Abstract

Medical profession is the art and science of healing. It encompasses a high rang of healing care practices. This profession needs higher standard of consciousness than common sense. The standard of carefulness of the profession is not the same standard of layman. A health care provider does not need only the properly duty of care but also the properly duty of expert.

Now a day, medical malpractice lawsuit is an infringement case (non-contractual liability). It is a burden of patient to prove that they were treated negligently which the treatment could be called as unprofessional and substandard according to medical general practices. To proof to the court for medical malpractice lawsuit to be valid, the damaged patient must aware, understand the proper process and method during the treatments that she or he was treated improperly and substandard as required. But it is not fair for the patient to understand the process of treatment. It is only the practitioner whom has studied the subject. Even the case that allows to have a physician as an expert witness, his or her opinion may be different based on their experience and expertise. To proof that the medical practitioner is negligent it will be more difficult than other normal cases. In the past the injured patients have not gotten proper care due to the lack and limited of proof as above mentioned.

The purpose of the thesis is to clarify and to study on the principle contractual liability in order to apply the principle with the damages incurred due to the malpractice from the health care provider. The study told that the relation between the health care provider and patient and hospital both private and public, only the service from the health care provider of private hospital can comply with the principle of contractual liability. Because in general the relation between health care provider from public hospital is considered as public service which state obligates to provide to people. It is not considered as a form of contract. I purposely studied on the contractual liability of a health care provider in private hospital. Since the formation of contract for medical service is about the provider and the receiver and the consent of the patient.

My opinion, the consent is not a form of juristic acts according to the civil law. So it is not under the provision of juristic acts and contract. Besides, the thesis is intended to study on contractual liability of medical service, standard of duty of care of the medical professional.

The consequences of the lack of duty of care by the medical professional including the liability of the person in medical profession causes damages due to the malpractice or violate the duty of care as per the standard of medical profession. After a research I would like to conclude that the relation between the medical profession in the private hospital and patient is a contractual liability. The contractual liability of the medical services contract is formed when the medical practitioner does the wrong duty or violates the standard of the duty of care of his profession. To apply the principle of law on contractual liability should create a great deal benefit to the injured person. An objective of the law on contract is that the practitioner (debtor) fails to perform his obligation correctly as per the objective of debt in the contract, any argument on this subject or the burden of proof, the injured person is able to bring the evidence to proof or claim easier than to file a law suit case as the infringement case.