

刑事醫療鑑定新制 之理想與現實

The Idea of the New Regulations of the Criminal
Medical Expert Examination and Its Reality

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摘要

近年來，醫療糾紛備受關注，使鑑定制度在刑事訴訟中的重要性日益提升。2024年刑事訴訟法對鑑定制度進行重大修法，明定鑑定人須具名、具結並親自出庭接受交互詰問，旨在強化對質詰問權與程序正當性。然而，新制實施後，醫界對出庭作證壓力與風險有所疑慮，導致刑事醫療鑑定人來源驟減，甚至出現「無人願鑑」的困境。本文將從法理與實務層面探討制度變革對刑事醫療鑑定的衝擊，並檢視主管機關的對應作為，思考未來修法方向，以兼顧訴訟權益與鑑定制度的可行性。

Recently, medical disputes have attracted considerable attention, increasing the importance of the expert

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examination in the criminal procedure. In 2004, the Code of Criminal Procedure introduced a major amendment to the expert examination, requiring expert examiners to appear in court in person for cross-examination, to strengthen the right to cross-examination and procedural propriety. However, after the implementation of the new system, the medical profession is concerned about the pressure and risk of being the expert examiner in court, which has led to a drastic decrease in the source of criminal medical expert examination, and even the dilemma that no one is willing to be the expert examiner. In this essay, the impact of the institutional changes on criminal medical expert examination would be explored from the legal and practical perspectives; the response of the competent authorities would be reviewed; and the direction of future amendments to the law would be considered. By doing so, the rights and interests of litigants and the feasibility of the system of expert examination would be taken into account.

壹、前言

近年來，隨著醫療糾紛日益受到社會關注，鑑定制度於刑事訴訟程序中扮演之角色益發重要。2024年刑事訴訟法鑑定制度進行重大修正與變革，導入鑑定人（包含機關鑑定之實施鑑定者）具名、具結及親自出庭接受交互詰問等規定，立法目的在於強化對質詰問權與程序正當性。然而，此一制度改革在實務運作中，特別是在刑事醫療鑑定領域中，引發醫界普遍疑慮與反彈，導致刑事醫療鑑定人來源嚴重萎縮，甚至形成「無人願鑑」之困境。

該如何解決這項困境，本文將從法理與實務等視角出發，