

全民健保特約藥局 藥事服務費核扣之法律界限 —以藥師未親自執行業務為例

The Legal Boundaries of Fee Recoupment for
NHI-Contracted Pharmacies: A Case Study on the
Pharmacist's Duty to Personally Perform Services

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摘要

本文以近期指標性判決（人和藥局案）為核心，探討全民健保特約藥局因藥師未親自執行業務遭核扣費用之法律界限。過去司法實務多採「全有全無」之僵化解釋，認為調劑行為不可分割，任一環節違規即全額追扣，常在特殊場域（如監獄）引發違反比例原則及公法上不當得利之爭議。本研究分析發現，司法實務已在程序與實體面向發生典範轉移。程序上，法院釐清「費用核扣通知」性質為契約上之意思表示，確立

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以一般給付訴訟取代撤銷訴訟，開啟對契約履行程度進行實質審查之大門。實體上，法院揚棄傳統行政制裁思維，引入民法「不完全給付」法理，將核扣性質由「懲罰」轉化為「對價平衡」與「損害填補」。透過解構健保支付標準之成本結構，司法實務成功將藥事服務內涵量化為可獨立評價之對價單元。法院據此確立比例核扣之審查基準，拒絕僅因附隨義務違反即剝奪全部給付。此發展顯示行政法院已從對行政機關判斷之尊讓，轉向高密度之契約解釋與事實認定，直接介入給付金額之量化分析，對於落實行政契約之實質對等與量化正義，具有深遠意義。

Centering on the recent landmark judgment of the *Renhe Pharmacy* case, this article explores the legal boundaries regarding fee recoupment imposed on National Health Insurance (NHI) contracted pharmacies arising from a pharmacist's failure to personally perform professional duties. Historically, judicial praxis adhered to a rigid "all-or-nothing" interpretation, viewing pharmaceutical dispensing as an indivisible act wherein any procedural breach justified total fee recoupment. This approach frequently engendered controversies regarding violations of the principle of proportionality and public law unjust enrichment, particularly within specialized settings such as correctional facilities. This study posits that a paradigm shift has occurred within judicial jurisprudence across both procedural and substantive dimensions. Procedurally, courts have recharacterized the "notification of fee deduction" as a contractual declaration of intent rather than an administrative disposition, thereby establishing the action for general performance—rather than the action for revocation—as the appropriate procedural vehicle. This reorientation has paved the way for substantive

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scrutiny regarding the degree of contractual performance. Substantively, courts have abandoned the traditional administrative sanction paradigm in favor of incorporating the Civil Code doctrine of “incomplete performance.” Consequently, the legal nature of fee recoupment has transformed from a punitive measure into a mechanism for preserving the equilibrium of consideration and effecting compensatory restitution. By deconstructing the cost structure inherent in the NHI fee schedule, the judiciary has successfully quantified pharmaceutical services into discretely evaluable units of consideration. Accordingly, courts have established a standard of review for proportional recoupment, rejecting the total forfeiture of payment predicated solely on the breach of ancillary obligations. This evolution signifies a departure by the Administrative Court from judicial deference toward administrative discretion, moving instead toward a rigorous mode of contract interpretation and fact-finding. By directly intervening in the quantitative analysis of payable amounts, this judicial trend holds profound implications for actualizing substantive equality and quantitative justice within the regime of administrative contracts.

壹、緒論

全民健康保險（下稱健保）之運作，係以保險人（衛生福利部中央健康保險署，下稱健保署）與醫事服務機構所簽訂之行政契約作為運作基礎。依據藥事法第37條及「藥品優良調劑作業準則」第3條規定，藥師執行調劑業務應「親自為之」，此乃確保醫療品質與用藥安全之核心義務。過去司法實務多

採嚴格解釋原則，認為調劑行為具備高度屬人性與不可分割性，藥師若未親自執行其中任一環節（如交付藥品或用藥指導），即構成違約。早期在「東泰藥局案」¹中，行政法院即認為藥師未依處方箋親自提供服務，健保署得依合約全額扣減費用；在「盧家中醫診所案」²中亦採相同見解，認為非由醫師親自執行之推拿不得申報費用，進而維持全額核扣之決定。

此種「全有全無」（All-or-Nothing）之處理模式，在特殊場域或現代醫療分工下逐漸顯露其僵化與不公平之處。以「人和藥局案」³為例，藥師在承作監獄藥事服務時，雖已完成處方確認、藥品調配與核對等核心工作，僅因受限於監獄管理規定或人力配置，遂將交付藥品與用藥指導之任務委由非藥事人員代為執行。依傳統見解，健保署將因該部分瑕疵而拒絕給付全部藥事服務費。此舉無異使行政機關受領藥師已付出之勞務與藥品成本（即已實現之醫療利益），卻無需支付任何對價，恐有違反比例原則及公平原則之虞。究竟行政機關對於違反親自執行義務之處置，應維持懲罰性質之全額追扣，抑或應回歸契約對價平衡之損害賠償或減價受領？

貳、藥師親自執行義務之規範內涵與司法審查之演變

一、調劑行為之規範架構與早期實務見解

健保特約醫事服務機構之給付請求權，係建立在合法提供醫療服務之前提下。藥事服務之合法性，核心在於藥師是否遵守藥事法規規定之親自執行調劑業務。早期司法實務對於親自執

1 臺北高等行政法院105年度簡上字第55號判決。

2 臺北高等行政法院101年度訴字第370號判決。

3 最高行政法院113年度上字第355號判決。