

【醫療民事法】 住院期間被性侵案： 醫療提供者之附隨義務

A Case about a Sexual Assault during
the Hospitalization: The Subordinated
Obligation for the Medical Treatment Giver

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摘 要

病患因思覺失調症住院接受治療，與治療醫院間成立精神疾病之住院醫療契約，其契約目的包含治療與住院照護，使得契約之醫療照護主給付義務與附隨保護義務部分重疊，但內容範圍與效果不一樣，本判決清楚區分兩者義務，值得肯定，惟就附隨義務之認定容有討論之空間。

The patient was hospitalized and took medical treatments because of the schizophrenia, making a contract of hospitalization in the psychiatric hospital with the hospital giving medical treatments. It contained the

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關鍵詞：住院醫療契約（contract of the Hospitalization）、附隨保密義務（the subordinated obligation of confidentiality）、附隨義務（the subordinated obligation）、保護義務（duty of protection）、思覺失調症（schizophrenia）

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hospitalization as well as inpatient care and made the principal performance obligations of the medical care overlap the subordinated obligation. Nevertheless there are still difference on the range of the contents and the effects. The issued judgment clarified clearly the both obligations and it was worth to be praised. However, there might still be possibility to discuss the content of the subordinated obligation.

壹、前言

醫療民事責任隨著學說與實務之發展，其重心已從過去強調醫療行為施行者之個人責任，逐漸轉移到醫療提供者之契約責任，而且自2018年醫療法第82條修法以來，醫療民事責任傾向醫療提供者之契約責任更是明顯，此發展趨勢非常值得肯定。在訴訟實務也逐漸能發現從契約責任追究醫療提供者之民事責任在義務違反之建構上，比侵權賠償責任容易許多，但過與不及，都非吾人所樂見。

法律責任之歸咎，仍應有其危險分配之公平性，是否將責任建構在契約責任時，即可輕易認定醫療提供方違反附隨義務，而有不完全給付之損害賠償責任，不無疑問。因此，本文特以此判決作為醫療提供方之契約附隨義務違反責任建構之評析。至於本案其他重要爭點，另一被告甲男與原告主張損害賠償之時效問題，則不在本文探討範圍之內。

又本案被告有二：與A女發生性行為之甲男和照顧A女之乙醫院，因本文評析之重點為醫療提供者之契約附隨義務違反之責任，則關於法院對甲男之判決部分，亦非本文評析之重點。