

從醫學倫理 規範、實定法到司法見解 —鳥瞰醫學倫理 法律化之本土進展

From Medical Ethics Norms, Legislation to
Judicial Perspectives: An Overview of the Local
Progress in the Legalization of Medical Ethics

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摘要

本文嘗試對我國醫學倫理法律化之進展作一輪廓式陳現。以西方醫學倫理之演進從「希波克拉底誓言」、「日內瓦宣言」到現今廣被接受之醫學倫理四原則開場，隨即將焦點放在國內，首先從我國醫師倫理規範之內容和近年重大增修談起，繼之討論醫療相關法律中將醫學倫理原則意涵明文入法的部分以及國內近年病人自主方面的重要立法發展，最後從若干醫師懲戒行政訴訟和醫療訴訟中一窺法院適用前述法律所表示的見解，以期讓讀者扼要了解醫學倫理法律化之本土進展。

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關鍵詞：病 人 自 主 (patient autonomy)、醫 師 懲 戒 (physician discipline)、醫 學 倫 理 (medical ethics)、醫 療 訴 訟 (medical lawsuits)

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This article attempts to outline the progress of legalization of medical ethics in Taiwan. It begins with the evolution of Western medical ethics, from the Hippocratic Oath, the Declaration of Geneva to the four widely accepted principles of medical ethics, and then focuses on the domestic context. First, it starts with the content of Physician Ethical Code and major revisions in recent years, and then discusses the parts of medical-related laws that explicitly incorporate the meaning of medical ethics principles into law, as well as the important legislative developments in Taiwan regarding patient autonomy in recent years. Finally, we can get a glimpse of the opinions expressed by the court on the application of the above-mentioned laws from several administrative lawsuits of physician discipline and medical lawsuits, in order to give readers a brief understanding of the local progress of legalization of medical ethics.

壹、前言

自從1979年Tom Beauchamp和James Childress發表《醫學倫理原則》一書，其所提出的尊重自主原則、行善原則、不傷害原則和正義原則已普遍被接受為醫學倫理之核心意涵。此里程碑般之提出並非一朝一夕，至少可追溯自西元前5世紀「希波克拉底誓言」以降，西方醫學倫理的傳承演進。我國亦深受影響，不僅於1999年醫師公會全國聯合會通過「醫師倫理規範」，醫學倫理之意涵亦轉換為條文文字，廣泛進入醫療法規之中，2016年更通過亞洲首部以「病人自主權」為名的專法。於此數十年期間，我國司法實務對於「醫學倫理」、「醫師倫理規範」以及「法規中之醫學倫理」也有所表示。本

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