學習式判解評

【醫療民事法】

雙側卵巢切除致不能生育案: 須經病人同意⑩醫療選項 與醫師臨床裁量衝突

Infertility Due to Bilateral Oophorectomy:
Conflict between Medical Options Requiring Consent
of Patient and Clinical Discretion of Physician

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摘要

對於病人自主權利法中賦予病人就醫療選項有同意權,病人已非單純被告知之對象而已,而確立病人自主決定權之法律地位,與醫療法第82條修正後所入法之醫師臨床專業裁量關係,應予釐清醫師裁量之界限係建構於踐行對病人之告知與同意,否則將使醫病關係倒退回醫療父權時代,對於病人權利戕害甚巨,法院在適用上應特別慎重。

Patients are not simply the subject being informed but have

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關鍵詞:告知後同意(informed consent)、容許風險(tolerable risk)、

推 測 同 意 (presumed consent) 、 臨 床 專 業 裁 量 (clinical

professional discretion)、醫療選項(medical options)

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the legal status with the autonomy according to Patient Right to Autonomy Act which endows with the right to consent in respect of options of medical treatment. As to the clinical professional discretion which belongs to the physician according to the paragraph 28 of amended Physician Act, it shall be clarified that the purpose of the discretion of the physician lies on the information and consent of patients. Otherwise, it might force the relation between patient and physician back to the patriarchal time, causing enormous damage to patients, and it shall be cautioned during the legal application in court.

膏、案例事實、歷審判決及問題提出

一、案例事實

23歲之原告因便秘及脹氣於2003年9月19日赴被告醫院肝膽陽胃科掛號求診,診斷結果為:胃腸機能性障礙及便秘,並於同年9月23日安排腹部超音波檢查(Abdominalecho,簡稱abdecho),診療結果改為:「1.疑似Malignant Neoplasm of Colon(即惡性腫瘤結腸),Unspecified(未具體説明)」,於同年月25日服用造影劑(CT with/without contrast)及進行電腦斷層攝影檢查(CT Abdomen,簡稱CT),該CT檢查報告單其上載:「臨床資訊、主訴、病史和摘要:超音波檢查:右下腹部腫瘤,主要的臨床診斷:結腸惡性腫瘤」,10月7日進行大腸纖維鏡Colonfibrscopy檢查,同年月9日原告回診後,醫師再向原告告知係因原告腸子有長腫瘤,需要開刀,並會安排其他專科醫師會診,原告同意後,醫師於該日病歷表前端「先前病歷」上記載:……曾作過OPD、abdecho及CT檢查,發現腹部及骨盆有腫塊,10月7日作過大陽纖維鏡檢