

# 醫師懲戒制度簡介— 臺灣與德國的法制比較

An Introduction to the Physician Disciplinary System:  
A Comparative Study of Taiwan and Germany

陳愛娥 Ai-Er Chen\*



## 摘要

為確保專門職業人員忠實履行其職業義務，對違反義務者，各國均建置相關懲戒制度；觀察各國專門職業人員的懲戒制度，足以顯示其對該等人員應扮演之社會功能的期許。本文擬選擇醫師此一職業，並以德國法制為比較對象，分別觀察臺灣與德國法制對醫師懲戒事由、懲戒事件之辦理組織與程序、懲戒之法律效果，以及懲戒法制與其他相關處罰法制之關係，最後則一般性地指出二法制的根本性差異。

To ensure that professionals faithfully fulfill their professional obligations, various countries have established relevant disciplinary systems for those who violate such duties. An examination of the disciplinary systems for professionals in different countries sufficiently reveals

\*國立臺北大學法律系兼任副教授 (Adjunct Associate Professor, Department of Law, National Taipei University)

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the social functions these individuals are expected to perform. This paper selects the medical profession as its primary focus and adopts the German legal system as a comparative model. It examines the disciplinary systems of Taiwan and Germany, specifically focusing on the grounds for disciplinary action, the organizational structures and procedures for handling disciplinary cases, the legal effects of sanctions, and the relationship between disciplinary frameworks and other penal systems. Finally, the paper highlights the fundamental differences between the two legal regimes from a general perspective.

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## 前言

為確保專門職業人員忠實履行其職業義務，對違反義務者，各國均建置相關懲戒制度；觀察各國專門職業人員的懲戒制度，足以顯示其對該等人員應扮演之社會功能的期許。本文擬選擇醫師此一職業，並以素來強調專門職業團體之自律功能的德國法制作為比較對象，分別觀察臺灣與德國法制對醫師懲戒事由、懲戒事件之辦理組織與程序、懲戒之法律效果，以及懲戒法制與其他相關處罰法制之關係，最後則一般性地指出二法制的根本性差異。

## 壹、臺灣醫師懲戒法制

醫師法第25條規定：「醫師有下列情事之一者，由醫師公會或主管機關移付懲戒：一、業務上重大或重複發生過失行為。二、利用業務機會之犯罪行為，經判刑確定<sup>1</sup>。三、非屬

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1 常見之案例類型可參見：周國隆、楊哲銘編著，實用醫事法律，五本檔案僅供試閱，完整內容請見本刊。