

# 新冠疫情下的刑法挑戰—以優先性分類為中心

## Challenges to the Criminal Law in the COVID-19 Pandemic: with focus on the triage

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### 摘 要

由於醫療資源有限，使得罹患新冠肺炎的病人可能無法人人都能使用呼吸器。在這種情況下，醫師必須做出誰能使用呼吸器的困難抉擇。在事前分類中所涉及的問題是醫師能否主張義務衝突，而此時對於救助義務的優先順序判斷須以病人的成功救治前景為標準。而在事後分類方面，本文認為其所涉及的亦屬義務衝突的問題，因而在救助義務的優先順序判斷上與事前分類相同。此外，醫師的選擇標準不應僅為道德上的規則，立法者有義務對於優先性分類的選擇標準進行立法，以使醫療人員有遵循的依據。

### 關鍵詞：

新冠肺炎、優先性分類、義務衝突、作為、不作為

# **Challenges to the Criminal Law in the COVID-19 Pandemic: with focus on the triage**

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## **Abstract**

Due to limited medical resources, it may be unable to use respirators for each patient suffering from COVID-19. Under this circumstance, physicians must make difficult decisions about who can use the respirator. The question involved in ex-ante-triage is whether the physician can be justified based on the conflict of duty, provided that the treatment priority is assessed based on the chances of a successful treatment on the patient. In terms of the ex-post-triage, the author also believes that the justification by the conflict of duty as above also applies and the treatment priority shall be decided the same as in the ex-ante-triage. In addition, the standard of decision by physicians should not be merely ethical rules, and the legislature is obliged to make laws about the triage standard for the healthcare professionals to follow.

### **Keywords :**

COVID-19, Triage, Conflict of Duties, Act, Omission