

J. Y. Interpretation No.206 (June 20, 1986) *

ISSUE: Is the provision of the Physician Act, prescribing to the effect that a non-physician placing an advertisement regarding medical treatment shall be subject to fines, in violation of the Constitutional?

RELEVANT LAWS:

Articles 6 and 7 of the Regulation Governing the Supervision of the Practitioners of Odontropy (鑲牙生管理規則第六條、第七條) ; Articles 18 and 28-1 of the Physicians Act (醫師法第十八條及第二十八條之一) ; Articles 15, 22, 23 and 152 of the Constitution (憲法第十五條、第二十二條、第二十三條、第一百五十二條) .

KEYWORDS:

dental technician (鑲牙生) , odontropy (鑲補牙) , false or improper advertising (不正當之廣告) , advertising of medical treatment (醫療廣告) , certified doctor (合法資格醫師) .**

HOLDING : Article 28-1 of the Physician Act provides: “The competent public health authority may impose a fine between NT\$5000 and NT\$50,000 on a

解釋文 : 醫師法第二十八條之一規定：「未取得合法醫師資格為醫療廣告者，由衛生主管機關處以五千元以上五萬元以下罰鍰」，旨在禁止未取得

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person who is not a certified doctor but runs an advertisement stating that he or she provides medical treatment.” The provisions set forth in Article 28-1 of the Physician Act prohibit a person who is not a certified doctor from advertising such service, which is a part of a physician’s medical practice. The provisions set forth in Article 28-1 of the Physician Act do not prohibit a dental technician from erecting a signboard advertising his or her practice. Thus, the provisions set forth in Article 28-1 of the Physician Act do not deprive a dental technician of the opportunity to work and are in compliance with the provisions set forth in Articles 15, 22, 23 and 152 of the Constitution of the Republic of China.

REASONING : According to the provisions set forth in Articles 6 and 7 of the Regulation Governing the Supervision of the Practitioners of Odontology, a dental technician can only perform odontology (make bridges, dentures, etc.). Such dental technician may not perform any oral surgery or dental treatment. The prevention and treatment of periodontal

合法醫師資格者為屬於醫師業務之醫療廣告，既未限制鑲牙生懸掛鑲補牙業務之市招，自不致影響其工作機會，與憲法第十五條、第二十二條、第二十三條及第一百五十二條之規定，尚無牴觸。

解釋理由書：依鑲牙生管理規則第六條、第七條之規定，鑲牙生應以鑲補牙為其業務，不得施行口腔外科及治療牙病。至牙周病之防治，屬於牙醫師之業務，鑲牙生自不得為之。如鑲牙生懸掛齒科或牙科市招，標明牙周病或齲齒之防治，即係逾越鑲補牙之業務範圍，而屬於牙醫師業務之醫療廣告。

disease shall be performed only by a certified dentist, not a dental technician. If such dental technician erects a dental clinic signboard indicating that he or she provides the prevention and treatment of periodontal disease, his or her action exceeds the scope of a dental technician authorized by law because such practitioner has advertised that he or she provides such service, which is part of a dentist's medical practice.

To safeguard the health of the nationals and to prevent undue delay of medical treatment, Article 18 of the Physician Act prohibits false or improper advertising. In addition, Article 28-1 of the Physician Act provides: "The competent public health authority may impose a fine between NT\$ 5000 and NT\$ 50,000 on a person who is not a certified doctor but runs an advertisement stating that he or she provides medical treatment." The provisions in Article 28-1 of the Physician Act are set forth to prohibit a person who is not a certified doctor from advertising such service, which is a part of the physician's medical practice. The provisions do

按國家為維護國民健康，避免貽誤病人就醫機會，於醫師法第十八條禁止醫師為不正當之廣告，並於同法第二十八條之一規定：「未取得合法醫師資格為醫療廣告者，由衛生主管機關處以本五千元以上五萬元以下罰鍰」，後一規定旨在禁止未取得合法醫師資格者為屬於醫師業務之醫療廣告，既未限制鑲牙生懸掛鑲補牙業務之市招，自不致影響其工作機會，與憲法第十五條、第二十二條、第二十三條及第一百五十二條之規定，尚無牴觸。

not prohibit a dental technician from erecting a dental technician signboard. Thus, the provisions set forth in Article 28-1 of the Physician Act do not deprive a dental technician of the opportunity to work and are in compliance with the provisions set forth in Articles 15, 22, 23 and 152 of the Constitution of the Republic of China.