

Thesis Title : The Problems Related to the Medical Council's Administrative Power
Exercise: A Case Study on Relicensing of Medical License

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ABSTRACT

Science in medical fields is the immortal subject and its knowledge is developing consistently. Medical knowledge and innovation is emerging continuously. There is lots of evidence-based medical information to study and research further after graduation from the medical school. There is no exception even for any doctor who is the specialist. However, the current medical license is life-long and may not respond to the fact that previously mentioned objectively. In other words, the doctor always can practice in his field unless his license is suspended or revoked and he is removed from the medical council's member. While many other countries' medical licenses or other health professions' licenses are time-limited and they must renew their licenses in specific time. Also the continuing professional education is the requirement for relicensing.

If the Medical Council requires all doctors to renew their licenses and makes the continuing medical education as the requirement of relicensing for doctor's up-to-date knowledge and fit to practice, it will cause at least two legal issues to consider. First the Council can issue the regulation to impose the license renewal or not. Secondly, this will restrict the occupational freedom recognized by the Constitution or not and can be made constitutionally or not. Because the State authorizes the Medical Council as a professional organization to exercise administrative power in controlling the medical profession, the Council's such power exercise is limited by the Principle of Legal State (Rechtsstaatsprinzip) and the Principle of the Legality of Administrative

Action. Therefore this thesis is aimed to study these legal issues and compare with the foreign medical practice law, especially those countries that have strong influence on Thai medical society, in the issue that there is any stipulation which the doctor must renew the license or not and under what conditions and criteria.

According to the research, it has been found that the Council could not issue the Medical Council's Regulation to impose the license renewal because of substantive ultra vires. Usually, the Regulation as subordinate legislation cannot exceed the scope of the Medical Practice Act, B.E.2525 (its source of power). In addition, that Regulation (if issued) will restrict occupational freedom, that recognized by section 43 of the Constitution, of the doctors whose licence has been lifelong. Also all of studied foreign Medical Practice Laws impose the renewal of medical license in the Act. It is constitutionality if there is amendment of the Medical Practice Act, B.E. 2525 in order to set the relicensing despite restricting the freedom of individuals recognized by the Constitution. Meeting the general criteria and criteria under Section 29 of the Constitution for restriction of basic rights is a must for constitutionality. To protect the welfare of the people and ensure them their doctors have always up-to-date medical knowledge and fitness to practice are the purposes determined by the Constitution. Moreover, the amendment of the Act in this aspect is not retroactive for the doctor whose license is already lifelong and not only prevention of discrimination between the doctors had already lifelong licensed and the newly graduate doctors but also achieving the objective of protecting the welfare of the people.

In conclusion, the author propose to amend the Medical Practice Act, B.E. 2525 in such issues and the Medical Council should make Continuing Medical Education activity currently administered by Center for Continuing Medical Education (CCME.) the requirement of medical license renewal as well.