



There are sound arguments to challenge the Andalusian Health Service tender of medicinal products

The State Council rules against (Opinions 158/2012 and 160/2012) while SAS publishes the selected medicinal products (Resolution of 19 of March)

The Andalusian tender is null

Until Sunday 25 of March, one might have thought that the storm created by the Board of Andalusia and by the Andalusian Health Service (SAS for its acronym in Spanish) with the "tender" of medicinal products would die down independently of the different administrative or legal procedures in course. It is often said that a bad agreement is better than a good lawsuit, and it is probably true, but if there is no change in the Andalusian administration, and all seems to indicate that there will be no change, it shall be necessary to continue with the court proceedings.

Our position in this regard is that the Resolution of 25 of January of 2012 which convened the selection process for the medicinal products to be dispensed in Andalusia when the prescriptions are made by active ingredient is null and void.

We understand so because the SAS does not respect Law 29/2006 and other legal provisions, it invades the State competence, and it breaches the Statute of Andalusia and also basic norms and principles of European law. Moreover, the Resolution and the annexed template agreement have serious inaccuracies which hinder or impede the companies from participating in the call under effective competition.

The resolution of the Director of SAS of 19 of March of 2012 approving the list of selected medicinal products must be considered null for the same reasons.

The position of the State Council

Since it is very possible that these matters will have to be finally decided by the courts, it is good to know that the State Council, in two Opinions issued in this regard, considers that there are sufficient legal grounds to challenge the constitutionality of the Resolution of 25 of January of 2012 and to file an appeal on constitutional grounds against Decree-Law 3/2011 of the Board of Andalusia, the basis of which such resolution was adopted.

The reasoning of the opinions is very clear:

- The State has exclusive competence for the establishment of a pharmaceutical provision in the System and its public financing.
- The direct effect of the tender called in Andalusia is the exclusion of certain medicinal products from public reimbursement, and this is contrary to the principle that the catalogue of health services, approved through Decree 1030/2006, is common to all users and that the Autonomous Communities can improve it but not restrict it.

We hope that the competent courts agree with this position and, especially, that the measures necessary to suspend the application of the resolutions are adopted before any further damage is caused. Otherwise, compensation may have to be paid.