

Tort Laws: Issues in Health Product and Medical Service

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Abstract

In the present day, the consideration on individual rights becomes an important concept worldwide. Any tort is not acceptable and there must be the proper management by the law of tort. The legal case according to law of tort can be seen worldwide. The tort laws involve in several aspects in the society. Here, the authors specific summarize and discuss on an important issue of tort laws, the specific dimension regarding health product and medical service. Interesting reports and case studies are summarized and mentioned in this article.

Keywords: Tort, medical, health, product, service

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INTRODUCTION

Everyone has the rights on one own's body and treasure. This right is accepted by international legal system. The other(s) cannot violate the other one's rights. If there is any action violating the other's belonging, it is considered an unacceptable action. Law of tort is the specific kind of law dealing with this issue. This kind of law exists in any country around the world aiming at peaceful living of mankind. The legal problem regarding violation of law of tort is not uncommon.

In general, any tort is not acceptable. Legally, there must be the proper management by the law of tort. The legal case according to law of tort can be seen worldwide. The tort laws involve in several aspects in various activities in the society. Here, the authors specific summarize and discuss on an important issue of tort laws. The specific dimension regarding health product and medical service are hereby focused. Interesting reports and case studies are summarized

LAW OF TORT AND HEALTH PRODUCT

At present, there are numerous health products. Most products are usually claimed for usefulness by producers. Control of health product quality becomes an important issue to be discussed. It is not uncommon that there might be an overclaim on some health

products by some unethical producers. The adverse effects due to using of low quality under standard products is possible. Daynard and Legresley noted that uncovering incriminating industry documents and publicizing product dangers and industry misconduct was possible and there should be a good system to "to strengthen legal procedures to facilitate these lawsuits and to establish mechanisms for mutual assistance [1]." Indeed, product liability is an important consideration at present.

For health product, the concept of product liability is also applicable. Kelly noted that there are three main issues that should be discussed [2]. Firstly, there is the issue of liability for a product fault [2]. Indeed, the are many cases be directed by legislation back to the manufacturer of the goods due to the concern on product liability [2]. Secondly, patient care technology should be specially focused. A specific aware of anti-discrimination legislation when making placement decisions is very important [2]. Finally, occupational health and safety legislation regarding standards for technology used in healthcare facilities is very important and should not be neglected [2]. Rowthorn et al. noted that "Conflicting interests within the health care system, safety concerns, and little value placed on low-cost interventions inhibit innovation [3]" and "Legal and regulatory

barriers rank among, and contribute to, an anti-innovation atmosphere in healthcare for domestic and reverse innovators alike [3].” Rutkow and Teret also mentioned that “when actions are taken on behalf of a corporate entity, the individuals responsible generally will not face personal liability for the negative results of those actions [4].” Studdert et al. noted that “A remarkable development in personal injury litigation in recent years involves attempts to expand legal claims beyond existing injuries to anticipated future harms [5]” and mentioned that this must be applied for the cases of medical products. Indeed, the medical monitoring for pharmaceutical injuries is very important [5–6]. This becomes an interesting issue in tort law. Studdert et al. noted that this is a specific tort law for public health [5]. Studdert et al. noted that “this expansion of tort law should be applied sparingly, but that the performance of courts to date in these cases gives cause for optimism [5]” and “Judges appear to be paying close attention to sophisticated epidemiological, clinical, and cost-effectiveness considerations [5].” Studdert et al. finally concluded that “Medical monitoring arms the courts with a new mechanism for addressing harms proactively rather than reactively, which could yield new victories for public health [5].” It can be seen that liability under tort laws include both malpractice and product liability [6]. Ross-Lee noted that those issues are important consideration in tort reform [7]. Conk noted that the jury on product defect under the Products Liability Act will becomes more complex in the future [8].

Focusing on the basic requirement for health product, the information to consumer is an important issue. The correct and sufficient information is necessary. This should be included in the product label [9–10]. For health product and dangerous product, guidelines regarding liability in the use of products and safety standards are important issue in control of good manufacturing practice [11–15]. Regarding this process. Michaels and Monforton noted that “The public health system must ensure that scientific evidence is evaluated in a manner that assures the public's health and environment will be adequately protected

[13].” Chen et al. recently proposed that “For victims of adverse drug reactions, tort lawsuits filed in the courts help compensate for the harm suffered and may also serve as warnings to manufacturers to improve drug safety to avoid future legal liability [16].”

LAW OF TORT AND MEDICAL SERVICE

Similar to the situation that is already mentioned for health product, the importance of law of tort in medical service is worldwide noted. As noted by Holsomback and Patry, Traditionally, a “hospital's defense if charged with strict liability (in tort) was that its primary business is to provide services and not sell products [17].” Nevertheless, the quality of the medical service provided by any medical center has to be controlled. The case of problem due to low standard service sporadically occurs. This becomes an issue relating to law to tort [18]. A malpractice is a totally unaccepted event and has to be legally managed [18]. This issue has been well established in USA for years. Illingworth et al. noted that “Although tort reform caps on noneconomic damages in Texas caused the largest initial decrease, increasing quality improvement measures without increasing financial burden also decreased liability claims in Louisiana. Uniquely, this study showed that increasing patient quality resulted in decreased medical liability claims [19].”

The tort claim is not uncommon and can be seen in any kinds of medical service of the hospital. Wang et al. recently studied on tort claims and adverse events in emergency medical services and concluded that “Emergency vehicle crashes and patient handling mishaps were the most common adverse events associated with tort claims against EMS agencies [20].” Following the tort claim, payment from hospital to the patient is common. Schaffer et al. proposed that “A better understanding of the causes of variation among specialties in paid malpractice claims may help reduce both patient injury and physicians' risk of liability [21].” Buletsa et al. concluded that “the legal estimation of medical errors must be based on the single principles enshrined in the legislation and confirmed by judicial practice

[22].” Pukk-Härenstam et al. suggested that “*Systematic collection and analysis of patient-generated quality of care complaints should be encouraged, regardless of the malpractice compensation system in use* [23-24].”

CONCLUSION

The law of tort is an important legal measure for good practice regarding health product and medical service. There are several interesting principles and legal cases on this issue.

Conflict of interest:

None

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