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A Case Note on the Medical Negligence of Traditional Chinese Herbal Medicine in the UK†

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Abstract

Objective : Traditional medicine (TM) has been playing its role in national healthcare system and it is taken as complementary and alternative medicine (CAM) from the viewpoint of modern Western medicine. In the UK, not a few practitioners of Traditional Chinese Medicine (TCM) are working as CAM practitioners using herbal medicine and acupuncture therapy. Cases of dispute in the TCM practice are not rare these days because patients who take TCM service are increasing by year.

Method : In the UK, dispute cases of the Traditional Medicine of East Asia can be found these days, however, it is hard to find a reported court case. A medical dispute case of TCM will be analysed to see the legal management and the resolving principle in the alternative medicine practice with some cases of Korean Medicine (KM) being discussed.

Results : The usual pattern of clinical negligence can be discussed from the points of a duty of care, breach of that duty by negligence, and the harm to the patient from that breach of duty. The judge followed this procedure In this case to discuss the claims. The department of health proposed to introduce regulation to provide the reasonable quality in TCM practice, and the governmental system would be essential to regulate both the TCM practice and practitioners.

Conclusion : The dispute case of traditional Chinese herbal medicine (TCHM) practice is important for the clinical negligence in TCHM practice. Judging the negligence of a TCHM practitioner involves the conventional negligence principle in tort law, and the TCHM practitioners are required to keep up with the up-to-date information on the related medical specialty. The reasoning is almost the same as that shown in the court case of Korea. The TCHM practice in the UK needs to be under the regulation by the government. The standard of care we expect of a TCHM practitioner is a further matter to discuss from the healthcare and social viewpoints.

Key words : traditional medicine, TCM, medical negligence, dispute, regulation, Korean Medicine

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I. Introduction

Traditional medicine seems to have got some status in modern worldwide healthcare system with complementary and alternative medicine (CAM)[1]. Traditional medicine in East Asia, usually taken as traditional Chinese Medicine, has long been a major method for healthcare systems in countries of Korea, China and Japan until the beginning of the last century where it is called Korean Medicine (KM, 韓醫學), Traditional Chinese Medicine (TCM, 中医学), Kampo Medicine (漢方医学) respectively. Acupuncture is the most popular treatment, however, herbal medicine is also one of the major methods of Traditional Medicine in addition to cupping and moxibustion.[2]

In the UK, the Department of Health published in 2011 that the estimated number of Herbal Medicine practitioners reached 1,500[3]. And the number of practitioners of TCM registered to the private associations[4] are not small. There had been the need to establish governmental system to regulate the TCM practitioners, and the department of health proposed to introduce regulation to provide the reasonable quality.[5]

Medical malpractice, negligence, and litigation is one of the major part in every textbook on medical law, and the cases increase each year so that it seems that some reforms are necessary to handle the whole issues about medical mishaps.[6] Clinical accident can also happen in alternative medicine area and have been increasing in the countries like Korea or China where traditional medicine is prevailing.[7] In the UK, Shakoor v Situ case[8] seems to be the only one about the malpractice and negligence in traditional Chinese herbal medicine (TCHM)[9] practice.[10]

This rare case will be analysed to see how it is managed legally and how the principle of medical negligence can be applied to alternative medicine practice, and briefly mention the situation and the law in Korea. Cardiff Index to Legal Abbreviations[11] was used as a legal citation method,

1) General Guidelines for Methodologies on Research and Evaluation of Traditional Medicine (WHO 2000) P1 ; Dennis Normile. The new face of traditional Chinese medicine. Science. 2003:299:188.

2) A method of treatment by applying burning moxa to points of meridians.

3) Department of Health estimated that there are 13,000 Acupuncturists, 1,500 Herbal Medicine Practitioners and 2,800 Traditional Chinese Medicine Practitioners (Cited by Policy paper Enabling Excellence: Autonomy and Accountability for Health and Social Care Staff (Department of Health, 2011) 29).

4) The Register of Chinese Herbal Medicine has over 450 members. 〈www.rchm.co.uk〉 accessed 2014.12.16. ; The Association of Traditional Chinese Medicine and Acupuncture UK has more than 700 members. 〈www.atcm.co.uk〉 accessed 2014.12.16.

5) Policy paper Enabling Excellence: Autonomy and Accountability for Health and Social Care Staff (Department of Health, 2011) 18.

6) Emily Jackson. Medical law: text, cases and materials. 3rd ed. Oxford University Press. 2013:102.

7) The number of medical malpractice litigation cases in Korea reached over 1,000 in 2008 and it exceeded 1,300 last year. Choson.com news (2014.01.13.) 〈http://news.chosun.com/site/data/html_dir/2014/01/13/2014011300036.html〉 accessed 2014.12.16.

8) Shakoor v Situ [2001] 1 WLR 410

9) TCHM is a branch of TCM. The case is about TCHM, but sometimes TCM also used where necessary in this article.

10) Emily Jackson. Medical law: text, cases and materials. 3rd ed. Oxford University Press. 2013:122.

11) It is generally used in the UK legal studies. 〈www.legalabbrevs.cardiff.ac.uk〉 accessed 2014.12.16.

which has been widely used as a useful search method in legal studies that includes thousands of legal publications in the British Isles, the Commonwealth and the United States, and some other countries.

II. Factual Background

Abdul Shakoor was a 32-year-old man in November 1994 when he had a family which consisted of his wife, four children and himself. Though not regularly, he met with his doctor and was in a healthy condition, being not known to take any alternative medicine treatment before. Then he was suffering multiple benign lipomata for which the only treatment was surgery in modern medicine. So he seemed to visit and tell the doctor concerning the lipomata in October 1994. After a while somehow or other he went to a TCHM office of 'Eternal Health Co' run by Kang Situ, the defendant, on 15 November 1994.

The first consultation was for about 20 or 30 minutes long and the practitioner gave him the herbal medicine which had 12 kinds of herbs packed into ten doses for the skin problem. The herbs would have been boiled down with water to make extract of them and this extract was to be taken every other day after a meal according to the instruction.

After taking nine doses he showed appetite loss, nausea and heartburn with yellowing on the skin and eyes. So he consulted the local doctor on 29 December 1994 and was referred to the Queen's Medical Centre which he visited on 2 January 1995 complaining that the vomiting anorexia and abdominal pain had been lasting for ten days. He was diagnosed as probable 'hepatitis A' having been admitted on 10 January 1995. Even worse, it was found that he had 'acute liver failure' by liver function tests, and then the transfer was made on 13 January 1995 to the Queen Elizabeth Hospital in Birmingham. There, he got the liver transplant surgery on 17 January 1995, however, the liver biopsy revealed 'acute sub-total hepatic necrosis'. In the end he died on 20 January 1995.

The coroner investigated the remaining dose of herbs and identified 10 elements among which there was Dictamnus Dasycarpus (Bai Xian Pi, 白鮮皮). It was used usually for skin problem in TCHM and also was reported to show hepatotoxicity in some articles but not to the extent of its regular toxicity.

III. Legal Issues

Since this case deals with the TCM, how to judge the negligence of the practitioner of traditional medicine or alternative medicine is of great concern.

The first point is that as to duty of care whether or not it is enough that the practitioner should be assessed by the standard of competent practitioner recognized by the body of TCHM. Because in the UK where the health system is based upon the modern orthodox medicine one should say that the alternative medicine needs to be proved its safety and efficacy in modern scientific methods and this is of course natural and right point of view as we live in the modernized country. However, on the other hand, in a sense of justice the practitioner of alternative medicine cannot be expected to have and show the knowledge and skill of medical doctor in the UK.

The next point is whether the standard of care of TCHM can provide beneficial treatment from the risk-benefit analysis or not. This is rather difficult because the practice has not been acknowledged yet in the UK as formal way of healthcare, though plenty of research evidences are being made over the alternative medicine. Therefore the question that 'Is the general stan-

dard of care in this art is deficient?'[12] will be discussed to some degree restricted to this case.

As derived from the above points it was also proposed that the liver functions test with further monitoring should have been performed and the proper warning on the risk of decoction had to be done so that the patient could take back the decision of taking the treatment of herbal medicine.

IV. Prior Cases

Three cases were referred to in the discussion by the judge and they were Bolam v Friern Hospital Management Committee[13], Bolitho Appellant v City and Hackney Health Authority Respondents[14] and Sansom and another v Metcalfe Hambleton & Co.[15]

First, Bolam case tells us about the 'Bolam test' which emphasizes 'practices that ought to be accepted by the profession'[16] stating that:

> The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art… that he is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art… a man is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion who would take a contrary view.[17]

In this case John Hector Bolam, who was suffering from depression with history of having been admitted before, took the mental treatment of electro-convulsive therapy (ECT) at the Friern Hospital. While the therapy was being given he got the convulsive muscular movements which caused him pelvis fractures on both sides, so he made a claim for the negligence against Friern Hospital Management Committee.

Among the considerations, the first was whether Bolam took the treatment of the standard quality provided by the practitioner with proper skill and knowledge or not.[18] And the second was whether or not he agreed to take the treatment if he had been warned of the risks of the therapy.[19] The major judgment was that as far as the doctor followed the standards of practice recognized by a responsible body he cannot be taken as negligent just because a certain other school of thought takes a different view on the treatment holding therefore different method.

Second, Bolitho case is about a two-year-old child whose name was Patrick with respiratory problem. He was once admitted due to croup and readmitted since he experienced breathing difficulty and wheezed. While at hospital he showed two episodes of respiratory symptoms with oxygen deficiency but the doctor in charge did not turn up in time. In the middle the child seemed to

12) Emily Jackson. Medical law: text, cases and materials. 3rd ed. Oxford University Press. 2013:123.

13) [1957] 1 WLR 582.

14) [1998] AC 232.

15) [1998] 2 EGLR 103.

16) Shaun D. Pattinson. Medical Law and Ethics. 3rd ed. Sweet & Maxwell. 2011:79.

17) [1957] 1 WLR 582, 586-87.

18) [1957] 1 WLR 582, 586.

19) [1957] 1 WLR 582, 590-91.

get better playing in the cot, however, after a while respiratory dysfunction got worse inducing cardiac arrest and subsequent severe brain damage. Unfortunately he died later during the proceedings. The appellant appealed that after the second episode the prophylactic intubation was necessary for protecting cardiac arrest and any competent doctor would have arranged for that treatment. House of Lords dismissed the appeal pointing that a breach of duty of care was proved but the breach did not cause the injury.

To judge whether the intubation was necessary for the child at the age of two, risk-benefit assessment was considered, thus Lord Browne-Wilkinson described:

> But if, in a rare case, it can be demonstrated that the professional opinion is not capable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible… The assessment of medical risks and benefits is a matter of clinical judgment which a judge would not normally be able to make without expert evidence.[20]

Lord Browne-Wilkinson agreed that the invasive medical treatment that might cause injury or death was not the reasonable measure for the child whose symptoms did not imply the progressive respiratory collapse since he showed quick recovery from the prior respiratory crises in spite of the serious appearance.

Third, in Sansom case Miss Sansom and Mr. Monaghan bought a property following the report on the condition of the property structure provided by Metcalfe Hambleton & Co. After buying it the owners found that there was a crack in the wing wall and took the legal steps against the company, acquiring the damage compensation of £7,500. Then the defendants raised the appeal, which was allowed in the Court of Appeal.

The major ground of appeal was that the county court judge made a mistake that he accepted the evidence of a structural engineer considering 'what a reasonably competent chartered surveyor should have done'.[21] Lord Justice Butler-Sloss referred several cases regarding the professional duty of an architect and doctor including 'the Bolam Test' saying that 'In the medical negligence cases, the expert evidence would be expected to come from medical practitioners appropriately qualified to give it'.[22] Then she concluded that the owners had not fully prove the case, for the evidence should have come from the expert of the same profession, allowing the appeal.

V. Judge's view and reasoning

Bernard Livesey QC, the judge, started to identify that both side had the same opinion on the fact that the incident was due to taking the decoction on a balance of probabilities and the ingredients were not toxic wholly and separately and that the adverse effect was related mainly to an idiosyncratic reaction which is so rare and cannot be expected in advance.

The claims of plaintiff were as follows: (1) Liver functions test should have been done before prescribing the herbal medication; (2) monitoring should have been carried out during the intake of doses; (3) the defendant was negligent to prescribe the herbs because the decoction did no good regarding risk-benefit analysis; (4) the patient needed to be warned about the risk of taking the herbal medicine as to the injury or

20) [1998] AC 232, 243.

21) [1998] 2 EGLR 103, 104.

22) [1998] 2 EGLR 103, 105.

adverse effect; (5) the defendant should be judged by the standards of proper orthodox medical practitioner in the field of dermatology in the UK.

The judge explained that it was most unlikely for the patient to have showed other health problems when he came to the defendant's office and also that the whole time for taking doses was too short so that neither liver functions test nor further monitoring were necessary. About the risks of hepatotoxicity in relation to the formulae of TCHM, seven articles were taken into consideration in the journals such as 'British Medical Journal', 'Lancet' and 'British Journal of Dermatology'.[23] In some cases the decoctions seemed to be related with the mild and short-term toxic reactions but they disappeared soon after the stopping of intake, while in other cases the decoctions showed the effect on the 'intractable eczema' and long-term safety, and one article suggested that TCHM appeared to be much less toxic than medical drugs for severe atopic eczema.

As to the extent of the professional duty owed by the defendant, the judge tried to find criteria because the exact case law did not exist about the duty and standard in the profession of traditional medicine practitioner when it comes to negligence. After having examined the 'Bolam', 'Bolitho' and 'Sansom' cases, the judge, on the one hand, admitted that the patient did not choose the orthodox medicine but alternative medicine which meant that he could not later complain that the defendant had not provide the quality of competent orthodox practitioner's standard. On the other, the judge proposed that the alternative practitioner in this country should consider his status alongside orthodox medicine. Thus in judging the alternative practitioner the court needed to consider more than the principle of 'the standard of the ordinary practitioner skilled "in that particular art"'.[24] The plaintiff failed to prove the lack of appropriate skill and care provided by the defendant.

Then the judge suggested what the practitioner should follow. First, the practitioner has to maintain the competent practice in accordance with the standard of care in a system of law and medicine. Second, the practitioner has a duty to make sure that the treatment will not be harmful and it is not enough to merely say that the treatment will be safe because it came from the traditional experience. Third, should the adverse effect occur, the practitioner should be ready to transfer the patient to an orthodox hospital and it is highly recommended to report that in journals of orthodox medicine. Therefore an alternative practitioner needs to keep up with the relevant information on orthodox medical practice through the subscription to some association.[25] However, it would be in the higher standard than necessary when judging the negligence to say that what is expected of the traditional Chinese herbal practitioner needs to come up to the level expected of the general practitioner so as to get the information regularly from the journals such as 'Lancet'. Even more, should the defendant have acquired the information from the journal articles or letters, it was unlikely for him to decide not to treat the patient considering the aforementioned low risk of harm.

With regard to the risk-benefit analysis of TCHM, the judgment began with the literature evidence such as journal articles and textbooks about the positive effectiveness. And the judge also considered the trend that orthodox practitioners tended to turn to the treatment of TCHM

23) [2001] 1 WLR 410, 428-19.

24) [2001] 1 WLR 410, 417.

25) Ibid.

and examined many cases of success in treatment of the intractable disease. Along with this the judge accepted the evidence that the risk of unforeseeable adverse effect like the hepatotoxicity of herbal medicines was very much lower than that of modern medicines.

Finally, to the allegation that if the patient had been warned of the risk probably he would not have decided to take the herbal medicine treatment, the judge responded that the risk was so small that the defendant did not have to explain it to the patient, and even if the defendant had warn of the risk the patient would have probably taken the treatment. The judge concluded that 'the defendant was not in breach of his duty'.[26)]

VI. Discussion

1. Issues and judgment

The usual pattern of clinical negligence[27)] can be discussed as follows: (1) there was a duty of care which the practitioner (the defendant) owe the patient (the plaintiff); (2) the defendant breached that duty by negligence; (3) the breach of duty caused the harm to the patient. In this case the judge also took this way to discuss the claims.

It is clear that both side agreed that the decoction was tightly related to this mishap. And in regard to the breach of duty and negligence the claims first pointed out the necessity of function tests and monitoring, which was contradicted by the evidence from the journal articles that described the some positive effect and relatively low risk of the herbal medicine about this case.

Next, regarding the standard of care in this art the judge referred the prior cases of which the 'Bolam' case is the most important. 'Bolam test' is a method of examining the clinical negligence in medical malpractice, and it suggests the recognition of other practitioners. Though the test can be practical to find out the standard of that profession, it is criticized in that it only needs the testimony from the same practice, even though the proving the negligence should be left to the court.[28)] So the 'Bolitho' case suggested the judge's active logical analysis, however, which could not go 'without expert evidence'. To a great degree it is natural to rely on the same professional body or expert to find out the negligence of a practitioner in the dispute, but it should also be considered who can testify against his or her colleagues in the court.

In Korea, there was something like cooperative spirit among the medical doctors under the association, so in every medical dispute and litigation the victims failed to prove the negligence of the medical practitioner because of the testimony of the persons of the same profession. But as more and more medical doctors came into the society, that negative implicit cartel broke down and some courageous persons appeared and the truth could be found out in the court against the medical practitioners. Lately in medical dispute litigation the trend has been changed, so that the burden of proof tends to be more on the defendant's side which means the practitioner should prove that he or she have not done anything negligent in the course of treatment. It might be under the influence of social law such as manufacturer's liability or product liability.

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26) [2001] 1 WLR 410, 420.

27) Shaun D. Pattinson. Medical Law and Ethics. 3rd ed. Sweet & Maxwell. 2011:68 ; John Healy. Medical Negligence: Common Law Perspectives. Sweet & Maxwell. 1999:40.

28) JK Mason and GT Laurie. Mason and McCall Smith's law and medical ethics. 8th ed. Oxford University Press. 2011:para 5.39.

The judge seemed not to follow entirely the legal principles of the prior cases in trying to find the reasonable ways because this is the first case on the Traditional Chinese Medicine. By and large in addition to the view of 'the standard of the ordinary skill of an ordinary competent man' and 'acting in accordance with a practice accepted as proper by a responsible body in that particular art', the judge took the notion that the alternative practitioner should abide by the UK system of law and medicine thus go alongside the orthodox medicine. The attitude of the practitioner mentioned by the judge complied with this view therefore even the alternative practitioner should try to keep up with the late opinion of that specialty in modern medicine also.

Not yet acknowledged as formal healthcare treatment, however, as a method of health management alternative medicine should follow the scientific way which means that it needs to be checked from the efficacy and safety viewpoint like drugs, agents or supplements. The alternative medicine itself is not recognized by the patients as the same kind of orthodox medicine and the principle and mechanism are different from those of modern medicine. On that account it is unreasonable to demand the same quality and contents of the alternative practitioner. In this reason, the judge appeared to have taken a compromise stance on the practice of the TCM.

For all intents and purposes, it can be assumed that the judge considered the situation in China about the practice of TCM notwithstanding his statement: 'I learned little during the course of this trial as to the extent of current teaching, research, monitoring and verification of its practices in China or elsewhere… I know not what is the standard of skill and care which prevails in China or how it compares with the standard which is practised here'.[29] With the other evidences such as those from the journal articles and the expert testimonies the judge concluded the risks of adverse effect and toxicity was relatively small and therefore did not admit the negligence of practice and prescribing the herbs. Though this did not mean the acknowledgement of the TCM as one of the formal healthcare methods, at least, this judgment made certain assurances to the practice of TCM, opening the discussion on regulating it in the public and formal health system in the UK.

2. A Supreme Court Case of Korean Medicine[30] in the Republic of Korea

The number of medical malpractice litigation cases in Korea reached over 1,000 in 2008 and it exceeded 1,300 last year.[31] To meet the national demand and expectation for reform of the medical dispute policy, 'Act on Remedies for Injuries from Medical Malpractice and Mediation of Medical Disputes' was made in 2011, which had been included in 'Medical Service Act' before. The purpose is 'to promptly and fairly redress injuries caused by medical malpractice and create a stable environment for medical services of public health or medical professionals by providing for matters regarding the mediation and arbitration of medical disputes'.[32] However, there remain still complaints from the patients and healthcare

29) [2001] 1 WLR 410, 415.

30) 'Oriental medicine' and 'Oriental medical doctor' was used in the past, but recently the association of Korean Medicine have decided to use 'Korean Medicine' and 'Doctor of Korean Medicine, M.D.'.

31) Choson.com news (2014.01.13.) 〈http://news.chosun.com/site/data/html_dir/2014/01/13/2014011300036.html〉 accessed 2014.12.16.

32) Act on Remedies for Injuries from Medical Malpractice and Mediation of Medical Disputes (Act No.10566, Apr. 7, 2011 Amended by Act No. 11141, Dec. 31, 2011). English version from Statutes of the Republic of Korea

providers.

The percentage of Korean Medicine[33] in the medical dispute cases is very low and according to a civic group report in 2005 the estimate was 2.5%.[34] The claims occurred mainly in herbal medicine and acupuncture with fewer cases in cupping, moxibustion, chuna (chiropractic therapy), physical therapy etc.[35]

The case referred here are about the serious allergic reaction of 'anaphylaxis' after the treatment of apipuncture (acupoint stimulation with diluted bee venom). The supreme court decided on the legal principle of negligence in the doctor of Korean Medicine and held that the same principle applied to the case as that of medical doctor.[36]

> In order to acknowledge a medical doctor's negligence in the medical accident, a medical doctor's negligence of failure to anticipate and avoid the occurrence of a consequence where it is possible to anticipate and avoid shall be reviewed. In determining the existence of negligence, the ordinary person's duty of care in the same work and duties shall be the standard. And also, the level of ordinary medical science at the time of medical accident, medical environment and conditions, medical treatment's special nature, etc. should be considered. The above legal principle applies equally to the case of oriental medical doctor.[37]
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> If a medical doctor administered a medical treatment in violation of a duty to explain and the victim suffered injury, a causal relation must exist between the victim's injury and the medical doctor's violation of a duty to explain or fault during the process of acquiring an approval for a medical doctor to be held liable criminally due to occupational negligence and the same principle applies to an oriental medical doctor's case.[38]

The reasoning went the similar way basically to that in the cases we investigated above. The point in the criteria for judging the negligence was 'the standard of ordinary person's duty of care in the same work and duties' which has the same sense as 'Bolam test'. But the judges add some more to that criteria since they usually take the holistic view. After taking everything into consideration such as the level of ordinary medical science at the time of medical accident, medical environment and medical conditions, they upheld the decision of previous court in favor of the defendant.

The aforementioned supreme court case states that the legal principle of medical negligence applies to the duty of care in a doctor of Korean Medicine. However, since the nature of modern medicine is different from that of Korean Medicine the reasoning for two professions cannot be exactly the same. In other cases on the negli-

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〈http://elaw.klri.re.kr〉 accessed 2014.12.16.

33) Traditional Korean Medicine.

34) Cited by Donga.com news 〈http://news.donga.com/3/all/20060121/8268112/1〉 accessed 2014.12.16.

35) HW Lee and H Kim. Medical Dispute and the Proper Guideline for Medical Practice in Korean Medicine. Korean J. Oriental Physiology & Pathology. 2006:20(6):1755.

36) Doctor of Western medicine.

37) Supreme Court Decision 2010Do10104 Decided April 14, 2011 [Injury due to Occupational Negligence, Violation of the Medical Services Act] English version from 〈http://library.scourt.go.kr/jsp/html/decision/8-20%202011.4.14.2010Do10104.htm〉 accessed 2014.12.16., from the 'Summary of Decision'.

38) Ibid.

gence of doctor of Korean Medicine, the duty to transfer to the appropriate medical expert such as the doctors in hospital was referred to avoid the catastrophe. The duty to transfer is supposed to be the proper guideline to judge the negligence, for doctors of Korean Medicine take a role in the primary healthcare system as general practitioner. Scientific methods of diagnosis such as medical examination, lab test and imaging should be performed with the help of medical doctors since the doctor of Korean Medicine can have limited use of modern devices at now.

One of the plans to prevent mishaps in Korean Medicine is to allow the doctor of Korean Medicine to use the modern scientific devices to reduce the risks in the course of treatment. As is mentioned in this 'Shakoor' case, previous lab tests including liver function test can be helpful to prevent the error in further diagnosis and treatment, which medical doctors already do in their clinics. And the doctors of Korean Medicine have the capacity, for over a half of the whole modules at the medical school of Korean Medicine deal with the contents of modern medicine. However, in order to solve the situation the holistic approach is required, as this process involves arranging the curriculum at the medical school of Korean Medicine, changing the healthcare limit in license system, and the most importantly managing conflicts between doctors of Korean Medicine and medical doctors.

VII. Conclusion

The case of Shakoor v Situ is important for the clinical negligence in traditional Chinese herbal medicine. Judging the negligence of a TCHM practitioner involves the conventional negligence principle in tort law and the 'Bolam test' used in medical case. While the basic principle is the same as that of medical doctor, the standard of care needs to be modified for the TCHM practitioner, for the nature of TCHM is not the same as the nature of modern medicine.

TCHM has its own clinical territory and usage, and the practice in the UK needs to be under the regulation by the government as there are a significant number of practitioners and they manage the human health problems. The extent of standard of care we expect of a TCHM practitioner is a further matter to discuss from the healthcare and social viewpoints. TCHM practitioners should try to keep up with the up-to-date information on the related medical specialty.

In Korea, the main criteria for judging the negligence was 'the standard of ordinary person's duty of care in the same work and duties' as is the same in the UK. And the supreme court added some holistic view considering the level of ordinary medical science at the time of medical accident, medical environment and medical conditions.

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