

**On the Regulatory Challenge of Judicial Review of
Administrative Actions: The Regulation of Deceptive Drug
Price Reporting under the National Health Insurance as a Case
Study***

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Abstract

By examining the regulation of **deceptive drug price reporting** under the National Health Insurance of Taiwan, this project investigates the limitation of the traditional legal concept of administrative disposition in the era of regulatory state, as well as the judicial response to this limitation. In such cases, drug companies often claim the National Health Insurance Administration (NHIA) decision to exclude drugs, regarding which price reporting requirements had been violated, from NHI coverage constitutes administrative disposition and is subject to judicial review. In response, the court rules that the NHIA decision is a legal order and in

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principal does not have direct legal effect on drug companies. However, due to the external impact of the legal order, such decision can also constitute **administrative disposition upon things** and serve as the basis for judicial review. The author argues that this judicial argumentation reflects the regulatory background that, in the era of governance and regulatory state, the growing utilization of administrative contracts has: 1) challenged the traditional conceptual distinction between administrative disposition and legal order; and 2) triggered the debate over the correct legal categorization of regulatory actions conducted during the administrative contracts. Facing these challenges, the court in Taiwan seems to: 1) be increasingly willing to blur the distinction between administrative disposition and legal order to provide additional opportunities for judicial review; but 2) meanwhile review conservatively regarding the substance of the regulatory actions. The conservative attitude can find resemblance in other countries and regions, where courts increasingly shift the focus of judicial review from substantive rationality to the procedural legality of the regulatory actions. The shift on the one hand reveals the necessity to reinvent legal concept for reviewing procedural legality such as the non-delegation doctrine. On the other, the shift is also the natural consequence of the evolving regulatory state where the court no longer occupies the central role in the regulatory process, a development that demands scholarly reflection on the proper role of the judiciary in the new era.

Keywords: Regulatory State, National Health Insurance, Health Fraud, Deceptive Drug Price Reporting, Administrative Contract, Administrative Disposition, Administrative Disposition upon Things, Judicial Review, Legal Orders, Non-delegation Doctrine