The Legal System Experience of Medical Disputes in Taiwan and the Enlightenment of China

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Abstract: By introducing the relevant legal experience in the handling of medical disputes in Taiwan, the problem of dealing with medical disputes in the region is mainly manifested in the fact that the treatment of medical criminal liability is too loose. This is a rationalization of medical criminal responsibility in Taiwan society and legislative bodies. Attempts have been made to rigorous medical criminal liability, medical non-compensation compensation systems or mandatory mediation dispute resolution systems. This has certain implications for the construction of a harmonious doctor-patient relationship and the alleviation of medical disputes in China.

Problems in medical disputes in Taiwan

Single medical dispute resolution mechanism. Most medical disputes in Taiwan begin with criminal proceedings, and in the form of incidental civil lawsuits, hospitals or physicians are required to compensate for damages. According to the statistics of the Taiwan Provincial Department of Health, in the 23 years from 1987 to 2010, the total number of medical approval cases handled by the Department was 7,393, of which 5,850 were criminal cases, accounting for 79.13% of all cases. The result of the implied result was 18.3% of the loss or possible loss. In other words, in Taiwan, 80% of medical lawsuits are criminal cases, and medical personnel are likely to accept prosecutors' investigations and prosecutions as long as they involve medical disputes.

In the case of medical disputes, patients or family members in Taiwan prefer to take criminal proceedings, mainly because they are deeply rooted in the concept of “carrying the people by torture”. Patients or family members hope to use criminal procedure to coerce the hospital or physician to compensate for the damage; The patient usually uses the prosecutor to collect evidence in a criminal case to avoid the burden of collecting evidence. Furthermore, patients wish to use criminal proceedings and add incidental civil damages to save litigation costs and reduce the burden of hiring lawyers[1].However, it is not unreasonable whether criminal prosecution can be achieved by deterring the doctors from causing death and injury to the patient. Regardless of whether the doctor has caused death or injury, whether criminal responsibility should be given. In theory and practice, the criminal case is more strict in determining the fault, and the result of most criminal cases is the judgment that the patient and the family have lost the case. Over the years, in criminal proceedings for medical disputes, the rate of patient failure has reached 97%[2].

Insufficient protection of patients' rights and interests. In the case of patients and their families taking criminal incidental civil proceedings, the result of seeking damages often leads to patients not being able to obtain the compensation they deserve, as described above. More importantly, due to the potential criminal responsibility, the patient safety notification system promoted by the medical profession cannot be effectively established. According to the "Taiwan Patient Safety Notification System", it is a notification system based on the five purposes of anonymity, voluntary, confidentiality, non-responsibility and mutual learning. It collects experience related to patient safety, conducts trend analysis, and provides warning messages to medical institutions. And study cases to build inter-agency experience sharing and information exchange to further create a safe medical environment[3].The purpose of the notification system is to detect errors, analyze the nature and causes of mistakes, and establish mechanisms to prevent mistakes

from occurring, to avoid the same mistakes from occurring in different organizations or individuals, and to change the mistakes faced by medical personnel by encouraging abnormal incidents. Attitude.

Although the medical community promotes a system of voluntary reporting without blame, the criminal liability course runs counter to the principle of non-responsibility in the notification system. Physicians may be criminally responsible for fear of reporting wrong medical practices, so most physicians are wrongly wrong. When it happens, I don't want to report it automatically. Frequently notified, only for macro or accidental mistakes. For example, a wrong anesthetic drugs, surgical site errors, the number of blood transfusion pocketed unlabeled missing[4].The patient safety notification system cannot function effectively, and the medical safety environment in Taiwan cannot be effectively improved and improved, which is very unfavorable for the well-being of patients.In addition, when a patient has a medical accident, he or she often seeks the truth, and the truth of the accident, the doctor's apology and damages. However, the burden of medical criminal liability does not help patients to seek truth. However, in order to avoid criminal responsibility, physicians are often reluctant to admit the patient to the case and apologize to the patient. They believe that an apology is tantamount to acknowledging that they made a mistake and becoming an excuse for the patient to file a lawsuit. In the shadow of medical criminal responsibility, it is conceivable that doctors do not cover up all the facts or shirk their responsibilities. In medical practice, when an intern has experienced a medical accident due to lack of experience, the attending physician is unwilling to take responsibility and the intern is the person responsible for the legal responsibility. Not only is the truth unclear, but the responsible person also evades responsibility.

The rationalization of medical criminal responsibility in Taiwan

Because medical criminal responsibility has too many side effects on the medical system, doctors are conservative and take defensive medical treatment and conservative treatment for patients. For dangerous departments, it is easy to cause medical disputes, and doctors can avoid it. Doctors take defensive medical care, which causes waste of medical resources and is not conducive to the universal health care system. Doctors taking conservative treatment may not be beneficial to the patient. How to reduce the medical criminal procedure has become a hot topic in the current world. In order to reduce medical criminal litigation cases, there may be two methods: first, strengthen the investigation authority of the health administrative authority; second, stricter medical criminal responsibility. At the time of the medical dispute, the patient often gives criminal prosecution to the prosecutor, and the prosecutor initiates the investigation. Part of the reason for patients taking criminal proceedings is to use the prosecutor's investigative power to promptly seize cases and avoid evidence loss or alteration. In order to improve this phenomenon, the right to investigate the health authorities should be strengthened, and the right to seize cases should be given to avoid the opening of criminal proceedings.

Secondly, regarding the strictness of medical criminal liability, the medical profession now calls it "the rationalization of medical criminal liability". It is the medical profession's attempt to reduce the criminal responsibility of medical criminals and try to reduce the medical treatment in Taiwan. There are too many criminal litigation cases.

The development model of medical disputes in Taiwan gives enlightenment to China

Compulsory medical dispute mediation system. Sociologists pointed out that in most cases of medical disputes, although the patients adopted the legal mechanism, they continued to negotiate and compromise with the hospital, and most of them ended up accepting compensation or not. It is obvious that the patients and family members of medical disputes in Taiwan have the motive of adopting legal proceedings. They do not regard legal proceedings as the last line of defense for medical justice. They also emphasize that they should punish doctors for medical misconduct, but for promoting doctors. Coordination, venting dissatisfaction with doctors to deal with disputes rashly, and means to protect their own litigation rights[5]. However, for the family members of the

disease, the court proceedings are not a proper dispute resolution mechanism, and the mediation system should play a greater role in dispute resolution.

According to the provisions of Article 99 of the Medical Law, the municipal and county health bureaus have set up medical review committees to serve as mediators for medical disputes. According to the statistics of the Department of Health, between 2002 and 2011, the municipalities and counties and municipal health bureaus had a total of 4,540 applications for medical disputes; the number of mediation cases was 1,671, and the proportion of mediation was 36.8%[6].However, the mediation of the health bureaus in counties and cities in Taiwan is not mandatory, and there is no significant effect on reducing the source of complaints. Therefore, in the December 2005, the Department of Health proposed the draft Medical Disputes Treatment Law. Article 5 stipulates: "Medical disputes should be handled in accordance with this Law before prosecution, telling or private prosecution." Adopt the principle of forced mediation. Subsequently, in April 2008, the department proposed the "Regulations on the Handling of Patient Safety and Medical Disputes". Article 13 of the Regulations stipulates: "Parties of medical disputes may apply for mediation in accordance with the provisions of this Law." It is no different from general mediation.

In August 2012, the Department of Health promoted the criminal liability rationalization and repair measures, and proposed that the "Medical Dispute Resolution and Medical Accident Compensation (Draft)" stipulates the medical "non-compensation compensation system" (medical no-fault compensation), and Standardize the mediation system for medical disputes. In the course of the draft discussion, the most serious dispute is whether the patient or family should adopt a mandatory mediation system and mediate prepositionism. The so-called compulsory mediation system means that after a medical dispute occurs, the parties must first go through a mediation procedure. When the mediation cannot be established, the court will be tried. Conversely, the so-called mediation prepositionism means that after a medical dispute occurs, it must first undergo a mediation procedure. When the mediation is not established, the party may file a lawsuit with the court and request the court to judge. Otherwise, the party’s lawsuit is illegal and should be rejected. .

According to Articles 403 and 242 of the Civil Procedure Law, disputes arising from medical disputes shall be settled by the court before prosecution. The party who is indicting is considered to be the application for mediation. This provision is the provision for mandatory mediation of medical disputes. According to the provisions of this article, the organ for mediation is a court and is limited to civil cases and not criminal cases. In other words, if a patient or a family member of a medical dispute wants to initiate a criminal lawsuit, there is no room for enforcement of the mediation.

In order to reduce the number of cases of medical litigation (especially medical criminal litigation), the Department of Health issued the "Draft Medical Disputes" in August 2012, Article 8 of the provisions; "Medical dispute cases are medical negligent cases of death and injury, patients Or a person who has filed a lawsuit according to law shall apply for mediation to the municipal or county (city) medical dispute mediation committee under the jurisdiction of the medical disputes before filing a civil, criminal or private prosecution. This article provides that the compulsory mediation system and mediation are adopted. Disciplinaryism, medical disputes, without mediation, may not be filed in civil and criminal proceedings.

The provisions of this draft article are not fundamentally different in the case of civil litigation. The difference is that the civil mediation law provides for compulsory mediation, the mediation agency is the court, and the mediation is conducted according to the provisions of the draft medical dispute handling law. The mediation agency is the medical dispute dispute mediation committee of the county and city government health bureau. Therefore, in the course of the discussion, there are few disputes in this part.

Controversy over mediation prepositionism. First, limitation of litigation rights. The Ministry of Justice of Taiwan has taken a firm opposition to this. It believes that the draft stipulates that mediation is not established as a requirement for bringing a complaint or private prosecution, and infringement of the people's right to sue is unconstitutional. According to Article 16 of the

Constitution of Taiwan, the people have the right to be willing, petition and litigation. However, litigation rights are not entirely unrestricted. According to Article 26 of the Farming Land Relief Regulations: “When a dispute arises between the lessor and the lessee, the local township (county, city, district) public office should be reconciled by the cultivated land tenancy committee; It shall be transferred by the municipal or county (city) government arable land tenancy committee; if it is not subject to mediation, it shall be transferred to the judicial organ by the municipal or county (city) government arable land tenancy committee, and the judicial organs shall promptly handle the case and exempt the referee. Fees. According to this, in the dispute over the arable land lease, this law adopts mediation and mediation of pre-positionism, and may not be prosecuted without mediation and mediation. This article stipulates that although it is a settlement of civil private rights disputes, it is essentially a restriction on the people's litigation rights. Its legislative purpose is to reduce litigation, and the mediation of the administrative organs has replaced the court proceedings.The Ministry of Justice of Taiwan believes that the criminal procedure is to confirm the existence and scope of the exercise of rights, and non-mediation and mediation can replace it. However, in terms of reducing the source of litigation and reducing the number of cases in a particular type of litigation, the mediation system is sufficient to reduce the number of cases in civil litigation and criminal litigation. In the current Taiwan society, 80% of lawsuits arising from medical disputes are criminal cases. It is also the practice of criminal proceedings that causes medical personnel to stay in front of their feet and fail to actively diagnose and treat diseases. In order to reduce criminal disputes in medical disputes, by means of compulsory mediation, before the criminal proceedings are filed, the medical and medical parties have the opportunity to conduct consultations and mediation, and resolve disputes by means of reconciliation to ease the sharp opposition between the medical and medical relationships. Nothing wrong.

Second, tell the time limit. The Ministry of Justice of Taiwan also believes that if the compulsory public must be able to bring a telling or private prosecution after the mediation or mediation is not established, it may exceed the telling time limit, and refer to the intention of the fifth letter of the interpretation of the word, fearing that there will be improper restrictions on the people’s litigation rights. Only in accordance with the provisions of Article 237 of the Criminal Procedure Law, telling the sin of the theory, telling the person who tells himself that the person who told the person knows the prisoner within six months, the limit of the period of the telling There is no unconstitutional doubt about the restrictions on the rights of the people. When the time is over, the telling is illegal. The compulsory mediation and mediation pre-arrangement system, although legally required to require the parties to initiate criminal proceedings, should be subject to mediation procedures. In order to prevent the mediation process from being overdue during the reporting period, it is legally stipulated that the applicant who initiated the mediation procedure will not be counted in the calculation of the telling period from the date of application until the termination of the mediation process, that is, the six-month telling period will be suspended. That is enough to avoid the doubts of the overtime period.

The conclusion

The re-examination of medical disputes in Taiwan and the corresponding adjustments were made in the context of the frequent deterioration of doctor-patient relationships due to frequent medical disputes. Some of these are manifested in the fact that doctors are discouraged from treating patients and patients cannot be properly cared for. Therefore, doctors taking defensive medical care are not conducive to the health insurance system and the health of patients. These problems are constantly appearing in the country and are concentrated and intensified in some areas. In this regard, we have borrowed some attempts from the Taiwan region, mainly based on some troubles in Taiwan. For example, in the case of medical disputes, the criminal litigation system can not actually achieve the function of deterring the lawless, but the victimized patients cannot obtain appropriate Compensation. In this regard, China can try to adopt some improvement in the system design concept, withdraw the handling of criminal litigation from the medical dispute handling mode, and instead emphasize the medical dispute resolution mechanism in the form of civil litigation.

Reference

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[6] Source: Taiwan Regional Supervision Institute, Huang Huangxiong and other members of the investigation report, December 2012, 18 pages.