學習式判解評析

【醫療刑事法】

病房醫療暴力案：私人蒐證證據能力與醫療暴力之刑事評價

Case of Healthcare Ward Violence:
The Admissibility of Privately Obtained Evidence
and the Criminal Evaluation of Medical Violence

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摘 要

本文以最高法院114年度台上字第5198號刑事判決為核心，就醫療暴力之刑事評價與私人蒐證之證據能力兩大主軸，進行系統性之法理分析。就事實背景而言，被告因不滿住院醫師之醫療處置，於病房內毆打、推擠正在執行查房業務之醫師，護理師當場以手機錄影蒐證。歷審法院均認定被告成立傷害罪及醫療法第106條第3項妨害醫療業務罪，最高法院駁回上訴，確立手機錄影屬「科學、機械產物」而具備證據能力。本文就程序面指出，最高法院雖以「科學產物」論據確立

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關鍵詞：私人蒐證（private evidence collection）、法益權衡原則（balancing of legal interests）、執行醫療業務（performance of medical practice）、醫療暴力（medical violence）、證據能力（evidentiary competence）

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私人錄影之證據能力，惟「無人為編修」之認定仍仰賴法官感官勘驗而非科學鑑定，論理存在循環。私人秘密蒐證之「法益權衡原則」亦未就比例原則之必要性要件充分展開，病房場域之隱私期待尚待更細緻之評估。就實體面，本文剖析醫療法第106條第3項「強暴」與「執行醫療業務中」之構成要件，指出查房業務具有動態連續性，應涵蓋病床間之移動，惟一、二審就「具體妨害」之認定及該罪屬抽象危險犯或具體危險犯之性質，均未充分論述。此外，辯護權之實質保障及醫美診所隱密錄影之合法性爭議，亦為本文延伸討論之重點。

This article analyzes the Supreme Court criminal judgment No. 114-Tai-Shang-5198, focusing on two central issues: the criminal assessment of medical violence and the admissibility of privately gathered evidence.The case arose from a hospital ward incident in which a defendant, dissatisfied with a resident physician's treatment, struck and shoved the physician during ward rounds, while a nurse recorded the scene with her mobile phone. All courts upheld convictions under the Criminal Code for bodily injury and Article 106, Paragraph 3 of the Medical Care Act for obstructing medical practice. The Supreme Court affirmed, characterizing mobile recordings as "scientific and mechanical products" possessing evidentiary competence.The article critically evaluates both procedural and substantive dimensions. Procedurally, the "scientific product" characterization creates a logical circularity: the finding of "no human editing" was based on judicial inspection rather than forensic scientific examination. The proportionality analysis under the "balancing of legal interests" framework for private covert recording was not fully elaborated, particularly given the non-public nature of

hospital ward settings. Substantively, the article examines the elements of "violence" and "during medical practice" under Article 106, Paragraph 3 of the Medical Care Act, arguing that ward rounds constitute a dynamic and continuous process—including movement between beds—that qualifies as medical practice. However, both lower courts failed to adequately address whether the defendant's conduct caused concrete obstruction and whether the offense constitutes an abstract or concrete endangerment crime. The article further extends its analysis to the right to effective defense and the legality of covert recording in aesthetic medical clinics.

壹、本案之犯罪事實、案件爭點及歷審法院見解

一、案例犯罪事實

本案起因於一起高度緊張的醫病糾紛。被告因其母於2022年12月間在系爭醫院接受醫療處置，對住院醫師丙執行之鼠蹊中央靜脈導管置入術深感不滿，認為其處置失當導致其母健康惡化，甚至陷入昏迷狀態。這種長期的憤怒與焦慮，在2023年1月18日上午10時22分許，於該院第一醫療大樓7樓72病房爆發為具體的肢體衝突。根據法院勘驗之錄影與相關人證，丙醫師當時正隨同主治醫師執行例行查房業務。當醫師群準備離開病房前往下一病床時，被告因不滿醫師未對其先前行為致歉，先行將丙擋住，阻止其離開病房。隨後，被告基於傷害及對於醫事人員執行醫療業務時施強暴之犯意，伸手重擊丙左臉頰，並持續往病房內部推擠，試圖將醫師限制在病房一隅。此時，在一旁協助被告母親換藥的護理師H與隨後聽聞巨響而來的護理師L，均目睹或聽聞了這場暴力衝突。L護理師在進入病