

告知說明義務系列： 醫師未盡告知說明義務 是否構成侵權行為？

The Series of the Obligation to Disclose :
Is the Tort Constituted when
the Physician Fails to Fulfill the Obligation to Disclose ?

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摘 要

醫師之主要義務不僅在於正確診斷出病人之病灶所在，以採行及時、有效及適當之治療方法，更在使病人已充分知悉其病灶所在之資訊，而使病人能基於充分之資訊及受告知的情形下，正確且完整地行使其接受或不接受治療之決定權，此即所謂病人之自主權及受告知後同意權之真實意義所在。而此項告知義務之行使態樣，固以醫師已適當、完全告知病人病情或檢查結果，或告知病人得知悉其病情或檢查結果之管道即為已足，且應由病人自行決定是否接受治療及承擔治療之各項風險，但仍以有盡其適當告知義務為前提要件。醫師之告知義務包括病理檢查報告之結果，未

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關鍵詞：告知說明 (explanation)、相當因果關係 (proximate cause)、損害賠償 (compensation for damage)

DOI : 10.3966/241553062018030017010



為病理檢查報告之告知係術後處置措施之明顯疏失。又醫院既為醫師之僱用人，則任何病患至該院由任何醫師為其診療，不論其係由專任醫師或特約醫師診治，在客觀上均係由病患與醫院成立醫療契約，醫院與其醫師間權利義務之約定，並不影響醫療契約之對外效力。

The main obligations of the physician are not only diagnosing a disease of the patient and using the prompt, effective, appropriate treatment, but also telling the complete information of the disease to patient. After being informed and realizing the information, the patient could correctly make the decision to accept the treatment or not, the foregoing is the real meaning of the patient's autonomy and the right of the informed consent. Although the patient makes the decision to accept the treatment and assumes the risk, the physician must fulfill the obligation to disclose. The form of the obligation to disclose requires the physician appropriately informs the condition of an illness, the test result, or the source that the patient could notice his or her situation of the illness. Physician obligation to disclose included informing the results of the pathological examination report, he had an obvious malpractice at the postoperative care for the patient. Physician is employed by hospital. The patients go to the hospital for medical treatment, whatever full-time physicians or adjunct physicians do the treatment in the hospital, the medical contract is between the patients and the hospital. The agreements of the rights and obligations which are between the hospital and its physicians don't influence the external validity of the medical contract.

Angle

壹、案例

病人A於2002年1月間前往甲醫師所開設之婦產科診所就診，經超音波檢查結果，認其疑患有子宮肌瘤後，乃於同年月21日前往其任特約醫師之L醫院住院，並於翌（22）日由甲醫師為其施以全子宮及兩側卵巢切除手術，且於同年月27日出院時所開立之診斷證明書上載明為「子宮肌瘤」。病人A出院後即依甲醫師之指示至其診所接受術後治療，期間並有多次因腹部疼痛不適而在該診所就診之情事。嗣於同年4月29日因腹痛前往L醫院急診時，經乙醫師調閱病歷資料後，始發現於開刀後之病理檢查結果為子宮頸腺癌。依該病理檢查報告所示，當時病人A之子宮頸腺癌僅為第二期，5年內仍有高達60%之存活率，甲醫師卻未告知病人A該項檢查結果。病人A嗣後雖前往高雄Z總醫院治療，然因已延誤治療期間，致癌細胞已擴散至整個腹腔內，最終於同年8月8日死亡。

貳、爭點

一、甲醫師就病人A於手術前、手術中及手術後之醫療行為是否有過失？

二、甲醫師是否有未盡告知義務之疏失？

參、解析

一、子宮頸腺癌較難於內診時發現

按子宮頸抹片係早期發現子宮頸病變之有效方法，子宮頸癌最主要之兩種組織型為鱗狀上皮癌和腺癌。一般而言，腺癌

1 臺灣高等法院高雄分院95年度醫上字第1號民事判決。