

Patient Autonomy — Cause of Action of Informed Consent in Taiwan's Tort Law

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Abstract

This paper studies the issue that how can the Taiwanese tort law integrate the doctrine of informed consent so as to explore the very important concept in modern bioethics, patient autonomy. What is patient autonomy? How does the legal regime in Taiwan treat the concept of patient autonomy? Does patient autonomy receive enough attention and have sufficient legal protection? I tries to answer these questions by reviewing related regulatory laws, tort law, and contract law. Study revealed that the current laws in Taiwan do not have a clear assertion to patient autonomy. Doctors' duty to disclosure might be established through the relevant requirements of the Physician Act 2003, the Medical Practice Act 2005, and contract law, but those are not accurate and appropriate basis for patients' right to autonomy.

The author argued for a direct acknowledge- ment of patient autonomy as a legal right protected by Tort law. Medical performance without a patient's consent would constitute a violation of the patient's bodily right; before the patient consent, doctors should disclose necessary information so the patient can make an informed consent, otherwise it would constitute a violation of the patient's autonomy right. "Bodily right" is a negative right, and "autonomy right" is a positive right. Both are protected by article 184, section 1.

Keywords: Informed Consent Patient Autonomy Torts