

A Discussion on Criminal Negligence: Based on Criminal Cases of Medical Malpractice in the United States

*Ming-Woei Chang**

Abstract

In Taiwan, a criminal prosecution of criminal negligence goes for medical doctors especially when the medical malpractice is not settled. Medical doctors are much dissatisfied with high conviction rates and argue for decriminalization of medical malpractices. In response to this argument, this article tries to redefine the term “criminal negligence” by referring to American concept. After analyzing cases about criminal prosecution of medical doctors in the United States, this article concludes that not all deviation from standard of care or standard of conduct would result in criminal negligence. However, the situation in Taiwan is very different. The courts and scholars in Taiwan almost agree that criminal negligence equals to civil negligence so all deviation from standard of care or standard of conduct would be covered in criminal negligence. The article argues the Taiwanese viewpoint confuses criminal negligence with civil negligence. In support of saying that, this study distinguishes the former from the latter by pointing out the legislative concern of each concept. As a result, this study suggests adoption of the American idea of criminal negligence, which makes a better sense, would limit the scope of criminal negligence in Taiwan. Only few medical malpractices then will go under criminal prosecution.

Keywords: medical malpractice, decriminalization, gross negligence, manslaughter, standard of care, deviation, culpability, wanton, reckless, intent

* Assistant Professor of Law, Alethia University. Email: mwconqueror@yahoo.com.tw