

美容醫學醫療糾紛 之民事法律關係

The Civil Legal Relationship in the
Disputes of Aesthetic Medical Treatments

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摘要

現在流行的美容醫學所衍生出之醫療糾紛民事訴訟，已占訴訟實務上相當之案源，此類近來常見美容醫學之醫療契約與一般醫療行為之醫療契約，契約性質是否應完全相同，學說上多所討論，亦為實務上所重視。本文基於美容醫學之特性為非治療性且非必要性之醫療行為，亦涉及主觀審美之不確定概念，高額自費及營利性質甚重等因素為考量，討論美容醫學之醫療行為特性、告知說明義務之範疇，以及醫療契約性質。

The civil litigations arisen from the aesthetic medicine which is popular nowadays have occupied a large part of legal praxis. There is many theoretical discussions about whether a medical contract concerning the aesthetic medicine is similar with a contract concerning the normal

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medical contract, and whether the character of the contracts are the same one totally. They are important for the legal praxis as well. According to that the character of aesthetic medicine is neither therapeutic nor necessary medical treatment, this essay engages in the medical character of the aesthetic medicine, the range of the duty of disclosure and the character of medical contract, taking the factors into consideration, like the subjective aesthetic as an uncertain legal concept, the expensive payment and apparently profit-making.

壹、前言

現行醫療糾紛之民事實務，常見涉訟案例中，病人係單純為追求外表主觀上之美麗，而非為了治癒疾病等醫療必要，至整形外科診所進行隆鼻、抽脂及補脂等整形外科手術。此類近來常見美容醫學之醫療契約性質與一般醫療行為之醫療契約之契約性質是否應完全相同，學說上多所討論，亦為實務上應重視之課題。另此類時下流行之美容整形，即俗稱之醫美，所衍生出之民事醫療糾紛訴訟，現在已占實務上訴訟之大宗來源，此等實務上常見之醫療糾紛所引起之爭議問題，如術前醫療告知義務之範圍、符合醫療水準應有之注意義務標準為何、損害如何認定等，本文即以現行民事醫療訴訟實務上常見之醫療糾紛爭議，該等美容醫學之醫療行為特性、醫療告知義務之範圍、醫療契約性質、損害如何認定等法律關係為議題。