

【醫療刑事法】  
開立過敏藥物致死案：  
論傳聞證據與  
因果關係之認定爭議

Case of Prescription of Allergy Medication Leads  
to Fatality: The Dispute Over the Determination  
of Hearsay Evidence and Causation

楊迺軒 Nai-Hsuan Yang\* 郭家嘉 Chia-Chia Kuo\*



摘要

本文以臺灣高等法院113年度醫上易字第1號刑事判決為研究對象，探討傳聞證據與因果關係在刑事過失案件中之認定方式與舉證標準。本案被告與被害人具長期醫護關係，卻二度開立被害人過敏藥物予以服用，最終導致被害人因嚴重過敏反應入院治療，於時隔六個月後過世。本案涉及告訴期間起算、傳聞證據定性之程序爭議事項，同時涉及醫療注意義務、因果關係認定與衡量判斷量刑因子之實體爭議。本文將逐一分

\*逢甲大學財經法律研究所副教授（Associate Professor, Graduate Institute of Financial and Economic Law, Feng Chia University）

\*\*逢甲大學財經法律研究所法學碩士（Master of Laws, Graduate Institute of Financial and Economic Law, Feng Chia University）

關鍵詞：因果關係（causation）、告訴期間（statute of limitation for bringing complaint）、量刑（sentencing）、傳聞證據（hearsay evidence）、醫療常規（professional custom）

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析上述爭議，並對判決理由、實務採用標準及其可能之適用彈性進行探討，期提供實務判斷參考。

This article discussed the determination of evidentiary standards for hearsay evidence and causation in criminal negligence cases. The defendant and the victim had a long-term medical relationship; nevertheless, the defendant prescribed the victim an allergenic medication on two occasions, which ultimately resulted in the victim's hospitalization due to a severe allergic reaction and death six months later. The case involves procedural disputes over the commencement of the statute of limitations and the characterization of hearsay evidence, as well as substantive issues regarding the scope of medical duty of care, determination and assessment of causation, and sentencing factors. This article systematically analyzes these controversies, discusses the reasoning behind the judgment, the standards adopted in practice, and their potential flexibility, to provide practical reference for judicial decision-making.

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## 壹、案件事實與判決整理

### 一、案件背景與事實

本案被告甲為新北市A診所醫師兼負責人。被害人乙高齡約75歲，患有高血壓、心臟衰竭、糖尿病、巴金森氏症、失智症及末期腎臟病等多項慢性疾病，於2016年4月15日起定期在A診所接受血液透析。本案爭點為被告是否明知被害人對含有「Cephalexin」成分之抗生素（下稱本案藥物）曾有嚴重過敏反應，卻仍於後續診療中再次開立本案藥物，導致被害人出現嚴重皮膚反應（廣泛水泡性固定型藥物疹）送急診救治，因而構成過失傷害罪。