

告知說明義務系列： 告知說明是否必須 醫師親自為之

The Series of the Obligation to Disclose:
Is It Necessary for the Physician to
Inform and Explain Personally to the Patient?

王聖惠 Sheng-Huey Wang *



摘 要

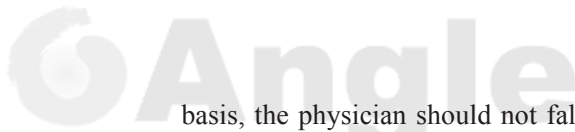
按醫師法第11條之立法精神，在規範醫師對從未診視過之患者，於病情不明情況下而予以處方之行為；若該患者已經詳細檢查，病情明顯，醫師任何處置皆有所本，即應不屬醫師法第11條處罰之範疇。醫療行為須賴團隊之分工合作乃能全其工，不必均由醫師親自為之。

According to the legislative spirit of Article 11 of Physicians Act, the physician prescribes for the patient who has never been diagnosed when the state of an illness is unclear; if the patient has been examined in detail, the state of an illness is obvious, and each medical behavior has

*政治大學法律科技整合研究所兼任副教授 (Adjunct Associate Professor, Institute of Law and Inter-Discipline, Chengchi University)

關鍵詞：告知說明 (inform and explain)、親自為之 (personally)、醫療法第 11 條 (Article 11 of Physicians Act)

DOI : 10.3966/241553062019050031009



basis, the physician should not fall within the punishment of Article 11 of Physicians Act. The medical behavior depends on the division of labor cooperation of the medical team, and it is not necessary for the physician to personally do it.

壹、案例¹

自訴人之妻即患者A於1996年9月4～8日間，在T醫院接受心導管檢查，自訴人稱因被告甲醫師未經告知實施心導管檢查之危險性即實施，且實施心導管檢查後，在A之鼠蹊部傷口各壓置每包兩公斤之砂袋各一個，因砂袋過重且沒有及時拿開，導致A股動脈栓塞並引發急性心肌梗塞而死亡。被告乙醫師值班時未親自巡視病房，而以電話指示護士施予A舌下硝化甘油含片解緩症狀，已違反醫師法第11條第1項本文規定：「醫師非親自診察，不得施行治療、開給方劑或交付診斷書。」此外，被告丙醫師值班時，於家屬要求值班醫師診察時卻未到病房來診察，亦違反上開醫師法第11條之規定，而認被告甲醫師、乙醫師與丙醫師涉有刑法第276條第2項業務過失致死之罪嫌。

貳、爭點

一、被告甲醫師是否對實施心導管檢查之危險性未善盡告知說明義務？

二、被告乙醫師值班時未親自巡房，而以電話指示護士施

¹ 請參閱臺灣高等法院臺南分院94年度重上更（二）字第278號刑事判決。