

饒了我吧！我不要當鑑定人 簡評刑訴修法 對醫事鑑定的影響

Forgive Me! I Don't Want to be an Appraiser.
A Brief Review of the Impact of the Revision of the
Criminal Procedure Law on Medical Appraisals

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摘要

近年來醫療糾紛頻傳，醫事鑑定成為論斷責任歸屬的重要依據。立法院於2023年12月1日三讀通過「刑事訴訟法部分條文修正草案」關於鑑定之修正。本次修法對於鑑定人之資格，與本案訴訟關係人之利益揭露、偵查中請求檢察官為鑑定、當事人於審判中自行委任鑑定及費用負擔、為機關實施鑑定之自然人具名及使到庭以言詞說明、對專家學者徵詢法律上意見等事項，均加以明文規範，強化鑑定制度程序保障，嚴謹證據法則，使鑑定制度更為完善。然而，醫事機關鑑

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定人與其他專業鑑定人不同，醫事鑑定人多不願也極少出庭說明及接受詰問。此次修法後之鑑定期間可能會延長很多，因為醫事審查委員會（下稱醫審會）或是其他機關或團體（下稱其他鑑定機關）可能找不到願意出庭的鑑定人。但是依本法第208條第3項規定，尚有轉圜餘地。醫審會是依醫療法具有執掌鑑定業務之機關，其所實施之鑑定得為證據。其他鑑定機關可要求主管機關認證，使其醫事鑑定報告得為證據，而其醫事鑑定人不用出庭。其他鑑定機關亦可要求醫病當事人先行出具書面同意書，載明同意醫事鑑定人無需出庭說明及不需接受詰問，方才接受鑑定。醫事鑑定人自可拒絕出庭，本法第199條更是指出「鑑定人，不得拘提。」也就是說，無強制力要求醫事鑑定人必須出庭。但是可被連續科以3萬元以下罰鍰。當然，最有效又符合此次修法目的，即是找尋願出庭者擔任醫事鑑定人。

In recent years, medical disputes have occurred frequently, and medical appraisal has become an important basis for determining responsibility. The Legislative Yuan passed the “Amendment to the appraisal criminal procedure law”. This revision of the law covers the qualifications of appraisers, disclosure of interests of persons involved in the litigation, requesting prodigals to during trials and paying for the expenses, naming natural persons for agencies to conduct appraisals, and making verbal explanations in court, matters such as soliciting legal opinions from experts and the rules of evidence should be strictly enforced to make appraisal system more complete. However, medical appraisers are different from other professional appraisers. Medical appraisers rare different from other professional appraisers. Medical appraisers rarely attend the litigation activity. Medical Review Commission or other appraisal agencies

may not be able to find appraisers willing to appear in court. The medical review committee or other institutional appraisal agencies may require the parties involved, such as the medical examiner or hospital examiner, to issue a written consent stating that the appraisers may not appear in court before accepting the appraisal. Medical evaluators may also refuse to appear in court to give explanations and accept cross-examination. There are no penalties in this law. In other words, there is no compulsion to require medical evaluators to appear in court. The medical review committee or other appraisal agencies may request certification from the competent authority so that their appraiser do not have to appear in court to explain and accept cross-examination. Of course, the most effective and consistent with the purpose of this revision of the law is to find people who are willing to appear in court to explain and accept cross-examination.

壹、緣起

醫療是「健康所繫，性命相託」的神聖使命，臺灣在醫事人員長期的無私犧牲奉獻下，創造了全球矚目的醫療環境及品質。惟近年來醫療糾紛頻傳，「醫師在法院上班，律師到醫院上班」，成為殘酷的笑話；德諺稱：「醫生開刀時，一隻腳踩在手術房中，另一隻腳則踏在監牢中」，更是令人聞之色變。歷年來衛生福利部（下稱衛福部）及財團法人醫院評鑑暨醫療品質策進會（下稱醫策會）均將降低醫療糾紛、簡化醫療糾紛程序列為重大之施政目標之一，但醫師往往未具備法律專業，執法者又無醫療背景，皆需仰賴衛福部醫事審議委員會（以下簡稱醫審會）作出醫事鑑定，此鑑定成為院檢論斷責任