

# 醫療訴訟之 過去、現在及未來

The Past, the Present and the  
Future of Medical Litigation

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## 摘要

本文從三次不同時段搜集之醫療訴訟進行對照，可以看出醫療訴訟在不同時期的變與不變，並可比較醫療機構及各科之法律風險，另從起訴主張醫療過失之態樣，足以明瞭醫療糾紛之原因，促使醫療服務改善，同時法院判決針對醫療臨床之針貶是否合理及一慣性，亦是長期醫療判決分析可以得悉，並可使法律實務界加以自我審視及修正，最後，從過往醫療訴訟總結作為預測並預防將來發生醫療不良結果，此為醫療判決分析研究之最大貢獻。

This essay would collect and compare medical litigation in three different periods, and it could show the changes

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關鍵詞：合理臨床專業裁量 (reasonable clinical professional discretion)、告知後同意 (informed consent)、醫療事故預防及爭議處理法 (Medical Accident Prevention and Dispute Resolution Act)、醫療崩壞 (Collapse of Medical Treatment)、醫療常規 (medical standard)

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and constancy of medical litigation in different periods, and could compare the legal risks of medical institutions and various departments. In addition, from the pattern of claimed medical negligence, it is sufficient to understand the causes of medical disputes and to promote the improvement of medical services. Furthermore, the long-term analysis of medical judgments could reveal whether the clinical assessments made by the courts are reasonable and consistent. Based on the results, the legal profession could review and correct itself. Finally, the greatest contribution of the analysis of medical judgements would be the prognosis based on the summary of the medical litigation in the past and the prevention of medical malpractice in the future.

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## 壹、醫療訴訟搜集統計之困難

關於醫療民事、刑事訴訟之搜集，通常管道是司法院裁判書查詢系統，此系統收錄高等法院及其分院以下（含地方法院）係自2000年起之民、刑事案件，然而從眾多「案海」如何能撈出醫療訴訟案件，醫療刑事案件自2013年起，與醫療有關刑事案件各地檢署分案時冠以醫偵字別，但以醫偵字號蒐尋出案件可能以涉犯醫師法第28條密醫罪或醫療法第106條醫療暴力案件占大多數，因此，必須加上其他關鍵字，例如：刑法第276條過失致人於死或刑法第284條過失傷害罪<sup>1</sup>，但以「醫偵」為搜尋關鍵字容易漏掉以被害人提起自訴或聲請交付審判而進入法院的醫療刑事案件，而法院針對醫療涉訟刑事案件則

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1 2019年5月31日刑法刪除業務過失致死或傷害，因此以業務作為搜尋即有不當。