



## Medicines and the Criminal Code

*The judgement of the Audiencia Provincial of Alicante of 25 february 2014 condemns a practising medical doctor for fraudulent use of a public document*

### Background

This case began in 2010, when the public prosecution office began an action against a medical doctor. The position of the office was that the physician was writing official prescriptions for steroids and anabolic products for the benefit of persons whom he had never examined. The prescriptions were then used by other individuals to obtain such drugs from the pharmacy of offices.

The Court found that the accused doctor had incurred in a criminal offence consisting in the fraudulent use of a public document by a public official. The ruling ordered the doctor to be imprisoned for 4 and a half years, it also imposed a fine and a debarment for 4 years.

### Careful investigation

A first aspect of the judgment which is worth mentioning is the explanation it makes about the investigation that the public office carried out before bringing charges against the doctor. The public office verified that the doctor, who worked only part time substituting other doctors, used always prescription books from such other doctors; and all the persons who appeared to be as patients in such false prescriptions were interviewed. All of them denied having had any contact with the accused doctor nor having taken the drugs.

### Prescriptions are public documents and doctors of the NHS are public officials

The judgment recalls that official prescriptions are public documents and that a fraudulent use

or falsification of the same is penalized under the Criminal Code. Moreover, the Court also works under the idea that the doctor was a public official even if he was only working part time and if he had not gained a permanent position at the Spanish NHS. For the purposes of the application of the Criminal Code, the Court says, all those who exercise public functions must be considered as public officials.

### The "mutatio veritatis"

In order for the Criminal Code to apply when a public document is falsified, the case law requires that the falsification affects elements of the document which are essential and which have relevance enough to impact on a juridical relationship. When dealing with this in other cases of false prescriptions, the Courts have sometimes exculpated doctors prescribing a product when the real beneficiary of the prescription could benefit from using it even if the prescription was written for another person (see Supreme Court, 29 October 2003).

In this case, the Court is very rigorous when considering this matter. The Court understands that the right to prescribe drugs is only properly exercised when the prescription is written for an identified patient in order to meet his or her needs after due examination by the doctor. Writing a prescription for a person different from the use who needs the product, according to the Court, is a falseness that affects an essential element of the prescription, and if the doctor knows this, then the doctor is acting in a fraudulent manner which may be penalized under the Criminal Code.