Summary of J.Y. Interpretation No. 753

Note: This summary constitutes no part of the Interpretation but is prepared by the Clerk's Office of the Constitutional Court, only for the readers' reference.

Case Nos.: Huei-Tai-11411 filed by the representative of the Catholic St. Joseph Hospital Foundation, Tsong-Ming Li, Huei-Tai-11411 filed by Petitioner Hsian-Tang Chen as Dongtai Pharmacy

Decided and Announced: October 6, 2017

Background Note

1. The representative of the Catholic St. Joseph Hospital Foundation, Shi-Chie Chang (now changed into Tsong-Ming Li by a motion to assume the action, hereinafter "Petitioner 1"), and the Central Health Insurance Bureau of the Department of Health, the Executive Yuan prior to the governmental reorganization (now reorganized as the National Health Insurance Administration, Ministry of Health and Welfare, hereinafter "NHI Administration"), entered into a National Health Insurance Healthcare Providers Contract (hereinafter "the Contract"). During September to October in 2007, a surgical surgeon under the supervision of Petitioner 1 conspired with a patient to mix someone else's cancer tissues into the patient's biopsy. With the false result, a surgery and other treatments were taken. Based upon such treatments, Petitioner 1 applied for multiple medical expenses to the Insurer. The false claims were later investigated and found out by the prosecutor. According to the laws at the time of the said fraud, i.e. related provisions of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions (hereinafter "Contracting and Management Regulations") enacted according to the authorization of Article 55, Paragraph 2 (hereinafter "Provision I") of the National Health Insurance Act promulgated on August 9, 1994 (hereinafter "NHI Act of 1994"), including the part regarding contract suspension under Article 66, Paragraph 1, Subparagraph 8, amended and promulgated on March 20, 2007 (hereinafter "Provision II"),

Article 70, First Sentence regarding refusal of reimbursement during contract suspension, amended and promulgated on February 8, 1996 (hereinafter "Provision III"), and Article 20, Paragraph 1 of the Contract, the NHI Administration suspended Petitioner 1's contracted surgical services (including outpatient and inpatient ones) for around 2 months and refused to pay for any expenses associated with services rendered to the insurance beneficiaries by the liable physician within the period of suspension. Petitioner 1 objected and filed a lawsuit for the administrative remedy. Meanwhile, according to Article 39, Paragraph 1 of the Contracting and Management Regulations, amended and promulgated on September 15, 2010 (hereinafter "Provision IV") concerning offsets of the suspended contract period, Petitioner 1 applied for deductions to offset the enforcement of the suspended contract period (hereinafter "offsets of the suspended contract period") on May 4, 2011. The NHI Administration approved this application and agreed to deduct NTD $ 14,001,281. After exhausting all the judicial remedies, Petitioner 1 petitioned for constitutional interpretation to this Court in January 2013, contending that Provision I to IV violated the *Gesetzesvorbehalt* principle and the principle of proportionality under Article 15 and 23 of the Constitution.

2. Petitioner Hsian-Tang Chen as Dongtai Pharmacy (hereinafter Petitioner 2), and the NHI Administration entered into the Contract too. Petitioner 2 did not dispense in person, but according to the prescriptions from 12 pm, May 18 to 10 am, May 19 of 2013 he declared and applied for medical expenses. The false claims were found out through on-site investigation by the NHI Administration on June 12, 2014. The NIH deducted NTD $ 311,710, i.e. 10 times of the related medical expenses declared (hereinafter "deductions of medical expenses ") [Note], according to Article 37, Paragraph 1, Subparagraph 1 of the Contracting and Management Regulations, amended and promulgated on December 28, 2012 (hereinafter "Provision VI"), under the authorization of Article 66, Paragraph 1 of the National Health Insurance Act (hereinafter "Provision V), amended and promulgated on January 26, 2011 (hereinafter "the

existing NHI Act"), and Article 20 of the Contract. After exhausting all the judicial remedies, Petitioner 2 petitioned for constitutional interpretation to this Court in August 2016 contending that Provisions V and VI violated Article 7, 15, 16 and the *Gesetzesvorbehalt* principle under Article 23 of the Constitution.

3. Both of the two petitions abovementioned involve the issues of, when the contracted insurance medical care institution breaches the contract, whether the NHI Administration's measures taken according to Provision I to VI violate the *Gesetzesvorbehalt* principle as well as the principle of clarity and definiteness of authorization, and therefor are inconsistent with the Constitution. Given the commonality of the petitions, this Court consolidates the above two cases.

Holding

1. Article 55, Paragraph 2 of the National Health Insurance Act, promulgated on August 9, 1994, provided: "[r]egulations regarding contracting and management of National Health Insurance medical care institutions in Paragraph 1 shall be enacted by the Competent Authority." And Article 66, Paragraph 1, amended on January 26, 2011, provided: "[m]edical care institutions should apply to the Insurer to become contracted medical care institutions. The Competent Authority shall determine the qualifications, procedure, review standards, disqualification, resolution of violations, and other relevant matters pertaining to contracted medical care institutions." Both articles do not violate the principle of clarity and definiteness of statutory authorization in a rule-of-law state. Nor do they infringe upon the right to work and the right to property under Article 15 of the Constitution.

2. Article 66, Paragraph 1, Subparagraph 8 of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions, amended on March 20, 2007, provided: "[t]he Insurer shall suspend the contract for one to three months, or suspend the medical department or specific service items for one to three months, if the insurance medical care institution has any of the following circumstances during the term of the contract: … 8. Other unscrupulous behavior or false certifications, reports or

statements in order to declare medical expenses." Article 70, First Sentence of the same regulation, amended and promulgated on February 8, 2006, provided: "[f]or any contracted medical care institution whose contract is suspended …, the responsible or liable medical personnel shall not be reimbursed for the medical services provided to the insurance beneficiaries during suspension …" Article 39, Paragraph 1 of the same regulations, amended on September 15, 2010, provided: "[w]here the suspension … of a contract pursuant to Articles 37 to 38 poses a threat of significant impact on the beneficiaries' right to receive medical care, or is necessary to prevent or mitigate risks to the public, the medical care institution, subject to the Insurer's approval, may suspend … the scope of the specific service items or categories of medical care of the contract for violation of the respective requirements, and may apply to the Insurer for the deduction of the payment to offset the suspended … contract period according to the declared volume of the medical department which is subject to specific service items or categories of a medical care as well as the verified average points of the total volume of the district of the most recent year." The abovementioned provisions (which all have been amended and promulgated on December 28, 2012 into Article 39, Subparagraph 4, Article 47, Paragraph 1, and Article 42, Paragraph 1 in order, with the same regulatory meanings) do not go beyond the authorization of the enabling statue, thereby not in breach of the *Gesetzesvorbehalt* principle. The provisions are also consistent with the principle of proportionality under Article 23, as well as the right to work and the right of property under Article 15 of the Constitution.

3. Article 37, Paragraph 1, Subparagraph 1 of the Regulations Governing Contracting and Management of National Health Insurance Medical Care Institutions, amended and promulgated on December 28, 2012, provides: "[t]he Insurer may deduct ten times of the reported medical expenses applied by the insurance medical care institutions based upon the average total value of the most recent quarter of their locations, should the insurance medical care institutions be found under any of the following circumstances: 1. Failure to

provide medical services according to prescriptions …" This provision does not exceed the authorization of the enabling statue, thereby not in breach of the *Gesetzesvorbehalt* principle. Neither does this provision infringe upon the right to work and the right of property under Article 15 of the Constitution.

Reasoning

1. The scope of the *Gesetzesvorbehalt* principle in a rule-of-law nation includes but is not limited to matters restraining people's rights enumerated in Article 23 of the Constitution. Administrative measures by the government, even if not directly restricting people's freedoms, shall be authorized by statute or by statute-authorized rules in the case where such measures are related to material public interests. When the law authorizes the Competent Authority to make supplemental rules, such authorization shall be specific and precise. The content of the National Health Insurance Contract involves whether the National Health Insurance system could soundly operate, which is critical to whether the state could provide comprehensive healthcare services in pursuit of the health of the entire population. Such matters, involving constitutional protection of all the people's right of existence and right to heath, are considered important matters of material public interests. Therefore, it shall be made by statute or by rules specifically and unequivocally by statute. The so-called specific and unequivocal authorization of statute must be judged from the viewpoint of the relevancy as expressed by the enabling statute in its entirety rather than being judged by rigid adherence to the language of any particular provision.

2. Article 55, Paragraph 2 of the NHI Act of 1994 (aka. Provision I.) had explicitly stipulated: "[r]egulations regarding contracting and managing methods of the contracted medical institutions shall be determined by the Competent Authority." The same provision was later amended on January 26, 2011 into Article 66, Paragraph 1 (aka. Provision V), which also explicitly provides: "[m]edical care institutions should apply to the Insurer to become contracted medical care institutions. The Competent Authority shall determine the qualifications, procedure, review standards, disqualification, resolution of violations, and other relevant matters pertaining to contracted medical care institutions." The abovementioned statutes have authorized the Competent

Authority to make regulations over abovementioned matters, and thereby the provisions in question do not violate the *Gesetzesvorbehalt* principle.

3. According to Article 31, Paragraph 1, Article 42, Article 52, Article 55, Paragraph 1 and Article 62 of the NHI Act of 1994, the legislator has already provided specific guidelines concerning the content of the Contracting and Management Regulations to the Competent Authority. Measures dealing with breach of contract are common parts of a contract. The term Management of the Contracting and Management Regulations should include measures dealing with breach of contract from the view of objective interpretation. It is reasonable to assume the legislators' intent to authorize the Competent Authority to tackle with breach of contract by the Contracting and Management Regulations in pursuit of the purposes of authorization - to effectively manage insurance medical care institutions as well as to provide comprehensive healthcare services.

4. For the purpose of administering the National Health Insurance by the Competent Authority, the Contracting and Management Regulations are articulated as the governing regulations to administer the National Health Insurance, to enter into Contracts, to manage insurance medical care institutions and to deal with breach of contract. Parts of the regulations have been incorporated into a part of the model Contracts. The legislature authorized that the Insurer and the insurance medical care institution may reach into agreements by the Contract, in order to let the Insurer take handling measures when the insurance medical care institution violates the Contract, for the purposes of preventing depletion of resources of the National Health Insurance, enhancing management of insurance medical care institutions and urging those institutions to perform the Contract according to the contractual purpose. Considering that both provisions are measures necessary for the Insurer to effectively manage insurance medical care institutions and to urge institutions to perform the Contract according to the contractual purpose, and that the nature of both provisions is different from fines imposed upon breach of administrative obligations, Provision II and III have not gone beyond the authorization of their enabling statute.

5. Provision IV stipulates the requirements, procedures and standards of substitutions of the enforcement of the suspended contract period, according to which the insurance medical care institution may apply for reimbursement deductions to offset the enforcement of the suspended contract period, with the approval of the NHI Administration and the deduction calculated according to certain methods. The essence of this provision is to allow the abovementioned enforcement of the suspended contract period to be substituted by the offsets, as long as the insurance medical care institution applies and obtains approval from the NHI Administration, so that the insurance medical care institution can continue to provide medical services to the insurance beneficiaries and declare its medical expenses. This provision remains to be within the scope of measures necessary for the Insurer to effectively manage insurance medical care institutions and to urge institutions to perform the Contract according to the contractual purpose. Therefore, this provision is not beyond the authorization of its enabling statute.

6. Provision VI explicitly provides that the Insurer may deduct ten times of the reported medical expenses by the insurance medical care institutions. It stipulates that the Insurer may claim for institutions' obligations of non-performance by the Contract, which is also a measure tackling with breach of contract, falling within the scope of measures necessary for the Insurer to effectively manage insurance medical care institutions and to urge institutions to perform the Contract according to the contractual purpose. Therefore, Provision VI does not exceed the authorization of the enabling statute.

7. Given the content of the Contracting and Management Regulations greatly affects the sustainable and sound development of the National Health Insurance system as well as the rights and obligations of insurance medical care institutions, the Competent Authority should hold public hearings according to the Administrative Procedure Act, allowing representatives of stakeholders to attend to orally present their opinions and debate. The Competent Authority should take the entire hearing records into account and make decisions accompanying with reasons of adopting stakeholders' opinions or not. The existing Contracting and Management Regulations should be reviewed and

improved.

8. The purposes of contract suspension and refusal of reimbursement in Provision II and III are to prevent and tackle with medical reimbursement frauds in furtherance of comprehensive medical services. The purposes serve important public interest and therefore shall be legitimate. The means, i.e. contract suspension and refusal of reimbursement, could cause a decreased number of patients or impair the fame of contracted medical care institutions through public announcement that deters or penalizes medical reimbursement frauds to a certain degree. The means are indeed helpful to achieve the purposes. Moreover, the existing Contracting and Management Regulations, in accordance with the seriousness of contract violation, generally divide into different measures to be taken, ranging from requests to make improvement within a specific period of time, imposing contract-violation points, deducting medical expenses, to suspending or terminating the contract. Among them, contract suspension may even be implemented from one to three months in accordance with the seriousness of contract violation; moreover, the suspension could only be limited to the scope of the entire or a portion of service, or the outpatient or inpatient part of the specific medical department, service items or categories of a medical care which violates the requirement respectively. Additionally, Provision IV also serves as an equitable mechanism. There is nothing significantly unreasonable in above provisions. Therefore, Provision II and III concerning contract suspension and refusal of reimbursement are not inconsistent with the principle of proportionality under Article 23 of the Constitution.

9. Provision IV regarding offsets of the suspended contract period refers to that the insurance medical care institution, by an application approved by the NHI Administration, may pay for the amounts calculated with certain methods to substitute the enforcement of the suspended contract period. The deductible amount is generally equivalent to the amount of refusal of reimbursement for services provided to the insurance beneficiaries during suspension. Since contract suspension does not violate the principle of proportionality under Article 23, neither does Provision IV regarding offsets of the suspended contract period violate the same constitutional principle.

Justice Ming-Cheng TSAI recused himself from this case.

Justice Jiun-Yi LIN filed an opinion concurring in part.

Justice Chong-Wen CHANG filed an opinion concurring in part.

Justice Horng-Shya HUANG filed a concurring opinion.

Justice Chen-Huan WU filed a concurring opinion.

Justice Chi-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion.

Justice Dennis Te-Chung TANG filed an opinion concurring in part and dissenting in part.

Justice Chang-Fa LO filed an opinion dissenting in part.

Justice Sheng-Lin JAN filed an opinion dissenting in part.

Justice Beyue SU CHEN filed a dissenting opinion.