

醫療行為中的坦誠義務： 句句屬實、絕無虛言？(三)*

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

陳怡君 Yi-Chun Chen** 編譯

本篇中譯自 Oxford University Press 授權繁體中文



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

*本文譯自 Oliver Quick, *Duties of Candour in Healthcare: The Truth, the Whole Truth, and Nothing but the Truth?*, 30(2) MEDICAL LAW REVIEW 324-347 (2022), <https://doi.org/10.1093/medlaw/fwac004> VC The Author(s) 2022. Published by Oxford University Press.

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted reuse, distribution, and reproduction in any medium, provided the original work is properly cited.

** 玉醫科技法務 (Corporate Counsel, MedJade Co., Ltd.)

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

DOI : 10.53106/241553062023060080005

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79期，112-126頁。

伍、對坦誠持保留態度？

對病患及家屬坦誠並不容易，這需要面對圍繞著專業身份、聲譽和害怕受到不公平指責的複雜文化議題。這些職責並不是單獨存在的。由醫療過失系統和其他申訴方式主導，以及較少提到的刑事調查和死因調查，這些系統在醫療法環境裡相互作用¹。坦誠和訴訟風險與成本之間的關係特別重要，2020年到2021年期間，英格蘭在賠償與處理索賠的總成本為為22億英鎊，其中的6億英鎊用於法律費用²。國家審計署估計，只有4%的人在發生醫療不良事件有提出索賠³，而且學術分析懷疑，英國存在著「補償文化」（compensation culture）⁴，索賠的數額與成本其實仍有增長空間。坦誠背後的財務成本有著不確定性，也為了保護公共資源，因此衛生部對於推動政策有著一定擔憂⁵。

這裡的關鍵組織是國民健保署，它在降低成本、補償醫療

1 See O Quick, *Regulating Patient Safety: The End of Professional Dominance?* (CUP 2017).

2 NHSR, *Annual Report and Accounts 2020/21* (NHSR 2021) 15.

3 National Audit Office (NAO), 'Managing the Costs of Clinical Negligence in Trusts', HC 305 Session 2017–2019, 7 September 2017.

4 A Morris, "Common Sense Common Safety": The Compensation Culture Perspective' (2011) 27(2) *Candour and Healthcare Harm* • 339 *Journal of Professional Negligence* 82.

5 DH, *Improving Patient Safety and Openness—The Role of the NHS Litigation Authority in Incentivising the Duty of Candour* (DH 2015).