

电商平台“便民找药”服务中的管理漏洞及治理对策^Δ

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摘要 目的 推动互联网电商平台“便民找药”药品经营新型服务业态的管理与规范,保障公众用药安全及生命健康。方法 通过1起电商平台“便民找药”业务中发生的以虚假问诊形式变相销售网络禁售药品的行政公益诉讼案件,分析当前电商平台“便民找药”服务模式在实施与监管中暴露出的风险问题,并据此提出管理与规范方面的治理建议。**结果与结论** 当前电商平台“便民找药”服务模式存在行为性质认定模糊,监管主体不明确,平台商业模式有待完善、义务规定较为模糊、审核义务与安全保障义务的落实有待明确等问题。建议可通过明确相关行为的法律性质、强化监管职责、落实平台责任、加强法律监督等措施,推动对电商平台“便民找药”服务的规范与管理,促进行政部门的有效监管和检察机关的切实监督,切实维护公众生命健康安全。

关键词 便民找药;电商平台;网络禁售药品;虚假问诊

Management loopholes and governance countermeasures in the “convenient medicine search” service of e-commerce platforms

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ABSTRACT OBJECTIVE To promote the management and regulation of the new service format of “convenient medicine search” pharmaceutical operations on internet e-commerce platforms, and to safeguard public medication safety and health. **METHODS** Through an administrative public interest litigation case involving the disguised sale of internet-prohibited drugs under the guise of false medical consultation in a “convenient medicine search” service, this paper examines the risk issues exposed in the implementation and supervision of the current “convenient medicine search” service model on e-commerce platforms, and accordingly proposes governance recommendations for management and regulation. **RESULTS & CONCLUSIONS** The current “convenient medicine search” service model on e-commerce platforms faces problems such as ambiguous characterization of the nature of the conduct, unclear regulatory subjects, a business model that requires improvement, relatively ambiguous provisions on platform obligations, and a need for clarification in the implementation of review obligations and safety guarantee obligations. It is recommended that the regulation and governance of the “convenient medicine search” service on e-commerce platforms be advanced by clarifying the legal nature of relevant acts, strengthening regulatory duties, fulfilling platform obligations, and intensifying legal oversight, thereby facilitating effective supervision by administrative agencies and genuine oversight by procuratorial organs, and ultimately safeguarding the life and health of the public.

KEYWORDS convenient medicine search; e-commerce platform; drugs prohibited from online sale; false medical consultation

近年来,随着信息技术的快速发展,药品经营领域新业态与新形式大量涌现。其中,“便民找药”服务蓬勃发展,不仅多地(如北京、淄博、福建等)的市场监管部门或医保部门已上线了官方找药系统,各大电商平台也在积极探索互联网找药服务模式,设置“便民找药”板块为用户提供新特药品/直接面向患者(directly to patients, DTP)药品等特殊药品的获取信息,并同步开设了“线上

预约、线下问诊、留药待取、快递送药”等配套服务^[1]。但在实际运营中发现,与之相关的合规性问题也不断滋生,出现了以虚假问诊形式变相销售网络禁售药品的违法行为。

长久以来,大众获取新特药品/DTP药品的方法、途径等信息的渠道不畅,存在信息壁垒,面临着“找药难”的问题。电商平台通过开设“便民找药”板块方便公众查询、获取稀缺药品购买渠道的创新业务本身具有一定的现实意义。从监管角度来讲,应持包容审慎的态度,并出台相应法规措施推动该项服务形式的规范发展与

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