本期企劃

評估病人自主權利法醫師免責規定—比較美英日立法例

A Critical Analysis of the Safe Harbor Provision in the Taiwan Patient Right to Autonomy Act Granting Immunity to Physicians from Civil Liability with Comparison to US, UK, and Japanese Legislation

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摘 要

病人自主權利法第14條第5項後段明文醫師執行病人所簽署，載明終止、撤除或不施行維持生命治療（life sustaining treatment, LST）全部或一部內容之預立醫療決定的民事免責規定。從美英日立法例之比較而言，醫師執行病人載明拒絕LST（含ANH）之預為決定（advance decision, AD），而得主張民事免責情形，不應僅限於前揭病主法規定之狀況。原則上，只要本人就完成表明拒絕LST之AD，確未欠缺意思能力，而該

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關鍵詞：免責（immunity）、預立醫療決定／預為決定／事前指示（advance medical decision/advance decision/advance directive）、預為拒絕處置決定（advance decision to refuse treatment）、預為醫護照顧指示（advance health care directive, AHCA）、維持生命治療（life sustaining treatment）

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AD有效及得適用於當前狀況，醫師並依循該AD，而執行拒絕LST者，當即有基於因係依循本人AD之行為，得主張民事免責之餘地。

PRAC §14(5)(b) expressly provides a safe harbor for physicians to carry out signed patient advance medical decisions (AMD) that authorize physicians to terminate, withdraw, or withhold life sustaining treatment (LST). Collectively, the AMD are called 'refusal' of LST. A refusal may apply to LST in whole in or party. In Taiwan, the safe harbor under PRAC §14(5)(b) generally shields the physician from civil liability when she carries out AMD of LST.

A comparison of related legislation in the United States, the United Kingdom, and Japan shows that the physician safe harbor in Taiwan should be expanded. In other words, Taiwanese physicians should be able to claim immunity from civil liability when carrying out AD by patients to refuse LST (including ANH) in a broader set of situations going beyond the relatively narrow types of conduct that currently enjoy immunity under PRAC §14(5)(b).

In principle, a physician should be permitted to assert a civil liability immunity defense so long as [i] a patient who does not lack capacity has completed an AD refusing LST [ii] the AD is effective and applies to the clinical situation, and [iii], the physician carries out the AD to refuse LST. The civil liability immunity defense is available because the physician carried out the AD in compliance with the patient's advance decision.

壹、序言

病人自主權利法（下稱病主法）第14條第5項後段明文「……醫師依本條規定終止、撤除或不施行維持生命治療或人工營養及流體餵養之全部或一部……因此所生之損害，除有故意或重大過失，且違反病人預立醫療決定者外，不負賠償責任。」是醫師執行病人依病主法所簽署預立醫療決定（advance medical decision, AMD）之民事免責規定（醫師民事免責規定）。且該AMD係載明終止（terminate）、撤除（withdraw），或不施行（withhold）（併稱拒絕）維持生命治療（life sustaining treatment, LST）或人工營養及流體餵養（artificial nutrition and hydration, ANH[1]）之內容。

基於醫師民事免責規定，就病人而言，醫師在減輕遭究民事責任之擔心與壓力下，如得以更積極執行AMD，協助病人實現自主決定，就病人享有及實現決定自主（decisional autonomy）及執行自主（executive autonomy）[2]，將產生提升促進作用；另就醫師而言，醫師亦得因此獲得執行AMD之明確免責保護作用。是醫師民事免責規定，就病人自主（權）之

1 得將ANH解為醫療行為之一，並包含在LST範圍內，故以下稱LST，皆包含ANH在內。

2 自主（autonomy），1.就「內容」而言，可區分「人格自主」、「身體自主」及「財務自主」，黃三榮，論自主權、知情同意與說明義務——兼評「病人自主權利法」之實像與虛像（十一），萬國法律雜誌，251期，2023年10月，64-65頁。2.另由「決定類型」來說，得有「自主決定／代替決定」、「當前決定／預為決定」及「決定支援／支援決定」。黃三榮，論自主決定／代替決定、當前決定／預為決定及決定支援／支援決定——兼評「病人自主權利法」之實像與虛像（十六），萬國法律雜誌，258期，2024年12月，47-66頁，以及3.再由「行使」而言，可區分「決定自主」（decisional autonomy）——即無外在限制（restrain）或強迫（coercion）下，進行決定之能力及「執行自主」（executive/executional autonomy）——即執行決定自主之能力及自由，GRORGE J. AGICH, DEPENDENCE AND AUTONOMY IN OLD AGE 63-64 (2003).