

COVID-19疫情下之 醫師保密義務初探

COVID-19 and the Physician's Duty of Confidentiality

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摘要

COVID-19疫情引發許多影響醫病關係之倫理與法律議題，包括醫師保密義務之範圍與界限。由於COVID-19患者與疑似感染者之健康資訊已被廣泛運用在防疫措施，醫師是否可能因其揭露義務之擴張而導致保密義務受到挑戰，便引起關注。舉例而言，雖然醫師依據傳染病控制法有義務於發現傳染病或疑似傳染病時報告當地主管機關，並因此構成保密義務之例外，但醫師報告之資訊類別與數量、或強制通報義務內涵能否因COVID-19疫情發展而擴張，並未有清楚規範；另如遠距醫療（通訊診察治療）因COVID-19疫情擴散而被廣泛運用，作為提供檢疫 / 居家隔離者或一般民眾健康照護之重要模式以降低感染風險，但現行醫師保密義務之規範要求是否足以應對新興技術所帶來之隱私

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風險，亦引起質疑。為因應COVID-19疫情對醫師保密義務所形成之挑戰，現行醫師保密義務法律規範應重新檢討評估，主管機關並應提供適當指引，當中包含保密義務豁免之具體條件或病患隱私保護之技術建議。

The COVID-19 pandemic has given rise to a number of ethical and legal issues affecting the physician-patient relationship in Taiwan, including the scope of the physician's duty of confidentiality. Because the personal health information of COVID-19 patients and suspected cases has been broadly used in different measures to combat the spread of the novel virus, many are alarmed that the perception of patient-physician confidentiality may be challenged. For example, even though physicians are required to report COVID cases or suspected cases to the authority and their confidentiality duty can be waived in accordance with the Communicable Disease Control Act, it remains unclear what type and amount of information can be disclosed to the authority and whether the disclosure can be further expanded during the pandemic. Additionally, when telemedicine/telehealth has been widely used for people in quarantine or for the general public to minimize the risk of COVID-19 transmission, it remains questionable whether the current confidentiality requirements is sufficient to cope with the privacy risks posed by the new technologies. To respond to the limited exploration of the physician's duty of confidentiality during the pandemic, current statues and regulations regarding the duty should be reevaluated. Additionally, confidentiality waivers and technical advices on the protection of patient's confidentiality during the pandemic should be clearly elaborated in the guidelines provided by the government.

壹、前言

面對新型冠狀病毒（SARS-CoV-2）肺炎（COVID-19，或稱嚴重特殊傳染性肺炎）之疫情來襲，政府對各類資訊（尤其是感染者或疑似感染者之健康資訊）之需求增加，並大量倚賴這些資訊以衡量COVID-19傳播之範圍與狀態，藉此擬定相關防治策略；因此，醫師保密義務之調整（或限縮），以防止COVID-19疫情擴散與保障國民健康自有其必要性，但該調整卻也可能影響醫病間之信任關係¹，甚至在社會對COVID-19病患仍有污名化之情形下，降低COVID-19感染者（或疑似感染者）尋求適當醫療協助之意願，如此將不利於整體防疫政策之推行。從而，應如何平衡醫師保密義務、病患隱私權與個人資料保護，以及傳染病防治所需之資訊揭露，皆是各國在COVID-19疫情期間所面對之法規與倫理價值的重要挑戰。

貳、醫師保密義務之內涵

醫師保密義務（duty of confidentiality）為醫病關係間之核心義務，故包括醫療法第72條²、醫師法第23條³、刑法第316條⁴，均規定醫師對於因業務而知悉或持有他人之病情或健康

1 See e.g., Am. Med. Ass'n (AMA), *Must Physicians Disclose Personal Health Information to Patients?*, AMA (Oct. 6, 2021), <https://www.ama-assn.org/delivering-care/ethics/must-physicians-disclose-personal-health-information-patients> (last visited Jun. 17, 2022).

2 醫療法第72條規定：「醫療機構及其人員因業務而知悉或持有病人病情或健康資訊，不得無故洩漏。」

3 醫師法第23條規定：「……對於因業務知悉或持有他人病情或健康資訊，不得無故洩露。」

4 刑法第316條規定：「醫師、藥師、藥商、助產士、心理師、宗教師、律師、辯護人、公證人、會計師或其業務上佐理人，或曾任此等職務之人，無故洩漏因業務知悉或持有之他人秘密者，處一年以下有期徒刑、拘役或五萬元以下罰金。」