

對外籍病人 之說明義務履行

The Performing of the Duty of
Explanation to the Foreign Patient

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摘要

甲為在臺工作之越南人，曾因病到醫師乙的診所進行治療但未獲改善；乙為甲安排回診，以便進一步檢查，但甲因不諳中文而未回診，因此造成病症加劇。醫師固然應以一般人能理解的語文與說明對病人說明病症，但縱使無法使外籍病患明確知悉，可能僅止缺失而非過失。必要時，醫師可得病人同意，請第三人協助翻譯說明。與此同時，病人亦應評估自身語文能力，是否足以了解醫師說明，並主動告知醫師了解能力，以利醫病雙方溝通之順暢。德國實務見解也肯定病人於醫療過程有協力義務，即主動找尋信賴人陪同就醫、主動使醫師知悉有限的理解能力並同意尋找第三人協助翻譯及說明。

A is a Vietnamese who works in Taiwan. Because of illness, the A had gone to the B's hospital but the condition didn't

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improve. The B arranged a back visit for the A, in order to exam further. Nevertheless, the A didn't go back due to being unfamiliar with Chinese. A's condition exacerbated as the result. Even though the physician has to explain the syndrome to the patient with the language which can be understood normally, it is still only a deficiency instead of a fault, when a foreign patient can't understand the explanation of the physician. If necessary, a third party, whom the patient consents to arrange, could assist the physician by translating the explanation. Meanwhile, the patient has to evaluate his / her language ability, if he / she can understand what the physician explains or not. Furthermore, he / she shall tell the physician what he / she understood. So that the communication between the physician and the patient could be better. Moreover, the German judicial opinions have approved that the patient has cooperative duties during seeking medical advice, including being accompanied by whom is trustful, reacting immediately when the patient didn't understand the explanations of the physician, and consenting to arrange a third party, who can translate the explanations.

壹、案例

甲為在臺工作之越南人，右下腹因經常性悶痛，而到醫師乙的診所治療；經治療後，症狀並未獲得改善，醫師乙認為有可能是慢性盲腸炎，需要進一步進行鋇灌腸造影與腹部超音波檢查確診。甲雖然會一點中文，但是對於前述完整流程之說明的理解能力還是有限。病人甲因不甚了解醫師乙之說明，對於醫師乙安排之檢查與回診，置之不理。因未繼續接受檢查與治

療，事後演變成急性盲腸炎，差一點喪失生命（醫師乙認為他已經盡力告知病人甲，病人甲卻無法了解，他也無法改變此一語言隔閡之事實）。問：醫師乙對於病人甲之說明義務履行是否妥當？

貳、爭點

當病人的中文理解能力有限時，醫師應如何履行其告知說明義務？當病人無法了解，導致後續治療無法繼續進行，但其治療流程又有一定之必要性時，醫師該如何履行其告知說明義務？病人對於醫師說明義務之履行有何配合義務？病人甲對於不了解之說明，進而未能遵照醫囑，是否也有過失？

參、分析與討論

全球化（globalization）已然成為當代世界各國的發展基礎，醫病關係中也因此漸漸注入一些新的不確定因素，如本文前述案例中，病人係外國人之新因素，使得本來在履行上已具有一定困難程度的說明義務更形困難。醫師履行說明義務，不再僅是說明藝術與技巧問題，更有語文能力問題。醫師面對需要治療之病人，並不能像一般行業，可以因語文不通而放棄交易進行，醫師面對須接受治療之病人，不管其國籍為何，都有盡其專業治療之義務。但問題在於：醫師究竟應如何履行其告知說明義務呢？

一、醫師有積極告知義務

不論病人國籍係屬本國籍或外國籍，基本上都不會影響醫師或醫院（即所謂的醫療服務提供者）對於病人治療應有之說明義務。以本案為例，醫師乙在治療病人甲時，按醫師法第12