

凌斌 主编
司法精义丛书

医疗 纠纷

审理思路
及裁判标准

白松 著

为医疗纠纷领域众多法律难题提供清晰的路线图和法律对策

- 医疗纠纷的案由及法律适用
- 医疗纠纷的诉讼主体
- 医疗鉴定的程序及鉴定意见的效力
- 医疗纠纷中的病历
- 医疗纠纷损失的确定及计算标准
- 医疗纠纷中的举证责任分配



北京大学出版社
PEKING UNIVERSITY PRESS



北京大学医学出版社

凌斌 主编
司法精义丛书

医疗 纠纷

审理思路
及裁判标准

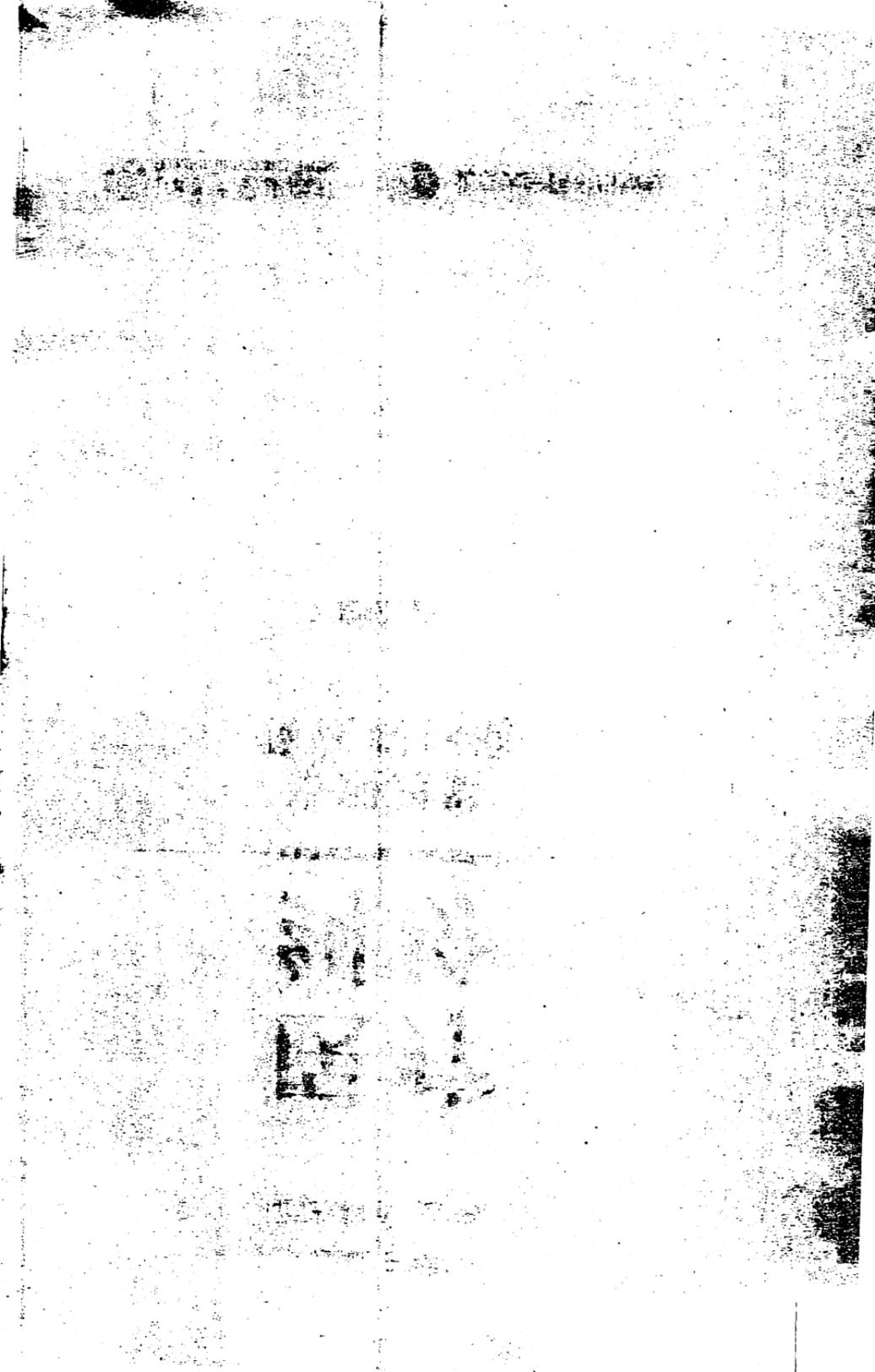
白松 著



北京大学出版社
PEKING UNIVERSITY PRESS



北京大学医学出版社



作者简介

白松

女，1967年出生，北京人，就职于北京市第二中级人民法院民二庭，现任医疗纠纷专业化审判团队负责人，二级高级法官。1989年本科毕业于北京大学法学院，后于2002年至2005年在清华大学攻读在职研究生，获得法律硕士学位。

在三十年的法官职业生涯中，白松曾荣立个人二等功2次、个人三等功9次，获个人嘉奖10余次，先后被评为“北京市双先法官”、“北京市审判业务专家”、第七届北京市“人民满意的政法干警标兵”、“全国法院办案标兵”，荣获“首都五一劳动奖章”、“北京榜样”年度提名奖，2017年被评为“全国优秀法官”。

白松法官在积累大量案例的基础上，注重总结经验、发现问题，参与了《医疗事故处理条例》《侵权责任法》及相关解释等多部法律、法规的立法讨论；合编图书《医疗纠纷法理与实务》，参与撰写《医事法撰写疑案评析》，在《健康报》《卫生与人才》《中国司法鉴定》等多份报纸、杂志上发表案例分析及专业文章。由于具有极强的专业性，白松被业内誉为法官“白大夫”。

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of public administration and government operations. The text highlights how detailed records can help identify inefficiencies, prevent fraud, and ensure that resources are used effectively.

2. The second part of the document focuses on the role of technology in modern record-keeping. It explores how digital systems and software solutions can streamline the process of data collection, storage, and retrieval. The author notes that while technology offers significant advantages, it also presents challenges such as data security, system integration, and the need for staff training. The document suggests that a balanced approach, combining traditional methods with modern technology, is often the most effective solution.

3. The third part of the document addresses the legal and regulatory requirements surrounding record-keeping. It discusses various laws and standards that govern how records must be maintained, including retention periods, access protocols, and data protection regulations. The text stresses that organizations must stay up-to-date with these requirements to avoid legal penalties and ensure compliance. It also mentions the importance of regular audits to verify that record-keeping practices are in line with the law.

4. The fourth part of the document discusses the impact of record-keeping on decision-making and strategic planning. It argues that high-quality records provide a wealth of data that can be analyzed to identify trends, forecast future needs, and inform policy decisions. The author suggests that organizations that invest in robust record-keeping systems are better positioned to make data-driven decisions and achieve their long-term goals.

5. The fifth and final part of the document provides a summary of the key points discussed and offers some practical recommendations for implementing effective record-keeping practices. It encourages organizations to establish clear policies, invest in reliable technology, and foster a culture of transparency and accountability. The document concludes by emphasizing that record-keeping is not just a bureaucratic task, but a critical component of any organization's success.

6. The first part of this section discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of public administration and government operations. The text highlights how detailed records can help identify inefficiencies, prevent fraud, and ensure that resources are used effectively.

7. The second part of this section focuses on the role of technology in modern record-keeping. It explores how digital systems and software solutions can streamline the process of data collection, storage, and retrieval. The author notes that while technology offers significant advantages, it also presents challenges such as data security, system integration, and the need for staff training. The document suggests that a balanced approach, combining traditional methods with modern technology, is often the most effective solution.

8. The third part of this section addresses the legal and regulatory requirements surrounding record-keeping. It discusses various laws and standards that govern how records must be maintained, including retention periods, access protocols, and data protection regulations. The text stresses that organizations must stay up-to-date with these requirements to avoid legal penalties and ensure compliance. It also mentions the importance of regular audits to verify that record-keeping practices are in line with the law.

9. The fourth part of this section discusses the impact of record-keeping on decision-making and strategic planning. It argues that high-quality records provide a wealth of data that can be analyzed to identify trends, forecast future needs, and inform policy decisions. The author suggests that organizations that invest in robust record-keeping systems are better positioned to make data-driven decisions and achieve their long-term goals.

10. The fifth and final part of this section provides a summary of the key points discussed and offers some practical recommendations for implementing effective record-keeping practices. It encourages organizations to establish clear policies, invest in reliable technology, and foster a culture of transparency and accountability. The document concludes by emphasizing that record-keeping is not just a bureaucratic task, but a critical component of any organization's success.

11. The first part of this section discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of public administration and government operations. The text highlights how detailed records can help identify inefficiencies, prevent fraud, and ensure that resources are used effectively.

12. The second part of this section focuses on the role of technology in modern record-keeping. It explores how digital systems and software solutions can streamline the process of data collection, storage, and retrieval. The author notes that while technology offers significant advantages, it also presents challenges such as data security, system integration, and the need for staff training. The document suggests that a balanced approach, combining traditional methods with modern technology, is often the most effective solution.

13. The third part of this section addresses the legal and regulatory requirements surrounding record-keeping. It discusses various laws and standards that govern how records must be maintained, including retention periods, access protocols, and data protection regulations. The text stresses that organizations must stay up-to-date with these requirements to avoid legal penalties and ensure compliance. It also mentions the importance of regular audits to verify that record-keeping practices are in line with the law.

14. The fourth part of this section discusses the impact of record-keeping on decision-making and strategic planning. It argues that high-quality records provide a wealth of data that can be analyzed to identify trends, forecast future needs, and inform policy decisions. The author suggests that organizations that invest in robust record-keeping systems are better positioned to make data-driven decisions and achieve their long-term goals.

15. The fifth and final part of this section provides a summary of the key points discussed and offers some practical recommendations for implementing effective record-keeping practices. It encourages organizations to establish clear policies, invest in reliable technology, and foster a culture of transparency and accountability. The document concludes by emphasizing that record-keeping is not just a bureaucratic task, but a critical component of any organization's success.

16. The first part of this section discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of public administration and government operations. The text highlights how detailed records can help identify inefficiencies, prevent fraud, and ensure that resources are used effectively.

17. The second part of this section focuses on the role of technology in modern record-keeping. It explores how digital systems and software solutions can streamline the process of data collection, storage, and retrieval. The author notes that while technology offers significant advantages, it also presents challenges such as data security, system integration, and the need for staff training. The document suggests that a balanced approach, combining traditional methods with modern technology, is often the most effective solution.

18. The third part of this section addresses the legal and regulatory requirements surrounding record-keeping. It discusses various laws and standards that govern how records must be maintained, including retention periods, access protocols, and data protection regulations. The text stresses that organizations must stay up-to-date with these requirements to avoid legal penalties and ensure compliance. It also mentions the importance of regular audits to verify that record-keeping practices are in line with the law.

19. The fourth part of this section discusses the impact of record-keeping on decision-making and strategic planning. It argues that high-quality records provide a wealth of data that can be analyzed to identify trends, forecast future needs, and inform policy decisions. The author suggests that organizations that invest in robust record-keeping systems are better positioned to make data-driven decisions and achieve their long-term goals.

20. The fifth and final part of this section provides a summary of the key points discussed and offers some practical recommendations for implementing effective record-keeping practices. It encourages organizations to establish clear policies, invest in reliable technology, and foster a culture of transparency and accountability. The document concludes by emphasizing that record-keeping is not just a bureaucratic task, but a critical component of any organization's success.

21. The first part of this section discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of public administration and government operations. The text highlights how detailed records can help identify inefficiencies, prevent fraud, and ensure that resources are used effectively.

22. The second part of this section focuses on the role of technology in modern record-keeping. It explores how digital systems and software solutions can streamline the process of data collection, storage, and retrieval. The author notes that while technology offers significant advantages, it also presents challenges such as data security, system integration, and the need for staff training. The document suggests that a balanced approach, combining traditional methods with modern technology, is often the most effective solution.

23. The third part of this section addresses the legal and regulatory requirements surrounding record-keeping. It discusses various laws and standards that govern how records must be maintained, including retention periods, access protocols, and data protection regulations. The text stresses that organizations must stay up-to-date with these requirements to avoid legal penalties and ensure compliance. It also mentions the importance of regular audits to verify that record-keeping practices are in line with the law.

24. The fourth part of this section discusses the impact of record-keeping on decision-making and strategic planning. It argues that high-quality records provide a wealth of data that can be analyzed to identify trends, forecast future needs, and inform policy decisions. The author suggests that organizations that invest in robust record-keeping systems are better positioned to make data-driven decisions and achieve their long-term goals.

25. The fifth and final part of this section provides a summary of the key points discussed and offers some practical recommendations for implementing effective record-keeping practices. It encourages organizations to establish clear policies, invest in reliable technology, and foster a culture of transparency and accountability. The document concludes by emphasizing that record-keeping is not just a bureaucratic task, but a critical component of any organization's success.

司法精义丛书

总序

本书的最初缘起,来自于十年前我在法院挂职工作的切身体会。2011年,经北京市房山区人大任命,我有幸进入法院系统工作,在房山区人民法院担任副院长、审判委员会委员和审判员。这让我有机会直接接触到从基层法院、中级法院、高级法院直至最高人民法院的许多优秀法官。不仅包括北京、上海这些一线城市的法官,也包括一些有所交流的其他地方法院的法官。

从那时起,我越来越强烈地感受到:中国的法官群体当中,已经开始出现一批出色的具有很高专业水准的审判专家,他们既有良好的法学基础训练,又在多年工作当中积累了丰富的审判实务经验,从而形成了大量的不可替代的专业知识。这些专业知识,非常宝贵,很多是法学理论中所欠缺的,如果能够总结出来,加以系统的阐述和提炼,一定能够对于中国乃至世界法学发展、法学教育和司法实践有所助益。但是另一方面,中国法官们又太过繁忙,很多时候来不及总结提炼这些专业知识。尽管法院系统内部也有相关的制度和组织支持(包括专著出版、论文比赛等很多形式),但是与系统外特别是学术界的交流还比较少,总体而言还缺少一个良好的学术机制的支撑,这使得很多法官的经验积累往往停留于具体办案层面,许多真知灼见湮灭流失在纷繁复杂的司法工作当中。这真的非常可惜。

也是从那时起,出版一套丛书的想法渐渐萌生出来。丛书的定位也日渐清晰,那就是,出版中国法官写作的学术专著。一方面,在法院系统之外给法官提供一个发表和写作的阵地,激励他们在工作之余把宝贵的司法经验总结提炼出来。另一方面,也由此增进法官和相关领域专家学者的学术交流,搭建一个实务界和理论界的学术互动平台。从而,为中国法官增添一份助力,推动他们面向法律专业的同行,系统总结中国司法的实践经验,把司法经验上升为法学知识。

然而理想要成为现实,还需要一个契机。更需要优秀的作者和编者的信任与支持。丛书的第一本,有幸出版的是北京市第二中级人民法院白松法官关于医疗纠纷的专著。白松法官最初和我联系时,正值新冠疫情肆虐之际。当时我在编辑另一套《法官说法丛书》。这套丛书的定位是法官面向公众的普法书籍,由众多法官集体写作。白松法官说想把她的书放在这套丛书里。而在了解到这本书的内容之后,我意识到出版一套新的丛书的契机出现了。这本书总结了白松法官在医疗纠纷领域三十年的专业审判经验,呈现了一个中国法官在长期司法实践中积累和总结的裁判标准和审理思路。这正是我心目中法官学术专著的本色。

有了好的作者和作品,还要有好的编辑和出版社。我为此联系了很多出版界的朋友。很幸运,这套丛书得到了北京大学出版社的大力支持。尤其要感谢蒋浩副总编辑。我现在还记得,我们第一次说起这套丛书的那天,是一个细雨绵绵的下午。“下雨天留客”,聊了很多,就聊到了这套丛书。蒋老师当即肯定了这个选题,还邀请了陆建华、刘文科两位编辑加盟。可以说,没有他们的支持,就没有这套丛书。

作者和编辑的信任和支持,给了我们莫大的动力:要把这套书做好。但是如何做好这本书,我们并没有经验。一方面,学术专著

不同于普法书籍,专业性很强,需要秉承最高的学术标准;另一方面,法官群体特殊性也很强,法官写的书不能和教授写的完全一样,不能也不应该套用同样的标准。我们希望法官写出的是自己的特色,是自己的独特的不同于学者的见地与思考。这也包括写作的方式和表达的习惯。

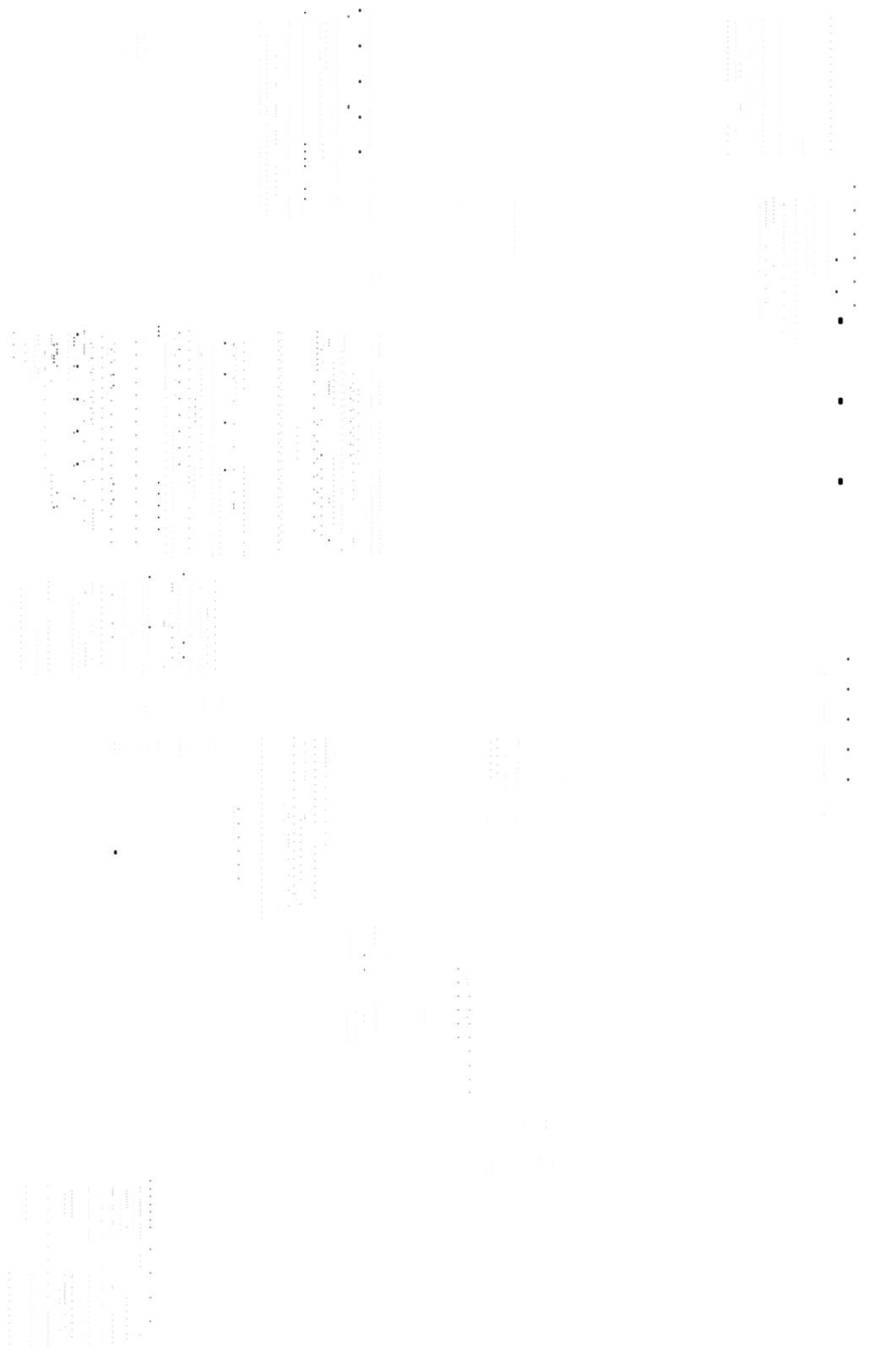
这套丛书不想给作者太多的束缚。但应该给作者以必要的支持。让法官们不必对学院派的理论高墙望而生畏,放心大胆地把自己的所知所想所思所得记录下来。一是在制度上,从选题到完稿,给作者全方位的学术辅助。二是在专业上,邀请相关领域的专家,集思广益共同研讨。白松法官的这本书,在出版之前,就组织了专门的研讨会,参加者有法学教授、医疗领域的专家、法院同仁,还有鉴定机构、媒体、患者的代表。我们希望可以由此开始形成一个范例,为这套丛书也为中国司法经验的积累不断完善机制,拓展思路。

每套丛书都是从出版第一本开始的。第一本书未必是最好的,甚或从主编的私心来说,最好不是最好的。书的评价总是见仁见智,而且要留给司法界和法学界的同行。我们出版这套丛书,正是期待有这样的交流。毫无疑问的是,这样的作品都是作者多年心血的凝聚。这样的作品是不可多得的。这样的作品,应该有一本出一本,也只能有一本出一本。但是,如果这样的著作能够多起来,能够一本本出下去,我相信,迟早会有中国的《普通法》和《司法过程的性质》。

这篇丛书总序,因此也是一封邀请函。希望将来有越来越多的法官不仅成为我们的读者,而且能成为我们的作者。欢迎全国各地的有意加入这套丛书的法官与我联系。我的邮箱是:lingbin@pku.edu.cn。

北京大学法学院教授、博士生导师
凌 斌

2021年9月28日



目 录

序言一	(001)
序言二	(001)
前 言	(001)
法律、司法解释等缩略语对照表	(001)
主要规范性文件汇总表	(001)
案例汇总与索引	(001)
第一章 医疗纠纷的案由及相关法律问题	(001)
一、与医疗纠纷有关的案由	(001)
二、医疗纠纷法律适用	(005)
三、不当选择案由的法律后果	(006)
第二章 医疗纠纷案件的主体	(016)
一、医疗纠纷的诉讼主体	(016)
二、对错列诉讼主体的处理	(022)

三、共同侵权时诉讼主体的选择与责任承担·····	(026)
四、医师异地执业引发的医疗侵权纠纷由谁担责·····	(053)
第三章 医疗纠纷的起诉与受理 ·····	(066)
一、医疗纠纷的管辖问题·····	(066)
二、医疗纠纷的起诉·····	(071)
三、医疗纠纷的受理·····	(082)
第四章 医疗纠纷中不当使用诉权的处理 ·····	(085)
一、法院对医疗纠纷中涉嫌重复起诉的处理·····	(085)
二、法院对患方撤诉后再次起诉并申请重新鉴定的 处理·····	(096)
三、法院对“拉管辖”现象的处理·····	(098)
第五章 医疗纠纷中法官的释明权和裁量权 ·····	(102)
一、释明权·····	(102)
二、法官的司法裁量权·····	(110)
三、医疗纠纷中法官的不当释明与裁量·····	(117)
第六章 医疗损害责任纠纷的举证责任 ·····	(127)
一、大陆法系国家证明责任理论·····	(127)
二、医疗损害责任纠纷案件中的举证责任·····	(130)
三、医疗过错及医疗侵权责任的认定·····	(137)
第七章 医疗纠纷中的病历 ·····	(148)
一、病历的概念、分类及书写要求·····	(148)
二、病历的保管责任主体、保管年限及相关法律责任·····	(154)
三、病历资料是医疗纠纷案件中至关重要的证据·····	(164)
四、对“瑕疵病历”的认定·····	(166)

第八章 医疗侵权纠纷中的司法鉴定	(170)
一、医疗损害司法鉴定意见书的法律地位	(170)
二、医疗损害司法鉴定对审判实践的影响	(173)
三、人民法院对医疗损害司法鉴定意见书的审查认定 及理解	(190)
第九章 患方合理损失的确定	(207)
一、合理损失的范围	(207)
二、影响法官认定责任比例的几个因素	(246)
三、“缺陷出生”涉及的赔偿问题	(265)
第十章 常见几类医疗纠纷的相关法律问题	(274)
一、因未履行或者不当履行告知义务引发的纠纷	(276)
二、因未尽医疗注意义务引发的纠纷	(297)
三、因过度医疗引发的纠纷	(315)
四、因医疗美容引发的纠纷	(318)
第十一章 与医疗纠纷存在交叉的几类案件	(328)
一、因药物临床试验致损引发的纠纷	(328)
二、因注射疫苗产生不良后果引发的纠纷	(341)
三、因涉及非法行医引发的纠纷	(355)
第十二章 医疗纠纷调解涉及的法律问题	(360)
一、几种常见的调解方式、性质及效力	(361)
二、医疗纠纷调解的相关法律规定	(365)
三、医疗纠纷调解应遵循的原则及实践中应注意的 问题	(368)

四、人民法院对双方达成、签订协议后一方反悔起诉的案 件的处理.....	(371)
参考文献	(377)
后 记	(379)

序言一

悠悠万事，唯健康为大！因为健康可以决定每个人的生存状况和生活水平，影响每个家庭的幸福与美满，甚至关系整个民族和国家的兴旺发达。因此健康权成为我国《宪法》所规定的公民基本权利之一，《基本医疗卫生与健康促进法》进一步明确地规定了“国家和社会尊重、保护公民的健康权”。

而为了尊重和保护公民的健康权，国家大力发展卫生和健康事业，为公民提供各种健康服务，同时也在卫生健康领域制定了越来越多的法律和法规，对公民获得医疗服务和医疗服务提供方从事卫生和健康工作作出了具体规定，设立了相应的机制和制度。可以说，没有哪个人可以不与医生、护士、医疗和公共卫生机构打交道的。没有他们的服务，公民的健康权就无法得以保证。同时也应当看到，不论是公民行使健康权还是医疗机构提供医疗服务，都应当遵循法律的规定，依法进行。

正是由于健康与每个人、每个家庭的幸福密切相关，医疗和健康服务成为每个人都不可或缺的基本生存和生活条件。随着基本医疗卫生和公共卫生服务的全面落实，以及各种类型的医疗与健康服务的推广，医疗和公共卫生服务中产生的医疗纠纷也日益增多，医疗纠纷甚至在一定程度上成为社会发展中的一个突出矛盾与难题。有人存在的地方就一定有人与人之间的交往，而人与人之间的

交往也一定会产生各种不同的矛盾和纠纷,这本是社会中的常态。但是如果某一类纠纷不能得到及时的处理和解决,尤其是没有完善的法律制度的保障,不仅对个人和相应家庭会造成巨大的痛苦,也会成为影响社会发展的重大问题。涉及健康权的医疗纠纷尤其如此。

正是在这一大背景下,白松法官集其20多年的司法实践经验,梳理提炼,由表及里,从案例到制度,从实践到理论,对医疗纠纷的司法处理提供了全方位的系统解读和对策,撰写了《医疗纠纷审理思路及裁判标准》一书。此书为防范和解决医疗纠纷提供了非常及时和重要的指南,也是卫生健康法制发展中的一个重大贡献。

医疗纠纷的司法解决首先碰到的问题就是提起医疗纠纷的案由。司法制度有其自身的体系,也有司法案件推进的路径。对于很多当事人,甚至一些律师而言,司法体系犹如不熟悉的陌生地带,在十字路口甚至是多条路径的交叉口前举足难行。因此在进入司法程序时必须要看清路标,找准路径。错识路标或误入他径,不仅会事倍功半,而且会影响当事人的自身合法权益。此书开篇就从这样一个最先碰到的问题入手,为医疗纠纷当事人提供了清晰的路标,以及法律上所指引的确定路径。看似简单,却又极具法律特有的规范性和技术性,对于当事人而言,显然是不可多得的路标指南。

此书由此进入医疗纠纷的主题,就医疗纠纷的主体及其各种变化、医疗纠纷的管辖权及其冲突解决、医疗纠纷中诉权的种种特点、医疗鉴定的程序及鉴定意见的效力、医疗纠纷损失的确定及计算标准等众多法律难题提供了清晰的路线图和法律对策,具有极强的实用性,也是解决上述难题不可多得的法律对策建议。此外,此书还特别就医疗纠纷中的举证责任,尤其是医疗纠纷中重要的证据——病历,进行了深入的分析,提出了有见地的法律指引。俗话说“打官司就是打证据”。那么谁举证就成为一个必须要明确的诉讼责任问

题。虽然《民法典》明确了一般医疗纠纷适用过错责任原则,但由于医患双方实际存在专业知识差距及其产生的信息不对称等具体问题,尤其是病历等相关证据材料往往保存在医疗机构中,作为法律规定的一般原则——谁主张谁举证,在面临具体医疗纠纷时,就需要有更多的现实考虑和具体制度安排。作者在书中指出,“‘举证责任倒置原则’虽不再适用于一般医疗侵权纠纷,但医院仍要承担提供由其保存的病历材料的举证责任,即行为意义上的举证责任”;进而提出了“以过错原则为主”“以过错推定原则为补充”“以无过错原则为例外”的制度安排。在对病历这一主要证据的分类和分析的问题上,作者不仅对于病历提供的法律责任进行了细致的分析,而且对于瑕疵病历的认定及其相应的法律责任提出了有针对性的法律解答。上述法律和法理解读加上具体案例分析,为读者尤其是医疗纠纷当事人提供了不可多得的法律指引,也为医疗纠纷解决的制度化及其完善提供了有见地的建议和对策。

此书不仅展现了作者扎实的法律和法理功底,更突显了作者二十多年如一日的锲而不舍、刻苦钻研的追求与毅力。法律实务工作者,尤其是法官,具有丰富的实践经验和切身的感悟。但很多实务工作者往往囿于时间和工作的压力,很难把这些丰富的一手资料进行系统的梳理、归纳、分析和研究。虽然在个案中努力追求了正义,但却难以提炼并产生制度层面上的正义。白松法官是少有的在这一领域持之以恒追求卓越的典型。她不仅身体力行,尽力在个案中实现正义,而且不断地上下求索,以实现制度上的正义。这种追求与坚持最终形成了读者面前的这本著作,它使我们从案例中,从她个人的经验和感悟中,深入地理解了医疗纠纷领域中的制度安排及其持续的展开和完善。

开卷有益,对于此书而言更是如此。不论是医疗纠纷的当事人,还是法律实务工作者,或者是法学理论研究者,都会从此书中获

益匪浅。

在此我不仅要感谢作者为大众提供这样一本不可多得的佳作，也要祝贺作者在不断追求卓越的征途上能创作智慧的结晶。有感于此，是以为序。

清华大学法学院教授、博士生导师

王晨光

2021年3月3日于清华园



更多法律电子书尽在 docsriver.com 商家巨力书店

序言二

医疗纠纷案件是当前易发、多发、高发的一类民事案件,也是人民法院民事案件审判中的难点和热点。近年来此类案件数量呈现逐渐上升的趋势,日益受到社会各界的普遍关注,人民法院在平息诉讼纠纷、化解医患矛盾、维护社会稳定、促进医疗行业规范发展等方面也承担着越来越重要的职责。

众所周知,医疗行业是一个风险较高的行业,医患纠纷产生的主要根源是人民群众日益增长的医疗需求同医疗技术发展水平不相适应之间的矛盾。一方面,人类对生命科学的认识还在不断发展中,对生命的整体性仍存在很多未知因素,医疗手段的相对有限性导致成功和失败在医疗工作中如影相随,医疗意外、并发症、误诊、漏诊等也不可避免地存在。另一方面,部分医疗机构也存在诊疗不规范、不严谨的问题,导致医疗事故或医疗瑕疵的发生,给患者及家庭带来了难以承受之重。此外,个别患者及家属也受到固有观念的影响,对医疗机构和医生有着过高的道德和技术要求,一定程度上忽视了作为医生个体的差异性和个体价值权利,从而容易导致医患纠纷的产生和矛盾的扩大化。

因此,医疗纠纷与普通的民事侵权纠纷或者合同纠纷案件存在较大的差异,对此类案件的事实认定更为复杂且具有极强的专业性。与此同时,因涉及专业医学技术问题,法官也往往难以依据法