

【醫療民事法】

胸腔內視鏡手術後遺症未告知案： 違反告知後同意訴訟類型 之因果關係認定

Failing to Inform Patient about the Complications
of Thoracoscopic Surgery: The Causality in
the Lawsuits about Breaching Informed Consent

廖建瑜 Chien-Yu Liao *



摘要

告知義務之違反是近年醫療訴訟主張的起手式，但結果往往是與身體健康權相結合，鮮少獨立以侵害病人自主決定之人格權作為侵權客體。本件經最高法院駁回上訴，確立違反告知後同意之醫療訴訟新樣貌即以人格權受侵害為主張，同時也衍生此種類型侵權責任如何架構的問題，尤其在因果關係有其獨特性，應特別予以關注並闡明，俾使侵權責任建構完整合理之基礎。

*臺灣高等法院刑事庭法官 (Criminal Judge, Taiwan Provisional High Court)

關鍵詞：告知後同意 (informed consent)、病人自主決定權 (autonomy of patients)、理性病人 (rational patient)、請求權基礎 (claim rights)、雙重因果關係 (bicausality)

DOI : 10.3966/241553062021030053005

Breaching the informed consent has been recently the starter for the medical litigations. The infringement of the autonomy of patients as a right of personality would seldom be the objective of the litigations, even though it connected always with the rights of body and health. After being overruled by the supreme court, it would be asserted in the issued case that the litigation about breaching informed consent takes the infringement of the right of personality as the claim right. It is also developed how the construct the obligation of this kind of tort. Due to its specialty, the causality should be concerned and explained, so that it could be a reasonable ground for constructing obligations of tort.

壹、判決簡介與問題提出

一、案例事實

原告於2014年5月22日至醫院進行健檢，從胸腔X光發現疑似腫瘤，復於同年6月16日住院欲進行胸腔內視鏡手術切除，當日簽署醫院所提供之手術同意書。於2014年6月17日由被告甲、乙二人進行胸腔鏡胸壁腫瘤切除手術（VATS，下稱系爭手術），手術紀錄記載，術前診斷原告之腫瘤為「肋膜的神經源性腫瘤」（neurogenic tumor），摘除腫瘤過程中，摘除腫瘤內有包埋發源神經，手術結果傷及原告之左手臂神經叢。醫院在原告病歷紀錄，並未記載醫師等人有將「左手臂神經遭截斷」之情事告知。原告主張術前醫師未說明有傷及臂神經叢之可能性。

二、判決要旨

本件被告二位醫師主要抗辯係無法預見系爭手術是否會發