

問對問題找答案— 論醫療民事訴訟的 證據提出與應對

Seeking Answers through the Right
Questions: "Evidence Presentation and
Response in Medical Civil Litigation"

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摘要

在臺灣現行的醫療鑑定制度下，法院、當事人及代理人如何擬定妥適的鑑定問題以釐清爭點，乃至法院如何審查鑑定意見是否契合案情以形成心證，對於裁判之效率及正確性皆極為關鍵。本文以醫療民事訴訟中之證據提出為切入點，依序分析法院或當事人關於「過失」或「因果關係」等待證事實應如何擬定鑑定問題，以及法院應如何針對醫療鑑定意見踐行證據調查，俾供我國實務界先進參酌。

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關鍵詞：爭點整理 (consolidation of points of contention)、待證事實 (pending facts to be proven)、醫療鑑定 (medical appraisal)、證據提出 (presentation of evidence)、證據調查 (evidentiary investigation)

DOI : 10.53106/241553062023070081002

Under the current medical appraisal system in Taiwan, how the court, the parties and their attorneys formulate appropriate appraisal questions to clarify the disputes, and how the court examines whether the appraisal opinion fits the case to form evidence is extremely important for the efficiency and correctness of the judgment. This article takes the presentation of evidence in medical civil litigation as a starting point and sequentially discusses how the court or parties should formulate appraisal questions regarding “negligence” or “causal relationship,” as well as how the court should conduct an evidentiary investigation in relation to medical appraisal opinions, providing advanced references for the practical field.

壹、前言

醫療行為及其結果，具有高度的不確定性與不可預測性，當醫療糾紛發生時，因被害人多欠缺醫療專業，且相關事證亦有證據偏在之特徵，乃常需調整舉證責任，並導入醫療專業意見，作為釐清經過之依據。在訴訟法上的各種證據方法中，鑑定係臺灣法院處理醫療糾紛時認定事實最重要的證據方法，也係影響訴訟成敗之關鍵因素。依據實證研究，臺灣醫療民事訴訟採鑑定為證據方法之判決比例超過80%，而判決結果與鑑定意見一致之比例更高達95%¹。臺灣實務上醫療訴訟鑑定人之選任多採機關鑑定，以行政院衛生福利部醫審會為最大宗，占七成以上；其次為各教學醫院，約占兩成；僅有極少數以醫師

1 沈冠伶，民事醫療訴訟之證明法則與實務運作，收錄於：民事醫療訴訟與紛爭處理，元照，2017年9月，63-70頁。