

Evidence-Based Study on the Pattern of Negligence in Medical Crimes: with Special Reference to the Amendment Draft of the Medical Care Act

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Abstract

It has been alleged by physicians that medical malpractice criminal litigations cast heavy psychological burdens on them in Taiwan. Consequently in the past 3 decades, the physician community urged to promote the amendment of criminal law to exempt all the criminal responsibility of physicians during their practice, yet in vain. Instead, the contemporary amendment policy is switched to exempt the medical crimes only from slight negligence and confine it to the acts or omissions amounting to gross negligence and recklessness. However, solid evidence that physician community will enjoy the benefit of such amendment is still lacking.

With the aim to understand clearly the patterns of negligence in the affirmed medical criminal convictions for causing death or injury in the performance of his medical duties or activities due to negligence, this study enrolled 41 affirmed medical criminal convictions during period between January in 2001 and November in 2015. The judgements of these convictions were reviewed independently by 45 physicians via questionnaire, and the acts or omissions in each conviction were categorized into grossly negligent, reckless or slightly

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negligent one. The result shows that the acts or omissions amounting to gross negligence and recklessness compose the majority (up to 95%) of convictions when compared to slight negligence, which shows statistically significance.

Though the exact explanation for the phenomenon we observed remains obscured, yet these evidence-based data imply clearly that the contemporary amendment attempt promoted by physicians to exempt the medical crimes from slight negligence and confine it to the acts or omissions amounting to gross negligence and recklessness might probably gain little achievement to reduce the conviction rate because the contemporary convictions already were confined to grossly negligent and reckless crimes. Moreover, how to properly amend the current provisions in Medical Care Act, with special reference to the descriptions of mens rea or subjective elements of crime regarding gross medical negligence, remains a very difficult task for us.

Keywords: medical crime, rationalized, gross negligence, conviction rate, negligently causing death or injury in the performance of duty, negligently causing injury in the performance of duty, elements of crime, strict proving rule of evidence