Abstract

**Purpose:** The societal perception of tattoos has evolved, and tattooing procedures have become more prevalent. However, tattooing constitutes a medical procedure involving invasive actions on the skin, thereby falling within the scope of medical practices. Unless performed by qualified medical professionals possessing medical expertise, there is a constant risk of jeopardizing the life, physical well-being, or public health of tattoo recipients. Consequently, this paper seeks to investigate the current state of tattooing practices in South Korea, examining the legal issues at hand, and proposing measures to mitigate potential harm to consumers.

**Method:** Through a comprehensive review of prior research and analysis of relevant literature, including an examination of judicial precedents, this study aims to examine the stance of the Constitutional Court and the Supreme Court regarding tattooing. Additionally, it seeks to review the legislative systems pertaining to tattooing in foreign countries such as the United States and Japan in order to propose improvements to the current tattooing system and suggest measures for consumer protection.

**Results:** Through a review of legal precedents in our country, we have identified the evolving perception regarding the practice of tattooing. Additionally, by conducting research on foreign laws and systems, we have gained new insights into the legalization of tattooing and the considerations for potential solutions. By engaging in comprehensive discussions encompassing the protection of citizens’ right to life and health, public health concerns, as well as the artistic nature, freedom of expression, and freedom of occupational choice associated with tattoos, we have sought to explore measures for improvement in the field of tattooing.

**Conclusion:** Through this study, it was possible to ascertain the changing public perception of tattooing. Additionally, by conducting an analysis of foreign legal systems that reflect the evolving perception of tattoos, avenues for the legalization of tattooing could be explored. Protecting the right to life and promoting health, which are the objectives of medical law, naturally entail reserving medical procedures for qualified healthcare professionals. However, given the difficulty of reversing the widespread acceptance of tattooing brought about by societal changes, it is now necessary to consider the legalization of tattooing through legal and regulatory frameworks. This should be accompanied by consistent governmental oversight and supervision by the Ministry of Health and Welfare to safeguard the health rights of the population.

**Keywords:** Tattoo, Medical Treatment, Medical Law, Unlicensed Medical Treatment, Cosmetic Plastic Surgery

1. Introduction

We live in a society where we create our own individuality within diverse cultures. Breaking away from a conformist society means being able to establish one’s own identity by expressing oneself to others or society as a whole. There are various ways to express this individuality. Generally, people express themselves in the public eye through external beauty. They may express their individuality by wearing fashion-forward clothing or owning limited edition bags,
among other methods. Unique makeup or hairstyles are also used as forms of self-expression[1][2][3][4][5]. Furthermore, the practice of getting tattoos on the body is becoming increasingly popular as a means of expressing individuality[6][7].

Perceptions of tattoos have also changed with societal shifts[1][8]. In the past, tattooing itself was not socially acceptable. Even cutting one’s hair freely was not allowed in Confucian culture, let alone marking one’s body with tattoos[9]. Moreover, when tattoos were done, they were often seen as a means of showcasing the characteristics of a specific group, resulting in a strongly negative image associated with tattoos. However, nowadays, tattoos are being performed not only for the purpose of expressing individuality, regardless of age or gender, but also for aesthetic reasons[10][11].

However, tattoo procedures involve invasive actions on the skin, making them medical procedures with associated risks and potential side effects. This raises concerns regarding the protection of individuals who may suffer harm due to health and hygiene issues arising from tattoo procedures[12][13].

Despite the fact that tattooing is considered a medical treatment and should ideally be performed by medical professionals, the majority of procedures are carried out by non-medical individuals. This exposes tattoo recipients to the risks of side effects, thereby infringing upon the rights to life and health of the general population. Additionally, there is a general lack of awareness regarding the risks faced by consumers who receive tattoo procedures from non-medical practitioners, which constitutes unauthorized medical practices.

Despite the various social demands and phenomena surrounding tattoos, current regulations on tattoo procedures remain ambiguous. The Medical Act and Act on Special Measures for the Control of Public Health Crimes completely prohibit unlicensed medical treatment, allowing only licensed medical professionals to perform medical acts[14]. However, there is a lack of legal provisions supplementing the definition of medical treatment, resulting in a situation where courts are punishing non-medical individuals for tattooing activities, rather than physicians[15].

Therefore, this research aims to examine the precedents of the Supreme Court and the Constitutional Court regarding tattoo procedures and explore the issues and possible solutions related to tattooing activities.

2. Major Constitutional Court and Supreme Court Precedents on Tattooing

2.1. The constitutional court decision


According to the Constitutional Court’s decision, it was determined that the provision concerning "medical treatment" within the subject of adjudication does not violate the principle of legal clarity and does not infringe upon the freedom of vocational choice, thereby remaining in accordance with the principle of proportionality. The essence of the decision is as follows[16].

(1) Considering the legislative purpose of the Medical Act, various provisions related to the duties of medical professionals, and the concept of medical treatment as interpreted by the Supreme Court, the term "medical treatment" among the provisions subject to adjudication is clearly understood as actions that go beyond disease prevention or treatment. It encompasses acts performed by individuals with medical expertise, experience, and skills, such as examination, diagnosis, prescription, medication, or surgical procedures, as well as actions that, if not performed by medical professionals, could pose a potential risk to public health and hygiene. Therefore, the provision subject to adjudication, specifically the term "medical procedure," does not violate the principle of clarity.
(2) Tattooing is a dermal invasive procedure in which pigments are introduced into the skin by puncturing its integrity using needles. This process poses various risks, including the potential for infection and adverse effects resulting from the introduction of dyes. These risks associated with the procedure not only affect the recipients of tattoos but also raise concerns about public hygiene. By allowing only medical professionals to perform tattooing procedures, the clauses subject to judgment aims to ensure the safety of such procedures.

An alternative approach that has been suggested in foreign jurisdictions is the implementation of a separate tattooing qualification system, which would permit non-medical individuals to engage in tattooing treatment. However, the medical knowledge and skills limited to tattooing cannot guarantee the same degree of safety as current medical practitioners and the full performance of any pre- and post-operative medical measures that may be required, so the adoption of these alternatives implies a social acceptance of health and hygiene risks. Furthermore, it is pertinent to acknowledge that the implementation of alternative measures, such as a tattooing qualification system, requires the development and implementation of a completely new regulatory framework. This framework would encompass the certification of tattoo artists, the regulation of tattooing environments, and the standardization of tattooing procedures. However, it is important to consider that the introduction of such a system would entail significant social and economic costs.

Therefore, it is within the realm of legislative discretion whether or not to introduce alternatives such as a tattoo licensing system. It is important to recognize that the legislative decision to allow only healthcare professionals to perform tattooing, in order to safeguard public health and hygiene, does not constitute a violation of the principle of excessive prohibition.

(3) Accordingly, the clauses subject to judgment does not contravene the principles of clarity or excessive prohibition and does not violate the claimant’s freedom of occupational choice. It is a legislative measure taken to protect public health and hygiene.

2.2. Supreme court decision

[Supreme Court, May 22, 1992, Case No. 91do3219]

The basis for considering tattooing as a medical treatment in South Korea, as established in the Supreme Court precedent, defines medical acts as "not only preventive and therapeutic acts for diseases but also acts that may pose health and hygiene risks if not performed by medical professionals." Furthermore, the Supreme Court stated that the act of creating eyebrow or eyelash tattoos using an automatic tattooing machine on the skin of customers' eyebrows or eyelashes, which does not cause pain, bleeding, or other side effects by injecting pigments into the epidermis, cannot be considered a medical act. The original judgment that concluded that it was not a medical treatment did not properly examine whether it is possible to create permanent tattoos by injecting pigments only into the epidermis, the specific procedure involved, or the potential risks of piercing the dermis or the possibility of infection through tattooing needles. However, the Supreme Court indicated that if there is a possibility of piercing the dermis or injecting pigments into the dermis due to the worker's mistake and if there are concerns about disease transmission through tattooing needles, it can be considered a medical act. Therefore, the act of non-medical individuals performing such procedures was deemed guilty.

3. Main Issues Regarding Tattooing Procedures

3.1. Medical nature of tattooing procedures

From a legal perspective, the Supreme Court has established that the notion of "medical treatment" is not explicitly defined in Article 12(1) of the Medical Service Act, which refers to the
implementation of medical, obstetric, nursing, and other medical techniques by medical professionals. According to Supreme Court precedents, medical treatment encompasses the prevention and treatment of diseases through examination, diagnosis, prescription, medication, or surgical procedures, based on medical expertise, experience, and skills. Additionally, it includes surgical procedures, acupuncture, and moxibustion, as well as methods that involve significant physical impact on the body, such as massage or pressure, which extend to therapeutic actions for various diseases[17].

Regarding tattooing procedures, the Supreme Court finds it challenging to view them solely as injecting pigment into the epidermis. Tattoos are perceived as permanent rather than temporary, and the act of injecting pigment into the dermis carries a substantial risk of side effects. Even if the defendant’s action is considered a tattoo procedure that only injects pigment into the epidermis, there is a possibility of accidentally piercing the dermis or injecting pigment into it due to the worker's mistake. Moreover, if a tattoo needle used on one person is also used on another, there is a concern about the transmission of various diseases. Therefore, it can be interpreted that such tattooing falls within the scope of medical treatment.

Furthermore, the Supreme Court highlights that while the Medical Service Act strictly differentiates medical professionals, such as physicians, dentists, and traditional Korean medicine practitioners, and prohibits and penalizes medical treatment performed beyond the limits of their licenses, it does not provide specific regulations on the extent of their respective professional duties and the specific range of medical acts covered by their licenses. This reflects the legislative intent to allow for flexible legal interpretation that aligns with the evolving nature of medical practices, influenced by the development of medicine, societal progress, and the changing demands and perceptions of healthcare service recipients. Therefore, the law explicitly states that only medical professionals with valid licenses, particularly doctors, can perform medical acts while leaving room for interpretation regarding the specifics of medical treatment.

### 3.2. Unlicensed medical treatment of tattooing

Understanding what constitutes an unlicensed medical act can help determine whether tattooing falls under the category of unlicensed medical treatment. According to Article 27(1) of the Medical Service Act, "Anyone who is not a medical professional is prohibited from performing medical acts, and even medical professionals are not allowed to perform medical acts beyond their licensed scope." Violators of this provision are subject to imprisonment for up to 5 years or a fine of up to 50 million won. Unlicensed medical acts under the Medical Service Act can be divided into medical acts performed by non-medical individuals without a medical license and medical acts performed by medical professionals beyond the scope of their licenses, both of which are prohibited. Furthermore, according to Article 5 of the Act on Special Measures for the Control of Public Health Crimes, if a non-physician conducts medical acts for profit in violation of the aforementioned prohibition on unlicensed medical acts, they can be punished with imprisonment for a minimum of 2 years or more without suspension and a fine ranging from 1 million won to 10 million won.

The reason why only medical professionals are allowed to perform medical acts is explained in Supreme Court precedents as follows: "Given that the medical acts of a physician require advanced professional knowledge and expertise and have a close and significant relationship with human life, body, and public hygiene, the Medical Service Act sets strict requirements for qualifying as a physician while prohibiting non-medical individuals from engaging in such acts. By monopolizing medical acts exclusively to physicians and prohibiting non-medical individuals from performing them, as stipulated in Article 25 of the former Medical Practitioners Act, the purpose is to prevent risks to human life, body, and public hygiene that may arise from non-medical individuals conducting medical acts."
The Constitutional Court also states that "Completely prohibiting medical acts by non-medical professionals is a suitable measure for protecting the fundamental constitutional rights of the people, such as the right to life and health, and fulfilling the state's duty to protect public health(Article 36, Paragraph 3 of the Constitution). Considering that such significant public interest can be realized effectively only by prohibiting non-medical professionals from conducting medical acts, which minimally infringes on the basic rights of the people, the limitation on the freedom of occupation is constitutionally justified as it is in line with the principle of proportionality." Consequently, the prohibition of unlicensed medical acts performed by non-medical professionals is upheld. Therefore, if tattooing procedures are performed by non-medical individuals, it falls under unlicensed medical acts, and the person can be penalized according to Article 27(prohibition of unlicensed medical acts) of the Medical Service Act and Article 5(penalties for illicit medical practitioners) of the Act on Special Measures for the Control of Public Health Crimes[18][19].

3.3. Possibility of accidents in tattooing treatment

When accidents occur as a result of tattooing procedures, the tattoo recipient may suffer damages. Since tattooing involves penetrating the skin using needles, there is a significant possibility of risks to individuals' physical well-being and public health, such as skin disorders or transmission of diseases. Particularly, performing such procedures without being a licensed medical professional is subject to legal penalties[17].

Tattoos in the United States, regulated by state laws, refer to the injection of pigments beneath the dermis of the human body using needles or other instruments to create permanent marks or designs that cannot be easily removed[20].

Harmful cases that can arise from tattooing include scarring, pain, infection, immune-related disorders, and even cancer. Causes of such harmful cases may include tools used, inadequate procedures, the skill of the tattoo artist, interactions with external factors, or unexplained causes[21].

In medical institutions, prior to surgeries or procedures, patients are subjected to allergy tests or drug reaction tests to prevent potential side effects. Therefore, before tattooing, it is necessary to conduct tests to determine if the tattoo recipient has any adverse reactions to pigments. However, even if the tests show no adverse reactions to pigments, tattooing should still consider the possibility of infections in the dermis or epidermis layers of the skin, as the procedure involves injecting pigments into the skin using needles.

4. Improvement Measures for Tattooing Treatment

Medical acts refer to actions performed by individuals with medical expertise, based on medical knowledge, experience, and skills, including examination, diagnosis, prescription, medication, or surgical procedures, for the prevention or treatment of diseases, as well as other acts that, if not performed by a medical professional, may pose health and hygiene risks.

"Medical professionals" who can perform medical acts are doctors, dentists, traditional Korean medicine doctors, midwives, and nurses who have obtained a license from the Minister of Health and Welfare(Article 2, Paragraph 1 of the Medical Act).

Therefore, tattooing treatment that fall under medical acts can only be performed by medical professionals, and if non-medical personnel perform tattooing treatment, it is considered unlicensed medical acts and subject to punishment under the Medical Act. Some argue that the concept of medical acts should be redefined to allow non-medical personnel, such as tattoo artists, to perform tattooing treatment. However, redefining the concept of medical acts requires significant time, effort, and social consensus. Furthermore, according to the Supreme
Court precedent, "since medical acts require a high level of specialized knowledge and experience and have a close and significant impact on the lives, bodies, and public hygiene of individuals, the Medical Act sets strict qualifications for becoming a doctor while monopolizing medical treatment for doctors and prohibiting non-medical individuals from performing them in order to prevent risks to human lives, bodies, and public hygiene that may arise from non-medical individuals performing medical acts." Therefore, even if the concept of medical treatment is redefined, there are limitations to non-medical tattoo artists performing tattooing procedures. However, there has been a positive change in the societal perception of tattoos, and it has become undeniable that the government and the Ministry of Health and Welfare have been negligent in managing and supervising tattoos. There are diverse opinions on tattooing, and depending on one's perspective, there is sharp opposition between those who have a positive view of tattoo culture and those who have a negative view.

When examining legislative examples from foreign countries, it is evident that most jurisdictions have established regulations to protect tattoo recipients. In the United States, for instance, the regulation of tattoo pigments falls under the purview of the Food and Drug Administration (FDA), and to date, no tattoo pigments have been approved by the FDA. Regulations pertaining to tattoo artists, tattoo parlors, hygiene standards, and prohibitions on tattooing minors are typically governed by state laws.

In the United States, no tattoo ink pigments have been approved by the FDA (Food and Drug Administration). Other tattoo regulations/legislation were state codes. On February 20, 2008, the Committee of Ministers at the Council of Europe adopted a negative list of tattoo ink ingredients (Resolution ResAP, 2008). As a result of this resolution, many European countries considered developing tattoo-ink regulations. In France, tattoo regulations were established in 2008, including tattooist/tattoo parlor regulations, hygiene regulations, prohibition of tattooing minors, and tattoo ink regulations.[21]

In the United States, tattoo regulations encompass requirements for tattoo artist qualifications, registration of tattoo parlors, implementation of licensing systems, use of disposable equipment and sterilization, wearing of gloves, prohibition of tattooing minors, and parental consent requirements. Recently, there has been a trend of granting and regulating tattoo artist qualifications for individuals with specific credentials, and some states even require supervision by a physician. For example, in Connecticut, only licensed physicians are allowed to perform tattoos independently, and even if a tattoo artist holds a license, they must operate under the supervision of a physician. Another significant aspect of regulation within the United States is the strict regulation of tattooing minors. Tattooing is prohibited for individuals below a certain age, and parental consent is required in certain cases. It is the responsibility of the tattoo artist to verify that the tattoo recipient is not a minor[21].

In the case of Japan, a ruling by the Supreme Court declared that although the treatment of tattooing itself, considering societal norms based on historical and realistic reasons, does not fall within the scope of the medical duty of "medical and health guidance" performed by physicians. However, the ruling pointed out that tattooing can invade the human body artificially, causing damage to the integrity of life and the body, as well as posing public health risks by triggering skin diseases, including AIDS infection. It emphasized the potential adverse effects on the health of the public, who are medical consumers, and highlighted the concern that such risks should fall within the exclusive domain of medical practitioners[22][23].

According to a recent paper titled "Concept of Medical Acts and Unauthorized Medical Acts in German Law" presented by the Korean Society of Medical Jurisprudence on April 15, 2023, in Germany, tattooing and piercing (including ear piercing) are not considered medical treatment. These procedures do not require medical expertise, do not pose direct risks to the body and health, and do not sufficiently give the impression of being medical treatment. Therefore, they
are not considered medical treatment in Germany[24]. Furthermore, in Germany, becoming a tattoo artist only requires a health certificate and the necessary equipment. There are no specific qualifications or other legally binding regulations. Vocational training is conducted regularly in tattoo shops, focusing on health and technical education(https://tattoomed.de/blogs/tattoo-news/welche-gesetzlichen-regelungen-gibt-es-fur-die-tattoobranche).

Due to these reasons, it is necessary for our country to establish regulations regarding tattooing as soon as possible and ensure systematic management in order to minimize the medical gaps related to tattooing and protect the rights to life and health of the citizens.

5. Conclusion

The social perception of tattooing has undergone significant changes, and the techniques used in tattooing have also advanced compared to the past. It cannot be denied that the risks associated with tattooing have decreased accordingly[8][25]. In relation to this, within the medical field, it is necessary to discuss the argument that illegal tattooing practices have increased, leading to an increase in associated risks and the extent of harm caused[9][15].

However, despite these changes, under the current medical laws, tattooing, classified as a medical procedure, can only be performed by healthcare professionals. Therefore, non-medical tattoo artists who perform tattooing procedures without proper medical qualifications cannot evade punishment for engaging in unauthorized medical practices[26][27].

This paper began with a questioning of the societal changes and the discrepancies in the current legal framework. Through constitutional court decisions and Supreme Court precedents, we were able to understand the approach and understanding of tattooing procedures by the Korean courts. By examining dissenting opinions from the Constitutional Court, which are interpreted positively, it became apparent that there are not only negative perspectives regarding tattooing procedures.

At the present stage, establishing a new definition of medical treatment within the current medical laws to address this issue appears challenging. Instead, it seems more plausible to introduce licensing or qualification systems, as seen in foreign legislative examples, for tattooing procedures. If tattooing continues to be performed by unqualified practitioners, it can only be interpreted as an attempt to evade responsibility for management and supervision.

In the medical field, advocating that only healthcare professionals should be allowed to perform tattooing procedures based solely on the argument of potential risks, such as infections, will no longer be acceptable to the public. Therefore, it is necessary to actively propose measures such as increasing the number of healthcare professionals capable of performing tattooing procedures according to market demand[28].

Currently, the protection of tattoo recipients relies on the collaboration between tattoo artists and healthcare professionals. Qualified and licensed tattoo artists should perform tattooing procedures while undergoing inspections by healthcare professionals to prevent issues such as infections. To achieve this, a system of qualifications and continuous management and supervision for tattoo artists is necessary[29][30]. Additionally, tattoo artists should bear responsibility for damages caused by issues such as infections resulting from tattooing procedures. Healthcare professionals should assess the extent of health risks for tattoo recipients through medical examinations and take immediate measures to minimize harm if there is an increased risk of infection. Given the opportunity, further research should be conducted on legislation(draft) specifically targeting tattooing treatment.

6. References

6.1. Journal articles

7. Appendix

7.1. Author’s contribution

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