

Recent court case recalls the potentiality of internet tools for e-health

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❖ Introduction

The Ministry of Health, Labour and Welfare (MHLW), under the amended Pharmaceutical Affairs Act and Pharmacists Act (currently called “The Law on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices”; hereinafter called “the Law”) of 2014, categorized new items immediately after their switch to OTC pharmaceuticals as face-to-face sold OTC (FOTC) pharmaceuticals¹⁾. Consequently, the internet sales of FOTC pharmaceuticals have been forbidden for a defined period²⁾. X, an online shopping company, filed a lawsuit against the MHLW stating that the ban on freedom of occupation by the Law is unconstitutional³⁾.

❖ Case Report

On July 18, 2017, the Tokyo District Court dismissed X’s assertion³⁾. The case became the first judicial decision against the FOTC regulation. Plaintiff X alleged that the risk cannot be prevented by providing information, regardless of the sales method used³⁾. The defendants claimed that face-to-face sales were more suitable than internet sales for pharmacists providing information and guidance, the object and period to be regulated as FOTC pharmaceuticals were limited. The

court found that to compare the risk of pharmaceutical items immediately after their classification has been switched, a pharmacist must provide required information or guidance to purchasers at the pharmacy; therefore, FOTC regulation was reasonable³⁾.

❖ Implications

Technological innovation in information and communications has changed distribution methods of non-prescription drugs⁴⁾. Amid the continuous rise of medical cost for the public, the trend of self-medication using non-prescription drug may further expand in the future. On the other hand, it is required to pay sufficient attention to adverse effects. Problems are not solved by regulating face-to-face or internet sale alone. In consideration of advantages in each selling method, it should be prioritized to establish a trusty relationship between various methods by admitting advantages each other and to improve hospitality. First, we believe that it is important to safely and easily distribute pharmaceuticals to individuals who really need them. Second, pharmacy education should introduce a curriculum on the safe online pharmaceutical sale-related issues, expanding the range of activities for pharmacists. Lastly, it is necessary to establish methods to track the adverse effects in patients who purchased pharmaceuticals online without adding restrictive measures. To promote self-medication⁵⁾, it is important to share necessary information with the parties involved.

❖ References

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