

醫療行為中的坦誠義務： 句句屬實、絕無虛言？(二)*

Duties of Candour in Healthcare: The Truth,
the Whole Truth, and Nothing but the Truth? (II)

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摘要

在創設了法律上與職業上的坦誠義務後，開始要求臨床醫療人員與醫療組織在療程出錯時，對病患及其家屬保持誠實。本文將解釋這兩者義務創設的背景，並分析坦誠的概念、道歉所扮演的角色，以及遵循法規的相關證據。我們將探討：將坦誠納入法律規定是否

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關鍵詞：安全 (safety)、坦誠 (candour)、法律 (law)、法規 (regulation)、損害 (harm)、道歉 (apologies)

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能妥善地反應損害背後的真相，以及其作為表達誠實的有力展現。然而，在複雜的專業文化背景、資金不足的醫療系統中、以及潛在的訴訟壓力及法規調查壓力下，想要坦誠相見並不容易。在當前的「醫療與照護法案」提案中，提議創設調查的「安全區」將禁止揭露提交給調查病安事件的獨立外部機構的資料，此舉將破壞坦誠相見的可能。本文認為此舉在原則上是錯誤的，在實踐中也存在相當大的問題，因此反對此提案。坦誠應當是一項被尊重的基本原則，不僅僅適用於提供醫療服務的人，也同樣適用於調查病安事件的人。受害病患及其家人有得知全部真相的權利。

The creation of professional and statutory duties of candour has formalised the requirement for clinicians and healthcare organisations to be honest with patients and families when treatment has gone wrong. This article explains the background to creating both duties, analyses the concept of candour, the role of apologies, and considers evidence about compliance. It argues that making candour a statutory requirement appropriately reflects the ethical imperative of telling the truth about harm and is a powerful signal for honesty. However, being candid is not easy in the context of complex professional cultures, the realities of delivering care in under-funded health systems, and in the shadow of possible legal and regulatory proceedings. Proposals in the current Health and Care Bill to create investigatory 'safe spaces' which prohibit the disclosure of information submitted to the Health Service Safety Investigations Body undermine candour. This article argues against such proposals, which are both wrong in principle and highly problematic in practice. Candour should be respected as a cardinal principle governing not only the conduct of those providing care, but also those who investigate such

incidents. Harmed patients and their families deserve to know the whole truth.

本文上篇載於本報告第78期，114-125頁。

（一）職業義務

坦誠的職業義務的創設是為了應對1990年10歲的Robbie Powell，死於未診斷出的愛迪生氏症（Addison's disease），這是一種罕見的自體免疫疾病，源於腎上腺機能不足。儘管一名兒科醫師懷疑這有可能是愛迪生氏症，並寫信給Robbie的家庭醫師建議進行檢測並轉診，但最終都沒有進行，因而錯過了許多防止他惡化、甚至死亡的機會。沒有醫療人員告知其家人有人曾經懷疑羅比是罹患愛迪生氏症。Robbie的父親，Will Powell試著解開他兒子本可免於一死的真相。有證據表明，兩名家庭醫師偽造了一封轉診信，讓這封信看起來像是在Robbie去世前就寫了，並且修改了Robbie的醫療紀錄，以誤導人，讓人以為這兩份紀錄是在Robbie去世前同時寫的¹。衛生主管部門承認過失責任，並對這個家庭支付了8萬英鎊的損害賠償。但隨後的精神賠償請求卻失敗了，因為該因果關係欠缺緊密關聯性²。歐洲人權法院也駁回了依據《歐洲人權公約》（European Convention on Human Rights）的第2條所提出的論點，要求對Robbie死亡因素的有效調查，因為解決醫療糾紛的訴訟需要充分的調查，而本案的疑點重重。法院的判決認為：「『按照現行的法律，醫師沒有義務向告訴那些因為醫療

1 W Powell, 'Robbie's Law: Lack of Candour—The Impact on Patients and Their Families' (2014) 20(1-2) Clinical Risk 4-6.

2 *Powell v Boladz* (1997) 39 BMLR 35. For a case note on the decision, see Ian Kennedy, *Powell v Boladz* [1998] 6 Medical Law Review 112 (note).