

The Codification of Medical Contract

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Abstract

In the past, no civil codes around the world stipulated the rules on medical contract law. Nonetheless, the Netherland, China, and Germany enacted the law of medical contract in their civil codes recently, and DCFR provided the law of medical contract for reference. All these medical contract laws provided detailed provisions on the duties of a doctor and many other significant issues such as informed consent and the burden of proof. The codification of medical contract is due to the widespread cases on medical malpractice around the world. The courts deliver diverse opinions on such kinds of cases, which renders it necessary to codify the law of medical contract.

The Taiwan Civil Code does not provide any rules on the law of medical contract. Taiwan courts have to handle the cases of medical malpractice in accordance with the civil code and the code of civil procedure with the medical act and the patient autonomy act etc. Also the court heavily rely on the civil code provisions such as tort law and general contract law to decide the medical malpractice cases, many aspects of the medical law are not provided by the civil code. Therefore, it is necessary in Taiwan to analyze the laws of medical contract stipulated in other countries in order to set some rules for Taiwan law to follow in the future.

This paper is intended to examine the rules of medical contract in those three countries and the DCFR, so as to clarify their major concerns and their resolutions in dealing with medical malpractice cases. It simultaneously examines the medical malpractice law in Taiwan so as to make a comparison

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with Taiwan law and foreign laws. In the end, it draws a draft on the law of medical contract for the legislative reference.

The main issues discussed in this paper include the parties of a medical contract, the duties of a medical provider (such as treatments, evaluation, medical devices safety, referral, disclosure, medical records), the duties of a patient, the duty of care for a medical provider, the doctrine of informed consent, and the duty of confidentiality. All these rules are examined in a perspective of comparative law so as to demonstrate the features of the law in different jurisdictions.

Keywords: medical contract, medical liability, medical duty, medical record obligations, standard of duty of care, informed consent, presumption of causation, right to privacy