

## 本期企劃

# 不敢作鑑定人！ 可以作評析人嗎？ 試論醫預法的評析人 於刑事訴訟的角色\*

Don't Dare to be an Appraiser! Can I  
be a Reviewer? An Analysis of the Role  
of Reviewer in Criminal Proceedings

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## 摘要

在我國現行醫療法律體系中，鑑定人與評析人之角色雖同屬醫療專業領域之意見提供者，然其性質與功能有所區隔。鑑定人通常係依據刑事訴訟法第206條由法院選任，就訴訟中涉及之專業問題提出鑑定報告，並於必要時出庭接受詰問，其所提供之意見具正式證據能力，為法院審理事實之依據之一。相對而言，評

\*本文節自林萍章，醫預法的評析人於醫療刑事訴訟中的角色。2025年5月3日口頭報告於台北榮民總醫院醫療糾紛案例學術研討會系列第30次台北依法論壇（XXX）醫療法律實務與智慧健康照顧新趨勢。

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關鍵詞：交互詰問（cross-examination）、刑事訴訟法（Code of Criminal Procedure）、評析（appraisers）、醫療事故預防及爭議處理法（Medical Accident Prevention and Dispute Resolution Act）、鑑定（evaluators）

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析人係依據醫療事故預防及爭議處理法之規定，由中央主管機關（即衛生福利部）委託之第三方中立機構指派，針對特定醫療爭議案件進行評析，其所提出之意見，主要供調解程序中之雙方當事人與調解委員參考，性質上屬非司法性專業意見，並不直接具備證據效力。根據醫療事故預防及爭議處理法第4條第1項及施行細則第11條規定，評析人須具備醫療專業知識與臨床經驗，並經專業機構遴選認證，其主要職責為：審視相關病歷資料、判斷醫療行為是否符合當時當地之醫療水準與醫療常規，以及釐清病情變化與醫療處置間之因果關係及是否涉及醫療過失。當醫療爭議進入刑事偵查程序階段，評析意見書雖非正式鑑定報告，但因其由中立機構召集專家所為，具有一定客觀性與專業性，可能作為檢察官作為是否提起公訴之重要參考資料。若案件進入審判程序，法院得依職權調查評析意見書，亦可依刑事訴訟法第198條選任評析人擔任鑑定人，或依第202條傳喚其作為鑑定證人或專家證人出庭作證，提供專業見解，協助釐清醫療爭點。此際，評析人於調解中提出之意見，不僅須於審判時向法官詳述其分析內容，並應接受檢辯雙方之交互詰問，以符合被告訴訟權之保障與程序正義原則，確保其意見之可信性與可採性。

In the current medical legal system in our country, although the roles of appraisers and evaluators are both providers of opinions in the medical professional field, their nature and functions are different. Appraisers are usually selected by the court in accordance with Article 206 of the Criminal Procedure Law, and they submit appraisal reports on professional issues involved in the litigation and appear in court to be questioned when necessary. The opinions they provide have formal evidentiary capacity and are one of the bases for the court to examine the facts. In

contrast, evaluators are appointed by a third-party neutral organization commissioned by the central competent authority (i.e. the Ministry of Health and Welfare) in accordance with the provisions of the Medical Accident Prevention and Dispute Resolution Act to conduct analyses on specific medical dispute cases. The opinions they put forward are mainly for reference by the two parties and the mediation committee in the mediation process. They are non-judicial professional opinions in nature and do not directly have evidentiary effect. have medical professional knowledge and clinical experience and be selected and certified by a professional organization. His main responsibilities are: reviewing relevant medical records, judging whether the medical behavior is in line with the medical standards and medical practices at the time and place, and clarifying the causal relationship between the change in the condition and the medical treatment and whether medical negligence is involved. When a medical dispute enters the criminal investigation procedure, although the evaluation opinion is not a formal appraisal report, it is objective and professional because it is made by experts convened by a neutral organization. It may serve as an important reference for prosecutors to decide whether to initiate public prosecution. If the case enters the trial procedure, the court may investigate the evaluation opinion ex officio, and may also select the evaluator as an appraiser in accordance with Article 198 of the “Criminal Procedure Law”, or summon him to testify in court as an appraisal witness or expert witness in accordance with Article 202 to provide professional insights and help clarify medical disputes. At this time, the opinions raised by the evaluator during the mediation must not only be detailed to the judge

at the time of trial, but also be subject to cross-examination by the prosecution and defense, in order to comply with the protection of the defendant's litigation rights and the principle of procedural justice, and ensure the credibility and admissibility of his opinions.

## 壹、緣起

針對醫療訴訟所造成之醫病對立、高風險科別人才流失、防禦性醫療等結構性問題，衛生福利部（下稱衛福部）遂於2018年提出醫療事故預防及爭議處理法（下稱醫預法）草案，歷經兩屆會期最終通過立法。醫預法以「保障病人權益、促進醫病和諧、提升醫療品質」為立法目的，並貫徹「即時關懷」、「調解先行」、「事故預防」三大原則，全法共計45條。根據醫預法第三章所建立之爭議評析制度，衛福部得設立專責機制，遴聘具專業資格與臨床經驗者擔任評析委員（下稱「評析人」），就特定醫療爭議提供中立、專業之意見，作為調解與檢察機關偵查時之參考。

另一方面，立法院於2023年12月1日三讀通過「刑事訴訟法」（下稱刑訴法）部分條文修正案，針對鑑定制度進行重大調整。鑑定意見不再僅止於書面審閱，法院及當事人得透過對鑑定人之交互詰問與言詞辯論，更有效地檢驗其證據能力與證據價值。

本文試圖探討：「評析人」於刑事訴訟中之法律地位與角色，並就其是否可能比照鑑定人於法院出庭說明及接受交互詰問之可能性，進行分析與評述。