appraisal continues to exist. Due to the differences between the medical association and the judicial appraisal in terms of the appraisal subject, content, procedure, conclusion and system function, it is still controversial in practice which kind of appraisal opinion should be used as the basis for the identification of medical infringement cases in litigation. Medical association appraisers are all composed of clinicians with rich practical experience in medical institutions. However, such appraisers inevitably make value judgments on the diagnosis and treatment of a patient, thus affecting the objectivity of appraisal opinions. However, the main problem of forensic experts is that due to the lack of clinical practice, they can only make inferences based on the consequences of diagnosis and treatment in the face of complicated situations such as difficult conditions, which may lead to more "dogmas".

3. The Perfect Countermeasure of Medical Damage Appraisal

In order to further improve the rules of medical damage appraisal, many scholars have provided many ways to improve, which can be summarized in three ways. The first way is for the medical association to improve the relevant appraisal system, so as to completely replace the judicial appraisal, and realize the situation that the medical association monopolizes the medical appraisal. The second path is to establish a "unified" medical damage liability system by the judicial appraisal, so as to bear the medical damage liability and break the liability appraisal led by the medical association. The third path is that the state authorizes or sets up any institution for unified control, and the judicial appraisal institution and the medical association jointly establish a unified national expert database of medical damage appraisal.

3.1. Improve the Medical Damage Appraisal from the Perspective of Evidence-based Evidence

3.1.1. Evidence-based Medicine

Evidence-based medicine, also known as evidence medicine, was first proposed by international epidemiologist David Sackett in 1996. The main concept is that doctors should rigorously and accurately use all research evidence to make clinical decisions for patients. Later, Sackett perfected evidence-based medicine as the integration of the best scientific research evidence, patients' willingness and doctors' clinical experience, emphasizing that any medical decision should be based on the best research evidence. Evidence-based medicine has developed the classic systematic rules for evaluating the level of medical research literature, such as systematic literature review > strict evaluation of subjects > strict evaluation of individual papers > randomized controlled observational study > cohort study > case-control study or report > expert opinion.

3.1.2. Evidence-based Medicine and the Identification of Medical Damage

In practice, it is very difficult to identify medical damage. Firstly, due to the objectivity of medical technology development itself, it is still difficult to explain the pathogenesis and outcome of many diseases clearly. Secondly, the medical damage result with multiple causes and one effect weakens

the scientific nature of effective methods in analyzing and judging the influence degree of various causes on the damage result. Therefore, it is particularly difficult to accurately analyze and identify the degree of responsibility and causal relationship in medical behavior.

3.1.3. Effective Combination of Medical Damage Identification and the Best Evidence

The issue of evidence is always the fundamental core problem in the identification of medical damage. Following the best research evidence is the technical requirement and academic basis for the identification conclusion, and also the fundamental guarantee of scientific accuracy. The author believes that the development of evidence-based medicine provides technical support for the scientific conclusion of medical damage appraisal in the collection and evaluation of evidence, focusing on the experience and skills of the medical damage appraiser, the willingness of the client, and the best evidence-based data of the current research to make the appraisal opinion closest to the truth of the case. For example, based on evidence-based medicine, the expert can determine whether there is a causal relationship between the diagnosis and treatment behavior and the damage consequences. The evidence-based method can be used to compare the causal relationship of similar cases, for example, to analyze the probability of a drug causing the patient's renal function impairment. Then compare the causal relationship of the case with the statistics of evidence-based data, and then analyze and determine whether the case follows the overall objective law. This kind of demonstration process can not only be used as the technical implementation means of the application of evidence-based medicine by the expert, but also can be used as a reference for the judge to consider the evidential power of the appraisal opinion when exercising his discretion. In addition, with the rapid development of scientific data platforms, there are currently evidence-based medicine research platforms such as the International WHO Clinical Trial Registry platform, the Cochrane Collaboration network, and the Network for Improving the Quality and Transparency of Health Research in China. The development of these databases will also make the evidence attribute of expert opinions strongly manifest. Through the combination of evidence-based medicine, the relevant data were collected, sorted out and graded, and the evidence level of each literature was determined, which was then used as the basis for identification and the problem of "distrust" was eliminated.

3.2. Improvement from the Perspective of Unifying the Qualification of Expert Witnesses

It is well known that medical damage appraiser will greatly affect the quality of medical damage appraisal opinion. The author believes that the technical standards of medical appraisal are not unified, which is ultimately a problem of "people". If the medical appraisal system cannot be completely unified in the short term, can the quality of the appraisal be improved from the perspective of unifying the qualification of the expert, so as to alleviate the distrust problem of the appraisal mechanism of medical damage at present? The expert database that can be reasonably shared by different appraisal institutions, and the unified appraisal standard and thinking can solve many problems caused by the lack of unified appraisal personnel on both sides. The author believes that only by unifying the personnel and standards of medical association and judicial appraisal institutions for medical damage appraisal, establishing cooperative sharing and information disclosure of expert data, and then unifying the appraisal theory and method, standardizing the appraisal procedure, thus forming a good fair competition mechanism, allowing the expert with strong appraisal ability and the appraisal institution that can ensure the appraisal quality to carry out relevant work, conducive to the survival of the fittest. In order to make the medical damage appraisal opinions return to scientific, normative and public welfare. To introduce evidence-based medicine, the most important problem is to let the expert have the thinking of evidence-based medicine in the appraisal, and to identify the medical process and causal relationship with basis and evidence; The second is to master the methods of

evidence-based medicine, collect relevant literature, sort it out and classify it, and determine the evidence level of each literature, which can be used as the basis for identification and eliminate the problem of "distrust". A qualified evidence-based medicine expert should not only master the basic medical knowledge, but also cultivate the ability and knowledge reserve of evidence-based medicine, including evidence-based thinking ability and evidence evaluation ability, familiar literature retrieval ability, skilled background knowledge of clinical epidemiology and the ability to acquire professional data. Through the comprehensive training of the above abilities, professional appraisers can calmly cope with the increasingly complex medical appraisal work.

4. Conclusion

The handling of medical tort cases is related to the resolution of doctor-patient disputes, the sustainable development of medical disciplines, and the allocation of medical resources. It also has specific practical significance for comprehensively promoting the rule of law. The current medical system problems make doctors also victims. They not only have limited ability to repeatedly communicate with patients about diagnosis results and treatment measures, but also have to deal with patients' doubts about disease outcome, treatment effect and treatment plan, as well as the pressure of hospital income generation and assessment tasks from superiors. With the continuous deepening of the reform of the national medical and health mechanism, how to deal with the performance appraisal model in the form of DRGs medical insurance payment has become another problem for modern hospitals and medical staff. According to the existing laws and regulations in China, the current fault-based liability system for medical tort may lead to improper moral damage of medical staff, and also sow the seeds of trust loss for doctor-patient disputes. This is not only not conducive to the diagnosis and treatment of patients' diseases, but also not conducive to avoiding medical damage. It may also increase the economic burden of patients and lead to new doctor-patient disputes.

In the face of such a high incidence of medical disputes, China has issued a large number of laws and regulations and local judicial documents, and repeatedly explored many problems concerning the information asymmetry between doctors and patients. The author believes that it is of great significance to clarify the evidence problems in medical damage cases for the prevention and settlement of doctor-patient disputes. In view of the strong professionalism in medical disputes, expert opinions and expert assistants' opinions often become the core evidence, and their accurate examination and judgment become the top priority in the settlement of medical tort disputes. Through the review of the theoretical status and practical cases of medical damage appraisal, we can fully feel the confusion and specific difficulties in the practice of medical damage appraisal. Compared with other disputes, the appraisal opinions of medical damage are irreplaceable in the mediation and settlement of doctor-patient conflicts. In medical damage dispute litigation, judges have always relied too much on the technical appraisal of medical damage due to the difficulty in grasping the medical technical standards.

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