

關於因侵入性治療 所生雙腿或足部癱瘓風險 的說明義務

The Range of Medical Explanations about
the Medical Invasive Treatment which
Led to the Risks of Palsy of Two Legs or Feet

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摘要

原告病患主張，被告醫生並未在手術前就手術所可能引發之癱瘓風險作完全說明，導致原告因神經受傷引發持續性癱瘓，被告對此應負損害賠償責任。最高法院認為，根據過去的判決，若病患並未進一步詢問，醫生依醫療常規在手術前所說明之癱瘓，原則上係指持續性的癱瘓。因此，被告已盡手術前告知原告可能引發持續性癱瘓風險之說明義務，不負損害賠償責任。

關鍵詞：侵入性治療 (invasive treatment)、持續性癱瘓 (persistent palsy)、醫療解釋義務 (duty of explanation)、癱瘓 (palsy)

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The patient as the plaintiff complains that the physician as the accused didn't explain the risk of the possible palsy before taking the operation according to his duty. The accused had therefore to take the responsibility for the compensation. The supreme court affirmed that the palsy which was explained by the physician before the operation is generally a persistent palsy according to cases in the past, if the patient didn't ask forward. Besides, it had been already one of the medical standards. Therefore, the accused had done her duty of explanation before taking the operation that the operation might cause to a palsy possibly, and has no responsibility for the damage.

壹、事實概要

一、事實概要

本件原告因手術後產生癱瘓等神經損害症狀，主張被告於手術時發生治療錯誤，且未經醫師解釋手術之可能風險，請求財產與精神上損害賠償。原告身為運動員暨手球教練，因為其右側股骨頭缺血性（Hüftkopfnekrose），曾於2010年6月1日接受被告乙在被告甲家中進行人工髖關節替換（Hüftgelenktotalendoprothese）手術。術後，原告併發神經叢損害（Plexusläsion）、足部癱瘓、腳趾癱瘓與蹠屈癱瘓，致不能正常地站立、行走，且無法繼續進行運動訓練。原告於手術前日的術前說明，係由助理醫師所進行，該日原告也已簽名表示了解手術可能會有「神經損害」的風險，也就是會有持續的後遺症，例如會導致腿部的局部癱瘓。原告強調，神經損害係由手術時與手術後的治療錯誤所致；此外，其於術前亦未受可能發生持續性癱瘓風險的說明。