

醫療全球化時代中 論醫療旅遊與重症兒童 之最大利益(一)*

Medical Tourism and the Best Interests of the
Critically Ill Child in the Era of Healthcare Globalisation (I)

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摘要

本文探討醫療保健全球化帶給醫療法規的新挑戰，這些挑戰涉及父母與醫療保健專業人員在重症兒童護理

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關鍵詞：全球化 (globalisation)、爭議 (disputes)、創新 (innovation)、最佳利益 (best interests)、醫療旅遊 (medical tourism)

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及治療方面的糾紛。本文藉由探討英國判例法中與兒童醫療相關的一系列問題，可知這些問題為全球化中日益加劇的現象。同時這些相互關聯的問題，對於醫療保健經濟學、臨床實踐及法律實施等，均提出不同挑戰。首先，是社群媒體利用案例的情感面；其次，網路應用提供了與新興療法相關的未經過濾訊息，甚至可透過群眾募資以支付費用。最終，去除全球貿易與旅行的障礙導致兒童醫療旅遊成為此類問題的連結點。這些問題在全球化中的醫學及法律均具有影響，但兒童醫療旅遊卻鮮少受到研究。本文認為其會影響後續連續性利益，包括：兒童權利、父母作為消費者權利以及社會在公共醫療保健方面之利益。此間相關問題之判別假定性解決方案與研究議程是很重要的。雖然涉及重症兒童的案件複雜且充滿情感，但這些問題的相互關聯性需要法律參與，並希望其可供連貫應對醫療保健全球化之影響。

In this article, we examine emerging challenges to medical law arising from healthcare globalisation concerning disputes between parents and healthcare professionals in the care and treatment of critically ill children. We explore a series of issues emerging in English case law concerning children's medical treatment that are signs of increasing globalisation. We argue that these interrelated issues present distinct challenges to healthcare economics, clinical practice, and the operation of the law. First, social media leverages the emotive aspects of cases; secondly, the Internet provides unfiltered information about novel treatments and access to crowdfunding to pay for them. Finally, the removal of barriers to global trade and travel allows child medical tourism to emerge as the nexus of these issues. These aspects of globalisation have implications for medicine and the law, yet child

medical tourism has been little examined. We argue that it affects a range of interests, including children's rights, parents' rights as consumers, and the interests of society in communalised healthcare. Identifying putative solutions and a research agenda around these issues is important. While cases involving critically ill children are complex and emotionally fraught, the interconnectedness of these issues requires the law to engage and respond coherently to the impacts of healthcare globalisation.

壹、緒論

為重症兒童所做的決策可能是複雜的、曠時日久的，且對兒童、父母與負責治療的醫療保健專業人員來說，是痛苦的，甚至較能廣泛性的引起社會強烈情緒¹。尤其對生命受限的兒童而言，人們越來越期望新技術與醫學將延長其生命²。同時以政策的長遠面來看，傾向消費主義的醫療保健方法日趨盛行，主張賦予患者更大的權利³。秉持這樣的想法，導致在與醫療保健提供者的互動之中，父母可能會代表他們的孩

1 S Barclay, 'Recognizing and Managing Conflict Between Patients, Parents and Health Professionals' (2016) 26 Paediatr Child Health (Oxford) 314.

2 LK Fraser and others, 'Rising National Prevalence of Life-limiting Conditions in Children in England' (2012) 129 Pediatrics 923.

3 J Newman and E Kuhlmann, 'Consumers Enter the Political Stage? The Modernization of Health Care in Britain and Germany' (2016) 17 Journal of European Social Policy 99; K Veitch, 'The Government of Health Care and the Politics of Patient Empowerment: New Labour and the NHS Reform Agenda in England' (2010) 32 Law & Pol'y 313; T Borkman and C Munn-Giddings, 'Self-help Groups Challenge Health Care Systems in the US and UK' (2008) 10 Adv Med Sociol 127.