

防禦性醫療的倫理評價 與相應之管制建議

Ethical Evaluation of Defensive Medicine
and Related Regulatory Recommendations

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摘要

防禦性醫療是醫療人員因為害怕醫療伴隨而來的糾紛風險，而採取的醫療行為。本文從動態倫理判斷出發，分析在臺灣，防禦性醫療如何導致醫療資源浪費與成本外部化、造成醫療排除與就醫權受損。進一步審視醫療法第82條修法、實務判決方向、健保品管與臨床指引之作用與侷限，進而指出面對防禦性醫療需多管齊下，結合健保支付制度與專業指引，縮限常規醫療的責任，並擴張消費型醫療的責任，方能兼顧醫療品質、公平正義與體系永續。

Defensive medicine refers to clinical actions taken by healthcare professionals primarily out of fear of malpractice disputes. From a dynamic ethical framework point of view, this article analyzes how defensive medical practices

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in Taiwan lead to resource waste, cost externalization, medical exclusion, and infringement of patients' access to care. It further examines the impact and limitations of the 2018 amendment to Article 82 of the Medical Care Act, judicial signals from cases, National Health Insurance quality-control mechanisms, and clinical guidelines. The analysis argues that addressing defensive medicine requires a comprehensive approach that integrates payment reforms and professional guidelines, narrows liability for routine medical care, and expands responsibility for consumer-oriented medical services. Such differentiation is essential for promoting care quality, distributive justice, and the long-term sustainability of the healthcare system.

壹、防禦性醫療的定義與分類

防禦性醫療在中外研究文獻中，有相當一致而有共識的定義：「醫療人員因為害怕醫療伴隨而來的糾紛風險，而採取的醫療行為」。有些較廣義的研究會加入包括「擔心錯失診斷」「擔心社會或同儕批評」「習慣性無意識的過度防禦」等非糾紛導向的動機。本文將針對較狹義的，與法律風險和醫療糾紛相關的行為來討論。而狹義的防禦性醫療，又可以分為積極防禦性醫療行為（積極的避險行為），包括額外的檢查、藥物、會診、增加回診頻率；和消極防禦性醫療行為（消極的避險行為），如拒絕特定病人、拒絕特定治療與手術¹。

防禦性醫療的本質在於醫方沒有承擔病人移轉的風險。本來在私法自治下，病人將醫療負面結果實現的風險，部分轉嫁由醫方承擔，醫方在承擔風險時，則可獲得醫療費用的利

¹ U.S. CONGRESS, OFFICE OF TECHNOLOGY ASSESSMENT, DEFENSIVE MEDICINE AND MEDICAL MALPRACTICE 21 (1994).

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