本期企劃

醫療能量不足是否得為拒絕病人的理由：論醫療刑事責任之免除

Is Insufficient Medical Capacity a Justifiable Reason for Refusing Patients? —On the Exemption from Criminal bility in Medical Practice

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摘 要

醫院或醫師因系統性因素所致醫療能量嚴重不足，而

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關鍵詞：急救義務（obligation of emergency care）、系統性錯誤（systemic errors）、根本原因分析（root cause analysis）、醫療刑事責任（criminal liability in medical practice）、義務衝突（conflicts of obligations）

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不得已拒收病人，是否有違醫師法第21條或醫療法第60條第1項之「救治義務」或「急救義務」。等公法上義務，而須負擔法律責任？本文以為，法條並未設有違反者處以刑罰規定，昭示作用較大。本文議題或有以不作為犯論之；若以刑法第15條第1項中之不純正不作為犯觀點，本質上屬於結果犯，未能造成病人死傷之結果，不得論罪。惟性質近似之刑法第294條「有義務者遺棄罪」，屬於抽象危險犯；然若已盡力救治，僅因系統性因素造成醫療能量不足，致使不得已而拒收病人，應視為並無遺棄故意與危險故意，「有義務者遺棄罪」不成立。現行醫療法第82條第3項，刪除草案中「但屬醫療上可容許之風險或系統性錯誤，不罰。」對醫事人員個人權利保護，極為不周。惟「系統性錯誤」在「醫療事故預防及爭議處理法」有相當篇幅提及，令我等仍期待法有明文：系統性錯誤所致病人死傷，個人應免除醫療刑事責任。當前雖法無明文，然醫療能量不足，在該等系統性因素下，醫師不得已而拒收病人，應採「義務衝突」之超法規阻卻違法事由論斷；無論所衝突之義務等價與否，皆阻卻違法。

When hospitals or physicians are compelled to refuse patients due to severe shortages in medical capacity caused by systemic factors, does this refusal violate the public legal duties such as the “obligation of emergency care” or the “duty to treat” as stipulated in Article 21 of the Physicians Act or Article 60, Paragraph 1 of the Medical Care Act, thereby incurring legal liability? This paper argues that these provisions lack explicit penal clauses and serve primarily as normative guidelines. The issue may be analyzed under the concept of omission in criminal law. From the perspective of an improper omission under Article 15, Paragraph 1 of the Criminal Code, it is inherently a

result-based offense; thus, no liability arises if the patient does not suffer death or injury. However, the offense of abandonment by a person with a duty (Article 294 of the Criminal Code), which resembles the situation in nature, is a crime of abstract endangerment. If the physician has made every effort to provide care and only refused treatment due to systemic shortages, such refusal should not be deemed as having the intent to abandon or create danger, and thus the offense does not constitute. Currently, Article 82, Paragraph 3 of the Medical Care Act no longer includes the draft clause stating: "But medical risks or systemic errors that are medically acceptable shall not be punishable," which significantly fails to protect the rights of medical personnel. Nevertheless, "systemic error" is extensively addressed in the Medical Malpractice Prevention and Dispute Resolution Act, giving hope for future codification that explicitly exempts individual medical practitioners from criminal liability for medical negligence caused by systemic errors. Although current law provides no clear exemption, when medical capacity is compromised due to systemic factors, physicians who are forced to refuse patients should be viewed as acting under a "conflict of obligations," a supra-legal justification for excluding unlawfulness. Regardless of whether the conflicting obligations are of equal weight, such justification negates criminal liability.

壹、前言

新冠疫情侵襲全球3年有餘，解封後卻出現全球性的護理人力不足問題，臺灣更出現護理荒的空前危機。根據統計，護

理人員執業率僅及六成，離職率則達一成二的10年高峰[1]，空缺率亦逾6%[2]。此現象已引起世界衛生組織高度注意，發出警訊指明為「已達緊急公衛事件」。對臺灣而言，更是國安問題等級。

護理離職率之所以逐年攀升，主要原因包括：人力不足導致工作壓力大，難以長期負荷；薪資或福利不夠好，前途黯淡不明；工作環境難以適應；對醫院政策不認同或對直屬上司的領導方式不滿意；自認在職場無晉升機會，又苦無申訴管道。凡此種種，皆已導致再符合法定護病比的前提下，醫院必須選擇關床。而普遍一至三成的關床率，導致醫療能量大幅下滑，急診常態性壅塞；整體國人醫療需求，難以滿足！

在此醫療危急存亡之際，醫療院所或醫師，是否得以醫療能量不足為拒絕病人之理由，便生疑義。本文試就法律觀點，探討此一問題。

貳、醫師違反急救義務之刑事責任

一、急救義務

所謂「救治義務」或「急救義務」，一般多以醫師法第21條：「醫師對於危急之病人，應即依其專業能力予以救治或採取必要措施，不得無故拖延。」以及醫療法第60條第1項：「醫院、診所遇有危急病人，應先予適當之急救，並即依其人員及設備能力予以救治或採取必要措施，不得無故拖延。」為法源依據。可見醫師執業時，面對前來求診的病患，必須依照其所在醫療院所之人員、設備及能力水準予以救治，或是

1 國語日報社論，護理人力荒是國安問題，2024年12月24日，https://www.mdnkids.com/content.asp?Link_String_=22CO00000LJVFSV（瀏覽日期：2025年5月27日）。
2 衛生福利部護理及健康照護司，護助e起來，業務儀錶板，https://nurse.mohw.gov.tw/mp-2.html（瀏覽日期：2025年5月10日。）。