

# 醫師是否應對遲發性併發症 負業務過失傷害之責？ 以大腸息肉切除 之腸穿孔併發症為例

Does a Physician Have a Responsibility of  
Professional Negligence because of Delayed Complication?  
Taking Gastrointestinal Perforation as the Complication  
after Colorectal Polypectomy as an Example

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## 摘 要

臨床上一般小型手術於大多數情況，醫師為初步觀察後無發現特別症狀時，考量病房有限，均會請病人返家休息。若病人出院前曾向醫師反應不舒服，但醫師未依其要求而為高規格檢查，且病人於事後確實發生併發症，醫師是否要負責？本文提供判斷之依據為：醫師是否已於術前告知併發症之資訊？是否已善加注

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關鍵詞：大腸息肉切除併發症（complication after colorectal polypectomy）、遲發性腸穿孔（delayed gastrointestinal perforation）、醫療之不可預測性（medical unpredictability）、醫療資源之分配正義（distributive justice of medical resource）

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意術後之生命徵象？令其離開醫院之判斷有無過於輕率？若醫師所為均符合醫療常規，因醫療資源有限，不能要求醫師對任何可能產生併發症之病人均給予高規格檢查始讓其離院，故即使病人之後確實產生併發症，也不會認為醫師應負過失責任。

Considering that there is no enough patient beds in a hospital, patients would usually be asked for discharging after having a minor operation without any other syndrome. Did a physician have a responsibility, if the patient was uncomfortable but without any high standard examination and had a complication after having an operation? It would be a criterion of judgement introduced in this paper whether the physician informed the complication before the operation, whether the physician payed attention to vita signs after the operation, and whether the decision of discharging was too hasty. The physician doesn't have any responsibility for negligence, if what he did corresponded to the medical customs, for medical resources is limited. It could be demanding to a physician to examine a patient who has a complication possibly with high standard before discharging.

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## 壹、案例<sup>1</sup>

消化系專科甲醫師為病人乙進行例行性健康檢查，於施行無痛大腸鏡檢查時發覺有大腸息肉，故於檢查後當日上午10時許為乙一併進行切除手術。接近中午時乙有腹部脹痛情形，甲醫師為其檢查後認為並無特別異常情況，而請乙返家休養。乙

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1 本件改編自臺灣高等法院106年度醫上易字第1號刑事判決。

返家後仍持續腹痛，而於下午16時回院急診，經轉診後，診斷為大腸穿孔合併腹膜炎，則甲醫師知悉乙術後腹部脹痛，仍讓乙返家，是否應對乙其後發生嚴重併發症負業務過失傷害之責？

## 貳、爭點

手術實施後，病人通常會產生不舒服之症狀，有時症狀會隨時間緩解，有時卻會因術後產生併發症而加劇。臨床上一般小型手術於大多數情況，醫師為初步觀察無發現特別症狀時，因為醫院病房有限，均會請病人返家休息。若病人出院前曾向醫師反應不舒服，但醫師未依其要求為高規格檢查，而事後病人確實發生併發症，醫師是否應負責？此時判定醫師須負責之依據為何？

## 參、解析

### 一、手術前是否為「息肉切除手術之併發症」之告知義務？

本件是在無痛檢查時發覺大腸息肉，但發覺當時，乙正處於麻醉狀態已無意識，若醫師在手術前未得乙同意，因大腸息肉並無立即致命性而有切除之需要，故不可「順便」為乙手術。而依照相關醫學文獻大腸息肉切除之併發症包括有暫時性腹脹、腹痛、腸道損傷、穿孔、出血及其他偶發之病變，惟其發生機率均低於1%<sup>2</sup>。若甲醫師於施作無痛大腸鏡之檢查前，曾告知乙若發現大腸息肉將為其切除，並就關於大腸息肉切除會發生之併發症亦已一併告知，又乙於了解併發症風險後，仍

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2 國泰綜合醫院腸胃內科，經大腸鏡息肉切除術，<https://www.cgh.org.tw/tw/content/article/healthy/292.pdf>（瀏覽日期：2019年3月7日）。