



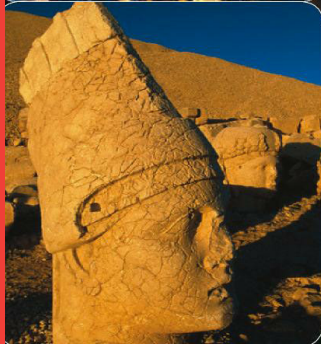
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The responsibilities of a health volunteer rescuer: ethical and medical- legal considerations

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Summary

In Italy, the organization of health services of external hospital emergency and urgency calls is based on skilled rescue teams (made up of a doctor, a nurse and technical staff) and rescue teams of volunteers coming from rescue associations. The authors analyze the figure of the health volunteer rescuer into the external hospital emergency and urgency system, focusing on the peculiar ethical and medical-legal aspects that characterize the responsibilities in civil and penal areas (according to the Italian legal system). Furthermore, also the responsibilities of the health volunteer rescuer that works in a team with the medical staff are analyzed together with the form of responsibility that characterizes the doctor or nurse that carries out voluntary activities in his/her free time.

Introduction

In the area of Italian emergency and urgency public service the health volunteer fits in with full rights and full legitimacy. Its legal placement has been defined and organically ruled by the August 11th, 1991 Law, no. 266 “Legge-quadro sul volontariato” (outline law on volunteering). In reality, this law regulates the associations in general terms, without analyzing in detail the voluntary ones operating in the health field. An important legal precedent can be found in the December 23rd, 1978 law, no. 833, Establishment of the National Health Service, art. 45, Voluntary associations: “The function of voluntary associations liberally constituted, which aim is to contribute to the National Health Service’s institutional purposes, is recognized. Among the voluntary associations of the previous comma also the institutions of associative nature are included, their activities are based, as statute’s law article, on the members’ voluntary and personal service...”. Thus the law recognizes the worth and the specific function of the health volunteering, which, therefore, contributes to the achievement of the National health service’s institutional purposes, operating through an agreement with the public structure.

Moreover, the Law delegates the Regions of the organization’s rules and the health volunteer’s activities. Because of the conventional nature with the public structure, of the contribution to the achievement of its institutional purposes, of the execution of a public service, to the volunteers of rescue associations, the State recognizes the legal qualification of public service officer 1 2 during the carrying out of institutional activities. The volunteer rescuers are, mostly, subjects without any specific competence and health education, who exercise another professional activity in their lives. The training and re-training programmes and its certification have to be defined by the Regions and the Independent Provinces. The conference State-Regions established that “the

1 Law August 11th 1991, no. 266, art. 2, comma 1: “As voluntary activity has to be considered the one performed in a personal, spontaneous and free way, through the organization of which the volunteer is part, without lucrative, even indirect, purposes but exclusively for solidarity aims ”

2 Penal Code, art. 358, Notion of the person entrusted with public service: “For penal law purposes those who serve public service by any way are public service officers. A disciplined activity in the same forms of public function, but characterized by the lack of its typical powers is what must be seen as public service..”

3 Supreme Court, Section VI, Sentence July 9th 1997 n° 6687: “Regarding the notion of a person entitled to public service, the employees of a corporation or a transferee society, also in a non exclusive way, of a service of public interest, must be considered public service officers, as they contribute the carrying out of the activities connected to it, it is relevant for the public or private nature of the society or of the contractor to whom this activity can be referred to”

personnel operating in the emergency and urgency system has to follow an consistent formative course, regardless of the membership to the National Health service and/or other associations, Voluntary Associations” as “the general aim is represented by the quality of the cures through the functional and operating integration of every sector of the emergency system – health urgency.” Overall, the volunteers, at the end of the training course, must be able to:

- ✧ Recognize and evaluate vital parameters and theirs main alterations
- ✧ Performing basic reanimatory manouvres (Basic Life Support)
- ✧ Give oxygen, according to protocols
- ✧ Immobilize the spine, pelvis and limbs
- ✧ Give a haemostasis
- ✧ Protect and medicate wounds
- ✧ Assist an emergency delivery
- ✧ Transport a patient in the most suitable position
- ✧ Take a patient away from any dangerous situation

From the analysis of the competences and activities that the National and regional laws forecast must be acquired and known by the volunteer rescuer, we deduce that the training and continuous retraining process of the volunteers is fundamental and founding: the responsibility of the volunteer’s compliance, for what concerns training and ability to the tasks, will be assigned to the voluntary organization and, specifically, on its health director doctor.

A primary role of support to the emergency and urgency system is left to the volunteer: the limit of the work of the non health volunteer, that found its action in a contest of qualified solidarity performance, can be identified with the invasiveness (with the exception of the introduction of oropharyngeal cunnulas as a support to the ventilation activities expected in the BLS cardiopulmonary reanimation protocols and the obvious exception of titled and qualified rescuers to perform different health professions). The trespassing towards more invasive manouvres can reasonably integrate the crime assumption of unauthorized exercise of a medical profession³, in addition to that of culpable and voluntary personal injuries.

Concerning the evaluation of the volunteers’ possible civil and penal responsibility, the lack of a specific legislation and the lack - at least in the emergency and urgency context (different from the case of non-urgent secondary transportations) - of contractual clauses, make it go back into an extra-cantractual area (ex art. 2043 of the Civil Code)

For what the paramethers for the evaluation of the non-health rescuers’ responsibility concerns, we could, extensively and indicatively, refer to the principles that govern those of non-medical health personnel. Despite the fact that non univocal doctrinal and jurisprudential interpretational trends exist, the volunteer, to be qualified to operate, follows a specific training course with standard programmes on a national scale, defined by precise legal references and certified by a third organism different from the one that cured the trainings (the executant-rescuer’s accreditation is prepared by the medical and nursing personnel on duty at the 118 operations room).

The presence of health, medical, nursing and obstetrical personnel is common in the roles of Health Rescue Associations (Italian Red Cross for instance). This presence, unfortunately, often generates misunderstandings about the tasks and the limits of the health worker’s workability that is also rescuer. It is necessary to remember that the only limits in the health workers’ actions, legally qualified to their professional practice, are those that law indicates as dependent on every single professional profile: the acquisition of a university title and the obtainment of the professional practice qualification. This not only allows the health worker to carry out the profession, but mainly implies the health worker’s compliance to the juridical and ethical law articles, mandatory and prevailing on the Rescue Associations’ regulations, in case these would introduce contrast elements. The ethic codes, under a strictly juridical profile, have the nature of a discipline, therefore the violation of ethical law articles involves, apart from the disciplinary measure, also that of “noncompliance of laws, regulations, orders and disciplines”, the guilt’s founding moment. The Italian Medical Code of Ethics is oriented, for instance, just in this direction, in the actual version of December 16th 2006, where, in the art. 1, Definition, “The Medical Code of Ethics contains the principles and rules that the doctor-surgeon and the dental surgeon.. must observe when exercising the profession.. The behavior of the doctor must be consistent with its dignity and stateliness also outside the exercise of the profession, in harmony with the solidarity, humanity and civil obligation that inspire it..” can be read.

For what concerns the doctor, volunteer and non-volunteer, in the contextual reference of the health emergency and urgency, the Ethical Code contains the punctual and fundamental references: art.3, Doctor’s duties: “The protection of Men’s life, physical and psychic health, and the relief from suffering are the doctor’s duty..”; art.4, Liberty and independence of the profession: “The exercise of medicine is founded on liberty and independence of the profession which institute a doctor’s inalienable right..”; art.8, Duty of intervention: “The

4 Penal Code, art. 348, Illicit exercise of a profession.

doctor, independently of his usual activity, can never refuse to rescue somebody or to give urgent treatments and has to become active promptly to ensure assistance”; art.9, Disasters: “ the doctor, in case of catastrophe, disaster or epidemic disease, has to be at the right authority’s disposal”; art.36, Urgency assistance “When urgency conditions subsist, considering the will of the person if stated, the doctor has to get going to ensure the essential assistance”.

Similar considerations also apply for the nurse, profession that, with the coming to effect of the February 26th 1999 Law, no.42 has gained the juridical nature of intellectual profession and guarded by the State, similarly to what happens for the medical profession. In the Nurse’s Ethic Code we can read: art.1.2 “the nursing assistance is a service to the person and the community...”; art.1.3 “ the nurse’s responsibility consists in curing and taking care of the person...”; art. 1.4 “ the ethic code guides the nurse into the development of a professional identity and the assumption of an ethically responsible behavior. It is a tool that informs the citizen of the behaviors he can expect from a nurse”; art. 3.6 “The nurse, in case of emergencies, has to rescue and become promptly active in guaranteeing the necessary assistance. In case of disaster, he has to be at the competent authority’s disposal”.

Conclusions

In conclusion: when the health personnel, even in a voluntary rescuer’s capacity, finds himself in presence of health situations where an intervention of professional nature is needed, he cannot limit himself to just carry out tasks, which are much more restricted and per definition non invasive and non therapeutic, typical of the non health volunteer rescuer, but has the juridical and ethical duty to become active according to what is expected in their specific professional profile.

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