醫事法學教室

產後照護與坐月子契約 之群聚**威染告知義務**

The Inform Obligation of Cluster Infection in the Contract of the Postpartum Nursing Care

侯英泠 Ing-Ling Hou*



摘要

因家庭社會結構改變,華人產後會到坐月子中心接受 月子中心之孕婦產後與新生兒之照護。惟坐月子中心 為透過群聚方式提供照護之服務型態,群聚感染為其 典型風險,屬締約告知義務之範圍,但一般人卻因琳 瑯滿目之月子中心廣告,而忽視此風險。月子中心之 締約告知義務為何,以及當其違反告知義務時,產婦 與新生兒之請求權基礎為何,係本文之重點。

Because of the changing of structures of families and society, Chinese would take the postpartum care in the postpartum facility after childbirth. The postpartum confinement offers the service in group and its typical risk is the cluster infection, which belongs to a part of the inform obligation in the contract but might usually

*成功大學法律學系教授(Professor, Department of Law, Cheng Kung University)

關鍵詞:不 完 全 給 付 (non-conforming performance) 、 坐 月 子 中 心 (postpartum confinement) 、產後照護 (postpartum care) 、群 聚感染 (cluster infection) 、締約説明義務 (inform obligation in the contract)

DOI: 10.3966/241553062017050007010

be ignored due to multiple advertisements. This article concentrates on the following questions: What is the burden of the inform obligation which belongs to the postpartum confinement? What is the basis of right of claim for damages which were caused by the disobeying this obligation?

膏、案例

甲、乙兩人為夫妻,自從乙懷孕後,既高興又焦慮。透過朋友經驗分享、網路搜尋與實地參觀後,甲、乙完全信賴丙產後照護中心之專業,並在預產期前即與丙中心簽訂契約,選擇其可負擔的價位10,800元。不料在乙與新生兒丁入住前夕,丙中心發生新生兒群聚感染,乙在不知情下帶著丁入住,丁不幸遭受呼吸道融合病毒(respiratory syncytial virus, RSV)感染,在加護病房治療5日,且未來1歲內都會持續發生病狀,將來也容易罹患氣喘等疾患。甲、乙不滿丙中心未及時説明疫情,而丙中心主張群聚感染並非其過失所造成,僅願意退回未住滿日數之溢收費用。

貳、問題提出

目前產後照護中心的廣告琳瑯滿目,皆強調月子餐、母嬰 照護,甚至提供新生兒照顧課程等,讓新手父母認為月子中心 比居家坐月子專業、衛生,但這些資訊並未詳實揭示群聚感染 為群聚照顧之典型風險。當丙中心未説明群聚感染之風險或者 告知群聚感染業已發生等情時,進而造成新生兒丁被感染, 甲、乙得以主張何種法律上之效果?又甲、乙是否可依此理由 解除契約?