

## Adjudication of new community pharmacies: comparison of ranking criteria

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### ABSTRACT

This article studies the differences between the models of candidate classification for the adjudication of new pharmacies in the different Spanish self-governing regions. The objective of this study is to analyze the profile of the selected professional. Generally, the ranking takes into account the professional activity as pharmacist, the pre-graduate formation as well as the postgraduate, with different weights. Some of the 15 autonomies include as merits the coofficial languages, an optional written test and special situations as unemployment.

In general, the criteria try to find out the best profile of pharmacist based on the professional experience and the postgraduate formation.

**KEYWORDS:** adjudication models, pharmacy, pharmacy legislation, standards.

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### 1. INTRODUCTION

This project studies the different scales of merits for the adjudication of new pharmacies in the different Spanish autonomies. The final objective is to analyze what profile of professional is requested in the process of adjudication of new pharmacies.

This topic has been chosen because of the importance it has in the maintenance of the so-called Mediterranean model of pharmacy, as it determines the professional curriculum of the new owners. One cannot forget that the alternative way of access to a pharmacy depends on the market rules because of pharmacies are private properties.

At present, it's important the position of the European Commission with respect of the Spanish model. The written procedure in July 2006 in relation with planning and property rules governing pharmacies. In another order, questions referred for a preliminary ruling of the Courts of Asturias and Andalusia about distance and number of habitants in the location remains unsolved.

The development of this project starts with a revision of the pre constitutional model,

and follows with the autonomic models prepared by the regional governments after the competencies in matter of pharmaceutical planning were transferred from the State to them.

## **2. PAST HISTORY**

The opening of pharmacies was regulated during the period before the Spanish Constitution of 1978 by means of Royal Decree 909/19781, partially abolished at present. The mentioned decree was developed by the Order of 21 of November of 19792, valid nowadays in the Autonomic Cities of Ceuta and Melilla that have not developed their own laws in matter of pharmaceutical planning. This rule established professional and academic criteria, although without a top in the professional experience, so that leaving the rest of merits in anecdote1.

After the competency transfer to the autonomies, every one developed its own regulation in matter of pharmacies, with different models adapted to their territory, obviously with peculiarities.

## **3. STUDY OF THE DIFFERENT MODELS OF ADJUDICATION IN SPAIN**

Since the transfer of competences in pharmacy to the different autonomies, which occurred between 1990 and 2002, the different self-governing regions published their own laws related with adjudication of new pharmacies3. As a result, many new pharmacies were authorized (from 17.896 pharmacies in 1990, 21.057 were registered in 2008)4.

The beginning of authorization expedient is carried out by the Public Administration, except in Catalonia and Navarra, where it can be performed by either the Administration or an individual pharmacist, as described in epigraph 3.1 and 3.2.

In all cases, the whole process for the adjudication of new pharmacies is conducted under the specifications of publicity and transparency, as disposed in the 3rd article of the Law 16/19975.

In the general case, the process consists of a ranking by means of merits, computed as specific criteria applied to elucidate the order in priority of the candidates.

The standards to choose between the candidates consist of a variable number of sections, of different weights, that consider the professional experience, postgraduate formation, academic grade, teaching and research activities. In some cases there's a written volunteer test, and in other cases, the professional exercise in the same autonomy is considered.

### **3.1. Navarra Model**

This model can be considered as the most liberal of the three models mentioned. It is ruled by the Decreto Foral 197/20015 that develops the Ley Foral 12/20006. The mentioned law advocates for the free practice of the pharmaceutical profession, achieving by this way a better pharmacist attention as well as a better accessibility of the population to pharmacies. This model permits the installation of new pharmacies with the only restrictions of distance between them (150 meters) and a maximum number of pharmacies not over one pharmacy every 700 habitants considering the global of the autonomy. In 2008 the law was modified to

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restrict the area to compute to the municipality<sup>7</sup>.

### **3.2. Catalonia Model**

The Catalonian model was established by the Decreto 173/19928. This model is based on the pre-constitutional one, probably because it was pioneer in matter of pharmacist planning.

This decree indicates the same procedure as the mentioned RD 909/1978, and can be initiated by one or more pharmacists or Public Administration. Usually, the individual applies, opening a dossier in which other professionals can apply. After 15 days, the dossier closes and the priority order is established after professional and academic standards.

Generally, the professional exercise of a pharmacist in a mountain area was the most valued, while positions as drug distributor, hospital pharmacy or teaching in the University where less considered. Some of the academic merits, as doctorate, were under valued in relation to Catalan language if time and effort to obtain it are taken into account. The language is also valued with the same punctuation as specialities<sup>8</sup>.

### **3.3. Adjudication by Public Notification of Merits**

The procedure is initiated by the Health counselling of each self-governing region, being publicised in each official bulletin, normally with annual frequency.

All the participants must be in full possession of the Pharmacy University degree. The professional merits will be accredited by the National Health System, by the contribution made to the Social Health Insurance, indicating the number of days as well as the type of contract the professional had in the job position.

The valuable merits have to be accredited by official certifications of the Administration, showing originals or certified photocopies, each pharmacist individually, except in the Murcia Region<sup>10</sup> where two or more pharmacist can apply together. The procedure in this case, calculates the average as the punctuation of the group applying.

There are some restrictions to apply for the adjudication of new pharmacies. The most important is age, that is limited in most autonomies to 65 years (Aragon, Asturias, Galicia and La Rioja), or 70 years (in the Valencia Community)<sup>10</sup>.

#### **3.3.1. Parts of scales**

Although a unique structure is not present in the 15 standards, there are certain common aspects. All scales include professional experience, representing about 40% of the final punctuation. Usually, there is a distinction between the professional practice in community pharmacy and other jobs in which the degree in pharmacist is required.

Another common point is related with the formation. Generally is structured in academic merits, comprising the expedient, doctorate, and other sanitary degrees. A emphasise is put on the postgraduate training, in accordance with its importance nowadays due to the continue evolution in matter of Pharmacy Sciences.

The rest of the points present a greatest variability in the autonomies, including a written voluntary test in Castilla-León<sup>11</sup>, La Rioja<sup>12</sup> and the Valencia Community<sup>7</sup> (oscillating between the 18-25%), the knowledge of the coofficial language (in the self-governing regions

that include, apart of Spanish, their language) or an increase in the final mark by working in the autonomy, based on a better understanding of the social reality.

### **3.3.2. Professional experience**

Normally this point differences between the pharmacy and other type of job in which the degree in Pharmacy is required.

This point rates the experience in a pharmacy without distinguishing the type of contract (proprietary, adjunct, substitute and regent) in all autonomies except Canary Islands<sup>13</sup>, Cantabria<sup>14</sup> and Castilla-León<sup>11</sup> that introduce the differentiation among the types of contract. Moreover, certain peculiarities exist depending on locality census, assigning a greater mark by month worked in rural towns, in order to favour professionals that gained their professional experience in disadvantaged conditions. As mentioned before, differences at this point comes from the variability in the demographic distribution of the self-governing regions, for example Valencia Community considers a rural condition if there are less than 800 habitants while Asturias fix the limit in 2.800 habitants.

The rating of other professional experiences, apart from the pharmacy, varies in a remarkable way in the different autonomies, even though it is always a lower mark. The Valencia Community considers globally all other professional practice, while the rest of autonomies evaluate them individually. They usually mention practice in hospital pharmacy, primary health assistance, investigators and director in distribution centers.

This way of distinguishing between professional practices has caused a great number of pronouncements, especially in Andalusia and Canary Islands in which the Court dictum that the experience in both pharmacy and hospital should be equal in evaluation. As many authors have pointed, this procedure is advantageous for hospital professionals as they have merit for their special qualification. On the other hand, many sentences have acknowledged the differentiation (as in Valencia or Andalusia).

### **3.3.3. Academic merits**

This point can be considered as the second in importance after the professional experience, as it represents around 20% of the final mark. The Asturias<sup>17</sup> and Murcia<sup>9</sup> autonomies assign the greatest percent (30%) meanwhile Galicia assigns the lowest (15%).

All scales include in this point the academic expedient, but not in a homogeneous way, giving a different value in the different marks. For example, Extremadura, Galicia and Murcia only consider higher marks (i.e. notable and outstanding). This point also includes doctorate, as well as the courses to obtain it, other degrees in health matters, and courses related to Pharmacy.

### **3.3.4. Other peculiarities**

Apart from the common aspects, most of the autonomies include certain variable aspects, contributing to heterogeneity in the 15 scales.

The written test, optional, can be considerate as the most important point, oscillating between the 18-25% of the final mark. Only Castilla-León, La Rioja and the Valencia

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Community include this test, being the subjects very similar among them.

The self-governing regions in order to find the best candidate for a new pharmacy include the knowledge in coofficial languages, in places in which the statute includes it, as the Balearic Islands, Catalonia, Galicia, Basque Country and Valencia Community. The reason argued is that this is a guarantee of understanding and knowledge about the area where the new pharmacy is going to operate. This point has to be considered thoroughly, in relation with the marks granted as well as the high number of dictum received in this matter.

#### **4. EU criteria**

The lack of clear limits in Spanish law related to pharmaceutical planning, has derived in the existence of three different models of adjudication, i.e. the Navarra, the Catalanian and the merits of competition. In this context, it is necessary to study the position of the European Union, especially the Commerce Commission. Obviously, the EU only intervenes in order to safeguard the application of the European Treaty.

Spain received in July 2005 an emplacement, continued by a written procedure<sup>15</sup> in June 2006, being answered by Spain and still waiting for resolution. The points to be answered were mostly devoted to the rules about property and the adjudication procedure and scales for it. Recently, two dictums of Luxembourg's Court supported the exclusive property of the pharmacist over the pharmacy: the Italian model and the instance presented by the German Court in relation with DocMorris. These decisions back up the system and make our subject of whole validity.

On the other hand, Asturias (in October 2007) and Andalusia (in March 2009) Courts referred preliminary questions to the Court of Justice about the procedure of authorisation of new pharmacies with respect to the article 43 of the European Treaty, concerning free establishment of professionals. Some aspects about this question can modify our topic, but are not already solved.

#### **5. DISCUSSION**

The public Administration considers that, in order to have a better service, the process of awarding a new pharmacy has to contemplate objective criteria. The process has to follow public and transparent procedures. From this point onwards, a great number of possibilities exist: chronological order in Navarra, establishment of an exposure period during which other pharmacist can attach to the initial expedient started by a pharmacist in Catalonia or a competition of merits started by the Public Administration in the rest of autonomies.

This first step has already caused controversy because the chronological order does not guarantee that the pharmacist in charge of that new pharmacy is the best qualified. Its true that the Law 14/86 determines that obtaining the degree enables the person for that profession but the experience is a very important value to guarantee quality standards in the Health care provision. The regulation of the adjudication of new pharmacies allows the selection of a specific professional profile, prepared from the point of view of basic knowledge of Pharmacy and from sociocultural understanding of the patient.

After studying all the actual scales, we suggest using a homogeneous one. It should look

for the best candidate, and most important, the suitable one for that job. To accomplish this goal, 5 sections will be considered, with its respective maximums: professional experience (40), academic merits (15), postgraduate training (20), languages (5) and a written optional test (25).

The process should give priority to experience, key factor for the good operation of the new pharmacy, not only in a professional aspect but also in the economic one. At this point, it could be interesting to study a way to facilitate the access to property for young pharmacists. One possibility is to increase the final mark in case of transferring the property of small rural pharmacies –usually run by young people- to the Administration. The small pharmacies will be available for new young pharmacists in the next adjudication process.

In this search of the best profile, the postgraduate formation turns to be very important, approximately 20% of the final mark, to favour the long life learning. The academic expedient should be considered with little relevance as it represents a requisite more than a merit to run a pharmacy. It would be interesting to consider the certificate in orthopaedics, which is a compatible work as it would add value to the pharmacy. Other degrees in Health sciences may denote knowledge, but most of them, except optics, are incompatible with a community pharmacy.

The understanding of languages is important in rural areas where the social environment forces to the use of coofficial idioms, as well as other foreign languages as English, because of globalization and the fact that great part of scientific articles and information use published in English.

The written test helps the recycling of the professional, not only in new therapies but also in regulatory aspects, toxicology, public health and management, which change quickly and affect the every day in the pharmacy.

Finally, having a unique scale, based on a common base for all the autonomies, and little variations following their idiosyncrasy, would give a stronger security to the applicants and more strength to the adjudication process in front of possible criticism from the European Commission.

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