

網際醫病關係之崩解(一)*

Internet Disruptions in the Doctor-Patient Relationship (I)

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摘要

病人藉由無所不在地從網路獲取有關健康問題的資訊，正從根本上破壞傳統醫病關係。已然發生轉移的知識不對等，正在醫療父權的棺材上敲入最後一顆釘子。谷歌醫生的隨時可近性有許多正向的影響，但依然存在病人不加辨別地接受不科學、過時或有偏見的訊息進行決策之風險。到頭來，這可能會影響到醫生在法律上的注意義務，並使他們需要敏感地詢問讓病人做出令人驚訝、或明顯不合邏輯的治療選擇時資訊之來源。此外，病人、與病人有關的人和其他人有可能在網路上發布關於醫生的不正確和有害訊息。

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目前，法院作出一些有影響力的裁判已經確立了醫療從業人員採取法律程序進行誹謗和禁止令救濟的合法性，以制止誹謗性和惡意的網路發表對其個人、名譽和商業造成傷害。並且，對於醫生發表的無禮與有失尊重的網路貼文，也要求其對於專業紀律的當責。所有這些因素都促使醫生與其病人之間的動態發生了崩解性的重新調整。

The ubiquitous access by patients to online information about health issues is disrupting the traditional doctor-patient relationship in fundamental ways. The knowledge imbalance has shifted and the last nails are being hammered into the coffin of medical paternalism. Ready access to Dr Google has many positive aspects but the risk of undiscerning acceptance by patients of unscientific, out-of-date or biased information for their decision-making remains. In turn this may feed into the content of the legal duty of care for doctors and contribute to a need for them to inquire sensitively into the sources of information that may be generating surprising or apparently illogical patient treatment choices. In addition, patients, those related to patients, and others have the potential to publish on the Internet incorrect and harmful information about doctors. A number of influential decisions by courts have now established the legitimacy of medical practitioners taking legal proceedings for defamation and injunctive relief to stop vituperative and vindictive online publications that are harming them personally, reputationally and commercially. Furthermore, disciplinary accountability has been imposed on doctors for intemperate, disrespectful online postings. All of these factors are contributing to a disruptive recalibration of the dynamics between doctors and their patients.

壹、引言

Google曾被描述為健康、性和政治的數位三位一體¹，網路和Google上最常見的搜尋是健康或情色相關的題材。2019年，在Google上每14次搜尋中就有一次與健康問題有關，每分鐘有7萬次這樣的搜尋²，然而，可能有一些特殊的因素促使人們造訪線上健康網站。以2019年發表的一項美國研究為例³，有15%的病人在急診就醫前七天會上網搜尋健康相關議題，遠多於標準值6%。搜尋時，56%關於症狀，53%查詢醫療院所資訊，23%與疾病的治療或處置有關。在前往急診就診當週，使用Google者有53%搜尋了與主訴直接相關的內容。相似地，在2018年一項澳洲研究中，49%的病人反應經常性的在網路上搜尋健康資訊，34.8%的病人在急診就診前曾搜尋過當前的健康狀態，這促使作者得出結論：「搜尋對醫病互動有正向的影響，不太可能降低遵醫囑性」⁴。

已有諸多文章探討在侵權法和相關規範領域，醫病關係的動態變化已從父權轉向病人自主決策，但情境仍在持續發展且需要更進一步的細節分析，以考量病人在當代環境中利用的資訊品質和來源。更好與更充分的醫療資訊揭露義務對病人主體價值的彰顯是其中的一部分變化。這改變了醫生及病人的思

1 P Göranson, 'Hydrarealizing Dr Google' (2017): <<https://patientmkt.wordpress.com/2018/08/16/hydrarealizing-dr-google/>>.

2 See M Murphy, 'Dr Google Will See You Now: Search Giant Wants to Cash in on Your Medical Queries' THE TELEGRAPH (10 March 2019): ><https://www.telegraph.co.uk/technology/2019/03/10/google-sifting-one-billion-health-questions-day/>>.

3 JM Asch and others, 'Google Search Histories of Patients Presenting to an Emergency Department: An Observational Study' (2019) 9(2) BMJ OPEN.

4 AM Cocco and others, 'Dr Google in the ED: Searching for Online Health Information by Adult Emergency Department' (2018) 209(4) MEDICAL JOURNAL OF AUSTRALIA 342.