

本期企劃

刑事醫療鑑定之
實務現況與困境Current Status and Challenges of Forensic
Medical Evaluation in Criminal Cases

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摘要

近年來，醫療糾紛日益增多，刑事訴訟中對於醫療鑑定的需求也隨之增加。醫療鑑定在認定案件事實及判斷責任歸屬上扮演關鍵角色，然而，我國刑事醫療鑑定實務正面臨多重挑戰。本次刑事訴訟法關於鑑定的修正，旨在強化鑑定制度的程序保障，使證據法則更為嚴謹，提升鑑定品質與可信度。修法內容涉及鑑定人的資格、利益揭露、偵查中鑑定、審判中委任鑑定、機關鑑定人具名及到庭說明、專家學者法律意見徵詢等多個面向，但修法後的實務運作卻引發諸多問題，對醫療鑑定產生深遠影響。首先，鑑定人出庭說明及接受詰問的要求，增加了醫療機構的人力成本，並降低了醫師參與鑑定的意願，醫師擔心身分公開後

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關鍵詞：刑事醫療鑑定（forensic medical evaluation）、醫療糾紛（medical disputes）、證據能力（admissibility of evidence）、鑑定人（evaluator）、鑑定制度（evaluation system）

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可能面臨的法律風險，以及鑑定工作帶來的時間與精力付出，使得醫療鑑定人力資源面臨短缺。其次，醫審會等機關鑑定報告證據能力的例外規定，其「特別可信性」的界定仍不明確，可能導致實務適用上的爭議，如何確保機關鑑定報告的品質，以及如何落實對實際鑑定人的詰問權，亦是值得關注的問題。再者，刑事訴訟法鑑定制度與醫療事故預防及爭議處理法中的醫療爭議評析制度，兩者存在本質上的差異，亦應明確區分二者的功能與適用範圍，避免混淆，以維護調解制度的功能。最後，鑑定客體的交付、保管及監管鏈的建立，也是影響鑑定品質的重要因素，如何在實務中落實鑑定客體的有效管理，確保鑑定結果的客觀公正，仍是重要的挑戰。面對這些困境，吾人應積極尋求解決方案。例如，建立更完善的鑑定人保護機制，提供合理的鑑定費用，強化鑑定機構的認證制度，以及明確鑑定客體管理的規範等。唯有如此，才能在提升鑑定品質與可信度的同時，確保醫療鑑定制度的有效運作，從而更好地解決醫療糾紛，維護醫病雙方的權益。

In recent years, medical disputes have been on the rise, leading to an increased demand for medical evaluations in criminal proceedings. Medical evaluation plays a crucial role in determining the facts of a case and assigning responsibility; however, the practice of forensic medical evaluation in Taiwan faces multiple challenges. The recent amendment to the Code of Criminal Procedure, concerning evaluations, aims to strengthen procedural safeguards for the evaluation system, make rules of evidence more rigorous, and enhance evaluation quality and credibility. The amendment addresses various aspects, including evaluator qualifications, disclosure of interests, evaluations during investigation, commissioned evaluations during

trial, naming of institutional evaluators and their obligation to appear in court for explanation, and consultation with experts and scholars for legal opinions. However, the practical implementation after the amendment has raised numerous issues, profoundly impacting medical evaluations. Firstly, the requirement for evaluators to appear in court for explanations and cross-examination has increased the human resource costs for medical institutions and reduced physicians' willingness to participate in evaluations. Physicians are concerned about potential legal risks after their identity is disclosed, as well as the time and effort demanded by evaluation work, leading to a shortage of medical evaluation personnel. Secondly, the exceptional provisions regarding the admissibility of institutional evaluation reports, such as those from the Medical Review Committee, still lack a clear definition of "special trustworthiness," which may lead to disputes in practical application. Ensuring the quality of institutional evaluation reports and implementing the right to cross-examine the actual evaluators are also pressing concerns. Furthermore, there are fundamental differences between the evaluation system under the Code of Criminal Procedure and the medical dispute analysis system under the Medical Accident Prevention and Dispute Resolution Act. A clear distinction between their functions and scopes of application should be made to avoid confusion and preserve the function of the mediation system. Lastly, the delivery, custody, and establishment of a chain of custody for evaluation objects are also critical factors affecting evaluation quality. Effectively managing evaluation objects in practice to ensure objective and fair evaluation results remains a significant challenge. To address these difficulties, we

must actively seek solutions. For instance, establishing a more comprehensive protection mechanism for evaluators, providing reasonable evaluation fees, strengthening the accreditation system for evaluation institutions, and clarifying regulations for the management of evaluation objects are crucial steps. Only by doing so can we enhance the quality and credibility of evaluations while ensuring the effective operation of the medical evaluation system, thereby better resolving medical disputes and safeguarding the rights of both medical professionals and patients.

壹、前言

近年來，醫療糾紛在臺灣社會日益增多，不僅對醫病關係造成衝擊，也對司法體系帶來挑戰。根據統計，醫療糾紛案件數量呈現上升趨勢，其中涉及刑事責任的案件也逐漸增加¹。在刑事訴訟中，醫療鑑定扮演著至關重要的角色。由於醫療專業的高度特殊性，法官往往需要仰賴醫學專家的意見，以釐清案件事實，判斷醫療行為是否存在過失，以及確定因果關係。因此，建立一個公正、客觀、高效的醫療鑑定制度，對於保障醫病雙方的權益，維護司法公正，至為關鍵。

立法院於2023年12月1日三讀通過刑事訴訟法修法，其中關於鑑定的修正引起社會各界的廣泛關注。此次修法旨在強化鑑定制度的程序保障，使證據法則更為嚴謹，讓鑑定制度更為完善。然而，修法內容涉及鑑定人的資格、利益揭露、偵查中鑑定、審判中委任鑑定、機關鑑定人具名及到庭說明、專家學

1 財團法人台灣醫療改革基金會，台灣醫療爭議案件數統計（醫改會2024年10月整理），<https://www.thrf.org.tw/medicaldisputes/2448>（瀏覽日期：2025年4月25日）