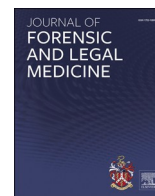




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Professional autonomy and liability of the resident doctor: Between the hammer and the anvil

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ABSTRACT

Within the regime of professional liability of doctors in training, the limits and the medico-legal aspects of their professional duties are not well-defined. The Italian Court of Cassation established in its sentence no. 26311/2019 that resident doctors do not work at hospitals just to receive their professional training. They are, indeed, licensed physicians and therefore bear full responsibility for the acts performed within the compass of their professional activity. The purpose of this article is to briefly define the possible consequences of this judgment.

In Italy, resident doctors (doctors in training) carry out - or should carry out - their activity under the guidance of a tutor. This implies that they cannot make decisions in complete autonomy since they must always consult their tutor. However, on July 4, 2019 the Italian Court of Cassation specified in its sentence no. 26311/2019 that resident doctors fully answer for their own conduct, and even if a mistake occurs as a consequence of an action that they were not in the position of performing, they are directly accountable for this action.

The judges of the Court came to this conclusion after analysing the case of a woman who was admitted to a healthcare facility and committed to the care of a resident doctor. During her hospital stay the woman had an abortion with septic shock, resulting in severe permanent damage, because the doctor in charge - the resident doctor - was not able to adequately manage the patient.

The judgement 26311/2019 brought the undeniable autonomy of trainee doctors - who are medical doctors in all respects - to the fore. While it is true that they have not full autonomy, nonetheless they are not mere executors of their tutor's orders. According to the Court, if the supervising tutors delegate a medical act to junior doctors and the latter feel unable to cope with the task because of their inexperience, they must manifest their refusal. Otherwise, junior doctors shall assume full and direct responsibility for their actions and for any damage these actions may inflict on the patient.

The Court's ruling has clearly had a direct impact on junior doctors' behaviour. It presents them with a choice whenever they are charged with a task: they stand at a crossroads between following their tutors' orders or disobeying them because they are scared at the prospect of making a mistake and, as a consequence, being involved in medico-legal

disputes. Asking resident doctors to assess on a case-by-case basis their ability to handle certain clinical situations means recognizing them as doctors who have professional autonomy. Therefore, this acknowledgment inevitably "neutralises" the dichotomy "medical doctor/student".

It is important to note that if resident doctors refuse to take on the requested task, they may incur disciplinary action against them. In case of disciplinary proceedings, they shall assume the burden of demonstrating that their refusal was down to their poor experience and inadequate skills. Thus, trainee doctors may find themselves being caught between the hammer of possible mistakes and the anvil of potential disciplinary measures.

The foregoing considerations show how important and necessary would be to guarantee these doctors in training respect for their role and provide them with the same protection ensured for other health workers. The situations in which trainee doctors compensate hospital staff shortages are increasing, together with their responsibilities and duties. But what doctors in training need is an improvement in guarantees and a reduction in risks for their security.

For example, due to the COVID-19 emergency, some Italian University Polyclinics are increasingly asking resident doctors to work under inadequate conditions. These hospitals provide neither a sufficient number of personal protective equipment nor contractual protections to the doctors, whose working conditions have inevitably sparked off an intense debate on the matter in Italy.^{1,2}

Against this background, it is desirable that hospital management policies be reshaped in their outlook on doctors in training. They are medical professionals having duties but also rights - the right to be protected and to work in a safe environment, among others. Working at

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a steady pace and experiencing episodes of workplace bullying are, for example, a few of the sources of stress for junior doctors. If hospitals do not provide fertile ground for collaboration and respect at work, they risk not enabling doctors to properly undergo their training program or adequately develop the professional skills they need for their job.

Unfortunately, inadequate working conditions can only lead to more far-reaching consequences and make health care quality worse: under certain conditions, doctors are more likely to make mistakes and defensive medicine practices are more likely to be used.³

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