

醫療過失之不純正不作為犯 — 洗腎透析管接頭鬆脫致死案之評析

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關鍵詞：不純正不作為犯、醫療義務的浮動性、預見可能性、法律不強人所難、客觀不可避免性

Keywords：Derivative omission offences, Floating of medical obligations, Foresee the possibility, Cannot expect the actor behaved reasonable behaviors fitting norms, Objectively unavoidable

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摘 要

本案首先應檢視者，甲之行為係作為或不作為，因攸關法律適用問題。而對於是否成立過失不純正不作為犯，法院除審查有無「應防止」之保證人義務外，尚應對於甲是否「能防止」及其結果是否具「可避免性」等項，詳予調查審認。則甲雖立於保證人地位，是否能預見並防止結果之發生？縱使認定甲未履行作為義務，與結果間是否具有因果關係？又該結果是否具有「可避免性」？亦即研析本案是否符合過失不純正不作為犯之內涵。

Medical negligence is not pure and not a crime — Evaluation of the case of dialysis dialysis tube joint loosening and lethality

Wang, Fu-Hsien

Abstract

The case should first be reviewed by the inspector. The behavior of A is caused or not, because of the application of the law. In addition to reviewing whether or not a negligence is not a pure or inaction, the court should, in addition to examining whether it is "should prevent" the guarantor's obligations, should also investigate whether A is "can prevent" and whether its results are "avoidable". recognize. If A is in the status of a guarantor, can it be foreseen and prevent the outcome from happening? Even if it is determined that A has not fulfilled its obligations, is there a causal relationship with the results? Does the result have "avoidability"? That is to say, whether the case is in line with the connotation of negligence and impureness.