

J. Y. Interpretation No.191 (November 30, 1984) *

ISSUE: Does the directive issued by the Department of Health requiring a pharmacist who opens a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine to apply for a druggist registration and a business license violate the right to work as guaranteed by Article 15 of the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條), Article 23, Paragraph 1 of the Drugs and Pharmacists Management Act (藥物藥商管理法第二十三條), Article 15 of the Pharmacist Act (藥師法第十五條), Article 7 of the Business Tax Act (營業稅法第七條).

KEYWORDS:

pharmacist (藥師), pharmacy (藥局), prescription drugs (處方用藥), over-the-counter medicine (成藥), druggist (藥商), business license (營業執照). **

HOLDING: Directive No 286403 issued by the Department of Health in the Executive Yuan on July 18, 1980, requires a pharmacist who opens a

解釋文：行政院衛生署於六十九年七月十八日所發衛署藥字第二八六四〇三號函，關於藥師開設藥局從事調劑外，並經營藥品之販賣業務者，應辦

* Translated by Li-Chih Lin, Esq., J.D.

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

pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine, to submit a druggist registration application and to apply for a business license. The purpose of this Directive is to regulate the services of the druggist and to improve the pharmaceutics. This requirement has no adverse effect on the right of work of a pharmacist and is consistent with Article 15 of the Constitution.

REASONING: To regulate the services of the druggist and to improve the pharmaceutics, Article 23, Paragraph 1, of the Drugs and Pharmacists Management Act provides that an applicant for the position of druggist should submit an application of approval to the competent authority and register his/her name and pay for the license fee after obtaining approval from the competent authority. The applicant should not open a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine without obtaining the druggist license. In addition, Article 7 of the Business Tax Act provides that no one should

理藥商登記及營利事業登記之命令，旨在管理藥商、健全藥政，對於藥師之工作權尚無影響，與憲法第十五條並無牴觸。

解釋理由書：按政府為管理藥商、健全藥政，對於經營藥商業務者，於藥物藥商管理法第二十三條第一項規定：「凡申請為藥商者，應申請省（市）衛生主管機關核准登記，繳納執照費，領有許可執照後，方准營業……」，並於營業稅法第七條規定：「營利事業應於開始營業前，向該管稽徵機關申請營業登記……」，故凡從事藥商業務者，均須辦理藥商登記與營業登記，始符立法本意。

operate a business without obtaining a business license from the competent authority. Therefore, anyone who opens a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine must submit a druggist registration application and apply for a business license in compliance with the legislative intent of the law.

Furthermore, Article 15 of the Pharmacist Act states: "Services provided by pharmacists are: (1) sales or administration of pharmaceutical products, (2) prescription and preparation of pharmaceutical products, (3) appraisal of pharmaceutical products, (4) supervision of the manufacturing of pharmaceutical products, (5) supervision of the storage, supply, and packaging of pharmaceutical products, (6) supervision of the manufacturing of cosmetics containing medicine, and (7) to be performed by pharmacists under the law." If the pharmacist is only engaged in the preparation of prescription drugs within the scope of his specialty, the pharmacist is required by the Pharmacist Act to submit a pharmacist registration

又藥師法第十五條第一項規定之藥師業務，計有藥品販賣、調劑、鑑定、藥品製造之監製等七種，如藥師僅從事藥品調劑工作，事屬專門職業範圍，僅須辦理藥師登記即可；倘藥師專營或兼營藥品販賣，則係經營藥商業務，具有營利性質，縱屬藥師之業務範圍，已為藥師之登記，仍難排除藥物藥商管理法及營業稅法之適用，應辦理藥商登記與營業登記，方符管理藥商之本旨。

application. However, if the pharmacist is also engaged in the sales of over-the-counter medicine, the pharmacist is considered to be operating a pharmaceutical business under the law. While engaging in the sales of over-the-counter medicine is also within the scope of his specialty, the pharmacist is nevertheless required by the applicable provisions of the Drugs and Pharmacists Management Act and the Business Tax Act to submit a druggist registration application and to apply for a business license in compliance with the purpose of regulating the services of the druggist.

In sum, it is evident that Directive No 286403 issued by the Department of Health in the Executive Yuan on July 18, 1980, requiring a pharmacist who opens a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine to submit a druggist registration application and to apply for a business license, is to regulate the services of the druggist and to improve the pharmaceutics. The requirement that the pharmacist who is engaged in the sales of

綜上說明，足見行政院衛生署於六十九年七月十八日發布之衛署藥字第286403號函所稱：「藥師開設藥局從事調劑外，依現行法規仍得經營藥品之零售、批發、及輸入、輸出等業務，其經營之業務，如與藥物藥商管理法所稱藥品販賣業務無殊，自應辦理藥商登記及營利事業登記」之命令，旨在依法管理藥商、健全藥政。藥師從事藥品販賣業務，只須申報有關登記，即可開業，對其工作權尚無影響，與憲法第十五條並無牴觸。

506 J. Y. Interpretation No.191

over-the-counter medicine must submit an application of approval to the competent authority and register his/her name and pay for the license fee after obtaining the approval from the competent authority, has no adverse effect on the right of work of a pharmacist and is consistent with Article 15 of the Constitution.