

J. Y. Interpretation No.682 (November 19, 2010) *

ISSUE: Some rules of the Special Examination for Doctors of Chinese Medicine provide that any examinee who scores zero points for any subject, has an average score of less than 50 points for professional subjects, scores less than 55 points for the subject of internal medicine, or scores less than 45 points for any of the other test subjects, does not pass the exam. Are such rules unconstitutional ?

RELEVANT LAWS:

Articles 7, 15, 18, 23 and Article 86, Paragraph 2 of the Constitution (憲法第七條、第十五條、第十八條、第二十三條、第八十六條第二款) ; Judicial Yuan Interpretation No. 547 (2002.06.28) (司法院釋字第五四七號解釋) ; Articles 2, 3, 9, 10, 11, 15, 19 and 22 of the Professionals and Technologists Examinations Act (專門職業及技術人員考試法第二條、第三條、第九條、第十條、第十一條、第十五條、第十九條、第二十二條) ; Article 1 and 3 of the Physicians Act (2009.05.13) (醫師法第一條、第三條) ; Article 15, Section 2 of the Enforcement Rules of the Professionals and Technologists Examinations Act (as amended on 2001.07.23) (中華民國(下同)九十年七月二十三日修正發布之專門職業及技術人員考試法施行細則第十五條

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** Contents within frame, not part of the original text, are added for reference purposes only.

第二項) ; Article 10, Section 2 of the Enforcement Rules of the Professionals and Technologists Examinations Act (as amended on 2008.05.14) (九十七年五月十四日修正發布之專門職業及技術人員考試法施行細則第十條第二項) ; Article 3, Section 1 of the Regulations on Score Calculation for the Professionals and Technologists Examinations (專門職業及技術人員考試總成績計算規則第三條第一項) ; Article 9, Paragraph 3 of the Examination Rules on the Professional and Technical Special Examination for Doctors of Chinese Medicine (as amended on 2001.07.25) (九十年七月二十五日修正發布之專門職業及技術人員特種考試中醫師考試規則第九條第三項) ; The Regulations on the Professional and Technical Special Examination for Doctors of Chinese Medicine (promulgated on 1962.02.23) (五十一年二月二十三日發布之特種考試中醫師考試規則) ; The Regulations on the Qualification Screening Examination for Doctors of Chinese Medicine (promulgated on 1962.03.23) (五十一年三月二十三日發布之中醫師檢覈辦法) ; The Regulations on the Preliminary Qualification Examination for Doctors of Chinese Medicine (promulgated on 1968.04.25) (五十七年四月二日發布之中醫師考試檢定考試規則)

KEYWORDS:

the right to work (工作權), the right to take examinations (應考試權), the freedom to choose an occupation (職業自由), statutory reservation (法律保留)、the principle of proportionality (比例原則), equal protection (平等

權), the power to design and hold examinations (考試權), professions (專門職業), Doctor of Chinese Medicine (中醫師), qualification for practice (執業資格), Qualification Screening (檢覈), Senior Examination (高等考試), Initial Qualifying Examinations (檢定考試), special examinations (特種考試), qualifications to take examinations (應考資格), test subjects (應試科目), the standards used to determine who passes the examinations and who does not (及格方式), the professional judgment (專業判斷).**

HOLDING: Article 15, Paragraph 2 of the Enforcement Rules of the Professionals and Technologists Examinations Act, as amended on July 23, 2001, stipulates: “Where, in the preceding paragraph, the successful examinees are determined by using a total average score of not less than sixty or by a specific percentage of the total number of actual examinees in each category, if a candidate’s score in any one of the examination subjects is zero, or if his or her average score in the professional subjects is less than fifty, or if any score in a specific subject fails to meet the minimum requirement, that candidate shall be deemed to have

解釋文: 中華民國九十年七月二十三日修正發布之專門職業及技術人員考試法施行細則第十五條第二項規定:「前項總成績滿六十分及格……者,若其應試科目有一科成績為零分、專業科目平均不滿五十分、特定科目未達規定最低分數者,均不予及格。」(九十七年五月十四日修正發布之現行施行細則第十條第二項規定亦同)、專門職業及技術人員考試總成績計算規則第三條第一項規定:「……採總成績滿六十分及格……者,其應試科目有一科成績為零分,或專業科目平均成績不滿五十分,或特定科目未達規定最低分數者,均不予及格;……」及九十年七月二十五日修正發布之專門職業及技術人員特種考

failed the examination..” (The same text appears in Article 10, Paragraph 2 of the current Enforcement Rules, as amended on May 14, 2008.) Article 3, Paragraph 1 of the Final Score Calculation Rules of the Professionals and Technologists Examinations states: “An examinee passes a professionals and technologists examination if his or her final score is more than or equal to 60 points.... However, an examinee does not pass the examination if he or she scores zero points for any subject, has an average score of less than 50 points for professional subjects, or does not meet the minimum score requirements for specific subjects....” Article 9, Paragraph 3 of the Examination Rules of the Professional and Technical Special Examination for Doctors of Chinese Medicine, as amended on July 25, 2001, states: “Any examinee who scores zero points for any subject, has an average score of less than 50 points for professional subjects, scores less than 55 points for the subject of internal medicine, or scores less than 45 points for any of the other subjects tested, does not pass

試中醫師考試規則第九條第三項規定：

「本考試應試科目有一科成績為零分或專業科目平均成績未滿五十分或專業科目中醫內科學成績未滿五十五分或其餘專業科目有一科成績未滿四十五分者，均不予及格。」尚未抵觸憲法第二十三條法律保留原則、比例原則及第七條平等權之保障，與憲法第十五條保障人民工作權及第十八條保障人民應考試權之意旨無違。

the exam...” The rules set out above are consistent with the principles of statutory reservation and proportionality under Article 23 of the Constitution, as well as the right of equal protection under Article 7 of the Constitution. These rules are also consistent with the protection of people’s right to work under Article 15 of the Constitution and the protection of people’s right to take examinations under Article 18 of the Constitution.

REASONING: The people’s right to work, as protected by Article 15 of the Constitution, entails the freedom to choose and to pursue an occupation. Whether particular restrictions on the freedom to choose and to pursue an occupation imposed by a statute or a regulation explicitly authorized by a statute are constitutional is a question governed by several standards of review on the basis of their contents. Article 86, Paragraph 2 of the Constitution states that the qualifications for professional occupations shall be determined on the basis of examinations administered by the Exami-

解釋理由書：人民之工作權受憲法第十五條所保障，其內涵包括選擇及執行職業之自由，以法律或法律明確授權之命令對職業自由所為之限制是否合憲，因其內容之差異而有寬嚴不同之審查標準。憲法第八十六條第二款規定，專門職業人員之執業資格，應經考試院依法考選之。因此人民選擇從事專門職業之自由，根據憲法之規定，即受限制。憲法第十八條對人民應考試權之規定，除保障人民參加考試取得公務人員任用資格之權利外，亦包含人民參加考試取得專門職業及技術人員執業資格之權利，以符憲法保障人民工作權之意旨。又為實踐憲法保障人民應考試權之

nation Yuan. Thus the people's freedom to choose professional occupations is restricted by the Constitution itself. The right to take examinations under Article 18 of the Constitution not only guarantees the people's right to take examinations to become qualified to serve as civil servants, but also guarantees the people's right to take examinations to obtain license to work as professionals or technicians, which is consistent with the Constitution's protection of the people's right to work. In order to realize the protection of people's right to take examinations under the Constitution, the state is obliged to establish an objective and fair examination system and to ensure the fairness of the examination results. Should any regulation on the qualification to take examinations or the method of examinations constitute a limitation on the people's right to take examinations or the people's right to work, the regulation should not be inconsistent with the constitutional principles of statutory reservation, equal protection, and proportionality. However, adequate deference should be given to the

意旨，國家須設有客觀公平之考試制度，並確保整體考試結果之公正。對於參加考試資格或考試方法之規定，性質上如屬應考試權及工作權之限制，自應符合法律保留原則、比例原則及平等權保障等憲法原則。惟憲法設考試院賦予考試權，由總統提名、經立法院同意而任命之考試委員，以合議之方式獨立行使，旨在建立公平公正之考試制度；就專門職業人員考試而言，即在確保相關考試及格者具有執業所需之知識與能力，故考試主管機關有關考試資格及方法之規定，涉及考試之專業判斷者，應給予適度之尊重，始符憲法五權分治彼此相維之精神。

Examination Yuan, as the Constitution establishes the Examination Yuan and requires the Examiners, appointed by the President with the consent of the Legislative Yuan, to exercise independently the power to design and hold examinations to ensure a fair and objective examination system. Fairness in qualification examinations for professionals and technicians requires that all individuals who pass the examinations possess the necessary knowledge and abilities. As a result, if the regulations promulgated by the Examination Yuan with regard to qualifications to take examinations or methods of examination involve professional judgment about examinations, the regulations should be given adequate deference so as to conform to the constitutional spirit of the “separation and coordination of five powers.”

Article 1 of the Physicians Act states that nationals of the Republic of China who pass the physicians' examination and receive the certificate of physician license accordingly may practice as

依醫師法第一條規定，中華民國人民經醫師考試及格並依該法領有醫師證書者，得充醫師。又依專門職業及技術人員考試法第二條規定，該法所稱專門職業人員，係指依法規應經考試及格

physicians. Article 2 of the Professionals and Technologists Examinations Act defines professionals and technologists as persons who are eligible to practice their professions only after passing examinations and obtaining certificates in accordance with laws and regulations. Through Article 1 of the Physicians Act, the Legislative Yuan classifies doctors of Chinese Medicine as professionals, who must obtain certificates of physician license in accordance with relevant statutes and regulations. (see J.Y. Interpretation No. 547). Article 15 of the Professionals and Technologists Examinations Act stipulates: "Regulations governing the different Special Examination for Professionals and Technologists shall be submitted by the Ministry of Examination to the Examination Yuan for approval (Paragraph 1). The examination regulations referred to in the preceding paragraph shall cover the grades and levels of examinations, as well as the qualifications for the different examination categories and the required examination subjects (Paragraph 2)." Article 19 of the Professionals and

領有證書始能執業之人員。是立法者將中醫師列為專門職業人員，其執業資格應依相關法令規定取得（本院釋字第五四七號解釋參照）。專門職業及技術人員考試法第十五條規定：「專門職業及技術人員各種特種考試之考試規則，由考選部報請考試院定之（第一項）。前項考試規則應包括考試等級及其分類、分科之應考資格、應試科目（第二項）。」第十九條規定：「專門職業及技術人員考試得視等級或類科之不同，其及格方式採科別及格、總成績滿六十分及格或以錄取各類科全程到考人數一定比例為及格（第一項）。前項及格方式，由考選部報請考試院定之（第二項）。專門職業及技術人員考試總成績計算規則，由考選部報請考試院定之（第三項）。」專門職業人員考試之應試科目暨及格標準之決定，關係人民能否取得專門職業之執業資格，對人民職業自由及應考試權雖有限制，惟上開事項涉及考試專業之判斷，除由立法者直接予以規定外，尚非不得由考試機關基於法律授權以命令規定之。上開規定除規定專門職業人員考試得採「科別及格」、「總成績滿六十分及格」及「錄取該類科全程到考人數一定比例為及

Technologists Examinations Act consists of three paragraphs. Paragraph 1 states: “with due regard to the different grades or categories of examinations, successful examinees in the Professionals and Technologists Examinations may be determined by their having passed each test subject, or by their achieving a total average score of not less than 60, or by a specific percentage of the total number of actual examination candidates in each category.” Paragraph 2 states: “the specific method of determining examination qualifiers with regard to the above shall be submitted by the Ministry of Examination to the Examination Yuan for approval.” Paragraph 3 states Regulations governing the calculation of total scores for Professionals and Technologists Examinations shall be submitted by the Ministry of Examination to the Examination Yuan for approval. The test subjects and the standard used to determine who passes the Professionals and Technologists Examinations concern whether particular individuals may obtain licenses to work as professionals or technologists;

格」三種及格方式外，就各類專門職業人員考試應採之及格方式、各種特種考試之考試規則（包括考試等級及其分類、分科之應考資格、應試科目）、總成績計算規則等，明文授權考試機關本其職權及專業判斷訂定發布補充規定。考其立法意旨，即在賦予考試機關依其專業針對各該專門職業人員考試之需要，決定適合之及格方式暨及格標準，以達鑑別應考人是否已具專門職業人員執業所需之知識及能力之目的。考試院依據上開法律規定之授權，於中華民國九十年七月二十三日修正發布之專門職業及技術人員考試法施行細則第十五條第二項規定：「前項總成績滿六十分及格……者，若其應試科目有一科成績為零分、專業科目平均不滿五十分、特定科目未達規定最低分數者，均不予及格。」（九十七年五月十四日修正發布之現行施行細則第十條第二項規定亦同）、專門職業及技術人員考試總成績計算規則第三條第一項規定：「……採總成績滿六十分及格……者，其應試科目有一科成績為零分，或專業科目平均成績不滿五十分，或特定科目未達規定最低分數者，均不予及格；……」，及於九十年七月二十五日修正發布之專門

thus, they constitute limitations on the people's right to work and right to take examinations. However, the test subjects and the standard used to determine who passes the examinations involve professional judgment about examinations. As they involve professional judgment about examinations, not only may the Legislative Yuan legislate on such matters; the Examination Yuan may also promulgate administrative regulations on the basis of statutory authorization. In addition to setting out the three standards that may be used to determine who passes the examinations, *i.e.*, "achieving a score of 60 points on each and every test subjects," "achieving an average score of 60 points for all test subjects," and "achieving an average score better than a set percentage of all examinees," the Professionals and Technologists Examinations Act explicitly authorizes the Examination Yuan to, in accordance with its jurisdiction and professional judgment, promulgate supplemental regulations for all professionals and technologists examinations with regard to the methods used to determine

職業及技術人員特種考試中醫師考試規則第九條第三項規定：「本考試應試科目有一科成績為零分或專業科目平均成績未滿五十分或專業科目中醫內科學成績未滿五十五分或其餘專業科目有一科成績未滿四十五分者，均不予及格。」

（以下併稱系爭規定）就中醫師特種考試所採「總成績滿六十分及格」之具體內容，明定尚包括應試科目不得有一科成績為零分、專業科目平均成績不得未滿五十分及特定科目應達最低分數之標準，尚未逾越上開法律授權範圍，與憲法第二十三條法律保留原則尚無抵觸。

who passes these examinations, the rules that govern these examinations (including those related to the level and classification of examinations, the qualifications required to take examinations, and the test subjects), and the calculation of examination scores. The legislative intent is to authorize the Examination Yuan to exercise its professional judgment to determine, for various examinations, the appropriate standards of passing by which the state may ensure that all examinees who pass examinations possess the necessary knowledge and abilities. With the statutory authorization set out above, Article 15, Paragraph 2 of the Enforcement Rules of the Professionals and Technologists Examinations Act, as amended on July 23, 2001 by the Examination Yuan, states: “For those whose total score has reached 60 points for qualification, ... if any tested subject of the examinations should be zero point, the average score of the professional subjects is less than 50 points, or the score of specially designated subject(s) does not meet the minimum requirement, they shall all be deemed

to be not qualified.” (The same text also appears in Article 10, Paragraph 2 of the current Enforcement Rules, as amended on May 14, 2008.) Article 3, Paragraph 1 of the General Score Calculation Rules of the Professionals and Technologists Examinations states: “... Among those qualified who have reached the general score of 60 points, ... as long as there is a zero point on any tested subject, or the average score of the professional subjects is less than 50 points, or the score of specially designated subject(s) does not meet the minimum requirement, they shall all be disqualified....” Article 9, Paragraph 3 of the Rules of the Professionals and Technologists and Traditional Chinese Medicine Doctor Examination, as amended on July 25, 2001, states: “For the score on any of the test subject that is zero point or professional subjects that is less than 50 points in average, or the internal medicine of the Traditional Chinese Medicine that is less than 55 points, or any of the other professional subjects that is less than 45 points, they shall all be disqualified.” (All these provisions are

referred to hereinafter as “disputed provisions.”) The disputed provisions, requiring that a successful examinee may not obtain zero points for any subjects, that a successful examinee’s average score be no less than 50 points, and that a successful examinee’s score for specific subjects should meet minimum requirements, provide more specific contents to the more general standard that “anyone who achieves an overall score of 60 points passes the examination” as applied in the Special Examination for Doctors of Chinese Medicine. Therefore, the disputed provisions do not violate the principle of statutory reservation under Article 23 of the Constitution.

Many patients in this country rely on doctors of Chinese medicine. As decades ago few formal schools of Chinese medicine existed, for the purpose of selecting qualified Chinese medicine doctors to meet the needs of the society, the Examination Yuan, authorized by the Examinations Act at the time, promulgated the Rules on Special Examination for

國人依賴中醫診療之患者眾多，早年因中醫正規教育尚未普及，考試院為甄拔適格之中醫人才以供社會所需，依據當時考試法規定之授權，於五十一年二月二十三日發布特種考試中醫師考試規則、同年三月二十三日發布中醫師檢覈辦法，及於五十七年四月二日發布中醫師考試檢定考試規則，以應考人學經歷之不同定其應考資格，分別舉辦中

Doctors of Chinese Medicine on February 23, 1962; the Measures on the Qualification Screening Examination for Doctors of Chinese Medicine on March 23 of the same year; and the Rules on the Initial Qualifying Examination for Doctors of Chinese Medicine on April 2, 1968. Pursuant to these regulations, examinees with various educational backgrounds and experiences could take three different kinds of examinations: Special Examinations, Certification Examinations, and Preliminary Qualification Examinations. Only those who pass the Special Examination or Certification Examination are qualified to practice as doctors of Chinese medicine. Later, as the society changed, more universities and independent colleges began to educate doctors of Chinese medicine, which is a result of the Legislative Yuan's policy decision, but the Legislative Yuan still enacted Article 3, Section 3 of the Physicians Act to allow those who pass the Initial Qualifying Examinations to take the Special Examination. As such a rule allows the individuals who do not possess an academic degree

醫師特種考試、檢覈考試及檢定考試，通過中醫師特種考試或檢覈考試者，始取得中醫師執業資格。嗣因社會變遷，大學或獨立學院之中醫學教育日漸普及，立法者雖選擇以大學或獨立學院之中醫學教育培養人才為中醫師之養成政策，仍於醫師法第三條第三項規定，經中醫師檢定考試及格者，得應中醫師特種考試，以保障非大學或獨立學院中醫學系畢業者、非醫學系、科畢業而修習中醫必要課程者或非醫學系選中醫學系雙主修畢業者，亦有參與考試以取得中醫師執業資格之機會，符合憲法第十八條保障人民應考試權之意旨。考試院即依此規定，依應考人是否經正式中醫學教育養成，而分別舉辦中醫師高等考試與中醫師特種考試兩類考試，並依專門職業及技術人員考試法規定之授權，及基於專業之判斷依法定程序訂定系爭規定。其就中醫師特種考試及格方式所為之規定，乃為鑑別應考人是否具有取得中醫師執業資格之合理手段，與憲法第二十三條規定之比例原則尚無牴觸，亦未違反第十五條保障人民職業自由及第十八條保障人民應考試權之意旨。

from a department of Chinese medicine but take courses required for Chinese medicine or obtain a degree in Chinese medicine to take examinations to become licensed to practice Chinese medicine, Article 3, Section 3 of the Physicians Act is consistent with the protection of the people's right to take examinations under Article 18 of the Constitution. Pursuant to Article 3, Section 3 of the Physicians Act, the Examination Yuan holds two kinds of examinations for doctors of Chinese medicine. Examinees who have already received formal education in Chinese medicine may take the Senior Examinations for doctors of Chinese medicine, while examinees who have not received formal education in Chinese medicine may take the Special Examination for doctors of Chinese medicine. The Examination Yuan duly promulgates the disputed provisions pursuant to the authorization of the Professionals and Technologists Examinations Act and on the basis of its professional judgment. The standards used to determine who passes the Special Examinations and who

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does not are a rational means used to determine whether particular examinees are qualified to work as doctors of Chinese medicine. Therefore, such standards are consistent with the principle of proportionality under Article 23 of the Constitution, the protection of the people's right to work under Article 15 of the Constitution, and the protection of the people's right to take examinations under Article 18 of the Constitution.

The guarantee of people's right to equal protection under Article 7 of the Constitution is intended to prevent legislative arbitrariness and unreasonable differential treatment. For a statute or regulation to meet the equal protection requirement, the purpose of the differential treatment must be constitutional, and enough degree of nexus must exist between the classification set out in the regulation and the objectives that the regulation seeks to achieve. For examinees with various academic backgrounds and work experiences, the Examination Yuan holds three different examinations. Although

憲法第七條保障人民平等權，旨在防止立法者恣意，並避免對人民為不合理之差別待遇。法規範是否符合平等權保障之要求，其判斷應取決於該法規範所以為差別待遇之目的是否合憲，其所採取之分類與規範目的之達成之間，是否存有一定程度之關聯性而定。相關機關以應考人學經歷作為分類考試之標準，並進而採取不同考試內容暨及格標準，雖與人民職業選擇自由之限制及應考試權密切關聯，惟因考試方法之決定涉及考選專業判斷，如該分類標準及所採手段與鑑別應考人知識能力之考試目的間具合理關聯，即與平等原則無違。按立法者於專門職業及技術人員考試法

such differences in the knowledge tested and the minimum requirements may constitute limitations on the people's rights to choose occupations and to take examinations, the manner in which examinations are held involves the professional judgment about examinations. Therefore, as long as the classification is rationally related to the purpose of evaluating the knowledge and ability of the examinees, classification itself does not violate the principle of equal protection. Article 3 of the Professionals and Technologists Examinations Act divides Professionals and Technologists Examinations into three levels—senior, junior, and elementary—and authorizes the Examination Yuan to hold Special Examinations corresponding to these three levels to meet special needs. Articles 9, 10, and 11 of the same Act stipulate the qualifications, including both academic backgrounds and work experiences, required to take examinations. Article 22 further stipulates explicitly that depending on the needs of the particular kinds of professionals and technologists, additional training or education may be

第三條規定，專門職業及技術人員考試分為高等考試、普通考試、初等考試三等，並得為適應特殊需要而舉行相當於上開三等之特種考試；同法第九條、第十條及第十一條所規定各該等級考試之應考資格，係與應考人之學歷及經歷結合，第二十二條並明定得視類科需要於錄取後施以訓練或學習，期滿成績及格者，始發給考試及格證書。究其意旨即係認專門職業人員固應由考選機關依法考選，考選機關所舉辦之考試亦應符合整體結果公平公正之要求，惟無論採筆試、口試、測驗、實地考試、審查著作或發明、審查知能有關學歷經歷證明等考試方法，就應考人之專業素養鑑別度均有其侷限。且專門職業人員執業能力及倫理素養概須藉由相當程度系統化之教育始能培養，難謂僅憑考試方式即得予以鑑別。是為確保考試及格者之專業素養能達一定之執業程度，立法者即於上開規定依應考人教育養成之不同，舉行不同考試，並視需要於錄取後施以實務訓練或學習，相互接軌配套，期以形成合理之專業人員考選制度。考試院依醫師法第三條規定及專門職業及技術人員考試法相關規定，將中醫師執業資格考試區分為高等考試與特種考試兩類，

required after examinees pass examinations, and examinees may be licensed to work as professionals or technologists only after successfully completing this additional training or education. All of these rules imply the following policy consideration: Although professionals and technologists should be selected by the Examination Yuan through fair examinations held in accordance with the law, all methods of examination, including written examination, oral examination (interviews), on-site examination, review of publications, and review of diploma and work experience, cannot perfectly ascertain the professional abilities of examinees. In addition, professionals' and technologists' abilities and ethics must be cultivated by systematic education and cannot be ascertained through examinations only. Therefore, for the purpose of ensuring that the examinees that pass examinations have adequate professional abilities, the Legislative Yuan enacted the aforementioned articles in the Professionals and technologists Examinations Act, offering examinations for individuals

並因中醫師特種考試與高等考試兩類考試應考人所接受中醫學教育及訓練養成背景、基本學養等均有不同，為配合此一養成背景之差異，其考試規則有關及格方式、應試科目等之規定因而有所不同；且系爭專門職業及技術人員特種考試中醫師考試規則第九條第三項規定，就中醫師特考應考人之專業科目中醫內科學成績必須滿五十五分，其餘專業科目均須滿四十五分之及格要求，亦為考試主管機關依法定程序所為之專業判斷，與鑑別中醫師特考應考人是否具有中醫師執業所需之知識、技術與能力，有合理關聯性，並非考試主管機關之恣意選擇。是上開考試院發布之系爭規定尚無違背憲法第七條保障人民平等權之意旨。

with specific academic backgrounds and requiring additional training or learning. The purpose was to establish a reasonable examination system for professionals and technologists. Pursuant to Article 3 of the Physicians Act and the relevant rules in the Professionals and Technologists Examinations Act, the Examination Yuan divides the examinations for doctors of Chinese medicine into senior examinations and special examinations, and promulgates different examination rules with respect to the test subjects and the standards used to determine who passes the examinations and who does not, taking account of the fact that the examinees of these two examinations differ in their education and training in Chinese medicine. In addition, the requirement of Article 9, Section 3 of the Examination Rules on the Special Examination for doctors of Chinese Medicine, which states that successful examinees must receive at least 55 points for Chinese Internal Medicine and at least 45 points for other professional subjects, is a professional judgment made by the Examination Yuan in

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accordance with the legal procedure, and is rationally, instead of arbitrarily, related to the purpose of the Special Examination for doctors of Chinese medicine—identifying examinees who have the knowledge, techniques, and ability to practice as doctors of Chinese medicine. For this reason, the aforementioned rules promulgated by the Examination Yuan do not violate the principle of equal protection under Article 7 of the Constitution.

In conclusion, the disputed regulations are consistent with the principle of statutory reservation and the principle of proportionality under Article 23 of the Constitution, as well as the right of equal protection under Article 7 of the Constitution. These rules are also consistent with the protection of people's right to work under Article 15 of the Constitution and right to take examinations under Article 18 of the Constitution.

Justice Tzu-Yi Lin filed concurring opinion.

Justice Yeong-Chin Su filed concur-

綜上所述，系爭規定與憲法第二十三條法律保留原則、比例原則及第七條平等權之保障尚無抵觸，亦無違背憲法第十五條保障人民工作權及第十八條保障人民應考試權之意旨

本號解釋林大法官子儀提出協同意見書；蘇大法官永欽提出協同意見書；林大法官錫堯提出協同意見書；陳大法

ring opinion.

Justice Sea-Yau Lin filed concurring opinion.

Justice Shin-Min Chen filed dissenting opinion.

Justice Mao-Zong Huang filed dissenting opinion.

Justice Chen-Shan Li filed dissenting opinion in part, in which Justice Yuh-siu Hsu and Justice Chun-Sheng Chen joined

EDITOR'S NOTE:

Summary of facts: The petitioner took the Special Examination for doctors of Chinese medicine in 2002. Although he achieved an overall average score of more than 60 points, his scores on two subjects, "Traditional Chinese Internal Medicine" and "Traditional Chinese Medicine Diagnostics", failed to meet the minimum passing requirements set out in Article 9, Paragraph 3 of the Examination Rules on the Special Examination for doctors of Chinese medicine. As a result, the petitioner failed to pass the exam.

官新民提出不同意見書；黃大法官茂榮提出不同意見書；李大法官震山、許大法官玉秀、陳大法官春生共同提出部分不同意見書。

編者註：

事實摘要：聲請人參加九十一年專門職業及技術人員特種考試中醫師考試，經評定總成績雖滿六十分，惟其專業科目之「中醫內科學」、「中醫診斷學」二科成績未達中醫師特考考試規則第九條第三項所定之及格標準，致未獲錄取。

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The petitioner filed a request to the Ministry of Examination for reviewing his scores on all the test subjects. After reviewing and checking the petitioner's answer sheets and scorecards, no errors were found. The Ministry of Examination then notified the petitioner of the review results.

Unsatisfied with the disposition by the Ministry of Examination, the petitioner brought an administrative appeal to the Examination Yuan but the case was dismissed. The petitioner then appealed but the Taipei High Administrative Court ruled against the petitioner. The petitioner then appealed but the Supreme Administrative Court again ruled against the petitioner. Believing that several then applicable regulations, i.e., Article 15, Paragraph 2 of the Enforcement Rules of the Professionals and Technologists Examinations Act, Article 3, Section 1 of the Final Score Calculation Rules of the Professionals and Technologists Examinations, and Article 9, Paragraph 3 of the Examination Rules of the Professionals

聲請人向考選部申請複查各科目考試成績。經該部調閱其試卷及試卡核對結果，並無漏未評閱情事，且評定成績亦與成績單所載相符，遂檢附成績複查表函知聲請人。

聲請人不服考選部對其之不及格處分，提起訴願，遭考試院決定駁回；續提行政訴訟，迭經台北高等行政法院及最高行政法院判決駁回確定，乃認確定終局判決所適用之當時專門職業及技術人員考試法施行細則第十五條第二項、專門職業及技術人員考試總成績計算規則第三條第一項及專門職業及技術人員特種考試中醫師考試規則第九條第三項規定，有違反平等原則及法律保留原則之疑義，並致其工作權受侵害，聲請解釋。

and Technologists and Doctors of Chinese medicine Examination violated the constitutional principles of equal protection and statutory reservation and, therefore, adversely affected the petitioner's right to work, the petitioner filed for interpretation.