

Future litigation after Covid-19 pandemic in Italy

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We have read the article entitled ‘Is Covid-19 sowing the seeds for future litigation?’ by Riley-Smith et al.,¹ and we want to congratulate the authors for this successful article and make some contributions. This paper gives a detailed overview of various types of litigation that may follow the Covid-19 pandemic in the UK; this scenario is very likely to be replicated in Italy, where this pandemic has caused – and is still causing – significant individual and social suffering. Before the pandemic, medical malpractice litigation in Italy was so dangerously high that, in 2017, the Government passed a law for medical liability (law no. 24/17) to reduce litigation. The legislator intended to stand alongside physicians, introducing a new Article in the penal code: a clinician is not punishable when a patient’s injury or death has been sustained because of incompetence and the physician operated according to national guidelines. This provides for the institution of a National Guidelines System and encourages healthcare providers to use clinical practice guidelines included in the official lists. Regrettably, nowadays, the situation is still alarming: for every 1000 hospital admissions, there are 1.3 malpractice claims.²

During the Covid-19 pandemic, numerous critical issues surfaced in Italy.

- Both non-specialist doctors and newly graduated medical students were recruited to face the emerging crisis and stand in the front-line: lack of experience at a practical/clinical level surely increased the risk of mistakes, especially when dealing with such a new disease.
- Because of insufficient/inappropriate personal protective equipment (PPE), several healthcare workers contracted Covid-19, and many died: out of 37,352 reporting occupational coronavirus infections, 73.2% occurred in the healthcare sector (43.7% were nurses and physiotherapists; 20.8% intermediate care technicians; 12.3% doctors); out of 129 Covid-19 deaths in the occupational setting, 11.9% were doctors.³ According to the National Federation of Doctors (FNOMCeO), 167 doctors died due to coronavirus infection.⁴

- Especially at the time when the coronavirus epidemic was spreading in Italy and the virus features were almost unknown, several patients contracted the virus while being hospitalised for other pathologies. This will probably lead to an increase in litigation for hospital-acquired infection.
- Initially due to the absence of specific therapy, numerous patients died because of inadequate therapy, diagnostic delay of infection or ineffective intensive-care management.

In light of the above, the rate of litigation in the wake of the Covid-19 pandemic is destined to rapidly increase. The Italian government had proposed an amendment, in Decree-Law 17 March 2020, n. 18 (so-called ‘Cura Italia’), which should have limited medical liability, but this proposal was not approved.

In the USA, several states including New York, New Jersey and Michigan have adopted laws that provide healthcare professionals and hospitals with ‘immunity from liability for any injury or death that is believed to have been incurred due to acts or omissions committed in good faith’ during the Covid-19 pandemic.

Several questions and concerns emerge: are current regulations still valid during a pandemic? Can medical malpractice be judged using the same parameters as before Covid-19? Should all the struggles the healthcare system faced during such challenging circumstances be taken into account in the post-pandemic era?

In light of the previous observations, we conclude that there is a need to guarantee the widest clinical freedom which recognises science as the only guide in doctors’ professional work.

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