

再次手術仍須填寫手術 同意書、麻醉同意書*

The Surgery Still Had to Fill in the
Surgery Letter of Consent, the Anesthesia
Letter of Consent Once More

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摘要

原告A至被告B所設立之C婦產科診所進行人工流產手術後，因手術失敗，遂而進行第二次人工流產手術。但手術後仍未墮出胎兒，反而導致子宮穿孔、併發小腸三處穿孔、腹膜炎等症狀。法院認定，被告B為A進行第二次手術時，未向意識清醒的A或其配偶D說明手術原因、成功率或其他可能發生之併發症及危險，也未取得各該人等簽立同意書。因本案非醫療法第63條第1項但書所規定緊急狀況之例外情形，而仍受同條規定之限制，手術於取得病人或其配偶、親屬或關係人之同意並簽具同意書始得為之。

The accused B took an artificial abortion for the plaintiff A in his obstetrics and gynecology clinic C for the second

*請參考最高法院 86 年度台上字第 56 號民事判決。

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time after the first one was failed, but it still failed and caused a perforation of uterus, three places of intestinal perforation and peritonitis, etc. The judge found that B didn't explain the reason for the second abortion, its success rate, possible complications and dangers to A and her spouse. B didn't get any agreement in writing from the A and her family members either. This case doesn't belong to the emergency according the proviso of Paragraph 63 Section 1 Medical Law. Paragraph 63 Section 1 Medical Law was still valid. The surgery is permitted under the circumstance of the agreement in writing of the patient or his / her spouse, family members and parties.

壹、案例

原告A至被告B設立之C婦產科診所產檢，由於被告B將懷孕8週之雙胞正常活胎誤診為單生異常死胎，遂於取得原告A同意後為其施行人工流產手術。嗣原告A發現手術失敗，前往要求說明，被告B未經原告A或其配偶D再書立手術同意書，即進行第二次人工流產手術，不惟仍未墮出胎兒，反導致子宮穿孔、併發小腸三處穿孔，產生腹膜炎。

貳、法院認定

原告A前往被告B開設之C婦產科診所產檢時，被告B於病歷上記載「無胎心跳、無胎動」，並診斷為死胎，而為原告A實施墮胎手術，嗣原告A至E醫院檢查，竟是正常懷孕雙胞胎，足證被告B確實有誤診。本件第二次手術時，被告B未向當時神識清醒之原告A或其配偶D說明手術之原因、手術成功率或可能發生之併發症及危險，復未於各該人等簽立同意書後為之，顯然違反此等保護他人之法律，應推定為有過失。且本