

私請鑑定報告 可否作為判決之證據？

Can a Privately Appraisal Report be
Used as Evidence for a Judgement ?

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摘要

現行刑事鑑定制度由院檢壟斷，私請鑑定報告並無證據能力，民事鑑定則將此視為證明力高低之爭議。院檢壟斷鑑定係希望藉由證據能力來擔保鑑定品質，俾證據證明力亦獲得確保，惟事實上院檢壟斷鑑定制度有諸多制度上之缺失，使上述目的無法達成。反而，應承認私請鑑定，佐以監督、評鑑，鑑定人到庭接受交互詰問，並受同儕審查等措施來確保鑑定之品質，即能提高證據證明力之信任度，此非但可以強化被告之辯護權，有助於發現真實，且其證明力也可能更勝於由院檢壟斷之鑑定報告。

The current criminal appraisal system is monopolized by the court inspection, and privately requested appraisal reports have no admissibility of evidence, while civil

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appraisals regard this as a dispute over the probative force, The monopoly appraisal system of the court inspection department hopes to ensure the quality of the appraisal through the admissibility of evidence, so that the probative force can also be ensured. On the contrary, it should be acknowledged that privately requesting appraisals, supplemented by supervision and evaluation, the appraisers appearing in court to accept cross-examination, and subject to peer review and other measures to ensure the quality of appraisals, which can improve the trust in the probative evidence, which can not only strengthen the defendant's accusation. The right of defense helps to discover the truth, and the probative force of the privately requested appraisal report may also be better than that of the monopoly appraisal report of the court inspection.

壹、前言

由於法院欠缺醫療專業，就醫療過程中有無疏失發生，必須仰賴鑑定加以認定，故鑑定報告結果幾乎等同是判決結果。因此，鑑定報告如何取得，至為關鍵，尤其醫病兩造能否在民事或刑事訴訟中提出私請鑑定報告作為證據使用，常攸關有罪無罪或判決勝敗！

貳、刑事訴訟程序咸認為私請鑑定報告並無證據能力

無證據能力之證據，不得作為有罪判決認定事實之基礎¹，而所謂「證據」係指得為證據之方法，包括人證、物

1 釋字第582號解釋理由書，認為：「所謂證據能力，係指證據得提出