

【醫療民事法】

非正規醫療詐欺案：  
非法執行醫療業務  
及詐欺犯罪之被害繼承  
人賠償請求權探討

Unconventional Medical Fraud: A Study on  
the Right of Heirs to Claim Compensation for  
Crimes of Illegal Medical Practice and Fraud

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摘要

不具醫師資格之人基於治療、矯正或預防人體疾病、傷害、殘缺之主觀目的而對他人施以診察、診斷、治療、處方、用藥、施術或處置等客觀行為，除法定不違法情形外，即成立非法執行醫療業務罪；藉以為詐欺取財手段，病人嗣因病離世，被害繼承人得提起刑事附帶民事訴訟，主張繼承取得之財產上損害賠償請求權及自己身分法益受侵害之非財產上損害賠償請求權，前者有刑事判決認定之犯罪事實為據，後者則應

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關鍵詞：附帶民事訴訟 (ancillary civil action)、非財產上損害 (non-pecuniary damages)、相當因果關係 (sufficient causal relationship)、醫療行為 (medical treatment)

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本檔案僅供試閱，完整內容請見本刊。

證明權利成立要件及因果關係存在。若經法院認為附民訴訟不合起訴要件，原告亦得聲請或於案件業經刑事庭裁定移送至民事庭時，以補繳裁判費補正起訴程式之欠缺；但對於刑事訴訟第二審程序起訴之判決結果，即受上訴第三審之上訴利益限制。

Any person without a medical license who, with the subjective intent to treat, correct, or prevent human diseases, injuries, or disabilities, engages in objective acts such as examining, diagnosing, treating, prescribing, administering medication, performing medical procedures, or providing medical care to others—except in cases where such acts are not unlawful by law—is guilty of the crime of unlawfully practicing medicine. If such acts are used as a means of fraud to obtain money, and the patient subsequently dies as a result of the illness, the victim's heirs may file a civil action ancillary to the criminal proceedings to claim pecuniary damages for property loss acquired through inheritance and non-pecuniary damages for the infringement of their personal rights. The former is based on the facts of the crime as established by the criminal judgment, while the latter requires proof of the elements of the right and the existence of causation. If the court finds that the civil action does not meet the requirements, the plaintiff may file a motion or, if the case has already been transferred to the civil division by order of the criminal division, pay the court fees to remedy the procedural deficiencies in the complaint. However, the outcome of the judgment rendered in the second instance of the criminal proceedings is subject to the limitations of the right to appeal to the third instance.

## 壹、案件概述：臺灣高等法院臺中分院112年度訴字第13號民事判決<sup>1</sup>

### 一、原告X<sub>1</sub>、X<sub>2</sub>、X<sub>3</sub>主張

(一) 被告Y未具醫師資格，明知訴外人Z（2019年3月27日死亡）罹患肛門惡性腫瘤，竟以其負責經營之甲公司所製造之系爭產品，向Z佯稱具有治療肛門惡性腫瘤、瘻管及提升血量之效果，致Z自2018年7月至2019年2月間向被告購買系爭產品而交付新臺幣（下同）69萬6,300元；Y又指導Z抽出手部血液混和針劑後注射至臀部肌肉，所犯詐欺取財罪及非法執行醫療業務罪，經刑事判決處有期徒刑10月確定（下稱系爭刑案）。

(二) X<sub>1</sub>為Z之配偶，X<sub>2</sub>、X<sub>3</sub>為Z之子女，原告3人繼承Z財產上一切權利義務，依民法第1148條第1項前段、第184條第1項前段、後段、第2項規定擇一請求Y賠償對Z之詐欺取財及違反醫師法所致財產上損害69萬6,300元。又因Y之非法醫療行為，造成原告在盡配偶、子女之法定扶養義務過程中徒增身心勞累，造成額外之負擔及支出；Y侵害Z就醫選擇之自主權利，導致Z延誤就醫而死亡之結果，造成原告心中無法抹滅之傷痛，對於原告基於配偶、子女親密關係所生身分法益之嚴重戕害，依民法第195條第3項規定請求Y各給付X<sub>1</sub>、X<sub>2</sub>、X<sub>3</sub>120萬元、60萬元、60萬元之精神慰撫金。

(三) 聲明：1.Y應給付原告696,300元及自刑事附帶民事起訴狀繕本送達翌日起算之法定遲延利息。2.Y應各給付X<sub>1</sub>、X<sub>2</sub>、X<sub>3</sub>120萬元、60萬元、60萬元，及均自刑事附帶民事起訴狀繕本送達之翌日起算法定遲延利息。

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<sup>1</sup> 省略假執行之聲請與裁判部分。