

醫療事故侵權責任

謝 哲 勝*

目 次

- 壹、引言
- 貳、醫療事故侵權責任概說
 - 一、醫療事故責任類型
 - 二、醫療事故侵權責任的特性
- 參、醫療事故侵權責任歸責類型
 - 一、故意責任
 - 二、過失責任
 - 三、無過失責任
 - 四、舉證責任轉換
- 肆、醫療事故侵權責任的歸責考量
 - 一、損害承擔
 - 二、預防損害
 - 三、公平
 - 四、效率
- 伍、醫療事故侵權責任的責任範圍
 - 一、客觀範圍
 - 二、主觀範圍
 - 三、懲罰性賠償
- 陸、結論

關鍵字：醫療事故、醫療事故責任、侵權責任、醫療事故侵權責任、舉證責任轉換。

Keywords：medical accident, liability of medical accident, torts liability, torts liability of medical accident, switch of burden of proof.

* 謝哲勝，國立中正大學法律學系教授、臺灣財產法暨經濟法研究協會理事長、臺灣醫療衛生研究協會理事長；美國威斯康新大學法學博士。

摘 要

醫療事故侵權責任課予醫療提供人負損害賠償責任，使被害人不必承擔醫療事故的損害，也不必依契約法向醫療提供人加以請求，此一責任如何加以規範，相當程度地將影響醫病關係，也影響醫療提供人和病人的行為，因而特別值得探討。

本文第二部分首先概括說明醫療事故侵權責任的類型和特性，作為全文探討的基礎；第三部分探討醫療事故侵權責任的歸責類型，凸顯醫療事故侵權責任並不限於無過失和過失責任兩種；第四部分分析醫療事故侵權責任的歸責考量；第五部分闡述醫療事故侵權責任的責任範圍；第六部分總結全文，提出本文結論。

Torts Liability of Medical Accident

Shieh, Jer-Sheng

Abstract

Torts liability of medical accident imposes liability of damages to medical providers. With torts liability of medical providers, the injured would not be burdened the injury, and will not sue medical providers according to law of contract. Torts liability of medical providers influences the relationship between medical providers and patients, and the behaviors of them, and is worthy of exploration.

Part two of this paper firstly introduces the varieties and nature of torts liability of medical accident as the basis for exploration of the whole paper. Part three narrates the varieties of accusation to pinpoint that the torts liability of medical accident is not only two kinds of negligence and no negligence. Part four analyses the considerations of the accusation of torts liability of medical accident. Part five explores the scope of damages of torts liability of medical accident. Part six is the conclusion.