

告知說明義務系列： 告知說明之範圍

The Series of the Obligation to Disclose :
The Sphere of the Obligation to Disclose

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摘 要

所謂醫師應盡之說明義務，除過於專業或細部之療法外，至少應包含：一、診斷之病名、病況、預後及不接受治療之後果；二、建議治療方案及其他可能之替代治療方案暨其利弊；三、治療風險、常發生之併發症及副作用暨雖不常發生，但可能發生嚴重後果之風險；四、治療之成功率（死亡率）；五、醫院之設備及醫師之專業能力等事項。簡言之，在一般情形下，如曾說明上述之事項，病人即有拒絕醫療之可能時，醫師即有說明之義務；於此，醫師若未盡上開說明之義務，除有正當理由外，難謂已盡注意之義務；上開說明之義務，以實質上已予說明為必要，若僅令病人或其家屬在印有說明事項之同意書上貿然簽名，亦尚難認已盡說明之義務。

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關鍵詞：告知說明之範圍（the range of explanation）、告知說明義務（the duty of explanation）、損害賠償（compensation for damage）

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Angle

The obligation to disclose of the physician includes: 1. The diagnosis of a disease name, the condition of an illness, the consequence of the treatment and the consequence of refusing treatment. 2. Explaining the advantages and the disadvantages of the proposed treatment and the others alternative treatments. 3. Though the risk of the medical treatment, the complications and the side effects don't occur often, the physician must explain the risk of serious consequences to the patient. 4. The success rate and the mortality rate of the treatment. 5. The equipments of the hospital and the professional skills of the physician. Generally, if the patient might refuse the medical treatment after explaining, the obligation to disclose would exist. If the physician fails to inform, he or she fails to fulfill the obligation to disclose unless he or she has justified reasons. The obligation to disclose requires the physician to inform materially. If the patient or the patient's family signs rashly the consent form which has the explanations, it is hard to recognize the obligation to disclose that has been exhausted.

壹、案例¹

原告A之夫B（即其餘原告之父），於2007年9月7日15時許至被告E醫院就診，經被告甲醫師診斷為急性心肌梗塞，並未建議轉診，同日16時50分為病人B實施心導管及經皮冠狀動脈氣球成形術，同時進行放置血管支架手術，惟至20時40分病人B即有心包膜填塞情形，乃緊急施作心包膜放流術，復於21

1 詳見臺灣高等法院101年度醫上更（一）字第4號民事判決。