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美容醫學與 消費者保護法的距離

The Distance between Aesthetic Medicine and Consumer Protection Law

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摘要

在美容醫學廣受歡迎的今日,因其而起的糾紛數量, 於近年來也可見有相應上升之趨勢。從而如何在現行 法規之框架下,就映射出的法律爭議予以適切評價, 不論係對於提供美容醫學服務者、或有意接受者而 言,均具有高度切身性。其中,有關「美容醫學是否 有適用消費者保護法之餘地」的問題,和美容醫學是 否屬於醫療行為、美容醫學與以治療為目的之醫療行 為間有何差異等概念之釐清,實存在著環環相銜之關 聯。本文即聚焦於此,並以學說和司法實務之見解為 據,嘗試進行簡要的解析。

In today's age where aesthetic medicine is very popular, the number of disputes arising therefrom has also shown a corresponding upward trend in recent years. Therefore, how to appropriately evaluate the legal disputes reflected

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關鍵詞:美容醫學(aesthetic medicine)、消費者保護法(consumer

protection law) 、醫療行為 (medical practice)

DOI: 10.53106/241553062022020064003



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under the framework of the current laws and regulations is highly relevant to those who provide aesthetic medicine services or those who intend to receive them. Among them, the question of "whether aesthetic medicine has room for the application of the consumer protection law," and whether aesthetic medicine is a medical practice, and the clarification on the difference between aesthetic medicine and medical practice for the purpose of treatment, etc., are related by many connections. With this as a focus, and understanding of law in an academic setting and law in practice as basis, this article attempts to make a brief analysis.

壹、前言

從東方的「當窗理雲鬢,對鏡貼花黃」,到西方的博學大師——李奧納多·達文西(Leonardo da Vinci)於著名人體比例圖「維特魯威人」上寫道:「完美的人,是衡量宇宙的尺度」,自古以來,美好的外貌始終是引人追尋的目標之一。誠然,對於何謂「美」?會受到不同的時代背景、社會文化脈絡等因素影響,進而發展出特色各異的形象,但以面部結構來說,目前多認為在客觀上具備協調性、對稱性和差異性的容貌,即易帶給人賞心悦目的感受1。

時至今日,除了市面上琳瑯滿目的化妝品、保養品外,拜 醫學知識不斷累積和科技快速進步所賜,在非以治療疾病為主 要目的之情況下,包括美容手術,如:割雙眼皮、隆鼻、抽 脂;以及無須動刀且恢復期相對較短的微整形,如:光電治療

⁴ 參許延年、蔡文玲、邱品齊、石博宇、周彥吉、黃宜純編著,美容醫學,華杏,二版,2017年1月,3頁。