Selected Legislation and Jurisprudence: National

Medical Liability: The Current State of Italian Legislation

1 Introduction

The professional liability of healthcare professionals is a decidedly current issue; indeed, in the past decade litigation regarding alleged medical malpractice has increased exponentially in Europe.¹ Substantial changes have occurred in the context of medical liability legislation in Italy with the coming into force of Law no. 189/2012, also known as the ‘Balduzzi Law’. Article 3 of this law states that “the healthcare professional who, in carrying out his/her professional activities, adheres to the guidelines and best practices accredited by the scientific community, cannot be held criminally liable for malpractice, whilst the obligation for compensation, as defined in article 2043 of the Civil Code, persists. The judge shall also take due account of the standard of conduct denoted above when determining eventual compensatory damages”.² This article also establishes a special concession system for the liability insurance of medical professionals. The quantification of compensation for biological damages is based on the tables of Articles 138 and 139 of the Insurance Code, whose applicability was originally restricted to compensation for injuries caused by road traffic accidents. Since the emission of the new law, two key issues have

² Article 2043 of the Civil Code: ‘Compensation for unlawful acts: Any intentional or negligent act that causes an unjustified injury to another obliges the person who has committed the act to pay damages’.
been subject to criticism: first, the scope of the legislation, given the fact that it confers a certain degree of criminal liability to individual healthcare professionals, and second, the specific reference to Article 2043 of the Italian Civil Code. The present article will mainly focus on the latter, attempting to outline the essence of medical liability in the context of civil law in view of the numerous rulings issued since the introduction of the new legislation. This topic has attracted new interest following a recent judgement (17 July 2014) by the Court of Milan.

2 Legislation Overview

Prior to 1999, the admission of a patient to a healthcare facility entailed formulating an admission contract, or a contract for professional services between the patient and the facility. In this regard, the legislation stated that

the responsibility of the healthcare professional towards the patient for damages caused by individual diagnostic or therapeutic errors shall only be considered extra-contractual, and consequently compensation claims by the patient have a five-year limitation period as established by the first paragraph of Article 2947 of the Civil Code.3

Another approach was proposed promoting the contractual liability of both the healthcare facility and the individual physician.4 Several arguments supporting the contractual nature of the liability of individual healthcare professionals have since been highlighted. It was considered more fitting to establish a contract with protective effects in favour of a third party, as the contract between the healthcare facility and the individual physician would subsequently cover the care of patients requiring their services.5 However, the latter approach attracted further criticism, specifically that patients affected by a breach of duty were not entitled to claim damages under such contracts in favour of a third party. Instead, patients had to claim under the separate contract for professional services stipulated between the patient and the facility. Because of this criticism another scheme was introduced, consisting

3 Court of Cassation, 3rd Civil Chamber (no. 1716/1979).