

探討生殖醫學 公司化之影響*

Addressing the Consequences of the
Corporatization of Reproductive Medicine

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摘要

輔助生殖技術的商業化與公司化，在澳洲與英國催生出了一個由診所、產品與服務所組成的市場。雖然這在某種程度上擴大了病患的選擇，但由商業動機所主導並塑造的「選擇」，未必意味著更高品質的醫療照護。目前，對診所（包括公司化診所）及臨床醫師的監管，主要聚焦於醫病關係及診所與消費者之間的互

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動。然而，公司化診所對股東與投資人的責任、醫療專業人員對其所任職公司的責任，以及臨床醫師與公司對病患與整體醫療系統所應承擔的義務之間的衝突，至今尚未獲得足夠關注。以公司治理與商業倫理為基礎的監管架構，如利害關係人模型與「企業社會責任」等，可能難以有效應用在醫療領域中，因為在這方面存在明顯的局限性，也就是說現行的治理架構可能無法充分滿足病患或醫療系統的需求。筆者主張發展新的監管方式，更明確地界定公司與受雇臨床醫師對病患與社會所應承擔的義務，並支持這些義務的實踐。文中也探討了可以應用在澳洲這樣多司法管轄的環境，以及單一司法管轄的英國環境中的具體機制。

In Australia and the UK, commercialization and corporatization of assisted reproductive technologies have created a marketplace of clinics, products, and services. While this has arguably increased choice for patients, ‘choice’, shaped by commercial imperatives may not mean better-quality care. At present, regulation of clinics (including clinic–corporations) and clinicians focuses on the doctor–patient dyad and the clinic–consumer dyad. Scant attention has been paid to the conflicts between the clinic–corporation’s duty to its shareholders and investors, the medical profession’s duty to the corporations within which they practice, and the obligations of both clinicians and corporations to patients and to health systems. Frameworks of regulation based in corporate governance and business ethics, such as stakeholder models and ‘corporate social responsibility’, have well-recognized limits and may not translate well into healthcare settings. This means that existing governance frameworks may not meet the needs of patients or health systems. We argue for the development of novel regulatory approaches that

more explicitly characterize the obligations that both corporations and clinicians in corporate environments have to patients and to society, and that promote fulfilment of these obligations. We consider mechanisms for application in the multi-jurisdictional setting of Australia, and the single jurisdictional settings of the UK.

壹、介紹

生殖問題長期以來都被視為一項「生意」¹，而近幾十年來，輔助生殖技術（assisted reproductive technology, ART）的國際市場不斷擴展、變化，並在商業化的過程中被進一步形塑。這導致了生殖照護提供模式的關係網發生了深刻的變化，其中商業化的診所公司與投資者（包括私募股權）的權力與影響力日益增加。鑑於商業化的影響，筆者得更嚴謹的檢視在此背景下運作的商業形式，尤其是公司化的形式，評估它們對照護品質的影響，並確定應該監管什麼、監管誰以及如何監管。

雖然本文聚焦於 ART 和生殖選擇，在臨床研究中並不只有 ART 被公司化了。我們對商業化與公司化影響的分析，在其他醫療領域中也會有更廣泛的適用空間。然而，ART² 在英

1 Eg, M Brazier, 'Regulating the Reproduction Business?' (1999) 7 Medical Law Review 166; DL Spar, *The Baby Business: How Money, Science, and Politics Drive the Commerce of Conception* (Harvard Business Press 2006).

2 Corporatization is not unique to ART and has been observed and critiqued across several areas of medicine, including general practice, hospitals, dentistry, radiology, and pathology. These have also undergone conglomeration. See eg, K White and F Collyer, 'To Market, To Market: Corporatisation, Privatisation and Hospital Costs' (1997) 20 Australian Health Review 13; F Collyer and K White, *Corporate Control of Health Care in Australia* (Discussion Paper 42, The Australia Institute 2001); C de Moel-Mandel and V