

醫療行為中的坦誠義務： 句句屬實、絕無虛言？(一)*

Duties of Candour in Healthcare: The Truth,
the Whole Truth, and Nothing but the Truth? (I)

陳怡君 Yi-Chun Chen** 編譯

本篇中譯自 Oxford University Press 授權繁體中文



摘要

在創設了法律上與職業上的坦誠義務後，開始要求臨床醫療人員與醫療組織在療程出錯時，對病患及其家屬保持誠實。本文將解釋這兩者義務創設的背景，並分析坦誠的概念、道歉所扮演的角色，以及遵循法規的相關證據。我們將探討：將坦誠納入法律規定是否

*本文譯自 Oliver Quick, *Duties of Candour in Healthcare: The Truth, the Whole Truth, and Nothing but the Truth?*, 30(2) MEDICAL LAW REVIEW 324-347 (2022), <https://doi.org/10.1093/medlaw/fwac004> VC The Author(s) 2022. Published by Oxford University Press.

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted reuse, distribution, and reproduction in any medium, provided the original work is properly cited.

**玉醫科技法務 (Corporate Counsel, MedJade Co., Ltd.)

關鍵詞：安全 (safety)、坦誠 (candour)、法律 (law)、損害 (harm)、道歉 (apologies)

DOI : 10.53106/241553062023040078008

能妥善地反應損害背後的真相，以及其作為表達誠實的有力展現。然而，在複雜的專業文化背景、資金不足的醫療系統中、以及潛在的訴訟壓力及法規調查壓力下，想要坦誠相見並不容易。在當前的「醫療與照護法案」提案中，提議創設調查的「安全區」將禁止揭露提交給調查病安事件的獨立外部機構的資料，此舉將破壞坦誠相見的可能。本文認為此舉在原則上是錯誤的，在實踐中也存在相當大的問題，因此反對此提案。坦誠應當是一項被尊重的基本原則，不僅僅適用於提供醫療服務的人，也同樣適用於調查病安事件的人。受害病患及其家人有得知全部真相的權利。

The creation of professional and statutory duties of candour has formalised the requirement for clinicians and healthcare organisations to be honest with patients and families when treatment has gone wrong. This article explains the background to creating both duties, analyses the concept of candour, the role of apologies, and considers evidence about compliance. It argues that making candour a statutory requirement appropriately reflects the ethical imperative of telling the truth about harm and is a powerful signal for honesty. However, being candid is not easy in the context of complex professional cultures, the realities of delivering care in under-funded health systems, and in the shadow of possible legal and regulatory proceedings. Proposals in the current Health and Care Bill to create investigatory ‘safe spaces’ which prohibit the disclosure of information submitted to the Health Service Safety Investigations Body undermine candour. This article argues against such proposals, which are both wrong in principle and highly problematic in practice. Candour should be respected as a cardinal principle governing not only the conduct of those providing care, but also those who investigate such

incidents. Harmed patients and their families deserve to know the whole truth.

壹、引言

醫療糾紛是一個全球性的公衛議題。世界衛生組織（World Health Organization）預估醫療不良事件造成的死亡數比肺癌、糖尿病以及道路事故造成的死亡數還多，而且有80%的不良事件是可以避免的¹。在中低收入國家，低品質的醫療服務造成的死亡數占了整體死亡數的10%到15%²。這類簡化後的統計數據雖然看起來相當驚人，但真實世界中不安全的醫療照護，還必須考慮那些病患原本就存在的疾病和健康因素，而評估一起不良事件是否為可避免，該假設仍建立在理想的情況下，而奠基於非現實狀況。然而，光是英格蘭地區，為受傷病患提供進一步醫療照護的額外年度財務支出，就相當於僱用2,000多名受薪家醫師（general practitioners, GP）和3,500名醫院護理師³，而目前國民健保署（National Health Service, NHS）中有大量人員空缺，非常需要更多的勞工⁴。每年為處理及賠償婦產科醫療疏失的成本（21億英鎊）已超過了花費在分娩上的費用（19億英鎊）⁵。英國政府「預留了834億英鎊用

1 World Health Organization, 'Patient Safety: Key Facts' (13 September 2019) <<https://www.who.int/news-room/fact-sheets/detail/patient-safety>> accessed 11 January 2022.

2 *ibid.*

3 L Slawomirski, A Auraaen and N Klazinga, 'The Economics of Patient Safety: Strengthening a Value-Based Approach to Reducing Patient Harm at National Level', OECD Health Working Papers No 96 (OECD Publishing 2017).

4 L Rolewicz and B Palmer, 'The NHS Workforce in Numbers' (7 September 2021) <<https://www.nuffieldtrust.org.uk/resource/the-nhs-workforce-in-numbers>> accessed 11 January 2022.

5 K Flott, G Fontana and A Darzi, *The Global State of Patient Safety*