

## The Wrongful Act of an Agency because of Its Negligence\*

Supreme Administrative Court Judgment No. A. 587/2562 , dated 10<sup>th</sup> September B.E. 2562 (2019)

*Miss S (P)*

v.

*Mahidol University (D)*

According to Clause 8 (2) of the Announcement of the Ministry of University Affairs regarding the Division of Administrative Agencies in Mahidol University, B.E. 2540 (1997), the Defendant, Mahidol University, was an administrative agency, and Siriraj Hospital was affiliated with the university. Pursuant to Section 4 of the Official Information Act, B.E. 2540 (1997), medical records were considered as official information in the form of personal information of patients. The hospital had a responsibility for providing the medical records to patients upon their request under Section 58 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and Section 25 of the Official Information Act. In this case, the Supreme Administrative Court held that the hospital neglected its duties because it neither followed nor recovered such documents even though it noticed the loss of the records. It was considered that the hospital violated the Plaintiff's right to receive information. Therefore, the hospital conducted the wrongful act to the Plaintiff, and the Defendant was bound to make compensation pursuant to Section 5 of the Liability for Wrongful Acts of Officials Act, B.E. 2539 (1996).

**Legal Principles:** *Administrative Act, Wrongful Act of an Agency or a State Official*

**Administrative Court Procedure:** *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 9 paragraph one (3)*

**Legal Provisions:** *Constitution of the Kingdom of Thailand, B.E. 2540 (1997): Section 58*

*Civil and Commercial Code: Section 420*

*Official Information Act, B.E. 2540 (1997): Sections 4 and 25*

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*Act on Liability for Wrongful Acts of Officials, B.E. 2539 (1996):  
Section 5*

*Mahidol University Act, B.E. 2550 (2007): Sections 5 and 7*

*Announcement of the Ministry of University Affairs  
regarding the Division of Administrative Agencies in  
Mahidol University, B.E. 2540 (1997): Clause 8 (2)*

### **Judgment (Summary)**

The Plaintiff claimed that she had been treated and got surgery two times at Siriraj Hospital because of Systemic Lupus Erythematosus (SLE). After the second operation, she was not able to walk and control her excretory system. The Plaintiff would like to understand the result of these operations so she inquired about a doctor's name performing the surgeries, but the hospital did not respond to her demand. Then, she requested her medical records from a director of Siriraj Hospital; however, she found that these documents contained not useful information. For example, they did not have operative reports, nursing records, or X-ray films. The Plaintiff, thus, informed the director of the missing information and required such records. Nevertheless, the hospital responded that there was no other information available. Finally, the Plaintiff complained to the Official Information Board about these situations. The director later explained to the Board that the reason why he was unable to provide the records because such records were lost. The Plaintiff argued that the hospital did not notify such loss before filing the complaint to the Board. Consequently, she brought this case to the Court alleging that the hospital conducted the wrongful act to her and requested compensation from the Defendant.

The Supreme Administrative Court stated that the first issue, in this case, was whether the Defendant neglected the duty required by the law. Pursuant to Section 5 and Section 7 of the Mahidol University Act, B.E. 2550 (2007), the Defendant shall be a juristic person whose objectives are to build... all knowledge and conduct.... to promote, prevent and maintain health and sanitation... in order to benefit the society as a whole. According to Clause 8 (2) of the Announcement of the Ministry of University Affairs regarding the Division of Administrative Agencies in Mahidol University, B.E. 2540 (1997), the Defendant, who is an administrative agency, has the power to supervise Siriraj Hospital. Section 4 of the Official Information Act, B.E. 2540 (1997), defines the information in the medical records which are official information in the form of personal information. In addition, Section 58 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), guarantees that a person has a fundamental right to obtain such data. The hospital, therefore, had obligations to follow,

recover, and provide the medical records to the patient. Even though the hospital argued that it was not liable for such duties because the Plaintiff's mother and a doctor had borrowed and never returned the documents, the Court insisted that the hospital still had such obligations according to the mentioned-laws above. Moreover, Siriraj Hospital noticed the loss of such reports, but it did not comply with the laws. Thus, it was considered that the hospital neglected the duty required by the law causing the Plaintiff to be unable to acquire the complete information under Section 25 of the Official Information Act.

The Supreme Administrative Court discussed the next issue which was whether Siriraj Hospital conducted the wrongful act to the Plaintiff. According to Section 58 of the Constitution of the Kingdom of Thailand, it grants the fundamental right of a person to receive information possessed by a government agency. Section 25 of the Official Information Act also supports this right by stating that a person shall have the right to get access to personal information relating to such person. Besides, Section 420 of the Civil and Commercial Code stipulated that a person who, willfully or negligently, unlawfully injures... any right of another person is said to commit a wrongful act and is bound to make compensation. According to the fact, when the Plaintiff submitted the medical records request to the hospital, it indicates that she exercised her right under the Constitution and the Official Information Act. However, Siriraj Hospital was unable to give the documents to the Plaintiff because of its negligence. Therefore, the hospital conducted the wrongful act to the Plaintiff by infringing the right to obtain information. As a result, the Defendant, the supervision of Siriraj Hospital was liable to make compensation according to Section 5 of the Act on Liability for Wrongful Acts of Officials, B.E. 2539 (1996).

The Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance holding that Siriraj Hospital was obliged to follow, recover, and provide the medical records to the patient. Nonetheless, the records were missing because the hospital neglected its duties so the Plaintiff was unable to access the data. As a result, the hospital conducted the wrongful act to the Plaintiff by violating the right to receive information. The Defendant who was the supervision of the Siriraj Hospital was bound to make compensation to the Plaintiff.