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「醫療事故預防及 爭議處理法」之刑事偵查程序

Act on Prevention of Medical Incidence and Settlement of Discuptes and the Criminal Investigation Procedure

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摘要

「醫療事故預防及爭議處理法」於2022年6月22日公布,該法目的為保障醫病雙方權益及促進其和諧關係,並建立妥速醫療爭議處理機制。本文先介紹目前醫療案件一般偵查流程,逐步分析醫療案件於偵查各階段的處理現狀,以及醫療事故預防及爭議處理法施行後對刑事偵查程序之影響,並對該法施行後之法律適用問題提出看法,期待醫療爭訟在刑事偵查程序中能更有效率運作及妥適解決。

This is the Act on Prevention of Medical Incidence and Settlement of Disputes which was promulgated on June 22th 2022, with the aim of protecting the rights and

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關鍵詞:偵查程序(investigation)、調解(mediation)、醫療事故(medical accident)、醫療事故預防及爭議處理法(Act on Prevention of Medical Incidence and Settlement of Disputes)、醫療爭議(medical dispute)

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interests of both sides of physicians and patients and establishing a mechanism for the efficient handling of medical disputes. This paper first introduces the general investigation procedure concerning medical litigations, and then analyses the current status of medical litigations at various stages of the investigation, as well as the impact on the criminal investigation procedure after the implementation of the Act on Prevention of Medical Incidence and Settlement of Disputes. In this way opinions could be expressed on the application of the act after its implementation, in the hope that medical disputes in the criminal investigation procedure could be resolved more efficiently and appropriately.

壹、前言

為保障醫病雙方權益、促進醫病和諧關係、改善醫療執業環境、確保病人安全、提升醫療品質,並建立妥速醫療爭議處理機制,醫療事故預防及爭議處理法(下稱醫預法)於2022年6月22日公布,施行日期則由該法第45條規定授權行政院定之,橫跨七屆且歷經24年的立法歷程¹,終於豎立一個關鍵的里程碑。雖然建立醫預法要求的機制,仍需一段時日²,但該法施行後對既有法律制度的改變,以及如何與原有制度、流程整合,也是法律實務工作者有必要先行探討的重要問題。筆者在所屬機關參與醫療案件偵辦,已有數年時間,將先分享以自

¹ 參閱廖建瑜,簡評醫療事故預防及爭議處理法,月旦醫事法報告,70 期,2022年8月,113頁。

² 本法施行日期未定,主因在於如醫預法第4條第1項規定辦理醫事專業 諮詢與醫療爭議評析之財團法人,以及第12條第1項之醫療爭議調解 會組成,均需進一步研商。