

【醫療刑事法】 實驗性檢測方法 違反醫師法案： 嗅癌犬篩檢之法律問題

A Case in Violation of Physician Act: The Legal
Aspects of Cancer Screening by Cancer Sniffing Dogs

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摘要

現代醫療技術日新月異，各種癌症篩檢方式五花八門，但一般民眾對於科學檢測過程一知半解，容易受騙。我國醫事檢驗師法對於檢驗業務設有相關規範，不論從事醫療或檢驗業務都必須取得相關執照，使主管機關可加以監管，以保障民眾安全無虞。美國對於檢驗機構則是利用CLIA分類方式，根據檢驗方式之複雜度，區分不同之監管嚴格程度，以確保民眾權益，故本文加以介紹之。此外，本文並介紹目前關於國外嗅癌犬檢驗方式之發展，及若要引進該種檢驗方式應

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關鍵詞：嗅癌犬 (cancer sniffing dogs)、癌症篩檢 (cancer screening)、臨床實驗室改進修正案 (Clinical Laboratory Improvement Amendments, CLIA)、醫事檢驗師法 (Medical Technologist Act)

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注意之法律問題。

Modern medical technology is changing rapidly, and there are many different ways to screen for cancer, but the general public has little understanding of the scientific testing process and is easily deceived. According to Medical Technologist Act, the business of the medical technologies are regulated; it must be licensed to practice the medical treatment and the business of medical inspection, so that the competent authorities could monitor it to protect the public. It would be introduced in this essay therefore. In addition, the development of the cancer screening by cancer sniffing dogs in foreign countries as well as the legal aspects that should be noticed if such testing methods would be introduced.

壹、案件事實

被告明知其未取得合法醫師資格，不得擅自執行醫療業務，竟基於違反醫師法之犯意，向不特定民眾收集尿液檢體，以嗅癌犬辨別尿液檢體氣味指數之方式，擅自進行大腸癌之罹癌風險評估後向受測者說明罹癌風險，並給予其後續是否應進行進一步檢測等屬於專業醫療判斷範疇之建議，且收取檢測費用。

貳、判決概要

臺灣臺南高等法院（下稱南高院）認定：被告對不特定人之尿液檢體，以嗅癌犬辨別尿液檢體氣味指數之方式，進行大腸癌之罹癌風險評估，係屬醫療行為，被告並無醫師資格，故違反醫師法。南高院認定此種嗅癌犬之檢測方式為醫療行