

【醫療民事法】

掛名負責醫師與 密醫連帶賠償案： 借牌診所負責醫師責任

Joint Liability between Nominally Supervising
Physician and Quacksalver : The Liability of the
Physician in Charge for Lending the License

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摘要

本案事實包含具醫師資格者擔任診所負責醫師，卻由不具醫師資格之人執行醫療業務，此時，不具醫師資格之行為人是否當然構成侵權行為？負責醫師又應構成何種型態之侵權行為？其與不具醫師資格之行為人間關係為何？若病家與其中一人和解，是否影響其他債務人應負責任內涵？本文僅擇上開侵權行為責任與多數債務人間責任分擔之議題進行評析。

The issue in this case was about a physician who took the charge of a clinic and was qualified to practice, but the medical practice was run by another one who wasn't

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關鍵詞：不真正連帶債務 (unreal joint debt)、侵權行為 (tort)、密醫 (quacksalver)、掛名負責醫師 (nominally supervising physician)、連帶債務 (joint debt)

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qualified to practice. In this case, does a person who is not qualified to practice medicine constitute a tort? What type of tort could the physician in charge constitute? What was the liability between them? If the family of a patient reconciled with one of them, would it affect the liability the other obligor? The issue about the liability of torts and its sharing between multiple obligors would be the topic in this essay.

壹、案件事實

一、與侵權行為責任相關之事實

甲為具有醫師資格之醫師，與乙締結聘任合約書，約定甲願擔任由乙經營管理之X診所負責醫師，乙為X診所實際負責人，惟乙雖未取得醫師資格，亦在X診所內為病患看診，並僱用亦未取得醫師資格之丙為看診醫師。嗣有病患Y至該X診所由乙看診，乙擅自為Y注射點滴及普洛福（propofol）麻醉劑，導致Y心跳、呼吸趨緩且陷入意識不清狀態，經乙以加強電流再減緩，及以手壓胸腔方式進行CPR急救，繼由乙喚來丙對Y施以CPR急救，並注射腎上腺素、強心針、心臟注射劑，均無效後，於2小時後經救護車送往其他醫院急救仍不治死亡。

二、病家主張

本件乙於被訴密醫罪刑事案件中，已以350萬元與Y家屬全體（下稱病家）達成和解，並於和解契約中約定：「病家依民法第276條第1項規定免除乙其餘連帶債務，但該和解書無消滅損害賠償訴訟全部債務，或免除甲、丙連帶債務之意思」等語。嗣病家對甲、丙起訴，主張丙未取得醫師資格擅自執行醫