



Big Data Analysis Report on Trial of Medical Damage Liability Dispute Cases in China in 2021

Zihui Cheng^{1,a}, Jing Li^{2,a}, Min Zhou³, Lu Zhang¹, Lingjie Kong¹, Jie Zhang¹, Songyue He¹, Yong Zhang^{2,b}

¹ Beijing Fayuan Judicial Expertise Center of Scientific Evident, Beijing, China

² The Research Group of Medicine-Law, Beijing, China

³ Civil Division, The Primary People's Court of Qingdao Shibei District, Qingdao, China

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Abstract: Objective: To analyze the trial process and results of the 2021 medical damage liability dispute cases based on big data to understand the basic situation of the current medical damage liability dispute cases. Methods: The judgment documents of people's courts published from January 1, 2021 to December 31, 2021 were retrieved and searched through the website of China Judgment Documents, and then the relevant data were collected. Results: According to the data summary and data discussion in the same year, the geographical distribution of cases, the characteristics of the defendant's medical structure, the distribution of litigation departments and other data were summarized. Conclusion: According to the results of the basic investigation, the basic characteristics of our current medical dispute cases have been understood, but also the division of responsibility and the problems have been analyzed on the whole, and the corresponding suggestions have been put forward according to the questions, hope to help.

Keywords: medical damage, disputes over liability, trial of cases, the data analysis

Introduction

Since the founding of the People's Republic of China, the Civil Code of the People's Republic of China, the first landmark law named after the code, will be officially implemented in 2021, marking that China's civil law has fully entered the "era of Civil Code". To this end, From the standpoint of combining medical treatment and law, the team conducted statistics, sorting and analysis on the trial of medical damage liability dispute cases in the national court system in 2021. Based on the update of laws and regulations in the field of medical law, the key points and changing trends are interpreted, aiming at guiding doctors and patients to rationally safeguard their rights and helping the compliant and orderly development of the medical and major health industry.

1. Materials and methods

In order to obtain detailed and reliable trial data, this study searched and queried the judgment documents of people's courts published between January 1, 2021 and December 31, 2021 through the website of China Judgment Documents. Firstly, keywords "civil cases, liability disputes for medical damage" were searched to search the judgment documents of cases published in corresponding years. Based on the search results, the key words "first instance, second instance and retrial" are further searched to find out the number of first instance cases and second instance cases among all the published cases, which is conducive to analyzing the acceptability of civil trial results. Thereafter, all trial cases involving disputes over liability for medical damage will be downloaded and classified according to the following research contents: (1) Geographical distribution of litigation cases; (2) Characteristics of the defendant's medical institution; (3) Distribution of litigation departments in medical institutions; (4) Main dispute points of the first and second instance; (5) The judgment of the first and second instance; (6) Degree of liability of the defendant hospital for civil fault; (7) Common reasons for the failure of the medical institution as defendant; (8) Common reasons for failure of the plaintiff; (9) Court confirmation of disputes over medical records;

^a Zihui Cheng and Jing Li contributed equally to this work and should be considered as co-first authors.

^b Corresponding Author: Yong Zhang. The Research Group of Medicine-Law, Beijing, China. Email: yihahui@126.com.

2. Research results

2.1 Geographical distribution of litigation cases

According to the geographical distribution, the situation of region 2021 in medical liability dispute cases is shown as the figure below:

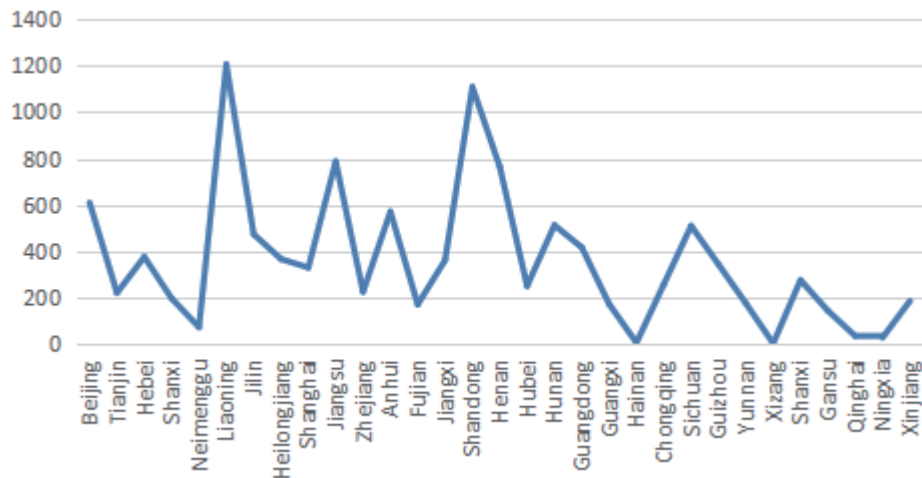


Figure 1. Geographical distribution

In terms of geographical distribution, Liaoning, Shandong and Jiangsu provinces top others due to the population

With the higher density, the probability of medical dispute liability is also greater. From the geographical distribution, with the continuous improvement of our civil legal awareness, the provinces with similar cases are constantly expanding. Based on the basic geographical characteristics, the overall geographical distribution of medical damage dispute cases in China is uneven, and the incidence of such cases is higher in areas with more concentrated economy and population.

2.2 Characteristics of the medical institution as defendant

Comprehensive hospitals are the main defendants. With the continuous rise of folk medical strength in recent years, the private medical institution begun to gradually flourish and medical liability disputes of private medical institutions show an upward trend, the specific results shown in the table below:

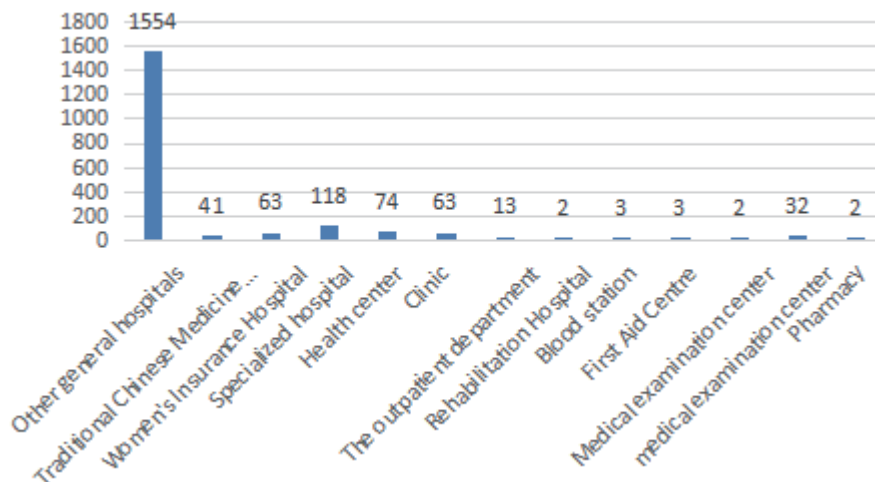


Figure 2. Distribution of the medical institutions as defendants

2.3 Distribution of litigation departments in medical institutions

From the perspective of department distribution, the specific results are shown in the figure below:

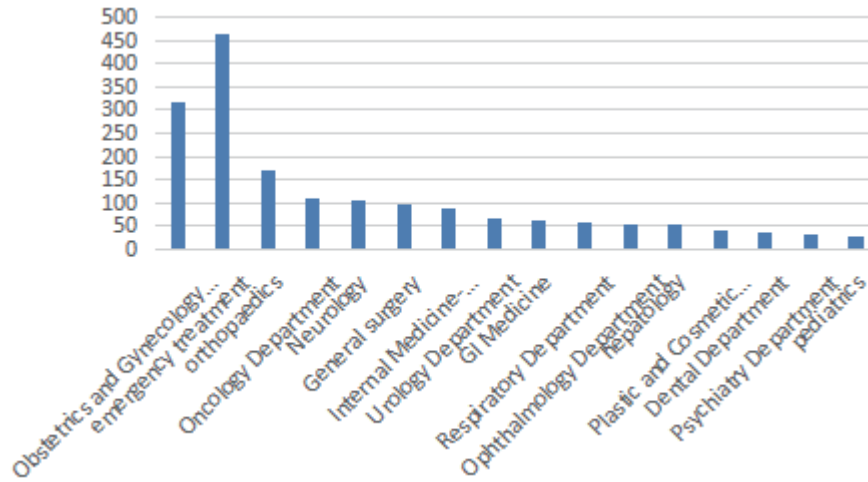


Figure 3. Department distribution

According to the results in 2021, the department with the most medical dispute cases is the emergency department. From the perspective of departments, the departments with high frequency are emergency, obstetrics and gynecology, and orthopedics, and the emergency department has the most cases and disputes. The main reason is that there are more disputes after admission due to various accidents, which is also the focus of follow-up management.

2.4 Main dispute points of the first and second trials

In the case of medical disputes, the main disputes of the first instance are as follows:

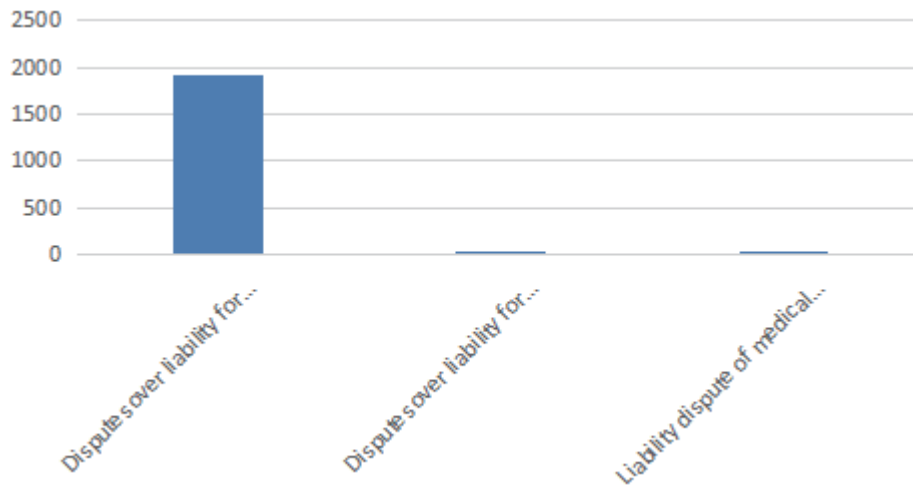


Figure 4. Main points of contention

According to the results, the most controversial dispute lies in the liability dispute for injury. If both parties disagree with the result of the first instance, the second instance will continue. The main dispute in the second instance is shown in the following figure:

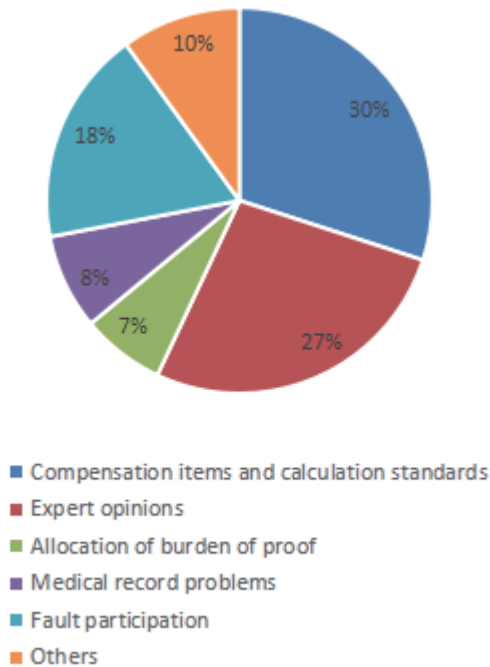


Figure 5. Dispute points of the second trial

From the discussion of the main disputes at present, the main focus of the disputes lies in some fixed labeling disputes. According to the dispute, it can be seen that the relevant legal content in our country is still not sound.

2.5 Judgment of the first and second instance

According to our basic legal provisions, in the judgment of the medical dispute liability case, if any party disagrees with the result of the first instance, it can continue to put forward the request of the second instance. The first and second court rulings for 2021 are as follows.

The judgment of the first instance is as follows:

Table 1. First instance judgment			
	Patient appeal	Hospital appeal	Note
2021	18%	80%	Compensation rate of 2% based on the principle of fairness

After the first trial, the appeal situation of the second trial is as follows:

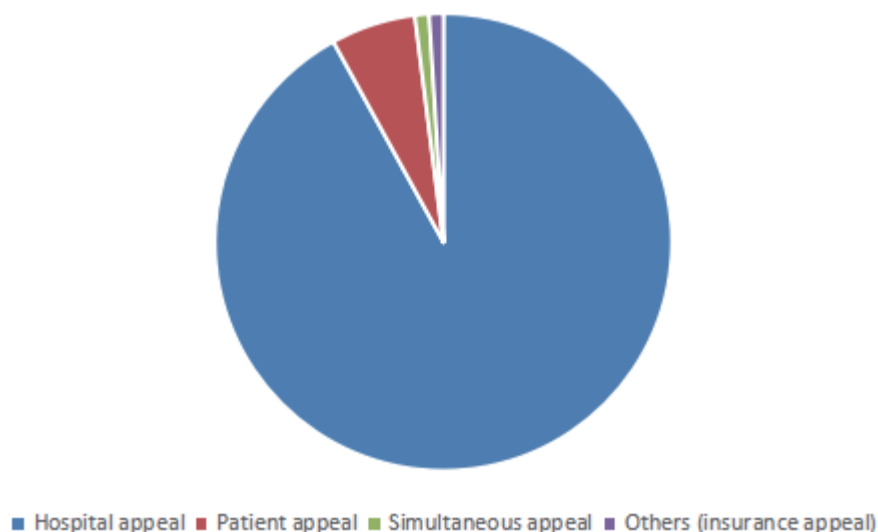


Figure 6. Appeals of the second instance

The result of the second trial is also shown in the figure below:

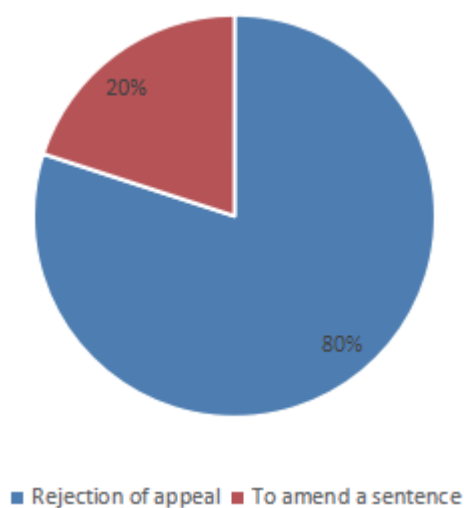


Figure 7. Results of the second trial

2.6 Degree of liability of defendant hospital for civil fault

Generally speaking, the division of liabilities shouldered by the defendant hospital is determined based on the division of medical liabilities, most of which belong to civil liabilities. From the perspective of the basic division of liabilities, the specific results are shown in the following figure:

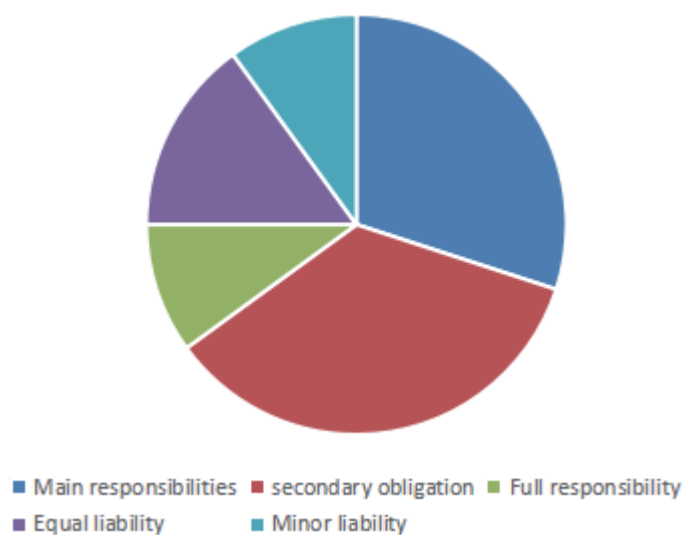


Figure 8. Results of the second trial

It can be seen that the primary responsibility and secondary responsibility are occupy the most proportion, that is to say, in the basic division of responsibilities, the responsibility of the hospital is still the main cause of disputes.

2.7 Common reasons for failure of lawsuit of medical institutions as defendants

The causes and results of the main failure of medical institutions are shown in the following table:

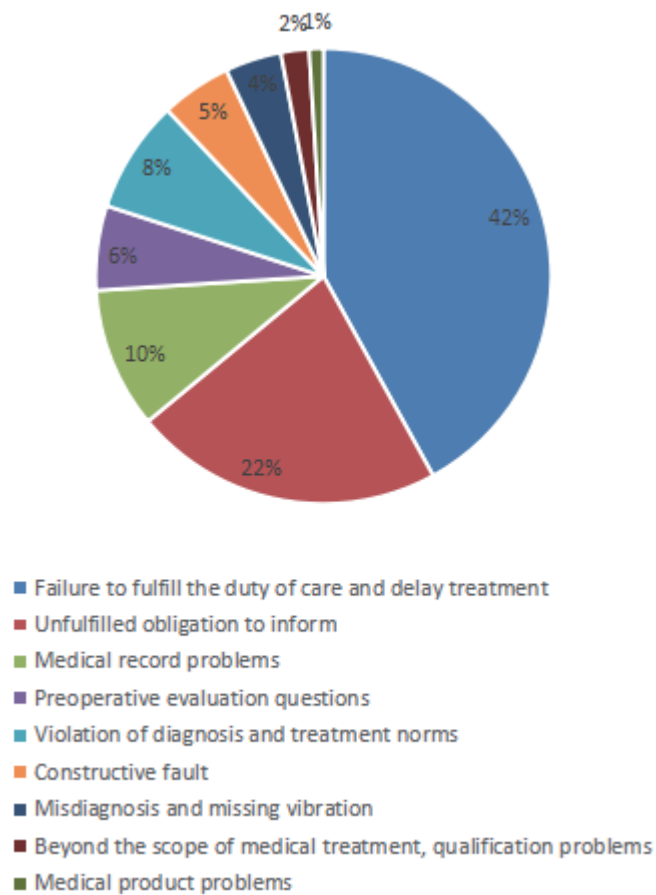


Figure 9. Main causes of failure

2.8 Common reasons for the plaintiff's loss

The common reasons for failure of the lawsuit of patients are shown in the following table:

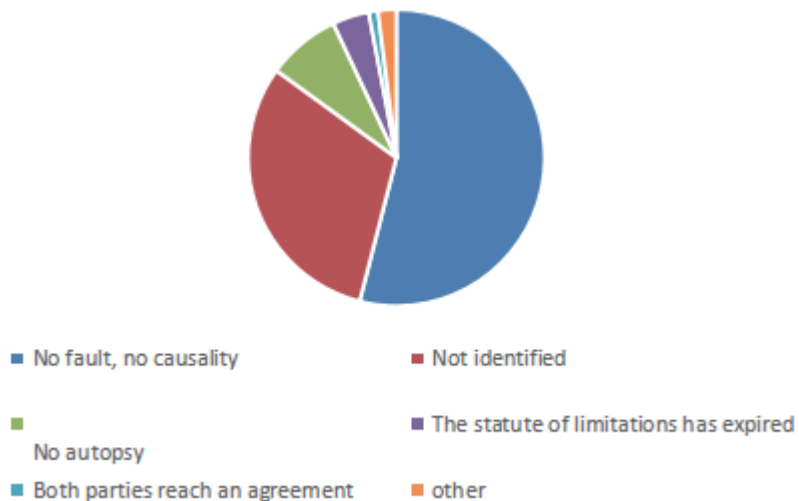


Figure 10. Statistics of causes of failure in lawsuit

2.9 Court determination of medical records dispute

The results of the court determination of medical records are shown in the figure below:

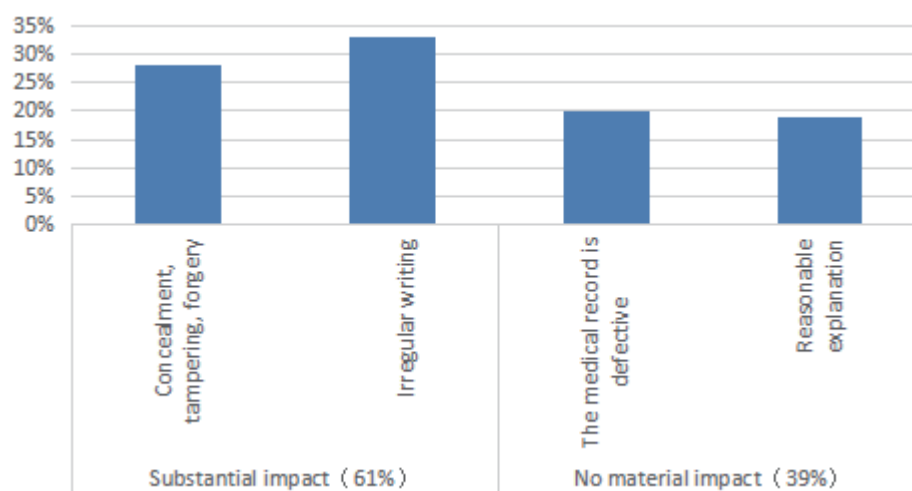


Figure 11. Main points of dispute in medical records

Medical record is the most important evidence in the case of medical damage liability dispute, and it is also one of the focal points in the dispute between doctors and patients. The common disputes focus on whether the hospital has hidden, falsified medical records, and whether the problems of medical records will affect the proportion of medical damage liability of medical institutions.

In 2021, we continue to divide the impact of medical record problems on medical liability into two categories: material impact and non-material impact. Among them, the material impact represents that the medical record after tampering has a substantial impact on the court in the process of liability identification, which has more serious consequences. No material impact means it does not affect the division of responsibility. The problem of medical record is also one of the more common problems in medical disputes. In practice, response management should be improved.

3. Discussion

3.1 Summary of characteristics of medical damage liability dispute cases

From the perspective of overall feedback, the main body responsible for medical damage is still medical institutions. According to the relevant provisions of the regulation on the administration of medical institutions, medical structure is defined as engaging in the course of the disease diagnosis and medical treatment activity structure, and some personal career in the medical activities of illegal practice medicine, for example, the standard cannot be applied for this part of the responsibility, that is not recognized as medical damage liability disputes, and only the provisions of the civil code shall apply.

From the perspective of practice, main body with the liability for damage behavior is still a medical personnel, including doctors and other medical personnel. From basic medical structure, it can be seen that blood stations, individual rehabilitation hospital has entered the medical liability and the scope of physicians include medical practitioners and assistant medical practitioners. It refers to the professional medical personnel who have obtained the qualification of medical practitioner or assistant medical practitioner according to law and have been registered to practice in institutions for medical treatment, prevention and health care.

Without qualification in medical practitioner or assistant medical practitioner. Village doctors who are registered to perform preventive, health and general medical services in village health institutions are also considered medical personnel. Assistant medical practitioners who independently engage in clinical diagnosis activities and have personal accidents constitute the liability for medical damage, and medical graduates who have not obtained medical qualifications and engage in corresponding medical activities under the guidance of superior physicians can constitute medical personnel prescribed by law and become the subjects of the liability for medical damage. As for whether nurses can be the subject of the liability for medical damage, only the registered nursing personnel who cause personal damage to patients in nursing activities can constitute the liability for medical damage.

From the perspective of medical liability division, in the conventional perspective, medical liability damage mainly represents problems in medical treatment. According to the plaintiff and defendant's interpretation of responsibility, the physical examination, implantation of medical devices, diagnosis, nursing, rehabilitation and observation of patients in the

hospital all belong to medical activities. However, cosmetic activities without surgery, drugs, medical devices and other traumatic medical techniques are not considered as medical activities.

The liability for medical damage is the liability arising from the personal rights and interests of the patient. Liability for medical damage refers to the liability arising from the patient's body, health and right to life being damaged by the medical institution, and the cause of the damage is negligence. Patients and health damage which refers to the personal injury caused by patient: damage to patients means killing patients: right of patient's body damage refers to the essence of integrity of the patient's body, which forms the integrity of the damage. As a consequence, it caused the body disability, that is, to cause illegal harm to the body of patients without the consent of the patients

The forms of liability for medical damage are vicarious liability and not true joint liability. Vicarious liability, also known as indirect liability, transference liability and extended liability, refers to the form of tort liability in which the liable person is liable for the damages caused by the actions of others and the objects under his/her management. The most basic characteristic of vicarious liability is the separation of the liable person and the doer. The doer commits the tort and the liable person bears the tort liability. The liability for medical damage is a typical vicarious liability. The medical staff is responsible for the medical damage, but the medical institution is responsible for the compensation.

And only the medical institutions in their own responsibility for compensation, for the fault of the medical staff can exercise the right of recourse. The liability form of medical product damage liability is not true joint liability. The Civil Code states that "patients may claim compensation from producers or blood providers, as well as from medical institutions. Where a patient claims compensation from a medical institution, the medical institution shall have the right to recover compensation from the responsible producer or blood provider after making the compensation ". This is not true joint and several liability. The ultimate owner of product liability is the producer or blood provider, rather than the medical institution.

3.2 Deficiencies in legal aspects of current medical damage liability dispute cases

According to the big data analysis of medical damage liability dispute cases, there are still some legal deficiencies in the overall discussion of the plaintiff and defendant, which are as follows:

The first is the standard of compensation. In the new "Medical Malpractice handling Regulations", the scope of medical malpractice was expanded, and the procedure of medical malpractice identification should be improved, and the standard for medical malpractice damages can be raised. However, due to the guiding ideology, legislative techniques and other reasons, in practice, the regulations on the Handling of Medical Malpractice still cannot cover all medical damages, and in the alternative standard, accident compensation in civil compensation is selected. Whether this alternative is reasonable still needs to be discussed. However, it is an indisputable fact that the current legal provisions for medical malpractice still cannot cover all medical damage disputes, which also reflects the imperfection of the law.

Secondly, on the basic nature of the "medical malpractice regulations", it belongs to administrative regulations. According to the provisions of Article 8 of the Legislation Law, the basic civil system can only enact laws. Therefore, the Regulations on the Handling of Medical Malpractice include the legal relationship of medical damage compensation into the scope of administrative management, which has no legal basis. Medical dispute belongs to civil behavior, and the corresponding disposition right of civil dispute is passive, procedural justice and neutrality are the most basic principles of dealing with medical civil dispute. The Regulations on the Handling of Medical Malpractice include medical disputes and administrative power, which not only goes beyond the scope of administrative power, but also violates the principles of procedural impartiality and neutrality in the handling of civil disputes. According to the results of subsequent basic legal treatment, this dislocation is to bring civil disputes into the scope of Xingheng management, itself is a bad dislocation performance.

Finally, the basic assessment of medical damage. According to the Regulations on the Handling of Medical Malpractice, although the organization of medical malpractice evaluation has been changed from the health administration to the medical association, this change has not changed the mode of "self-evaluation" from the system. From the perspective of nature division, although it belongs to an academic group, it still cannot be separated from the administrative nature. In many cases, its internal staff and administrative medical staff have the same interests. Therefore, in the identification of medical damage, whether it should meet the standards of the Chinese Medical Association is still worth discussing.

3.3 Suggestions to improve the occurrence of medical damage liability dispute cases

3.3.1 Pay close attention to medical management and improve medical quality

From the perspective of practice, for the current medical damage liability dispute cases, the main cause is still the failure of the hospital to perform the basic tasks. In order to effectively avoid the occurrence of medical accidents in practice, more attention should be paid to the daily quality management. From the perspective of practice, the implementation of medical

quality management target responsibility management can be followed. At the beginning of each year, the hospital and each department sign a medical quality management responsibility letter, and based on the size of their responsibilities, medical staffs can be divided into direct responsible person, indirect responsible person and management responsible person, internal economic recovery.

3.3.2 Establish a long-term prevention mechanism and attach importance to the implementation of the system

From the perspective of cause analysis, many problems that fail to fulfill the basic responsibilities are also due to the negligence of the hospital's work. The author believes that the problems including the medical record are also the problems caused by the lack of sufficient and effective external management. Therefore, the "three stricts" are used to standardize the management of medical quality. For every link of medical quality management, especially the key links that are with medical safety risks, such as obstetrics and gynecology, delivery room, operating room, supply room, emergency room, check the medical safety risks one by one, and implement the rectification one by one;

Second, strict assessment system. The quality control team composed of personnel from medical department, nursing department, hospital sense and other functional departments inspects and evaluates each department every month; Third, the assessment results should be made strictly in accordance with the system. At the same time, we often organize relevant staff to analyze and discuss the medical disputes that have occurred in the unit or other units in recent years, find out the main and objective causes, and summarize the universal experience and lessons, modify and improve relevant systems in a targeted way, and form a long-term and effective medical quality management and prevention system. Ensure that there are rules to follow in the management of medical quality and the handling of medical disputes.

3.3.3 Strengthen communication and shoulder responsibilities

The medical work itself needs to actively communicate with patients, fully understand the actual situation of patients, and then adopt specific methods more suitable for patients. Therefore, in order to better avoid the occurrence of medical damage liability dispute cases, it is also crucial to ensure that all hospital staff can improve their communication skills and fully shoulder their responsibilities. In specific practice: One is to strengthen the people-oriented principle, quality service for workers can be done and they should "greeted with a smile, take the initiative to greet, the first option (q) is responsible for discharge a trumpet" service mode, from the patient's demand of active services, a symposium held by patients, satisfaction survey forms, such as listen to the opinions of the patients in time, understand the patient needs, the improvement work, Safeguard the patient's right to consume.

The second is to respect patients' right to informed consent. Establishing the system of "five conversations" with patients; Before the operation. When there is a critical, acute or traumatic injury; Before the use of toxic, large side effects or expensive drugs; It standardized the contents of the conversation and signature, improved the condition consent, and the doctor-patient moral responsibility. At the same time, the medical staff can be taught to get rid of the idea of "respecting the doctor", rather they should adhere to the "patient-centered" principle, and earnestly fulfill the duty of informing, which provided a strong guarantee for improving the doctor-patient relationship and reducing doctor-patient disputes.

Conclusion

Based on the big data statistical analysis of medical injury dispute cases in China from 2017 to 2021, the paper makes a detailed analysis of the common types, causes and follow-up processing of medical disputes in China. From the perspective of practice, it also establishes a basic understanding of them, and makes basic advice output from both legal and medical aspects. It is also the key that can be put forward in this analysis. In order to better avoid cases of medical damage disputes and purify the overall medical environment, management is needed for medical practitioners. We also hope that according to this analysis, we can more effectively improve our legal provisions and promote the benign progress of our overall medical system.

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