

# Research on Relief Mechanism of Transfusion Infected Person Without Fault

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## Abstract

In recent years, infection cases of no-fault blood transfusion have become one of the important issues that the society has paid strong attention to. After the implementation of the Tort Liability Law, the courts in different places and at different levels have different practices regarding what kind of imputation principle should be applied to such cases and how to allocate the burden of proof. As a result, patients may receive no compensation or less. In order to solve this problem, this paper will discuss how to establish a socialized sharing mechanism on the basis of studying the relevant foreign legal systems. Starting from the construction of insurance system, fund system and other systems, Combined with the existing socialized sharing mechanism of some cities in China, before the law has made provisions on this, the relief system should be built from the system level to ensure the patients' right to get relief.

## Keywords

Non-default transfusion infection; Socialized sharing mechanism; Insurance; Funds.

## 1. SUMMARY OF NO FAULT TRANSFUSION INFECTION

In June 2015, Wang, a victim, suffered fractures due to falls to the people's Hospital of Mengzhou for treatment. During the period of blood transfusion, he received blood transfusion. In January 2017, when he went to the hospital for reexamination, he found that the hepatitis B virus antibody test was positive. He believed that the blood station was not eligible for blood, and asked the blood station and the hospital to bear the responsibility for medical damage. After investigation, the court held that the existing evidence was insufficient to prove the hospital's fault in the process of blood transfusion, and the evidence submitted by the blood station was sufficient to prove that the blood products provided by the blood station were qualified blood products. Therefore, the court ordered to reject the plaintiff's claim.

In the face of such disputes, most victims choose to solve the problem through litigation. The above cases were the cases in which the plaintiff claimed that the blood station and the hospital should bear the liability for medical damage due to the infection of virus in blood transfusion, and all ended in the plaintiff's defeat. In the process of diagnosis and treatment, the hospital carries out blood transfusion treatment for patients, which leads to the infection of patients with extremely difficult or even incurable viruses such as AIDS and hepatitis C. at this time, the hospital should bear civil liability. After the tort law of the civil code came into force in 2021, it also stipulates some treatment methods. However, what is the litigation basis of this legal problem, There is still no clear theoretical basis. To solve this problem, we must first clarify the nature of blood and blood products [1].

## 2. CURRENT SITUATION AND DILEMMA

### 2.1. present Situation

Since 2001, Shanghai has introduced the social insurance mechanism and established a relevant compensation system, which stipulates the compensation amount as 60000 yuan, which greatly ensures the rights and interests of patients to be compensated, and also ensures that blood stations and medical institutions do not have to bear compensation liability on the premise of no fault. Since then, the Nanjing municipal government has also established a similar insurance fund following the practice of the Shanghai municipal government [2].

Nevertheless, the insurance funds in Shanghai and Nanjing still have deficiencies: first, the scope of claims can only be attributed to the hepatitis C virus infection caused by no fault transfusion infection. In 2001, due to the relatively backward health conditions and the chaotic health management system, there were still many AIDS patients caused by blood transfusion without fault. HBV infected persons are even carriers of filariasis and Toxoplasma. These victims can not be compensated by this insurance fund, so there is still some limitation on the scope of compensation. Second, with regard to the burden of proof of blood stations and hospitals, the Shanghai municipal government stipulates that in scattered cases of hepatitis C infection caused by blood transfusion, if the hospital and blood stations can prove that they have no fault in performing their responsibilities, they can be accepted by the court without holding a court session, and the patients can directly claim compensation from the fund, At this time, there is no reasonable provision on the degree of burden of proof borne by medical institutions and blood stations, and the court orders patients to claim directly from the fund without a reasonable and public judgment, which is very easy to cheat the fund premium and exempt the blood stations and hospitals from their responsibilities.

### 2.2. Dilemma

#### 2.2.1 Dispute over the properties of blood products

To solve this dilemma, the first step is to clarify the properties of blood products. According to the Product Quality Act, a product is a product that has been processed and made to be used for sale. A positive said Scholars believe that blood products are made by blood stations after the whole blood components are processed [3]. This obviously belongs to the provisions concerning products in the Product Quality Law, and the application of strict liability at this time will be more conducive to the protection of victims; Negative said [4] According to Some scholars, China implements the voluntary blood donation system, and blood banks are public welfare institutions, so blood and blood products cannot be part of the business. In addition, the imputation principle of no-fault blood transfusion infection cases and the attributes of blood products are two relatively independent issues that should not be confused. In practice, classifying blood products as non-products will be more conducive to legislation setting special provisions for them [5].

#### 2.1.2 Dispute over the principle of imputation

First of all, the imputation basis of the fault liability principle is based on the subjective fault of the doer as the standard. If the doer does not have fault, he does not have to bear the responsibility [6]. According to the Provisions of the Civil Code, if the patient suffers damage in the diagnosis and treatment activities and the medical institution and its medical staff are at fault, the medical institution shall bear the liability for compensation. This shows that no-fault transfusion infection should indeed apply the principle of fault liability, and compensation for victims is possible only if the medical institution or its medical staff is at fault, Professor Zhao said [7] If there is no fault in the hospital and blood bank, the principle of fault liability will not play its due role. In this case, we should seek protection through other means and systems.

Secondly, the principle of no-fault liability means that no matter whether the actor is at fault or not, as long as there is a causal relationship between the actor's behavior and the damage consequence, he shall bear civil liability, which also embodies strict liability [8] It is concluded that the application of no-fault liability will be beneficial for patients to get compensation and effective relief, so as to realize the justice value of law, and will be more conducive to the construction of social sharing mechanism and promote the development of blood collection technology. However, on the basis of the current relevant laws and regulations, patients entered the unqualified lead to virus infection, blood to the blood stations and medical institutions can claim, at this point does not no-fault blood transfusion infection that does not belong to medical malpractice cases of solutions, due to the "window period" and "miss rate", the no-fault blood transfusion infection, how should solve from medical Angle, is still a technical problem, since the current medical technology level, can't make sure the blood stations and medical institutions exists faults, how demanding them high compensation, apply the principle of no-fault never obtained for patients is a high compensation way, However, it is too harsh on medical institutions and blood stations, and at the same time has no legal basis, so it also has certain disadvantages.

### **3. LEGISLATIVE INVESTIGATION ON EXTRATERRITORIAL RELIEF MECHANISM**

#### **3.1. Extraterritorial Status**

In countries such as Denmark and Sweden, the "government insurance model" is adopted. Sweden has implemented the so-called "patient compensation insurance system" since 1975, which covers patients' damage within the normal risk of medical treatment, including infection through no-fault transfusion. The insurance system is insured by the Swedish Insurance Institute, insured by the county council, which is responsible for public health. The county council pays most of the compensation and a small part by the medical staff. Mental compensation is also included in the insurance. The Swedish government also stipulates that the insurance system and the litigation system parallel, citizens can not only apply for insurance compensation, but also Sue for compensation. The Danish government mainly adopts the fund model. The government compensates patients by compulsively establishing "no-fault compensation fund", whose expenses come from government special allocations and taxes. In the compensation system implemented by these Nordic countries, funds, insurance and other means are widely used. However, there is a common feature behind them: the financial support of the government.

Second, the United States mainly adopts "self-preservation mode of medical institutions", Virginia in the United States in 1987 "damage compensation system", and has set up a "damage fund", originally aimed at resolving emergency childbirth and the postpartum women, lack of oxygen and neonatal spine permanent damage caused by mechanical damage, premium source mainly doctor volunteered to pay a certain amount, so called self-preservation mode, the voluntary insurance premium of pay of by the committee for the deposited in the fund management of the fund account, in the compensation scope includes basic medical bills and lost wages, but does not include the mental damage compensation; In terms of litigation, only when the doctor can be proved to be at fault and the medical institution does not pay compensation can litigation be initiated. The connection between the two is not closely progressive or parallel, and therefore, the number of patients who receive compensation is very small.

### **3.2. The Enlightenment of the Current Situation in the Domain -- The Socialized Sharing Relief Mechanism**

Social sharing from the perspective of social standard, the place of risks involved in the government, both doctors and other social groups Shared multi-faceted, with the development of social and economic progress, many risky factors gradually appeared in social life, and gradually by the public cognition, no-fault blood transfusion risk is one of this kind of high risk factors of infection, due to no fault of blood transfusion infection diseases such as AIDS and hepatitis c infection of the victims. How to this kind of risk sharing became the countries need to face one of the important issues, in accordance with the law of our country, the no-fault blood transfusion infected with the high-risk factors fully borne by both doctors, as for other aspects of the society and other groups are not involved in risk sharing, finally only cause the doctor-patient contradiction is more and more huge, both sides for fear will also further enhance the risk, and even lead to hospital may appear "defensive treatment", that is, the doctor in order to avoid risk. Treatment of the sick was kept to a minimum. Traditional risk-taking methods are no longer suitable for today's society.

## **4. THE CONSTRUCTION AND PERFECTION OF SOCIALIZED SHARING RELIEF MECHANISM**

### **4.1. Establish A Compulsory Liability Insurance Mechanism for Blood Transfusion**

The blood transfusion insurance mechanism has been practiced as early as 2001, but it has developed slowly in recent years. The reasons are as follows: First, due to the limitation of medical level and professional medical knowledge, patients and their families do not have a complete understanding of the blood transfusion transmitted diseases, and the participation in the insurance is relatively small. Secondly, insurance companies are commercial companies, and they are not enthusiastic about the insurance type of blood transfusion infection, which has few audiences, complicated procedures, little profit and involves many parties. Finally, the compensation is low. The cost of treatment for hepatitis C is much more than 60,000 yuan, and AIDS even more. Therefore, blood transfusion insurance is not developing rapidly in China.

With the rapid development of economy, there are more and more cases of no-fault blood transfusion infection. Before the technical problems are overcome, the government should take the lead in assuming responsibility and establishing compulsory liability insurance, so as to mobilize the enthusiasm of private insurance companies, so that the patients infected with no-fault blood transfusion can get better protection. It is important to note that the organization, embodied in the solution of medical dispute mediation role more and more big, the insurance companies and hospitals, build system of compulsory liability insurance, again by mediation organization for mediation, finally by the insurance company for compensation, relief mechanism of formation of the trinity, achieve the no-fault blood transfusion infection of external risk sharing [9].

### **4.2. Establish A Compensation Fund System for Infection Caused by Blood Transfusion Without Fault**

Virginia in the United States adopts the injury compensation system, which is mainly characterized by self-insurance mode. In other words, most of the insurance premiums are paid voluntarily by medical institutions, which is easy to cause insufficient and deficit of insurance premiums, and thus causes certain defects in the insurance system. In setting up the fund system of our country's future, you should set up a special committee on the management, the committee shall be fair and just, the most important thing is that patients with medical institutions, blood stations, and even the court has no interest, there is no interest relationship, so can be more fair and good management of funds. In terms of fund sources, first of all, the

government needs to support, and part of the fiscal expenditure should be invested in the fund system of no-fault transfusion infection, so as to avoid the shortage of insurance premiums in the United States. Secondly, compensation funds should be raised from blood banks and medical institutions. Although blood banks and medical institutions have a certain public welfare, they are still profitable in nature. Therefore, it is mandatory to pay a part of their profits as the source of funds, so as to minimize their benefits from the "blood bag".

### 4.3. Improving the Social Security Mechanism

Social insurance is an important part of the social protection mechanism and should therefore be a major aid in solving cases of no-fault transfusion infection. Social insurance is not for-profit, different from commercial insurance, social insurance reflects the characteristics of overall adjustment, as long as the laborer and the employer sign a social security agreement and establish a labor relationship, meet the conditions to enjoy social security, and pay premiums, you can enjoy social security. Among them, medical insurance is one of the major categories of social insurance. The inclusion of no-fault transfusion infection into the scope of medical insurance will help improve the current situation of no-fault transfusion infection.

At the same time, our country should set up a multi-level and high level of social medical insurance system, the first is that "serious health care" system, there is no fault of blood transfusion infection caused by diseases such as HIV/AIDS, hepatitis c is the common issue as an extension of the medical treatment of a serious illness insurance will help to realize the purpose of the establishment of medical security system, for different people, different forms of health care, for a serious illness, disease, shall pay the amount of access to high standards and high relief system.

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