



The complicated path of prescription by nurses

Judgment of the Supreme Court, of 26 June 2015, on the regulation of nursing activities in the Balearic Islands' healthcare system

Background

In 2009, an amendment to the Law on Guarantees and Rational Use of Medicinal Products and Medical Devices gave nurses the option of prescribing some medicinal products. The aim of the lawmaker was to regularise an activity that was already an everyday routine in for treating minor symptoms or preventing the interruption of a treatment regimen already prescribed by a doctor, dentist or podiatrist.

Having this objective, a system was designed which, while maintaining that the right of independent prescribing is still limited to the abovementioned professionals, allowed nurses, and subsequently physiotherapists, to authorise the dispensation of medical devices and over-the-counter medicinal products. In addition, the Government was entrusted with the regulation of the conditions on which this activity should be conducted, and nurses and physiotherapists were required to obtain permission from the Ministry of Health, Social Services and Equality in order to do so.

Six years after this practice was covered by the law, the Government has yet to produce the implementing regulations. During this period of uncertainty, undoubtedly detrimental to the principle of legal certainty, several judgments are worth reviewing, especially now that certain regional authorities have decided to push their own regulation.

Judgment of the Supreme Court of 3 May 2013

This decision addressed a challenge against Royal Decree 1718/2010, which regulates prescriptions and dispensation orders, brought by the Spanish Medical Association. The plaintiff argued that the Royal Decree violated the principle of requirement of law (*reserva de ley*), because the exercise of healthcare professions should not be regulated by rules with regulatory status lower than a formal law.

The Supreme Court rejected the challenge. With regard to the matter under consideration, the decision pointed out that the prescribing privileges reserved for certain professionals—in the case of prescription medicinal products — would not be violated by authorising nurses to issue supplementary prescriptions, as long as the purpose of this practice was to prevent the interruption of a treatment regimen previously prescribed by a doctor, dentist or podiatrist.

In its reasoning, the Court made a distinction between orders for over-the-counter medicinal products and for medical devices, which nurses could issue at their own discretion, and orders for certain prescription medicinal products, which should only be issued for the purpose of guaranteeing the continuity of a treatment regimen already established by an authorised professional.



Judgment of the Supreme Court, of 26 June 2015

The second and most recent ruling of the Supreme Court, to which the title of this article refers, came as a result of the Balearic Regional Government's ratification of Decree 52/2011, which regulates the actions of nurses with regard to the services provided by their regional health system.

This time the decree was challenged by the Spanish Nursing Association. On this occasion the Supreme Court ruled in the appellant's favour and overruled the decision of the lower court, having detected an obvious discrepancy between the arguments of the latter and the allegations of the Spanish Nursing Association. The Balearic court had merely analysed the issue in a general way, based on the idea that the scope of the decree was limited to the prescription of medical devices and over-the-counter medicinal products, but it failed to address the specific reasons for the appeal of the nurses' representatives.

With regard to substance, the Supreme Court did not contest the Balearic Government's right to impose training programmes and protocols aimed to ensure that these professionals are familiar with the catalogue of pharmaceutical products and with using the electronic prescription system. The Supreme Court argued that this does not affect the autonomy of nurses as regards the supplementary prescription of medical devices and over-the-counter medicinal products, and that contributes to improve patients' safety.

On the other hand, the Court considered unlawful the fact that the Decree failed to stipulate an obligation for nurses to obtain permission from the Ministry of Health, Social Services and Equality before they can prescribe such products.

The Court understood that this omission introduces an element of confusion and creates a legal situation which is contrary to the laws in force, and therefore declared null and void some articles in the Decree which address the prescription of these medicinal products and medical devices by nurses.

Lessons to be learned from these judgments

An analysis of the abovementioned judicial decisions can provide valuable clues regarding probable future developments on this matter.

Firstly, there does not seem to be any impediment to regulating the conditions under which nurses' prescriptions must be issued through legal instruments approved by regional governments. However, regional rules must make reference to the basic state legislation governing this activity, including the obligation of nurses and physiotherapists to obtain permission in order to engage in said activity.

In addition, such regulations must respect the discretionary powers of nurses and physiotherapists to prescribe medical devices and over-the-counter medicinal products, although this does not preclude the implementation of non-regulatory programmes and protocols designed to ensure proper training and usage of this tool.

In contrast, it seems that as regards prescription medicinal products nurses must only intervene for the sole purpose of guaranteeing the continuity of treatments previously prescribed by authorised professionals, and their actions in this area must be subject to the protocols and guidelines established by professional organisations and the Spanish agency of healthcare quality.