

# 醫療行為的意義： 被害人之傳統整復費用 可否請求加害人賠償？\*

The Meaning of “Medical Practice”: Can the Injured Claim Compensation against the Tortfeasor for the Expenses Incurred in Receiving Traditional Folk Osteopathy Conditioning at the Folk Traditional Osteopathic Institute ?

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## 摘要

在我國，因為衛生福利部以法規命令將傳統國術館、整復館等接受民俗傳統整復調理界定為非醫療行為。因此，原告接受民俗傳統整復調理，或至蔘藥行抓藥所支付之對價，均非接受醫療行為之對價，自亦不能納入「醫療費用」之項目，依民法第192條或第193條請求被告損害賠償。但原告若能舉證證明，上開「醫業類似行為」之費用，係「經過醫師之指示或勸告」，或「對於所受傷害確有在醫療行為通常療效所

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關鍵詞：損害賠償 (compensation)、增加生活上需要 (increasing the need in living)、醫療行為 (medical practice)、醫療費用 (medical expenses)

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不及之顯著療效」，且「未逾越依社會觀點上認為合理必要之範圍」，仍得允許原告以非醫療費用之「增加生活上之需要」，依民法第192條或第193條請求被告損害賠償。

The Ministry of Health and Welfare has regulated that receiving traditional folk osteopathy conditioning at the folk traditional osteopathic institutes as non-medical practices. Therefore, the expenses paid by the plaintiff incurred in obtaining traditional Chinese crude drugs from the Chinese drug pharmacy and receiving traditional folk osteopathic conditioning at the folk traditional osteopathic institutes are not the consideration to receive the medical practices and cannot be included in the “medical expenses” to claim for compensation according to Article 192 or Article 193 of the Civil Law. However, suppose the plaintiff can prove that the expenses for such “similar behaviors as the medical practice” are “incurred according to the instructions or advices of doctors” or “effecting curative effect that is beyond the usual curative effect of regular medical practices” and “within reasonable and necessary extent from the social point of view,” the plaintiff may still be allowed to claim damages against the defendant by Article 192 or Article 193 of the Civil Law for such increase of the need in living other than medical expenses.

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## 壹、案例

原告因被告行車過失肇事而受有雙側膝蓋外傷、左右膝挫傷、雙側腳踝、雙側手腕及腰椎挫傷、疑似左膝前十字韌帶撕

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1 改編自臺灣士林地方法院110年度士簡字第1615號民事簡易判決。

裂傷、左膝臏骨外側韌帶接骨點炎及臏骨內側韌帶疑似撕裂傷，除接受西醫常規治療之外，另至蔘藥行抓藥服用，並在國術館接受民俗傳統整復調理，並將蔘藥行抓藥及國術館調理之支出全部納入「醫療費用」中，依侵權行為法律關係起訴請求被告賠償。被告則抗辯：本件原告既已接受常規治療，是否有再另外接受民俗傳統調理，甚至另外服用中藥之必要，不無疑問。上開蔘藥行抓藥及國術館民俗傳統整復調理之費用，實屬重複醫療之支出，應予剔除。

## 貳、爭點

一、原告為治療其所受之傷勢，在蔘藥行抓取之藥、水、散、膏、劑之費用，以及在傳統國術館、整復館等接受推、按、壓、刮、拔、敷等民俗傳統整復調理之費用，是否能納入「醫療費用」請求被告賠償？

二、若否，原告為治療其所受之傷勢，在蔘藥行抓取之藥、水、散、膏、劑之費用，以及在傳統國術館、整復館等接受推、按、壓、刮、拔、敷等民俗傳統整復調理之費用，是否毫無可能請求被告賠償，而應予剔除？

## 參、解析

在生命權受侵害的情形，民法第192條第1項規定，不法侵害他人致死者，對於支出醫療及增加生活上需要之費用或殯葬費之人，亦應負損害賠償責任。醫療及增加生活上需要之費用，被列為侵害生命權的法定賠償項目。在身體權或健康權受侵害的情形，民法第193條第1項規定，不法侵害他人之身體或健康者，對於被害人因此喪失或減少勞動能力或增加生活上之需要時，應負損害賠償責任。此時，醫療費用被包含在「增加