

護理之家的密醫罪案例： 護理長指示護理人員 執行醫療輔助行為

Head Nurse Prescribed the Nursing Stuff to
Practice the Medical Assisted Activities:
A Case about Fake Doctor in the Nursing Home

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摘 要

護理人員違反醫師法第28條規定而觸犯密醫罪之態樣有二：一、護理人員執行應由醫師親自執行之醫療行為；二、護理人員未獲醫師指示，擅自執行醫療輔助行為。本文擬介紹一則護理之家護理長指示護理人員對住民進行鼻胃管之更換，護理長與護理人員均成立密醫罪之判決。本件之爭點涉及護理人員之業務範圍、醫療輔助行為、密醫罪與共同正犯等概念，本文擬藉此判決探究之。

There are two types for the fake doctor because the nursing stuff against paragraph 28 Physician Act: (1) the

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關鍵詞：共同正犯 (joint principal offender)、執業範圍 (the scope of practice)、密醫罪 (fake doctor)、醫師法第28條規定 (paragraph 28 physician act)、護理人員 (nursing stuff)

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nursing staff practices the medical activities which shall be practiced by physicians; (2) the nursing staff practices the medical assisted activities without the indication by physicians. A judgment would be introduced in this essay that the head nurse prescribed the nursing staff to change the feeding tube for the residents in a nursing home and both of them were sentenced to be the fake doctor. The legal issues are the matter of concepts like scope of practice for the nursing staff, the medical assisted activities, the fake doctor and the joint principal offender. These topics would be discussed on the basis of the judgement in the essay.

壹、案例事實

甲為護理之家護理長，乙為護理人員，A為長期鼻胃管留置之住民，甲指示乙對A進行鼻胃管之更換¹。

貳、爭點

甲指示乙對A進行鼻胃管之更換，問：

- 一、甲是否成立密醫罪？
- 二、乙是否成立密醫罪？

參、解析

本件之爭點涉及護理人員業務範圍、醫療輔助行為、密醫罪與共同正犯等概念，本文茲說明此等概念如下。

1 本件改編自臺灣高雄地方法院95年度訴字第1167號刑事判決與臺灣高等法院高雄分院95年度醫上訴字第5號刑事判決。