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Alessandra Pioggia

Essays and Articles

Health Protection in the New Medical Liability Law: Constitutional and Public Law Profiles (p. 305)

Elisabetta Catelani, Pietro Milazzo

This paper reconstructs the fundamental principles underlying medical liability within the more general principle of protection of the constitutional right to health. Starting with a review of previous legislation, the paper analyses the relevant international scenario and, especially, the EU legal system that encourage States to adopt rules guaranteeing patient safety and avoiding the constraints arising from defensive medicine. A detailed analysis of the public law profiles of the new Gelli-Bianco Law (No. 24/2017) clarifies the meaning of the introduction of the care safety principle, the relationships between the central State and regional organizations aiming to safeguard the said principle and, lastly, the issues that will be raised by legislation implementation and case law.

Civil Liability of Medical Personnel After the Gelli Law (p. 345)

Massimo Franzoni

The essay examines the main novel features of the Gelli law. It deals with aspects of risk management, care safety and doctor-patient relationships. The essay addresses, above all, the issue of health organizations' and individual physicians' civil responsibility towards the patients, highlighting the underlying dual system. A final reference is made to modes of filing claims against doctors.

The Court of Audit's Jurisdiction for Indirect Damage to the Treasury in Law No. 24/2017 (p. 365)

Jacopo Bercelli

This paper focuses on public health physicians' responsibility, according to law No. 24/2017, for indirect damage to the Treasury, as ascer-

tained by the Italian Court of Audit. Indirect damage to the Treasury occurs when a physician engages in malpractice damaging a patient who is then entitled to compensation from the public healthcare institution employing the said physician. The new rules, as set out in law No. 24/2017, fit consistently into the general framework of public servants' administrative responsibility. While parliamentary debate initially confirmed civil jurisdiction, the law's definitive text explicitly affirms the Court of Audit's jurisdiction. More specifically, this essay addresses an outstanding problem, namely whether, in this specific case, the Court's jurisdiction should be understood as being exclusive or, on the contrary, as shared with civil courts.

The Vaccine Issue from the Perspective of Constitutional Frameworks (p. 399)

Francesco Severino Florio

This text aims to review the historical and legislative development of the vaccine issue: from the first application of such practices to the present day (including analysis of controversial cases). The study includes detailed legal and scientific reflections on the much-debated correlation between vaccines and autism, as well as the potential damage caused by vaccines, in light of European Court of Justice case law. We then consider vaccination coverage in Italy via a comparative analysis, focusing particularly on recent legislative action undertaken by the Emilia-Romagna region. Finally, the text explores the initiatives put in place with regard to collective vaccine prevention, up to the recent legislative framework referred to in law No. 119/2017.

The Cognitive Potential of Administrative Data in the “Data Revolution” Era: the Case of Hepatitis C Eradication Policies (p. 421)

Matteo Falcone

The current “big data revolution” increasingly requires attention from public authorities, especially at the European and international levels. The big data phenomenon and data processing and analysis methods adopting the logic of big data analytics also involve Italian public authorities and raise challenging issues, for both public knowledge and

decision-making. Starting with the very recent case of policies to eradicate hepatitis C in Italy, this work seeks, on the one hand, to refocus the debate on persistent critical issues in administrative data management and the cognitive weakness of the Italian public administration, and, on the other, to highlight the cognitive potential of big data analytics, as well as the new perspectives that its widespread use, first and foremost by organized citizens, could open in terms of public decision-making.

Notes and Comments

Further Perspectives of Municipal Federalism: Examples and Practical Cases of Municipal Resource Implementation (p. 447)

Guglielmo Bernabei

Local governments' need to find resources involves the identification of additional forms of municipal federalism. Much interest has been raised by specific-goal taxes, flexibly adaptable to the regulations of local governments. Another important question is related to the implementation of "value capture" mechanisms relating to building infrastructures benefiting several different categories of people. The principle of "value capture" requires that beneficiaries support, to a large extent, the burden of the infrastructure, thus allowing a redistribution of benefits engendered by public investments. The analysis of a wide set of examples with an applied research perspective helps identify new opportunities for local governments, in observance of the principles of equality and subsidiarity.

On the Constitutionalisation of the Budgetary Stability Principle within the Framework of the Spanish Autonomic State (p. 485)

Carlo Alberto Ciaralli

In 2011, the Spanish Parliament amended article 135 of its Constitution and introduced the principle of financial and budgetary stability, strict control over public administration and Autonomous Community budgets, limits on public spending and the structural deficit. The effect of this reform was to strengthen the State's supervisory powers and financial control over the Autonomous Communities and a greater role in areas reserved to the Communities' jurisdiction. The financial constitution, in

time of crisis, changes its meaning, in the light of the strong link between national legislation and European rules concerning public finance.

Regional Observatory

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