

Medical Negligence and Guidelines in Italian Criminal Law

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Abstract

Criminal prosecutions related to medical negligence have registered a significant increase in the last decades. Italian lawmakers were interested in addressing the issue and intervened in 2012 with the Balduzzi Decree, which provided for the exemption from criminal liability for slight negligence of the physician who acted following the guidelines and medical protocols.

Subsequently, in 2017, to fight the phenomenon of "defensive medicine", the Italian legislator approved the Gelli-Bianco law entitled "Provisions on patient care safety and professional responsibility of health care providers", which introduced Article 590-sexies "Negligent liability for death or personal harm in the health sector" to the Italian Criminal Code. This Article provides for the exclusion of medical liability for lack of skill when the physician acts in compliance with guidelines published according to the law or, in any case, accredited by the scientific community or, in their absence, following best medical practices, except in cases where the patient's particular situation requires a different behaviour. The Gelli-Bianco law, designed to address the perplexities related to medical negligence that followed the Balduzzi Decree, seems to have generated new debates in doctrine and jurisprudence, which have considered the exclusion of criminal liability a cause of non-punishment with unclear application boundaries. In this regard, the United Sections of the Supreme Court intervened with the Mariotti judgment of February 22, 2018, No. 8770, intending to end this discrepancy in jurisprudence and the ambiguities surrounding the interpretation of Article 590-sexies of the Italian Criminal Code.

Keywords: Medical negligence, criminal liability, guidelines, best medical practices, Gelli-Bianco law.

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European Journal of Economics, Law and Social Sciences ISSN 2519-1284 (print) ISSN 2510-0429 (online)

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