

# 通訊診察治療芻議— 由美國墮胎藥 之實體診察(In-Person) 要求改變談起

A Discussion on Medical Diagnosis and Treatment  
by Telecommunications—Starting from the Changes in  
Face-To-Face Diagnosis and Treatment Requirements  
of Abortion Medication in the United States

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## 摘 要

通訊診察治療在新冠肺炎COVID-19疫情後之使用無論是在臺灣與美國皆大幅增加。臺灣於2024年修訂，並於同年7月1日施行「通訊診察治療辦法」，更增廣了通訊診察治療應用範圍。惟臺灣通訊診察治療長期受

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限於醫師法第11條之反面解釋，就醫師親自診察義務，以物理上的實體診查（in-person）為原則，並將通訊診療之使用限縮於特定情境，致時有爭議。本文由法律分析提出主管機關可透過函釋闡明親自診察義務並不同於當面親自診療，結合美國墮胎藥物Mifepristone對診察與給藥in-person要求之法院判決態度轉變，提出醫師與患者是否同時存在同一空間中，並不影響醫師親自診察義務實踐之芻議；同時建議對於是否可以通訊診察治療係屬醫師專業判斷，不須由法律直接限制之。最後並建議，因通訊診察與面對面之傳統診察治療方式仍有專業需求上之差異，在放寬管制的同時，主管機關可與專業團體共同制定通訊診療指引，並於醫學教育、醫師考試、訓練與再教育之各體系皆確立通訊診療之訓練與認證制度，以確保醫療品質。

This article provides a legal analysis and recommendations regarding the regulation of telemedicine in Taiwan. Following COVID-19 pandemic, the use of telemedicine has risen significantly in both Taiwan and the United States. Taiwan's "Rules of Medical Diagnosis and Treatment by Telecommunications," amended in 2024 and effective as of July 1, expands the scope of telemedicine applications. However, Article 11 of the Physicians Act, which states that a physician should not "use telecommunications methods to inquire about illness, make diagnoses, issue prescriptions, or provide treatment without personally conducting the diagnosis," except under specific circumstances such as "in

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mountain areas, on outlying islands, in remote areas, or under special or urgent circumstances,” has traditionally been interpreted as enforcing the "Physician's Duty of Diagnosing in Person." Drawing from the evolution of U.S. court rulings on in-person requirements for abortion medication consultations and dispensing, this article argues that the fulfillment of a physician's duty of care does not depend on the physical co-presence of the physician and the patient. Consequently, this article recommends that the decision on whether telemedicine is appropriate should be left to the professional judgment of physicians, without the need for direct legal restrictions. Recognizing the professional differences between telemedicine and in-person consultations, it is suggested that regulatory authorities collaborate with professional organizations to develop comprehensive telemedicine guidelines. Furthermore, to ensure the quality of healthcare, training and certification systems for telemedicine is supposed to be established within the existing frameworks of medical education, physician examinations, training, and continuing education.

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## 壹、前言

遠距醫療（telemedicine）已是全球醫療衛生發展重要一環，世界衛生組織（World Health Organization, WHO）並於2022年發布「綜合遠距醫療實施指南」（*Consolidated Telemedicine Implementation Guide*），可知遠距醫療受到相當

的重視<sup>1</sup>。該指南將遠距醫療定義為：「在距離是一個關鍵因素的情況下，所有醫療保健專業人員利用資訊和通訊技術，以交換診斷、治療、預防疾病和傷害的有效訊息，而提供促進個人乃至於社會健康之目的醫療保健服務」<sup>2</sup>。對此通訊技術使用之潮流，臺灣亦有所因應，1986年對於偏遠離島地區開放通訊詢問病情<sup>3</sup>，到2018年《通訊診察治療辦法》的訂定，以及2024年的大幅修正，已啟動遠距醫療服務<sup>4</sup>。遠距醫療作為WHO重點關注項目，已有許多國家有較全面之實施經驗，他山之石，也得以作為臺灣通訊診察治療實施參考。本文先蒐整臺灣通訊診療之規範與演進，並透過法規文義解釋、立法歷史與衛福部函釋，提出對醫師親自診察義務，以及以醫師法第11條第1項之反面解釋，將通訊診療限制於特殊條件下方得進行的解釋意見。而後透過美國法院判決對於墮胎藥Mifepristone（RU486）<sup>5</sup>的物理性當面使用限制的改變，作為臺灣對於實

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1 WORLD HEALTH ORGANIZATION, CONSOLIDATED TELEMEDICINE IMPLEMENTATION GUIDE (2022), <https://www.who.int/publications/i/item/9789240059184> (last visited Aug. 6, 2024).

2 *Id.* at 2. 於「綜合遠距醫療實施指南」中，遠距醫療之定義原文如下：「(T)he delivery of health-care services where distance is a critical factor, by all health-care professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries all in the interests of advancing the health of individuals and their communities」，相同定義可參WORLD HEALTH ORGANIZATION & INTERNATIONAL TELECOMMUNICATION UNION, NATIONAL EHEALTH STRATEGY TOOLKIT (2012), <https://iris.who.int/handle/10665/75211> (last visited Aug. 6, 2024).

3 1986年12月16日修正醫師法增列第11條但書提出，若「於無醫師執業之山地、離島、偏僻地區或有急迫情形，為應醫療需要，得由地方衛生主管機關指定之醫師，以通訊方式詢問病情……」。

4 2018年5月11日，衛生福利部衛部醫字第 1071662596 號令訂定發布「通訊診察治療辦法」全文 8 條；並自發布日施行。2024年1月22日衛生福利部衛部醫字第 1131660423 號令修正發布「通訊診察治療辦法」全文 22 條；並自2024年7月1日施行。

5 Mifepristone為藥品成分名，在臺灣較為人熟知的代稱為RU486，中文譯為米非司酮或美服培酮，為避免翻譯造成行文紊亂與讀者困惑，以