

本期企劃

真能減肥？還是誇大效能？ —從「減肥筆」案探討醫療 廣告宣傳如何避免「誇大不實」

“Can It Really Help with Weight Loss? Or is It
Exaggerating Its Effectiveness?” — Exploring How
Medical Advertising Can Avoid “Exaggeration and
Misrepresentation” through the Case of the “Slimming Pen”

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摘要

醫療法第86條第7款規定「其他不正當方式」為醫療廣告；衛生福利部也發布函釋認定所謂「誇大醫療效能」、「無法積極證明為真實」均為「不正當方式」。但法院實際如何判斷？診所要如何為醫療廣告才不會落入「誇大醫療效能」、「無法積極證明為真實」而被裁罰？本文將從臺灣桃園地方法院111年度簡字第37號行政判決針對「減肥筆」案討論。

Article 86, Paragraph 7 of the Medical Care Act stipulates that “To publicize by any other improper means.” constitute medical advertising; the Ministry of Health and Welfare

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had also issued interpretations stating that claims of “exaggerated medical efficacy” and “inability to actively prove as true” both fall under “improper means.” However, how do the courts actually determine this? What steps can clinics take to ensure their medical advertising does not fall into the categories of “exaggerated medical efficacy” and “inability to actively prove as true” and consequently face penalties? This article will discuss the case of the “Slimming Pen” based on the Administrative Judgment No. 37 of the Taoyuan District Court in Taiwan for the year 111.

壹、前言

醫美行業是近一二十年來新興的醫療產業之一，現行雖有醫療法、醫師法等從設立開始一直到相關法律責任為整套的規範，但針對醫療廣告的相關規範等，因為內容相當繁雜且容易隨著時代的演進而有不同的評價，所以醫療法本身只能概括規定，再授權主管機關以各項解釋去充實其內涵。而無論是醫美或是其他醫療診所，無可避免都會遇到「醫療廣告宣傳」的相關問題，甚至已經因為踩雷被行政機關裁罰而先繳了學費。本文擬從臺灣桃園地方法院111年度簡字第37號行政判決切入，來說明醫療廣告相關規範的法源基礎，以及診所要如何避免醫療廣告有「誇大不實」的情況。

貳、案例事實與相關規範

一、臺灣桃園地方法院111年度簡上字第37號的背景事實

桃園市政府衛生局在2021年時，以桃園市某診所在社群網站上以「減肥筆……達到減肥的效果、歐洲合法減肥筆」等內