

【醫療刑事法】 肌肉鬆弛劑致死案： 不作為醫療過失致死 之因果歸責

The Muscle Relaxant Case: On the Objective Attribution
for the Medical Negligent Homicide by Omission

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摘要

本案被告醫師先因過失錯誤指示護理師用藥，之後又延誤將被害人轉診送醫急救，導致被害人死亡。在此種行為人前後雙重過失行為導致他人死亡的案例中，由於行為人後面的過失係以不作為的形式出現，不作為代表並未介入先前過失行為所製造的風險實現歷程，被害人死亡的結果仍然是先前過失行為所製造風險的實現，因此行為人先前的過失行為會成立過失致死罪。再加上我國法上並不存在過失結合過失的「結果加重犯」類型，法理上只能針對行為人先前錯誤指示護理師用藥之過失行為，論以過失致死罪。本案歷

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關鍵詞：因果關係 (causality)、因果關係中斷 (breaking of the causality)、客觀歸責 (the objective attribution)、超越之因果關係 (transcendent causality)

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審判決均認定被告成立不作為過失致死罪，且未對於不作為之因果關係進行實質判斷，仍有檢討之空間。

In this case, the accused physician negligently instructed a nurse to administer the wrong medication and then delayed referring the victim for emergency care, resulting in the victim's death. In this type of case, where the perpetrator's double negligence caused the death of another person, since the tortfeasor's subsequent negligence was in the form of an omission, meaning that he did not intervene in the course of the risk created by the previous negligent act, and the result of the victim's death was still the realization of the risk created by the previous negligent act. The perpetrator's prior negligent act would therefore be convicted of the crime of wrongful death. In addition, there is no such concept of "crime with aggravated result" in the legal norm, so only the previous negligence of the perpetrator who wrongly instructed the nurse to administer the medication could legally be counted as involuntary manslaughter. In this case, the verdicts of the previous trials all recognized that the defendant was guilty of negligent homicide by omission and did not make a substantive judgment on the causal relationship between the omission and the death, so there is still room for review.

壹、案件事實與歷審判決

最高法院112年台上字第2198號刑事判決所涉案件事實，係美容醫學（下稱醫美）診所醫師涉嫌過失先給予護理師不當醫療指示，之後又因誤判未為適當處置且延誤送醫急救導致被害人死亡，涉嫌醫療過失致死的案例：

一、案件事實

被告甲於事發醫美診所兼職擔任雷射光療醫師，該診所之護理師乙與在該診所擔任美容師之A為好友，A前因腰部受傷身體不適而有抽筋、跛行現象。事發當日上午，乙及A持診所內所存放藥品名稱為「肌弛適」（NIMBEX）之肌肉鬆弛劑，向該日唯一當班醫師甲詢問得否施打上開肌肉鬆弛劑以減緩A腰部不適症狀，以及該藥劑之劑量、施打方式分別為何，甲閱讀該藥品仿單並自行上網查詢後，向乙、A聲稱該肌肉鬆弛劑得以靜脈注射施打1支5cc安瓶，且施打時須慢慢推約2分鐘推完之方式使用（實則該藥劑係供全身麻醉使用，會致無法自主呼吸，需配合插管）。

A於同日下午15時25分許央請乙依甲之指示施打，施打過程中，A感到不適甚至無法呼吸於15時28分許昏倒，逐漸呈現無意識狀態。甲於接獲A昏倒之通知後到場處理，僅測量脈搏而未確認呼吸或以監測儀施測，即貿然判斷A之昏迷狀態僅係處於施用上開肌肉鬆弛劑後之放鬆狀態，並指示在場之人將A移至病床，同時施打類固醇、葡萄糖，現場之人均不具醫師資格，基於信任具醫師資格之甲乃依其指示而從之，直至其等發覺A臉色及唇色逐漸異常、發黑，遂於15時43分許呼叫救護車，救護人員據報於15時53分許到場救護，並送往鄰近綜合醫院急救，經診斷為到院前心跳停止經急救、急性呼吸衰竭、缺氧性腦病變，延至同年9月3日不治死亡。

二、下級審判決

在一審地方法院¹審理程序，被告甲否認有過失，抗辯當天上午乙與A來詢問時其僅提供諮詢，完全未想到她們要直接使用此藥物，且之後A被施打該藥物導致陷入昏迷時，其經

1 臺灣桃園地方法院109年度訴字第8號刑事判決。