**医疗侵权责任**

**Medical Negligence**

**上课时间与地点**

时间：2024年9月18日、9月19日、9月20日、9月21日、9月23日、9月24日、9月26日8:00-11:35；9月27日13:45-17:10

地点：长宁校区

**课程主讲人简介**

Roy Gary Beran 是新南威尔士大学教授，昆士兰格里菲斯大学医学院教授，南方医科大学卫生法学国际研究院首位访问教授。接受过神经科顾问和认证睡眠医师的培训，此外还在法医学、军事医学和航空医学领域工作。他在澳大利亚卫生从业者管理局注册为神经科、公共卫生和睡眠医学的专家，并曾担任民航安全局的指定医学检查员、新南威尔士州保险监管局的争议解决医学评估员以及新南威尔士州工伤赔偿委员会的评估员。2022年，他还被任命为西悉尼大学医学院的联合教授。

他是澳大利亚法律医学学院（ACLM）的创始人，曾担任该学院的主席，2011年卸任，但仍留任委员会，并被授予该学院的第二个荣誉终身院士称号。2019年，他被任命为“联合教务主任”，负责协调ACLM在澳大利亚各地的培训课程。他是世界医学法学协会（WAML）的澳大利亚理事，曾担任秘书长，目前担任副主席，并在多个世界医学法学大会（WCML）的组织委员会任职，2004年在悉尼主持了WCML，并将在2022年作为会议主席，在昆士兰的黄金海岸举办WCML。他是皇家内科医师学会法医学与法律医学学院的首位荣誉院士。

**Profile**

Roy Gary Beran is trained as a consultant neurologist and accredited sleep physician, in addition to working within legal medicine, military medicine and aviation medicine. He is registered with the Australian Health Practitioner Regulation Agency (AHPRA) as a specialist in Neurology, Public Health and Sleep Medicine and was a Designated Medical Examiner for the Civil Aviation Safety Authority, a medical assessor for Dispute Resolution for the State Insurance Regulatory Authority and an assessor for the Workers Compensation Commission of New South Wales (NSW). He is a Conjoint Professor of Medicine at the University of NSW; Professor in the School of Medicine at Griffith University, Queensland. He was the inaugural Visiting Professor at the International Research Institute of Health Law Sciences at the Southern Medical University, Guangzhou, Guangdong Province, China. In 2022, he was appointed as a Conjoint Professor in the School of Medicine at the Western Sydney University, in addition to the above appointments.

He is: a founding Fellow of the Australasian College of Legal Medicine (ACLM); a Past President thereof, having stepped down in 2011, remains on Council and was awarded its second Honorary Life Fellowship. In 2019, he was appointed as ‘Co-Head of Faculty’ to co-ordinate the ACLM training courses throughout Australia. He is the Australian Governor, was the Secretary General and remains a Vice President of the World Association for Medical Law (WAML), serving on the Organising Committee of numerous World Congresses on Medical Law (WCML), presided over the WCML, in Sydney, in 2004, and will host the WCML, for the WAML, on the Gold Coast, Queensland, in 2022, serving as its Programme Chair. He was the first Honorary Fellow of the Faculty of Forensic & Legal Medicine of the Royal College of Physicians (London).

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| **院系 School** | 中国法治战略研究院 Academy for China's Rule-of-Law |
| **学科门类 Fields of Study** | 卫生健康法Health Law |
| **所属一级学科名称 Disciplines** | 法学 Law |
| **所属二级学科名称 Sub-Disciplines** | 卫生健康法Health Law |
| **先修课程 Prerequisites** | 无N/A |
| **选课对象 Registration Recommendations** | 硕士研究生Postgraduate students |
| **课时与学分 Lecture Hours & Credits** | 36学时36 Lecture Hours |
| **授课语言 Language taught** | 英语 English |

**基本信息 Basic information**

**课程目标**

本课程旨在使学生理解普通法背景下的过失，培养学生分析并应用注意义务概念的能力，评估注意义务何时产生及其范围，探讨知情同意与警告义务。使学生能够理解法律上的因果关系原则，以及它们如何决定过失案件中的责任，包括事实上的因果关系和法律上的因果关系之间的区别。使学生具备在对抗制法律体系中有效提出和评估专家证据的知识和技能，重点关注其在过失案件中的作用。讨论法律医学的演变趋势，包括新兴技术、道德考量及其对法律实践和政策的影响。

**Learning Goals**

This course aims to enable students to understand negligence in the context of common law, cultivate their ability to analyze and apply the concept of duty of care, assess when the duty of care arises and its scope, and explore informed consent and the duty to warn. It also enables students to understand the principles of causation in law and how they determine liability in negligence cases, including the distinction between factual causation and legal causation. Students will acquire the knowledge and skills to effectively present and evaluate expert evidence in an adversarial legal system, with a focus on its role in negligence cases. Furthermore, the course discusses the evolving trends in forensic medicine, including emerging technologies, ethical considerations, and their impact on legal practice and policy..

**课程内容**

普通法中的过失简介：过失原则概述、历史发展及其在现代法律体系中的重要性。

注意义务分析：深入研究注意义务的要素，包括可预见性、邻近性和政策考量。通过案例研究和假设情景进行应用。

知情同意与警告义务：讨论知情同意的法律和道德要求、患者自主权以及警告患者潜在风险的责任。

因果关系与责任：分析事实上的和法律上的因果关系、举证责任和过失索赔的抗辩。

远程医疗与法律挑战：概述远程医疗实践、数据隐私法律、远程咨询中的知情同意和责任问题。

法庭程序中的专家证据：专家证据的准备和提出技巧、交叉询问策略以及专家在塑造法律结果中的作用。

当代法律医学：讨论医疗保健中的新兴技术、其法律影响以及法律医学在解决道德和法律挑战方面的作用。

医疗过失保险与风险管理：研究医疗过失保险政策、风险评估和缓解策略，针对医疗专业人员。

法律医学中的职业发展：为对法律医学感兴趣的学生提供职业道路建议、网络机会和专业发展资源。

在法律医学中发表研究：关于撰写研究论文、选择期刊和导引出版过程的研讨会。

**Content**

**Introduction to Negligence in Common Law**: Overview of negligence principles, historical development, and its significance in modern legal systems.

**Duty of Care Analysis**: In-depth examination of the elements of duty of care, including foreseeability, proximity, and policy considerations. Case studies and hypothetical scenarios for application.

**Informed Consent and Duty to Warn**: Discussion of the legal and ethical requirements for informed consent, patient autonomy, and the duty to warn patients of potential risks.

**Causation and Liability**: Analysis of factual and legal causation, burden of proof, and defenses to negligence claims.

**Telemedicine and Legal Challenges**: Overview of telemedicine practices, data privacy laws, informed consent in remote consultations, and liability issues.

**Expert Evidence in Court Proceedings**: Techniques for preparing and presenting expert evidence, cross-examination strategies, and the role of experts in shaping legal outcomes.

**Legal Medicine in the Contemporary Era**: Discussion of emerging technologies in healthcare, their legal implications, and the role of legal medicine in addressing ethical and legal challenges.

**Medical Malpractice Insurance and Risk Management**: Examination of malpractice insurance policies, risk assessment, and mitigation strategies for healthcare professionals.

**Career Development in Legal Medicine**: Advice on career paths, networking opportunities, and professional development resources for students interested in legal medicine.

**Publishing Research in Legal Medicine**: Workshops on writing research papers, selecting journals, and navigating the publication process.