

J. Y. Interpretation No.711 (July 31, 2013) *

【Restriction of the location where a pharmacist may practice】

ISSUE: Is Article 11 of the Pharmacists Act, which provides that a pharmacist may only practice at one single location, unconstitutional? Is the competent authority's interpretation, which requires that a pharmacist who is also qualified as a nurse should practice at the same location, also unconstitutional ?

RELEVANT LAWS:

Articles 7, 15, and 23 of the Constitution (憲法第七條、第十五條、第二十三條) ; J.Y. Interpretation Nos. 371, 572, 584, 590, 649, 659, 702 (司法院釋字第三七一號、第五七二號、第五八四號、第五九〇號、第六四九號、第六五九號、第七〇二號解釋) ; Article 5, Section 1, Paragraph 2、Article 13 Paragraph 1 of the Law Governing Adjudication by the Grand Justices of Judicial Yuan (司法院大法官審理案件法第五條第一項第二款、第十三條第一項 (中華民國八十二年二月三日修正公布)) ; Articles 11, 15, 102 of Pharmacists Act (藥師法第十一條、第十五條、第一〇二條 (一〇三年七月十六日修正公布)) ; Article 178-1 of Administrative Procedure Act (行政訴訟法第一七八條之一 (一〇三年六月十八日修正公布)) ; Letter of 1 April

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2011, No. 1000007247 issued by the Executive Yuan, Department of Health (行政院衛生署一〇〇年四月一日衛署醫字第一〇〇〇〇〇七二四七號函)。

KEYWORDS:

right of work (工作權), freedom of occupation (職業自由), exercising the freedom of occupation (執行職業自由), location of practice (職業處所), limited to one location (限於一處), public interests (公共利益), full-time pharmacist (藥師專任), practice division of medical doctor and pharmacist (醫藥分業), vital public interest or emergency case (重大公益或緊急情況), necessary reasonable exception (必要合理之例外規定), principle of proportionality (比例原則), principle of Statutory reservation (法律保留原則), difference of occupational nature (職業性質之差異), principle of equality (平等原則), same location (同一處所), permissible Standards (容許標準), exception under certain conditions (一定條件之例外), medical Service (醫療服務), high degree of professional and technical distinction (高度專業及技術之差異性), vital matter (重要事項), constitutional court (憲法法庭), oral argument (言詞辯論), explicit authorization (明確授權), pharmacological consultation (藥事諮詢), professional knowledge (專業知識), excessive restriction (過度限制), mobile medical service (巡迴醫療工作).**

HOLDING: Article 11 of the Pharmacists Act provides that “a pharmacist who has registered to practice shall practice at only one single location.” Such provision does not constitute a necessary reasonable exception in a situation where the pharmacist does not violate the legislative purpose of the Article, or where there is a need due to vital public interests or emergency, imposes unnecessary restrictions on pharmacists exercising the freedom of occupation, violates the Principle of Proportionality of Article 23 under the Constitution, conflicts with the intent of Article 15 of the Constitution safeguarding the right of work, and shall lose its legal effect upon the expiration of one year after the publication of this Interpretation at the latest.

The Letter of 1 April 2011 No. 1000007247 issued by the Executive Yuan, Department of Health (now reorganized as Ministry of Health and Welfare), limiting the practice location of a pharmacist who is also qualified as a registered nurse to the same location, violates the Principle of Statutory Reservation under

解釋文：藥師法第十一條規定：「藥師經登記領照執業者，其執業處所應以一處為限。」未就藥師於不違反該條立法目的之情形下，或於有重大公益或緊急情況之需要時，設必要合理之例外規定，已對藥師執行職業自由形成不必要之限制，有違憲法第二十三條比例原則，與憲法第十五條保障工作權之意旨相抵觸，應自本解釋公布之日起，至遲於屆滿一年時失其效力。

改制前之行政院衛生署（現已改制為衛生福利部）中華民國一〇〇年四月一日衛署醫字第一〇〇〇〇〇七二四七號函限制兼具藥師及護理人員資格者，其執業場所應以同一處所為限，違反憲法第二十三條法律保留原則，應自本解釋公布之日起不再援用。

Article 23 of the Constitution and shall no longer be applied upon the publication of this Interpretation.

REASONING: This case arose because: 1) Yang Shiu Giun and four other persons separately considered Article 11 of the Pharmacists Act (hereinafter referred to as “the disputed Provision”) and the Letter of 1 April 2011 No. 1000007247 issued by the then Department of Health (before its reorganization), Executive Yuan (hereinafter referred to as “the disputed Explanatory Letter”) as applied by attached final judgments unconstitutional and applied for constitutional interpretation; 2) Judge Chien Chieng Ron of the Taiwan Taoyuan District Court Administrative Panel, while hearing case Chien-Tze No. 45 of the year 2012 regarding the Pharmaceutical Affairs Act, based on his reasonable belief considered the disputed Provision unconstitutional, and applied for constitutional interpretation in accordance with the intents of J.Y. Interpretation Nos. 371, 572, 590 and Article 178-1 of the Administrative Procedure Act. The Grand Justices decided

解釋理由書：本件係因一、楊岫涓等五人分別對附表所示之確定終局判決所適用之藥師法第十一條（下稱系爭規定）及所援用之改制前之行政院衛生署中華民國一〇〇年四月一日衛署醫字第一〇〇〇〇〇七二四七號函（下稱系爭函釋），認有違憲疑義，聲請解釋憲法；二、臺灣桃園地方法院行政訴訟庭法官錢建榮於審理該院一〇一年度簡字四五號藥事法事件時，對於應適用之系爭規定，依其合理之確信，認有牴觸憲法之疑義，依本院釋字第三七一號、第五七二號、第五九〇號解釋意旨及行政訴訟法第一百七十八條之一規定，聲請解釋。經大法官議決應予受理及將上開各案合併審理，並依司法院大法官審理案件法第十三條第一項通知聲請人及關係機關改制前之行政院衛生署指派代表及訴訟代理人，於一〇二年六月十三日到場，在憲法法庭行言詞辯論，並邀請鑑定人到庭陳述意見。

that above applications should be accepted and subject to consolidated review. In accordance with Article 13 Paragraph 1 of the Constitutional Interpretation Procedure Act the Grand Justices notified the applicants and the relevant authority, the then Department of Health, Executive Yuan to appoint representatives and agents ad litem to attend an oral argument in the Constitutional Court on June 13, 2013, and invited expert witness to make statements.

The applicants Yang Shiu Giun and four other persons asserted that the disputed Provision violated the Principle of Proportionality and Principle of Equality, and the disputed Letter violated the Principle of Statutory Reservation and the Principle of Equality, and infringed people's right of work as protected by the Constitution. Their reasons are, in brief, as follows: 1) The disputed Provision violates the right of work as protected by the Constitution: When the pharmacy where a pharmacist works does not open for business, the pharmacist may not support another pharmacy's work because of the disputed

聲請人楊岫涓等五人主張系爭規定違反比例原則與平等原則，及系爭函釋違反法律保留原則與平等原則，而侵害人民受憲法保障之工作權，其理由略謂：一、系爭規定侵害憲法保障之工作權：聲請人執業之藥局如休息不營業時，欲支援其他藥局工作，卻受限於系爭規定不得為之，已侵害其工作權。二、系爭規定未有例外規定，違反平等原則：其他各類醫事專業人員相關管理法規，與藥師法在性質上同為追求國民健康之公共利益，雖原則上亦限制執業處所以一處為限，但均設有報准制度，可因醫療機構間會診、應邀出診、急救等情形至他處支援之例外規定，系爭規

Provision. The pharmacist's right of work is infringed upon. 2) The disputed Provision does not have any exception, which violates the Principle of Equality: Other laws and regulations for various types of medical professionals just like the disputed Provision pursue public interests of national health. Although they also restrict the practice location to one, an approval system permits exceptions where support in another location is allowed because of joint consultations among medical institutions, invited house calls, emergency rescue etc. The disputed Provision has no exception at all, and obviously violates the Principle of Equality. 3) The legislative purpose of the disputed Provision is to ensure fulltime pharmacists, to prevent a pharmacist from lending his license, and to achieve the administrative purpose of regulating pharmaceutical businesses. However, now that the national health insurance system and the practice division between medical doctor and pharmacist have been established, in coordination with the registration of medical professionals, the disputed Provision should be reviewed and revised. 4) The disputed

定完全未設有例外規定，明顯違反平等原則。三、系爭規定立法時，目的在落實藥師專任，防止不肖藥師出租借牌外，更兼負管理藥商之行政目的。惟今日全民健康保險與醫藥分業制度業已建立，配合主管機關就醫事人員執業登錄之管理，系爭規定已有重新檢討修正之必要。四、系爭規定限制藥師執業處所，將導致專任藥師超時工作，醫療機構租借牌照情形更加猖獗，偏遠地區民眾反無法接受專業藥師服務，其欲保障國民用藥安全之目的更難達成。五、藥師人力仍有不足：根據相關學術研究，目前門診藥師人力尚嫌不足，已導致專任藥師超時工作，危害國民健康。六、關於系爭函釋，規定兼具藥師及護士雙重醫事人員資格者，執業登記處所以同一處為限，乃抵觸法律保留原則及平等原則：（一）現行對多重醫事人員限制，既然無法律依據，本無從管制，況現行醫事人員擁有多項專業證照者，均可自由選擇工作（例如醫師兼有律師或會計師證照者），但具有多重醫事資格者卻受到管制，違反憲法保障之平等權。（二）執業處所不限於同一處，僅增加交通成本，對提供的專業服務品質不致造成影響。（三）將多重醫事人員資格之執業處所限於「同一處」，由於各醫

Provision restricts the practice location of pharmacists; as a result, full-time pharmacists will work overtime. License lending will become more popular, and people in rural areas will not receive professional pharmaceutical services. The purpose of ensuring the safe use of medicine by citizens will be more difficult to achieve.

5) Lack of pharmacists: According to relevant academic research, outpatient pharmaceutical services are currently still insufficient, resulting in full-time pharmacists working overtime and jeopardizing national health.

6) The disputed Explanatory Letter, requiring a medical person who is double qualified as pharmacist and nurse to practice at the same registered location, violates the Principle of Statutory Reservation and the Principle of Equality:

a) The current restriction on multi-qualified medical professionals is without statutory basis and hard to control. On the other hand, if a medical professional currently possesses other professional licenses, he may freely choose his job (for example, a medical doctor is also qualified as a lawyer or an accountant). But those who have multiple medical licenses

事人員申請執業處所都有設備資格上的限制，故只有醫院診所才能同時具備多項醫事人員資格之登記條件，不無獨厚醫院診所之嫌等情。

are subject to restrictions; this violates the Principle of Equality as protected by the Constitution. b) Multiple practice locations only increase traffic costs, the quality of provided professional service will not be comprised. c) The practice location of a multi-qualified medical professional is limited to the same location. Because there are requirements of equipment for registering a practice location by various medical professionals, only hospitals and clinics are simultaneously qualified for registrations of various medical professionals. It seems beneficial only to hospitals and clinics.

In addition, the applicant Judge Chien Chieng Ron asserted that the disputed Provision violates the Principle of Proportionality and the Principle of Equality, and infringes upon people's right of work as protected by the Constitution. His Honorable Judge's reasons are, in brief, as follows: 1) The disputed Provision imposes an objective restriction on people's freedom to choose an occupation, and infringes upon the right of work as stipulated in Article 15 of the Constitu-

另聲請人錢建榮法官主張系爭規定違反比例原則與平等原則，而侵害人民受憲法保障之工作權，其理由略謂：一、系爭規定對人民職業選擇自由形成客觀限制，侵害憲法第十五條工作權：（一）職業自由為人民充實生活內涵及自我發展人格所必要，不因職業之性質而有差異，均應受憲法第十五條工作權所保障。其內涵包括選擇職業自由與執行職業自由。參照司法院釋字第五八四號解釋意旨，人民對於從事一定職業應具備之資格或其他要件，於符合憲法第

tion: a) Freedom of occupation is necessary for a fulfilled and cultivated life and the development of a person's dignity. A distinction should not be made as to the nature of occupations. They are all protected by the right of work under Article 15 of the Constitution. The freedom of occupation includes the freedom to choose an occupation and the freedom to exercise an occupation. By reference to the intent of J.Y. Interpretation No 584, within the scope of Article 23 of the Constitution, qualifications and other requirements for exercising certain occupations may be restricted by statutes or ordinances as expressly authorized by statutes. b) Restrictions on the freedom of occupation may have different permissible standards due to different contents. With regard to manner, time, location, counterpart or content when exercising one's freedom of occupation, legislators may impose appropriate restrictions when necessary due to public interests. As to objective conditions required of people choosing an occupation, this refers to conditions for undertaking specific occupations, which cannot be achieved by personal hardworking. It

二十三條規定之限度內，得以法律或法律明確授權之命令加以限制。（二）對職業自由之限制，因其內容之差異，在憲法上有寬嚴不同之容許標準。關於從事職業之方法、時間、地點、對象或內容等執行職業之自由，立法者為公共利益之必要，即非不得予以適當之限制。而人民選擇職業應具備之客觀條件，係指對從事特定職業之條件限制，非個人努力所可達成，則應以保護特別重要之公共利益始得為之。惟不論何種情形之限制，所採之手段均須與比例原則無違。（三）系爭規定限制藥師執業處所以一處為限，已非單純對於執行職業自由之限制，而係對於職業選擇自由之客觀限制。則其立法目的須在追求特別重要之公共利益，方能符合憲法第二十三條比例原則之要求。（四）惟系爭規定禁止藥師支援他處，致使需要藥師人力支援之醫療機構，迫於成本考量，藉租用牌照方式來執行業務，反有害於國民健康，無助於公共利益之追求。二、主管機關對藥事人力之統計，是以「領照人數」為依據，惟「實際執業人數」與「領照人數」有高達一萬兩千七百人之落差，能否遽稱我國藥事人力充足，不無可議之處。三、系爭規定違反平等原則：（一）平等原則為所有基本權之基

should be imposed only for the protection of vital public interests. In any event, the method should be in compliance with the Principle of Proportionality. c) The disputed Provision restricting a pharmacist's practice to only one location does not simply restrict the freedom of exercising an occupation. Rather, it objectively restricts the freedom to choose an occupation. The legislative purpose must be to pursue special vital public interests in order to meet requirements of the Principle of Proportionality under Article 23 of the Constitution. d) However, the disputed Provision restrains a pharmacist from supporting other locations. As a result, medical institutions which need the support of pharmacists will, due to cost consideration, borrow licenses from pharmacists for their practice, this will cause harm to national health and is not beneficial for the pursuit of public interests. 2) The statistics regarding pharmaceutical manpower by the competent authority are based on the number of registrations. However, the difference between the practicing number and the registered number is as high as 12700 persons. It is doubtful to claim that

礎，國家公權力之行使，必須保障人民在法律上地位之實質平等，要求本質上相同之事物應為相同之處理，不得恣意為無正當理由之差別待遇。(二)法規範是否符合平等原則之要求，參照司法院釋字第六九四號解釋意旨，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，因此差別待遇都必須具備憲法之正當性方可。(三)與藥師同樣在性質上特重維護或促進國民健康之公益要求的其他醫事專業人員，雖原則上限制於一處執業，但法律上均設有報備支援之例外規定，且以我國目前統計資料可知，醫師與藥師之領證人數約略相當，但醫師登記執業者猶多於藥師甚多，卻許可醫師於例外時可支援他處醫療機構執行業務，顯見對藥師產生更不合理之差別對待，有違平等原則等語。

there is sufficient manpower of pharmacists in Taiwan. 3) The disputed Provision violates the Principle of Equality: a) The Principle of Equality is the foundation of all basic rights. When exercising public powers, the substantive equality of people's legal standing must be safeguarded. It is required that same substantive matters should be treated in the same manner, and arbitrary differential treatment without reasonable justification is not allowed. b) Whether a legal norm meets the requirements of the Principle of Equality depends on, by reference to the intent of J.Y. Interpretation No 694, whether the purpose of such legal norm for differential treatment is constitutional, whether there is a certain degree of connection between the categorization and the achievement of the purpose of the norm. Therefore, all differential treatments must have a constitutional justification. c) Other medical professionals, whose nature, like pharmacists, emphasizes public interests of maintaining or promoting national health, are in principle subject to one single practice location, but the law provides statutory exceptions for approval. Furthermore,

according to current statistics, the numbers of registered medical doctors and pharmacists are roughly equal, but there are far more practicing medical doctors than practicing pharmacists. However, under exceptional circumstances, medical doctors are permitted to practice in other medical institutions. Obviously, this constitutes an unreasonable differential treatment for pharmacists and violates the Principle of Equality.

The relevant competent authority, the then Department of Health, Executive Yuan states that: 1) Although the disputed Provision infringes upon people's right of work, it does not violate the Principle of Proportionality and is still constitutional: a) According to the legislative reasons, the disputed Provision is designed to adopt necessary measures for coordinating and ensuring a system of full-time resident pharmacists who manage (supervise) business (factory) and operate pharmacies in person in order to ensure the safe use of medicine and to establish a comprehensive public health system, as well as to secure the people's right of

關係機關改制前之行政院衛生署略稱：一、系爭規定雖侵害人民工作權，但未違反比例原則，仍屬合憲：（一）從立法理由可知，系爭規定係為配合並落實專任藥師駐店（廠）管理（監製）之制度及親自主持藥局業務而設，乃為保障用藥安全，建構整體公共衛生體系，並維護憲法第一百五十七條國民健康權，所採取不得不然之必要措施。（二）醫療業務執行係高密度、持續性、專業性及技術性之行為。是以在維護醫療品質考量下，我國現行醫事人員法規對登記執業處所概以限於一處為原則。（三）藥師業務除執行調劑相關業務外，也負擔管理藥品責任，包括產品管理、監製等，其執業場所也更具多

health under Article 157 of the Constitution. b) The practice of medical business is of high density, continuity, professional and technical activities. Based on the consideration of maintaining medical quality, current laws and regulations applicable to medical professions stipulate the principle that the registered practice location shall be limited to one location. c) In addition to disbursing prescription, the practice of pharmacists also undertakes the responsibility of administering medicine, including product management and supervision of manufacturing, the practice locations vary accordingly. Thus, they must work full-time in one location to strengthen their professionalism. d) The disputed Provision restricts a pharmacist's freedom of occupation in terms of practice location. However, the legislative purpose is to ensure full-time pharmacists so as to achieve vital public interests of protecting the right of national health; the restrictive measure has a reasonable connection with the purpose and is necessary for the protection of public interests. It does not excessively restrict a pharmacist's right of work and does not

樣性，因此必須專職一處以厚植專業。

(四) 系爭規定對藥師從事工作地點之職業自由有所限制，惟審酌其立法目的係出於落實藥師專任，達成國民健康權保障之重大公共利益；且限制手段與目的間具有合理關聯，並為保全公共利益之必要手段，對藥師之工作權尚無造成過度之限制，與比例原則無違。二、系爭規定未開放藥師如其他各類醫事人員一般，可支援他處，乃基於保障國民健康之考量：(一) 依現行相關法規，醫事人員概以限於一處執業為原則，其目的在確保醫療資源被妥適運用，僅有在人力不足，緊急狀況下才例外准予支援，協助緊急狀況下之病患。(二) 由藥師業務內容可知，在藥品儲備管理上，結合執業處所一併採行風險控管措施，有其必要性。(三) 系爭規定未比照其他醫事人員法規，開放藥師支援他處執業，乃基於藥品管理安全上及民眾用藥安全之重大公益考量所採取之必要手段。三、開放藥師支援，將使其真正執業處所無法確定，形成有登錄之名卻無在場之實之流弊，直接造成醫療資源分布不均、人力分布無法掌握之窘境，更增加健保費用核付勾稽等審理作業成本負擔，影響全體國民之健康。四、基於整體醫療資源分配及緊急醫療救護之

violate the Principle of Proportionality.

2) The disputed Provision does not allow pharmacists to support other places as otherwise permissible for medical professionals, considering the protection of national health: a) According to current relevant regulations, medical professionals must in principle exercise their profession at a single location. The purpose is to ensure proper application of medical resources. The exception is only applicable where there is manpower shortage and in emergency cases to help patients in critical situations. b) Given the subject matter of the pharmaceutical business, in terms of storage and management of medicines, the combination of practice location and risk management measures is necessary. c) The disputed Provision does not, as in the event of other medical professionals, allow pharmacists to support other places. This necessary measure was adopted in light of vital public interests for safe management of pharmaceuticals and safe use of medicine by people.

3) Once a pharmacist may support other places, it becomes hard to ascertain the real practice location so that there may be practice registrations

考量，現行實務對系爭規定已採取合目的性之限縮解釋，彈性准許藥師於下述情形，得例外前往執行業務：（一）藥事人員以執業登錄處所之藥局、醫院或診所名義至護理之家、安養機構提供藥事諮詢服務。（二）基於推廣公共衛生業務及義診服務需求，參與醫療團體義診服務，執行藥品調劑工作。（三）巡迴醫療於山地、離島或於無藥事人員執業之偏遠地區執行藥品調劑工作等。

五、藥師人力充足：（一）根據至一〇一年十二月為止統計，我國藥師人力將近四萬五千人，依據改制前之行政院衛生署委託財團法人國家衛生研究院進行之「藥事人力發展評估計畫」，至一〇九年我國藥師人力總需求在三萬五千九百八十六人至三萬六千三百二十一人之間，人力不虞匱乏。（二）禁止藥師支援他處醫療機構或藥局工作，並不影響國民健康或醫療權利，相對而言是透過系爭規定建立藥師專任責任制，更有助其專業服務質量之提升。

六、系爭規定並不違反平等原則：憲法平等原則並非絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等，立法機關基於憲法之價值體系及立法目的，自得斟酌規範事務性質之差異而為合理之不同規定。故系爭

without actual practice there. This will directly cause an unbalanced distribution of medical resources and a situation where it is difficult to control the distribution of manpower. Moreover, the handling cost of auditing national health insurance cost will increase. As a result, national health will be jeopardized. 4) Considering the distribution of all medical resources and emergency medical care, current practice has relaxed the application of the disputed Provision to flexibly allow pharmacists to practice in following exceptional cases: a) In the name of the drugstore, hospital or clinic where the pharmacist registers his practice, to provide pharmaceutical consultation to nursing homes or pension institutions. b) For the promotion of public health business and volunteer medical services, to participate in volunteer medical services of medical groups to dispense medicines. c) To disperse medicines in mobile medical services in mountain areas, isolated islands or rural areas where there is no practicing pharmacist. 5) The manpower of pharmacist is sufficient: a) According to statistics as of December 2012, there are 45000 pharmacists in Tai-

規定未如其他各類醫事人員，明文許可支援或報備許可，無非期能以此健全完整藥品安全管理機制，使國民享有穩定而安全之藥事服務環境，具有合理性，而無違反平等原則。七、關於系爭函釋的合憲性：（一）基於專業可以多重、人格不可分之原則，又為維護國民健康及就醫安全、提升醫療專業品質等公益考量，限制兼具多重醫事人員資格者執業登記有其必要性。（二）依現行法制，不論藥師或護士，其法定登記執業處所本即以一處為限，是不論兼具藥師與護士資格者係本於何資格別登記執行業務，本均以一處為限而無例外。（三）藥師兼具其他醫事人員資格者，囿於藥師業務內容之特殊性，同時執業已非妥適，至於其執業處所，由其兼具雙重身分執行業務本應肩負多重權責義務，並適用全部各該身分別之法令規範以觀，法理上本即應適用較嚴格之藥師執業處所限制，以同一處所為限，故不違反法律保留原則等語。

wan. According to the Evaluation Project of Pharmaceutical Manpower Development conducted by the National Health Research Institutes commissioned by the then Department of Health, Executive Yuan, the demand for pharmaceutical manpower by the year 2020 lies between 35986 and 36321. There is no lack of manpower. b) Prohibiting pharmacists from supporting other medical institutions or drugstores will not affect national health or right of medical treatment. On the contrary, it is helpful to enhance the quality of professional service by way of full-time pharmacists as mandated by the disputed Provision. 6) The disputed Provision does not violate the Principle of Equality: The constitutional Principle of Equality does not mean absolute, mechanical, formal equality. Rather, it protects the substantive equality of legal standing of the people. Based on the constitutional value system and legislative purpose, the legislature may take into account the different nature of regulated matters and thus provide for reasonable differential treatments. Unlike other medical professionals, the disputed Provision does not allow

supporting other places. As such it is expected to ensure a sound and comprehensive system for pharmaceutical safety and management, to provide a stable and safe pharmaceutical service environment for the people. The disputed Provision is reasonable and does not violate the Principle of Equality. 7) Regarding the constitutionality of the disputed Explanatory Letter: a) Based on the principle that there may be various types of professions, but personality is indivisible, and in consideration of the public interests to ensure national health and safety of medical treatment, and to enhance medical professional quality, it is necessary to restrict the practice registration of medical professionals with multiple qualifications. b) According to the current legal system, the registered practice location of both pharmacists and nurses is limited to one only. Therefore, for a dual-qualified pharmacist and nurse, regardless whether he registers his practice under the qualification of pharmacist or nurse, his registered practice location is limited to one only without exception. c) If a pharmacist is also qualified for other medical professions, in view of the

special nature of the pharmaceutical business, it is improper to exercise dual practice. As to the practice location, because he possesses dual positions to practice and therefore should be subject to multiple obligations and to all the laws and regulations applicable to the respective qualifications, under legal jurisprudence the stricter regulations of a pharmacist's practice location should be applied, and it should be limited to the same single one. Therefore, it does not violate the Principle of Statutory Reservation.

This Yuan considered all the arguments and made this Interpretation. The reasons are as follows:

Article 15 of the Constitution provides that people's right of work should be protected. Its content includes people's freedom of occupation. If a law imposes obligations on people for certain occupations, it is a restriction on such freedom. Statutory restrictions on freedom of occupation are subject to loose or strict constitutional standards depending on their contents. With respect to exercising the

本院斟酌全辯論意旨，作成本解釋，理由如下：

憲法第十五條規定，人民之工作權應予保障，其內涵包括人民之職業自由。法律若課予人民一定職業上應遵守之義務，即屬對該自由之限制。法律對職業自由之限制，因其內容之差異，在憲法上有寬嚴不同之容許標準。關於從事工作之方法、時間、地點等執行職業自由，立法者為追求公共利益，且採行之限制手段確屬必要者，始符合憲法第二十三條比例原則之要求，迭經本院

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freedom of occupation in terms of manner, time and location of working, legislators have stipulated that only in the case of pursuing public interests and where a restrictive measure is strictly necessary such restriction meets the requirements of the Principle of Proportionality under Article 23 of the Constitution. It has been reiterated by this Yuan as such (see J.Y. Interpretation Nos. 584, 649, 702).

The disputed Provision provides that “a pharmacist who has registered his practice shall practice at only one location.” It restricts a pharmacist to practice at only one location after his registration of practice, and is a restriction on the manner and location of a pharmacist’s practice. The legislative purpose of the disputed Provision is to promote the policy of fulltime pharmacists and to prevent the illegal practice of license lending (see Legislative Gazette Vol. 67, No. 87, committee minutes p. 31). Ever since Article 102 of the Pharmaceutical Affairs Act was amended on 18 January 1993 and a system of practice division between medical doctors and pharmacists has

解釋在案（本院釋字第五八四號、第六四九號、第七〇二號解釋參照）。

系爭規定明定：「藥師經登記領照執業者，其執業處所應以一處為限。」限制藥師於登記領照執業後，僅得於一處所執業，核屬對藥師執行職業之方法、地點所為之限制。查系爭規定之立法目的，係為推行藥師專任之政策及防止租借牌照營業之不法情事（立法院公報第六十七卷第八十七期委員會紀錄第三十一頁參照）。且自八十二年一月十八日修正公布之藥事法第一百零二條規定，推行醫藥分業制度後，藥師係以專門知識技能，核對醫師開立之處方以調配藥劑，並為病人提供正確藥物資訊、諮詢等服務。系爭規定限制藥師執業處所於一處，乃出於確保醫藥管理制度之完善、妥善運用分配整體醫療人力資源，並維護人民用藥安全等公共利益

been implemented, a pharmacist, based on his professional knowledge and skill, checks a medical doctor's prescription to dispense medicine, and provides patients with proper medicine information, advice and similar services. The disputed Provision's restriction of a pharmacist's practice location to one is derived from considerations of public interest to ensure a perfect medicine management system, to properly use and distribute total medical manpower resources, and to protect the safe use of medicine by people. The purpose of such restriction by the legislature is justified, but it should not exceed the necessary extent by excessively restricting a pharmacist from exercising his freedom of occupation so that the Principle of Proportionality under Article 23 of the Constitution is complied with.

The disputed Provision restricts a pharmacist's practice to one location. This helps to achieve the above legislative purpose. However, a pharmacist may by law practice various businesses (see Article 15 Pharmacists Act). Society has different expectations with regard to pharmacists

之考量。立法者為此限制，其目的雖屬正當，惟仍不得逾越必要之程度，而對藥師之執行職業自由為過度限制，始符憲法第二十三條之比例原則。

系爭規定將藥師執業處所限於一處，固有助於前揭立法目的之達成。惟藥師依法本得執行各種不同之業務（藥師法第十五條參照），社會對執行不同業務藥師之期待因而有所不同，且因執業場所及其規模之差異而應有彈性有效運用藥師專業知識之可能。又於醫療義

practicing different businesses. Due to differing practice locations and scopes, it is possible to flexibly and effectively use the professional knowledge of pharmacists. In the case of volunteer medical services or in rural areas or disaster areas where there is lack of pharmacists, in cooperation with mobile medical services and to provide medicine consultation services to pension institutions, pharmacists' support will not violate the above legislative purpose, and there is no necessity to have any restriction. In addition, in view of the current practice, the competent authority in the above circumstances flexibly interprets the disputed Provision and so allows under certain conditions. Obviously, it is necessary to have, under certain conditions, exceptions to the rule that the practice location of a pharmacist should be limited to one only. Where it is not against the above legislative purpose or it is needed for vital public interests or in case of an emergency, the disputed Provision generally prohibits pharmacists from practicing various pharmaceutical businesses in different locations without any necessary reasonable exception; as such it imposes

診，或於缺乏藥師之偏遠地區或災區，配合巡迴醫療工作及至安養機構提供藥事諮詢服務等活動，由執業之藥師前往支援，並不違反前揭立法目的，實無限制之必要。且參諸現行實務，主管機關於有上揭情形時皆對系爭規定為彈性解釋，有條件允許之。足見就藥師執業處所僅限於一處之規範，設置一定條件之例外確有其必要。系爭規定於藥師不違反前揭立法目的之情形下，或於有重大公益或緊急情況之需要時，一律禁止藥師於其他處所執行各種不同之藥事業務，未設必要合理之例外規定，已對藥師執行職業自由形成不必要之限制，有違憲法第二十三條比例原則，而與憲法第十五條保障工作權之意旨相牴觸。相關機關至遲應於本解釋公布之日起一年內，依本解釋意旨檢討修正，屆時未完成修法者，系爭規定失其效力。

unnecessary restrictions on pharmacists exercising their freedom of occupation, violates the Principle of Proportionality under Article 23 of the Constitution and contradicts the protection of right of work under Article 15 of the Constitution. The relevant authority should review and revise the disputed Provision within one year of the publication of this Interpretation at the latest. Otherwise, the disputed Provision shall lose its legal effect.

The way how medical services are provided by various medical professionals differs greatly in terms of professional and technological nature. In consideration of maintaining medical quality and protecting national health, legislators may enact different restrictions concerning manner, time and location of practice with regard to various medical professionals. Although the disputed Provision differs from other regulations for other medical professionals regarding the practice location, such difference is made by legislators in view of the different professional nature of pharmacists and other medical professionals and other relevant factors, it

按各類醫事人員如何提供醫療服務，具有高度專業及技術之差異性。立法者基於維護醫療品質與保障國民健康之考量，得針對各類專門醫事人員執業之方法、時間及地點而為不同限制。系爭規定與規範其他醫事人員執業處所之規定雖有不同，惟係立法者衡量藥師與其他醫事人員職業性質之差異及其他相關因素所為之不同規定，尚不生抵觸憲法第七條平等原則之問題。

does not contradict the Principle of Equality under Article 7 of the Constitution.

It has been reiterated in this Yuan's Interpretations (see J.Y. Interpretations Nos. 584, 659) that within the boundary of Article 23 of the Constitution, people's freedoms and rights may be restricted by statute or by order as expressly authorized by statute. In the case of a medical professional possessing multiple practice qualifications for various medical professionals, with regard to restrictions of practice qualification, manner or location, involving restriction of people's freedom of occupation and public interests of safeguarding national health, the legislature should provide for the same by statute or expressly authorize administrative agencies to promulgate supplemental orders so as to comply with the Principle of Statutory Reservation of Article 23 of the Constitution. The disputed Explanatory Letter specifies that "4. As regards a pharmacist simultaneously possessing the qualification of a nurse, he may separately apply for practice licenses in accordance with the laws of respective medical profession-

有關人民之自由權利，於符合憲法第二十三條規定之限度內，得以法律或法律明確授權之命令加以限制，迭經本院解釋在案（本院釋字第五八四號、第六五九號解釋參照）。醫事人員如具備多重醫事人員執業資格，關於醫事人員執業資格、方式或執業場所之限制等規範，涉及人民職業自由之限制及維護國民健康之公共利益等重要事項，應由立法機關以法律明定或明確授權行政機關發布命令為補充規定，始符合憲法第二十三條法律保留原則。系爭函釋謂：「四、至於藥師兼具護士雙重醫事人員資格，雖得依各該醫事人員專門職業法律之規定，分別申請執業執照，惟其雙重資格執業場所以同一處所為限。」惟藥師法並未規定人民同時領有藥師及護理人員證書，其執業場所僅得以同一處所為限。系爭函釋已對人民工作權增加法律所無之限制，與法律保留原則有違，應自本解釋公布之日起，不再援用。

als, but the practice location of the dual-qualifications shall be limited to the same location.” However, the Pharmacists Act does not provide that if a person simultaneously possesses a pharmacist certificate and a nurse certificate, his practice location shall be limited to the same location. The disputed Explanatory Letter additionally imposes a restriction on people’s right of work without legal basis. It violates the Principle of Statutory Reservation and shall not be applied anymore from the publication date of this Interpretation.

One of the applicants argued that Article 37 of the Pharmacists Act and Annex 6 of Article 9 of the Criteria for the Establishment of Medical Institutions regarding the criteria for the establishment of Chinese medicine institution as applied by the Taiwan High Court Tainan Branch final judgment No. 12 of the year 2011 violated the Principle of Equality and the Principle of Statutory Explicitness; another applicant argued that Article 8 of the Nurses Act as applied by Kaohsiung Administrative High Court final judgment No. 606 of the year 2011 violated his

聲請人之一主張臺灣高等法院臺南分院一〇〇年度上國易字第一二號確定終局判決所適用之藥師法第三十七條及醫療機構設置標準第九條之附表（六）關於中醫診所設置標準部分，違反平等原則及法律明確性原則；另一聲請人主張高雄高等行政法院一〇〇年度訴字第六〇六號確定終局判決所適用之護理人員法第八條規定，侵害其工作權等語。核其所陳，均未具體敘明上開規定究有何牴觸憲法之處。是此部分聲請核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不予受理，併此敘明。

right of work. However, in view of their arguments, they failed to specify how the above provisions violate the Constitution. These applications are inconsistent with Article 5 Paragraph 1 Subparagraph 2 of the Constitutional Interpretation Procedure Act and should be rejected in accordance with Paragraph 3 of the same Article. It is so noted here.

Justice Mao-Zong Huang filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Chang-Fa Lo filed concurring opinion.

Justice Dennis Te-Chung Tang filed concurring opinion.

Justice Yeong-Chin Su filed concurring opinion in part and dissenting opinion in part.

Justice Ming Chen filed dissenting opinion in part, in which Justice Si-Yao Lin, Justice Chi-Ming Chih, Justice Ching-You Tsay and Justice Hsi-Chun Huang joined

本號解釋黃大法官茂榮協同意見書；葉大法官百修協同意見書；陳大法官新民協同意見書；羅大法官昌發協同意見書；湯大法官德宗協同意見書；蘇大法官永欽一部協同一部不同意見書；陳大法官敏提出，林大法官錫堯、池大法官啟明、蔡大法官清遊、黃大法官璽君加入部分不同意見書。

EDITOR'S NOTE:

Summary of facts: 1) Pharmacists A, B, C and D respectively registered in Chiayi County, Tainan County and Taichung City to practice general pharmacy business; they subsequently applied to local Bureaus of Health of their registered places to support other drugstores. The applications were rejected because of inconsistency with Article 11 of the Pharmacists Act (hereinafter referred to as "the disputed Provision"). The applicants initiated administrative proceedings but lost their cases in final judgments. They argued that the disputed Provision and the Letter of 1 April 2011, No. 1000007247 issued by the Executive Yuan, Department of Health (now Ministry of Health and Welfare), were unconstitutional and applied for Interpretation respectively. 2) Medical Doctor E argued that the Department of Health did not revise the disputed Provision but agreed that Pharmacists may provide visiting services and volunteer services, and ordered the Bureau of National Health Insurance to reserve budget to encourage such services, thus

編者註：

事實摘要：(一)藥師A、B、C、D4人各登錄於嘉義縣、台南縣及臺中市等地藥局執行一般藥師業務；嗣分別向登錄所在地衛生局申請支援他處藥局，均因與藥師法第11條(下稱系爭規定)規定不符而遭否准。聲請人不服，提起行政爭訟敗訴確定，乃主張系爭規定及行政院衛生署(現衛生福利部)中華民國100年4月1日衛署醫字第1000007247號函違憲，分別聲請解釋。(二)醫師E認衛生署不修改系爭規定，卻同意藥師可居家照護及義診，並命健保局編列預算鼓勵之，導致其可領得之醫療給付降低，損其財產權，提起國家賠償訴訟敗訴確定後，乃主張系爭規定內容不明確且不公平而違憲，聲請解釋。(三)臺灣桃園地方法院行政訴訟庭法官錢建榮審理該院101年度簡字第45號違反藥事法案件，依其合理確信認所應適用之系爭規定有違憲疑義，乃依本院釋字第371號、第572號、第590號解釋意旨及行政訴訟法第178條之1規定，聲請解釋。大法官就各案先後受理，因所主張違憲之標的相同，乃合併審理。

lowering his entitlement to medical payment and infringing his property rights. He initiated a national compensation suit but lost his case in a final judgment. Therefore, he argued that the content of the disputed Provision was unclear and unfair and, as a result, unconstitutional and applied for Interpretation. 3) When hearing case Chien-Tze No. 45 of the year 2012 regarding violation of the Pharmacists Act, the Taiwan Taoyuan District Court Administrative Panel Judge Chien Chieng Ron reasonably believed that the applicable disputed Provision might be unconstitutional, and therefore applied for Interpretation in accordance with the intents of J.Y. Interpretations Nos. 371, 572, 590 and Article 178-1 of the Administrative Procedure Act. The Grand Justices accepted these cases at different times. Because the subject matters were the same, the applications were consolidated for review.