

# 誰能使用呼吸器？ 如何在醫療資源不足下 進行分配的法律觀點

Who Could Use Ventilators ?  
How to Divide the Inadequate Medical  
Resource from the Legal Viewpoint

許澤天 Tze-Tien Hsu\*



## 摘要

因新冠肺炎肆虐帶來醫療資源匱乏，導致分配不足的生死問題，雖在醫學界已有所討論，並嘗試提供具有參考價值的資源分配倫理指引，惟此一涉及生死救助困境的災難，終究屬於法律問題，故仍應從憲法與刑法等法律規範的角度，尋求可靠的行為指引。本文試以呼吸器案為例，說明在資源分配不足下進行分配的法律觀點。

During the wreaking havoc of COVID-19, the physician P was busy in taking care of three serious patients A, B, and C. But there was only one ventilator and P had fallen into the dilemma that there could be only one patient being

\*成功大學法律系教授 (Professor, Department of Law, Cheng Kung University)

關鍵詞：義務衝突 (conflict of obligations)、緊急避難 (necessity)、醫療倫理 (medical ethics)、醫療資源 (medical resource)

DOI : 10.53106/241553062021080058007

rescued. A who is the only one patient with the clear mind expressed P the willing of sacrificing, leaving the ventilator to the others. P had decided therefore to let B to use it, for the reason that C was too old and B as a middle-aged man still had the responsibility to take care of his children. After few days, A and C were died from COVID-19, whereas B survived. However, if A could use the ventilator, he might have quiet high chance to live according to the investigation. Furthermore, the patients, whether A or C, could live at least few days longer if using the ventilator. The legal issue 1: Did P have any criminal responsibility? The legal issue 2: Supposed that P let B to use the ventilator but noticed that B was getting worse and it might be few days left, even he was treated continually and the survive rate was lower than C. P removed the ventilator from B to C consequently. Few days later, both A and B died from COVID-19, and C survived. Did P insofar have any criminal responsibility?

---

## 壹、問題提出

新冠肺炎肆虐下，小鎮醫師甲忙於負責照顧A、B、C三名重症患者，卻陷入只剩一臺呼吸器可用，而只能救活其中一人的困境。唯一意識仍清醒的A，向甲表達自己願意為人捨命的信仰價值，要求將呼吸器留給其他人。甲因此決定將呼吸器提供給B，理由是C已老邁，中年男子B仍要承擔照顧小孩的家庭責任。數日後，A與C皆死於肺炎而B獲救，且經調查，倘若A使用呼吸器有相當高的存活機率，不論是A或C，兩人至少可在使用呼吸器後存活數日。問題一：試問甲的可罰性？問