

論信賴原則於 醫療糾紛中的適用範圍 —以放射線科為例*

An Empirical Study of the Reliance Principle in the Types
of Medical Disputes and Court Decisions in the Radiology

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摘要

隨著醫療科技的進步，專科化已然成形，組織醫療逐漸複雜化，過往「上下階層」的醫療服務型態，需要加上「水平分科」成為立體架構。如何分配不同專科醫師間的注意義務範圍與責任，以適應越來越複雜的

*本文初稿部分內容曾口頭發表於國立臺灣大學國家發展研究所於 2022 年 9 月 23 日主辦之「2022 衛生法律與政策年度研討會」，承蒙與會學者專家提供寶貴意見，特表感謝。另，感謝兩位審稿人惠賜修正意見，使初稿疏漏之處能有增補之機會，特致謝忱。

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關鍵詞：放 射 線 科（radiology）、注 意 義 務（duty of medical negligence）、信賴原則（principle of reliance）、醫療分工（division of medical treatment work）、醫療過失（medical negligence）

DOI：10.53106/241553062023010075011

組織醫療架構，已成為醫療糾紛重要的議題。放射線科在專科發展上，正好位於此一關鍵位置，相當適合作為探究此一議題的主角。本文嘗試以放射線科在醫療行為的專業分工角色為主軸，輔以法院判決，探討法界實務上對於醫療分工角色的看法，並利用在交通領域已發展成熟的信賴原則，找出現代醫療情境下，分配注意義務的合理依據，提供醫界和法界實務上的參考。

With the advancement of medical technology, medical specialization has taken shape. In the past, the “upper and lower class” medical service types now need to be added with “level divisions”. The more complex the medical structure of the organization has become an important topic of medical disputes. The radiology department is at an important and key position. This article attempts to focus on the professional division of labor in the radiology department in medical behavior. It uses court judgments to do empirical research to explore the legal perspective on the role of medical division in practice, and uses the principle of trust to allocate the scope of care and responsibilities between different specialists. We try to find out the reasonable basis for allocating the duty of care in the modern medical situation and provide practical reference for the medical and legal circles.

壹、緒論

早期醫療行為是一位醫師輔以少數醫療人員，為病患提供服務，例如內科醫師搭配護理師和藥師，複雜點如外科醫師外加麻醉科醫師、手術助理和護理師。主治醫師為病患制定醫療方針、全程參與診治過程，最後完成治療，就像船長為整艘船

制定航行方向、指揮航行，帶領船隊順利到達目的地。主治醫師有足夠的專業能力監督輔助者的醫療行為是否恰當，並適時介入防止錯誤與傷害發生。在診療室或手術室內，主治醫師有極大的權限，小到撥放音樂，大到醫療團隊人員組成與器材藥物的選用，都由其決定。故此，當發生醫療不良結果時，由主治醫師負起全部醫療責任，合情合理，這就是「船長理論」（The Captain of the Ship Doctrine）¹。隨著醫療組織型態的轉變，主治醫師成為醫院僱員，醫療分工導致「船長」理論不再被法庭採用²，轉變為接受「借用工人法理」（Agency - Borrowed Servant Doctrine）³。

衛生福利部（下稱衛福部）於1988年公布施行專科醫師制度，臺灣醫療邁向專科化，目前共有23個醫師專科及11個牙醫專科醫師⁴。然而，這樣過度（次）專科化導致對於其他科

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- 1 該學說來自1949年賓夕法尼亞州最高法院，當時裁定：“... it can readily be understood that in the course of an operation in the operating room of a hospital, and until the surgeon leaves that room at the conclusion of the operation ... he is in the same complete charge of those who are present and assisting him as in the captain of a ship over all on board, and that such supreme control is indeed essential in view of the high degree of protection to which an anesthetized, unconscious patient is entitled” (McConnell v. Williams in 1949 in which the Supreme Court of Pennsylvania).
 - 2 Ellen K. Murphy, “Captain of the Ship” Doctrine Continues to Take on Water, 74(4) AORN JOURNAL 525-528 (2001). doi:10.1016/s0001-2092(06)61686-4.
 - 3 Edwin W. Scott, *Agency - Borrowed Servant Doctrine - Surgeon Is Responsible for the Pre-Operative Negligence of Anesthetist*, 7 VILL. L. REV. 283 (1961).
 - 4 專科醫師分科及甄審辦法第3條：家庭醫學科、內科、外科、兒科、婦產科、骨科、神經外科、泌尿科、耳鼻喉科、眼科、皮膚科、神經科、精神科、復健科、麻醉科、放射診斷科、放射腫瘤科、解剖病理科、臨床病理科、核子醫學科、急診醫學科、職業醫學科、整形外科；牙醫專科醫師分科及甄審辦法第6條：口腔顎面外科、口腔病理科、齒顎矯正科、牙周病科、兒童牙科、牙髓病科、鑲復補綴牙科、牙體復形科、家庭牙醫科、特殊需求者口腔醫學科、其他經中央主管機關認定之牙醫專科。