醫法新論

臺灣病人自主權利法 如何實踐於護理之家 之探討

Exploring How to Implement the Patient Autonomy Act in Nursing Homes in Taiwan

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摘要

漸進式安寧緩和醫療理念已是臺灣醫護界共有的趨勢,其內涵為重視病人的自主意願,期許作出預立醫療決定的當事人能緩和、有尊嚴的走向生命終點,而不是成為家人情感或經濟的依賴。護理之家乃係現代高齡化社會的重要機構,其住民則是具有老化、慢性病、失能,逐步邁向生命終點的一群人,適用漸進式安寧緩和醫療理念,但現行的病人自主權利法,卻不足以因應住民們對病人自主權落實的需要,原因包括預立醫療決定作成的參與成員需求過高、護理之家人員配置不足、護理之家與醫療中心的空間差距、阳卻

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關鍵詞:病人自主權利法(Patient Right to Autonomy Act)、健保卡註記(marked health insurance card)、預立醫療決定(advance decision)、護理之家住民(nursing home residents)

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違法規範不足,導致預立醫療決定的把關人員,易於 規避麻煩而拒為發動等。

資源分配現況下,護理之家無法配置所有專業科目的 專科醫師。縱然住民有預立醫療決定,仍需由後送 制度轉診至醫院治療或急救,住民長期歷經反覆的後 送,肇生無效急救措施,加重住民身、心負擔,甚有 家屬介入,使病人自主權的實踐更為困難,以致病人 自主權利法的規範內容難以落實於護理之家住民。本 文建議,立法上應增加能執行預立醫療決定的主體, 及訴訟法上加以配套,將健保卡註記視為預立醫療決 定合法成立且有效,以保護醫師。而且護理之家應 有主動提供住民相關資訊的義務,使住民得以親近資 訊,俾使護理之家住民之病人自主權獲得確保。

The concept of Progressive Hospice Palliative Care has become a common trend in the medical community in Taiwan's aging society. It upholds the patients' will, hoping Advance Decision makers could set off to the end of life with compassion and dignity rather than living for the family's feelings or becoming an income source for their family. Nursing Homes are important institutions in the modern aging society. Their residents are a group of aging people with chronic diseases and disabilities, who are gradually moving towards the end of life. They apply to the concept of Progressive Hospice Palliative Care. However, the currently passed Patient Right to Autonomy Act is unsatisfactory to meet the needs of the nursing home residents for their patient autonomy realization. Reasons include high threshold for Advance Decision participants, short-staffed nursing homes, long distance between nursing homes and medical centers, and insufficient regulations on affirmative defenses, which results in the executors' refusal to perform Advance Decisions in avoidance of trouble.

The present state of resource allocation in Taiwan restraints Nursing Homes from possessing specialists in all medical categories. Even after making Advance Decisions, nursing home residents will still be transferred to hospitals for treatment or first aid under the referral system. Going through long-term recurrent referrals, the inhabitants will inevitably face ineffective first aid measures, which intensifies their physical and psychological burden. Additionally, with the interference of family members, patient autonomy realization becomes more severe. Accordingly, the content of the Patient Right to Autonomy Act is unsuitable for the nursing home residents' present condition and realization of their patient autonomy. This paper suggests that in legislation, limitation on eligible executors of Advance Decision should be eased: as for complementary measures on evidence, Marked Health Insurance Card should be seen as the proof of Advance Decision being legally established and effective, in order to protect medical practitioners. Moreover, nursing homes should be obligated to provide relevant information to the residents, enabling their easy access to the information. Only in this way can patient autonomy of the nursing home residents be ensured

膏、漸進式安寧緩和醫療理念

安寧緩和醫療臨床決策,過往在法律上僅有安寧緩和醫療條例作為依據,難以落實病人自主,本於對於生命處分與道德風險之質疑,在預立醫療決定上有高度主體限制,亦即須經判定為末期病人者,且須有兩名專科醫師判定,但在護理之家無從即時接觸兩名專科醫師,縱然住民客觀上確屬生命末期之人,亦難以實踐其預立醫療決定。

護理之家住民有著疾病型態的慢性化、健康問題障礙化、 照護內容複雜化、照護時間長期化等表徵。護理之家住民邁向 人生終點的過程仍存在許多過度的無效醫療,如不斷後送、搶 救等,但隨著人性尊嚴與住民生存品質重視,開始重視漸進式 的安寧緩和醫療,讓護理之家住民也有拒絕無效醫療的自主 權。爾後,立法者另定病人自主權利法(下稱本法),藉由醫師告知、説明與家屬討論程序的加重,擴大簽署人的主體限制,自為醫療決定的權限也大幅開放。

本法讓一般人可預立醫療決定(此為病人自主權利法第3條第1項第3款用語,而其抉擇所載書面未有限制,在安寧緩和醫療條例,此預立之抉擇依照該條例第4條,則其抉擇所載書面稱為意願書,以下依照所引用法規範不同,將有「預立醫療決定」及「意願書」兩種用語,但其意旨相同,先予敘明),在意識清楚時預立醫療規劃,符合漸進式安寧緩和醫療理念,如圖1所示。

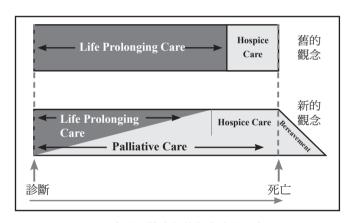


圖1安寧緩和醫療新舊觀念比較示意圖

資料來源:林明慧,高齡患者之安寧緩和照護,104年長期照護Level II醫師專業課程講義,2015年8月1日,13頁。

按本法第8條第1項前段:「具完全行為能力之人,得為預立醫療決定。」而不再有主體的限制,使得任何人均得預先表示,倘若自己有朝一日成為病症末期、植物人、重度失智、昏迷狀況或者「其他經公告的病人疾病狀況或痛苦難以忍受、疾病無法治癒且依當時醫療水準無其他合適解決方法的情形」,毋庸進行醫療,即以程序的慎重性,防範道德風險的同

時,肯認人人都可以提早預立拒絕無效醫療。

上揭法令放寬,乃係為安寧緩和醫療決策擴張的法律面問題。傳統安寧緩和醫療決策聚焦於癌末病人承受身、心、靈煎熬、自主性喪失,更衍生家庭失和等現實的社會情境。為病人謀取最大利益,不應只是單純的「生命維持」,更應追求善終原則的,以符合現代漸進式安寧緩和醫療理念。

貳、病人自主權利法於護理之家實踐的探討

臺灣對於護理之家未有不施行心肺復甦權利説明之義務,政策上也沒有強制的推廣(非屬護理之家評鑑項目),護理之家護理人員於中部地區統計結果,對不施行心肺復甦受有相關教育訓練者為72.1%¹,相較於其他以醫院附設護理之家的護理人員受訓達90%以上,仍屬認知比例不足²,護理之家的護理人員對於病人自主權認知相對缺乏,更遑論推廣。

家庭決策凌駕於住民意志,統計顯示對住民的醫療決策多由家屬決定,各種決策的安排亦都以家庭成員認知為優先,而非住民³,家屬也會要求護理人員在當事人面前陳述「善意的謊言」,使住民難以獲得相關資訊。

在護理之家要如何推廣,比醫療中心更為困難。不施行心 肺復甦決策,是住民自主「生命風險」延續的關鍵,即病人自 主權最重要的一環。在安寧緩和條例時期,護理之家欠缺住民 不施行心肺復甦同意書簽署之資訊及作為,此亦本法施行的隱

¹ 卓運晴,影響護理之家護理人員對安寧緩和醫療條例認知與不施行心 肺復甦術態度之因素,中國醫藥大學醫務管理學研究所碩士論文, 2013年,52百。

² 吳讚美、林惠賢、賈佩芳、蔡玉梅、施丞貴、謝志松,護理人員執行 不施予之現況及相關因素之探討,安寧療護雜誌,17卷2期,2012年7 月,146-161頁。

³ 黄秀梨、張媚,機構安置決策過程研究之剖析及應用——以家庭為中心的視角,護理雜誌,53期4卷,2008年6月,58-64頁。