

【醫療行政法】
醫師證書廢止懲戒案：
關於醫師法之
醫師懲戒罰與行政罰

Case about Sanction Revocating Physician Certificate:
Regarding Disciplinary Punishment and Administrative
Penalty for Physicians under the Physicians Act

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摘 要

醫師執行業務如有違反醫學倫理，已明文立法於醫師法第25條第4款作為醫師懲戒事由之一，另醫師法第28條之4則列舉禁止醫師業務上之具體違法行為得施以行政罰，此乃醫師法以雙軌制進行控管之體系設計。由於懲戒罰之作用及目的與行政罰有別，當一行為違反行政義務及特定之紀律，應同時受到行政罰及懲戒罰時，原則上應容許得併行處罰，且主管機關如僅擇取懲戒罰，尚不能遽認違法。本件主管機關就A醫師行為

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關鍵詞：一事不二罰原則（no double jeopardy principle）、刑罰優先原則（the principle of priority of criminal penalties）、行政罰（administrative penalty）、醫師法（Physicians Act）、懲戒罰（disciplinary punishment）

DOI：10.53106/241553062025040102007

僅依醫師法第25條移付醫師懲戒委員會決議廢止醫師證書，並無另依醫師法第28條之4施以行政罰，尚無懲戒罰與行政罰合併處罰之問題。至A醫師另遭主管機關以違反醫療法第108條第1款、第6款規定裁處之行政罰，則與本件懲戒罰之目的及性質均有不同，不生一事不二罰之問題。且本件既為懲戒罰，並無行政罰法的適用，自無行政罰法上刑罰優先原則之適用。

If a physician violates medical ethics in the course of their duties, it is explicitly legislated under Article 25, Paragraph 4 of the Physicians Act as a reason for disciplinary action. Furthermore, Article 28-4 of the Physicians Act lists specific illegal actions in the practice of medicine that may be subject to administrative penalty. This dual-track system is designed within the Physicians Act to regulate physicians. Since the purposes and effects of disciplinary punishment differ from administrative penalty, when an action violates both administrative obligations and specific discipline, it is generally permissible to impose both administrative penalty and disciplinary punishment simultaneously. Moreover, if the competent authority chooses to impose only disciplinary punishment, this does not automatically mean the action is unlawful. In this case, the competent authority only referred A physician's behavior to the Committee on the Discipline of Physicians Committee for a decision to revoke the medical license under Article 25 of the Physicians Act and did not impose an administrative penalty under Article 28-4, thus there is no issue of combining disciplinary punishment and administrative penalty. Furthermore, A physician was also subject to an administrative penalty for violating Article 108, Paragraph 1 and 6 of the Medical Care Act. This administrative penalty serves a different purpose and

nature than the disciplinary punishment in this case, and therefore, there is no issue of Double Jeopardy. Since this case involves a disciplinary punishment, the Administrative Penalty Act does not apply, and thus, the principle of priority of criminal penalties under the Administrative Penalty Act is not applicable.

壹、案件概述

一、事件背景

（一）A為臺中市某中醫診所（下稱系爭診所）中醫師，且為該診所之負責醫師。臺中市政府衛生局獲報於2020年7月30日、2020年8月1日前往稽查系爭診所，以A開立含有硃砂之中藥粉包處方，造成張姓等數名病患血鉛濃度超標情事，且在家中調劑處方，違反診所調劑設施設備及人員配置規範，認定A使用之藥材來源與醫療業務管理上顯有明顯疏失與不當，構成醫療法第108條第1款「屬醫療業務管理之明顯疏失，致造成病患傷亡者」，而依同法第115條第1項規定，裁處A罰鍰50萬元並命停業處分2個月即2020年8月6日至2020年10月5日（下稱另案前處分）。

（二）臺中市政府衛生局再於2020年8月6日配合檢警至系爭診所搜索，並經調查事證的結果及A陳述意見後，發現A明知硃砂為改制前行政院衛生署（現改制為衛生福利部）公告不得使用於中藥材調製口服藥品的禁藥，卻罔顧病患的身體健康，自2018年1月3日起至2020年7月17日止以硃砂入藥，並開立含有硃砂的中藥粉包處方，提供予227名病患服用，已經造成28名病患血液中鉛濃度超標而受害，認定系爭診所構成醫療法第108條第6款「從事有傷風化或危害人體健康等不正業務」，而依同法第115條第1項規定，裁處A罰鍰50萬元及停業