

【醫療民事法】 侵害醫師名譽權案： 針對診所醫療行為所為 網路貼文之法律責任

A Case about Infringing a Physician's Right of Reputation:
Legal Liability for Internet Postings Made by a Medical Clinic

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摘要

本案事實為未成年患者接受醫美診所之雷射療程後出現紅腫之症狀，患者之母在其臉書個人專頁發表「不負責任」、「態度差」、「不退費、不給醫療補償」、「別讓有人再騙」等貼文內容，指摘該診所術後處置不當，該診所認其名譽受損，此時發布上開貼文內容之人是否應負侵權行為損害賠償責任？責任範圍為何？本文將擇名譽權侵害要件及法律效果之議題進行評析。

The facts in this case are that, because the minor patient, after receiving a laser treatment from the clinic, developed

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redness and swelling, the patient's mother posted comments on her Facebook page, like "irresponsible," "poor attitude," "no refund, no medical compensation," "don't let anyone be cheated again," ect., accusing the clinic of improper post-operative treatment. The clinic believed that it's reputation has been tarnished. Should the person who posted the above comments be liable for the damage of trot? What would be the scope of the liability? The elements as well as the legal effects of the issued trot regarding the right of reputation would be the topics to discuss in this essay.

壹、案件事實

甲向乙診所購買雷射除毛療程，由乙診所聘僱之丙醫師為甲之未成年女兒丁進行雷射除毛，丁於2019年11月12日進行第四次療程後反應除毛部位有紅腫情形。嗣甲及乙診所針對退費、賠償等爭議協商未果，甲遂代理丁向法院訴請乙診所退費及賠償損害（下稱另案損賠訴訟）。甲於另案損賠訴訟一審尚未判決前，即在其臉書個人專頁張貼：「不負責任的○○醫美（即乙診所全名），把我女兒除毛燙傷至今不負責任，服務差、態度強硬……，還跟我打官司，不退費，更不給醫療補償，已經快1年了……」、「已經1年了，花了很多時間和金錢在買藥上……，只是這○○醫美太惡劣了，麻煩幫我分享出去，別讓有人再騙……」¹等語（下稱系爭貼文）。

乙診所（由戊醫師獨資經營，並無獨立法人格，於訴訟中係以○○○（即戊醫師全名）即○○醫美診所（即乙診所全名）為當事人名義）主張：

1 參見地院判決附件一。