

Italian reforms of healthcare practitioners' liability

An overview of the innovations with specific reference to insurance matters

On 28 February 2017, the Chamber of Deputies approved without amendments the “Gelli” Law on professional liability of healthcare professionals.

Health Ombudsman and other new bodies

One of the most significant innovations contained in the Law is the creation of an **Ombudsman for Health**, to whom recipients of medical care can address their complaints.

It is also envisaged that **new Regional Bodies** to manage healthcare risks and patient safety will be created to collect data about medical malpractice and related litigation, to identify appropriate measures to prevent and manage healthcare risks and also to train and update healthcare professionals.

Criminal liability of healthcare practitioners

Under a new provision of the Italian Criminal Code¹ a healthcare professional who causes death or personal injury to a patient during the exercise of his or her functions will be subject to the penalties for manslaughter² or negligent personal injury³. In the case of medical malpractice (*imperizia*), the healthcare professional will avoid liability if he or she can show that they acted in accordance with **recommended guidelines published under law**. In the absence of these guidelines the professional must adhere to principles of good practice.

Civil liability of the healthcare facility and practitioners

The Law provides that the healthcare facility will be **liable in contract** for the doctor's negligent or fraudulent behaviour. Conversely, the reform makes clear once and for all that practitioners are **liable in tort**, with the ensuing consequences regarding burden of proof and statutes of limitation, unless they have entered into a contractual relationship with the patient.

As regards limitation, a contractual action must be brought within 10 years, while an action under tort must be brought within 5 years.

Mandatory attempt at conciliation

A party cannot bring a claim for damages arising out of healthcare liability without having first filed a request for **mandatory conciliation**. Failure to file such a request will mean that the judicial proceedings will be declared inadmissible. All parties, **including the relevant insurance companies**, must attend. A party who fails to attend the conciliation procedure will face costs liability in respect of experts' and legal fees, whatever

¹ Art. 590-*sexies* of the Italian Criminal Code, entitled “Liability in negligence for death or personal injury in a healthcare environment”

² Art. 589 of the Italian Criminal Code

³ Art. 590 of the Italian Criminal Code

the outcome of the civil proceedings, in addition to a fine.

The insurance company must **offer a sum** for compensation or explain the reasons why no compensation is due. If the insurance company does not make an offer during the conciliation stage, and the claimant is successful in the first level civil proceedings, then **the judge will send a copy of the judgment to the relevant Italian regulatory body (IVASS)**.

Right of recovery from, or administrative liability of, the healthcare practitioners

A **recovery action** against the healthcare practitioner may be brought only in the event of his/her gross negligence or fraudulent behaviour. If the healthcare practitioner was not joined to the judicial proceedings for compensation, the recovery proceedings may be brought after the damages have been paid, and in any event within one year of the date of the payment.

Any judgment in favour of the claimant against the healthcare facility or its insurers will not be effective against the professional in recovery proceedings if he or she is not joined to them.

In any event any settlement agreement entered into by the parties in the compensation proceedings will be effective in recovery proceedings against the healthcare practitioner.

In relation to any judgment in favour of the claimant against the **public** healthcare facility or the healthcare practitioner, the action for recovery against the healthcare practitioner can only be brought by the public prosecutor before the administrative court ("Corte dei conti"), which is the Italian institution with the role of safeguarding public finance and guaranteeing the respect of judicial system.

The amount of the recovery against the healthcare practitioners cannot exceed three times his/her gross annual salary.

Mandatory insurance

A professional must have appropriate insurance cover in place to cover gross negligence in the carrying out of his/her professional activities.

The Law will also require healthcare facilities to have insurance in place to cover:

- civil liability to third parties and
- any damage caused to the professionals themselves while they are working at the healthcare facility.

The Law provides for an **retroactive extension** of the period of insurance cover for the risks arising out of the exercise of the professional activity up to **10 years** prior to taking out the policy, provided that the claim is submitted to the insurance company within the policy period.

If the professional stops carrying out his/her professional activities for any reason, the Law provides that the professional's insurance cover must include an **extension** to cover claims submitted up to **10 years** after the cessation, including against the professional's heirs, and which are based on events which occurred during the policy period.

Direct action against insurers

The Law gives claimants a **direct right of action against the insurers** of both the healthcare facility and the professional, within the limits of the insurance cover of the relevant policy. The action is subject to the same time limit as claims against healthcare facilities or professionals.

A significant innovation concerns the prohibition on rejecting cover on the basis of the policy terms, insofar as those terms differ from the ones which will be set out in a Ministerial Decree in due course. The Ministerial Decree will also prescribe the minimum requirements for insurance policies for healthcare facilities.

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Establishment of Guarantee Fund

The Law also provides that the healthcare facility and the insurance company must inform the professional about the legal proceedings brought against them by the claimant within 10 days of receipt of the claim form. Finally, it is anticipated that a **Guarantee Fund** will be established for damages arising out of medical malpractice.

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