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内視鏡的逆行性膵胆管造影に関する裁判例の解析

(Analysis of legal cases involving Endoscopic retrograde cholangiopancreatography (ERCP))

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Abstract

ERCP have been increasing since the 1990s. Through studying several legal cases, I analyzed the courts' reasoning and decisions on the issue of ERCP related accidental symptoms. After searching several legal databases, I selected 14 cases in which the main issues were ERCP, related procedures and accidental symptoms. I then analyzed the courts' decisions.

Out of five cases in which either the doctor's negligence in causing acute post ERCP pancreatitis, or in performing preventive observation measures were the issue, the court found the doctor negligent in none of them. On the contrary, out of four cases in which negligence was alleged in connection with diagnosis and post-onset treatment, the court found the doctor negligent in all cases. Among cases in which negligence in connection with perforation (duodenal perforation) was the issue, two found the doctor negligent and one did not.

Since the pathogenesis of post ERCP pancreatitis remains unknown, it is difficult for the plaintiff to prove negligence and causation in connection with its prevention and development. On the other hand, doctors tend to be found negligent when follow-up observation and post-onset treatment are the issue. In those cases, causation between negligence and death is presumed, even though the pathogenesis of pancreatitis is unidentified. Doctors are advised to keep detailed records on follow-up treatment for later evidence, especially when doing something outside of the guidelines.

In six cases where failure to inform the patient of the possibility of accidental symptoms was the issue, the court found the doctor negligent in one case and not negligent in five other cases. From an analysis of the judgments, it can be said that when performing ERCP, explaining generally that the patient could develop pancreatitis and that it could severe should suffice with regard to informed consent. However, if there is a special factor making it more likely for the patient to suffer accidental symptoms, the doctor needs to explain so.