Glossary

Ascertainment Methodology This is the methodology for ascertaining presumed error/inobservance in healthcare treatment on Living Persons and/or Cadavers, involving the examination of clinical and documentary data, specialist consultation, autopsy (external and/or internal examination) and further diagnostic procedures carried out by a medico-legal expert.

Anaesthesia Report This report comprises all the information about the physiopathological state of the patient during anaesthesia and surgery. It is very important in lawsuits for death during surgery or anaesthetic accidents.

Anamnesis and physical examination This is the prior step for diagnostic and therapeutic accuracy, the omission of which indicates inadequate medical conduct.

Authorisation for Admission Consent form signed by patient or patient's legal representative if the patient is physically or psychologically incapable of doing so.

Autopsy This is the examination of a cadaver to determine or confirm the cause of death.

Capability of Causing Harm (Ex-Ante Criterion of**)** This is the capability of a specific action/event to cause harm or disease. Such a capability must be ascertained by comparing the nature and strength of the action/event to the effects observed.

Causal Link/Causal Value This is the connection between error/inobservance (a possible *cause*) and an injury (the *effect*), where the second event is understood to be a consequence of the first.

Cause for Justification of Error/Inobservance The situation where an error/inobservance may be justified under the circumstances of the harm caused. A medico-legal expert must supply technical reasons for cases of justifiable error, since a final decision will be made by a judge of the court.

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Chronological Criterion This indicates the possible correlation between the moment of action of the causal factor (which may involve the omission of an action) and the moment when the injury becomes manifest.

Clinical Discharge Report This is issued when the patient is discharged, from the medical point of view, and goes home or to another hospital. It summarises the period in which the patient was hospitalised and should be a complete document, which includes the cause of hospitalisation, with precise diagnoses, treatments administered, evolution, the state of the patient when discharged and treatment(s) to be followed, with indications of any future examinations and whether the family doctor should carry out monitoring.

Clinical Synthesis This is the summary of the clinical, documentary and objective data before the phase of analysis and evaluation in Ascertainment Methodology on Living Persons.

Conditio Sine Qua Non In Legal terms, this is the juridical theory concerning the essential requisite existing between a specific antecedent and the fact in the case where the fact would not have occurred without the antecedent. It is also known as the *but-for* rule and is the minimum indispensable for the objective imputation of harmful events in Criminal Law.

Consent Documents These have to demonstrate that the patient was properly informed and that he has fully understood the implications of the given medical intervention and has agreed to it. They are generally compulsory by law.

Consultation with Specialist This takes place if preliminary evaluation of the clinical and healthcare documentation reveals the need/suitability for requesting the advice of one or more medical specialists in the ascertainment phase, to ensure better definition of the case in question. This involvement should preferably take place before clinical ascertainment, as the specialist may profitably contribute to the clinical ascertainment phase and to the choice of any further examinations to be carried out.

Counterfactual Reasoning This is a type of hypothetical reasoning in which, regarding the causal link, one tries to answer the question as to whether, without the conduct of the actor—contrary to the facts—a certain event would have taken place in any case. If the ascertainment indicates a negative answer (the event would have taken place), one may conclude that the action, or omission, is a necessary condition for the event to take place. If instead the answer is positive (the event would have taken place in any case), the behaviour of the actor was not a necessary condition and there is no causal link.

Criterion of Exclusion of Other Causes The cause of juridical relevance may act alone or together with other pre-existing or simultaneous causes (co-causes) that took place later which, if they are true co-causes, do not interrupt the causal link. Instead, the criterion of exclusion of other causes, if satisfied, leads to the opposite consequence, i.e., interruption of the causal link. In order for

interruption of the causal link to occur, "other causes" must be identified, either alone or necessary and sufficient to produce the event, or producing it completely autonomously.

Criterion of Phenomenological Continuity This indicates the possible correlation between the moment of action of the causal factor (which may involve the omission of an action) and the moment when the injury becomes manifest.

Criterion of Rational/Logical Credibility This is the criterion that refers only to the average experience and expertise of a particular medical category and is used for evaluating the causal value of error and the relationship of an actual causal link between error/non-observance and damage.

Damage Identification This covers death as well as possible bodily and/or biological damage or incapacity, which can be classed as temporary or permanent.

Degree of Probability of Causal Value and Causal Link The ascertainment of the causal value and causal link between error/inobservance and injury, which is identified by applying counterfactual reasoning and then medico-legal criteria, expressed in terms of certainty, high probability/near-certainty, average probability, low probability, possibility or exclusion of the causal value- causal link between error/non-observance and injury.

Emergency Room Assistance Sheet or Emergency Room Report This is compiled when the patient has requested care in the Emergency Room, including the reason for consultations, the results of any examinations and tests that have been requested, clinical opinion and diagnosis.

Error This is the violation of a rule shared by the national and/or international medical community as regards an aspect of professional practise, classified into the following types:

–True/Real error: This is a material error, of omission or commission, due to violation of a universal and/or epidemiological scientific law, or of consolidated rules of experience and competence.

–Pseudo-error (apparent error): This is an error not due to incompetence or ignorance on the part of a medical doctor or a member of the healthcare personnel, but is *apparent*. It may be caused by erroneous or unknown scientific knowledge at the time of the event, by the unpredictability or inevitability of the event, by chance, or by *force majeure*.

–Conscious error: This is an error made by a medical doctor or a member of the healthcare personnel in full conscience. Aware of having not identified the true (etiology of the) pathological state of the patient, the medical doctor applies diagnostic or therapeutic procedures with only an *ex adiuvantibus* aim (i.e. without true efficacy as regards diagnosis and/or treatment) causing damage to that patient.

Ex-Ante Evaluation/Judgement This is used in establishing error in which the medico-legal expert must imagine being in the same space–time circumstances of the medical and/or healthcare personnel involved (training, age, qualifications and professional experience) and the technical and instrumental equipment at their disposal, thereby drawing a comparison between ideal and real conduct.

Explanatory Law This expresses regularity in the succession of events observed in nature, from which it is possible to infer a known or still unknown fact (in which case it is predicted). The applicable laws are subdivided into universal and statistical laws.

Ex-post Analysis This is the subsequent analysis of the conduct of medical and healthcare personnel, taking into account the existence of the patient's consent, the diagnostic tests, prognosis, treatment and care of the patient.

Falsificationism This is the theory that falsifiability is an essential characteristic of any scientific hypothesis, which must be capable of being falsified by scientific observation and empirical experiments.

Force Majeure This is the occurrence of an extraordinary event or circumstance that is beyond the control of the physician.

Highly Complex Medical Interventions The nature and complexity of the medical intervention must always be evaluated when an error/inobservance in the healthcare conduct has been identified. If such an intervention involves highly complex technical challenges in cases of error/inobservance, the physician is liable only if the fault was extremely serious or intentional.

Ideal Medical Conduct This is the conduct which a physician should have followed during diagnosis, prognosis and treatment/therapy. Ideal standards of medical conduct are dictated by medical ethics and by medical conduct as regulated by law, which may overlap. Ideal Medical Conduct is established by reference to scientific sources, such as *Guidelines* (national and international), *Consensus Documents* (national and international), *Operational Procedures* (local, national and international), and *Scientific Literature* (national and International *Treatises* and *Journals*).

Inter-Consultation Sheet This sheet records all actions by other specialists who may examine the patient at the request of the doctor responsible for that patient. It is compiled when the patient's state, other than that for which that patient was admitted to hospital, is documented by a specialist from another discipline. The Inter-consultation Sheet is important, because when medical–legal evaluation of the case is performed all professional actions and their quality, degree of diligence, opportunity and effectiveness are taken into account.

Medical Orders Sheet This is the sheet on which doctors attending the patient are obligated to record their decisions.

Medical Responsibility/Liability This may be separated into two categories, the first of which is the positive responsibility of the physician for curing the patient. The second type is the negative responsibility not to cause harm to the patient. If harm is caused or the patient dies, then the physician may be liable under criminal law or civil law, depending on the nature of the medical conduct and of the judicial proceedings that are taken.

Necessary Condition A necessary condition is a single condition that must be satisfied in order for an event to take place. The necessary condition is examined through counterfactual reasoning.

Non-Observance of Rules of Professional Medical Conduct This is the non-observance of rules of conduct as referred to in National Laws, National/Local regulations, Hospital codes of conduct or those rules deriving from scientific medicine as taught in degree courses and specialisation schools, permanently updated through the scientific literature, congresses and training courses. The rules are mainly orientative and must be applied according to the diagnostic and therapeutic features of each single case.

Nursing Journal This sheet covers all incidents relating to vital signs, administration of medicines and medications, requests for care and any unusual decisions (including, for example, requests to doctors on duty made by nurses for extra medicines, especially analgesics, etc., outside usual working hours). Detailed notes which may be of interest are frequently found in nursing sheets.

Obligation of Means In medical malpractice, this is a burden on the physician who owes such an obligation to perform a given treatment in accordance with appropriate standards of care.

Observance of Minimum Quality Requirements/Important Rules of Conduct These are the minimum standards of conduct, understood as a set of duties incumbent on the physician and other health professionals when carrying out their work in the healthcare context.

Obligation of Result In medical malpractice this is a burden on the physician who owes such an obligation to attain a precise result when treating a patient. However, it is normally only applied in a small number of specific medical specialities, i.e. plastic surgery, orthodontic surgery, etc.

Operating Room Report This report records the nature of the surgical intervention, all incidents related to the technique used, and specific patient findings. It is therefore a patient document which is usually illustrated with a simple drawing showing what actions were taken in the surgical field, e.g. sutures, drains, etc. This sheet is essential for examining medical conduct if surgical or post-surgery complications arise.

Pathological Features These are features of the disease recognised in living persons/cadavers, divided into *initial*, *intermediate* and *final* clinical pictures, resulting in restoration to health, death, chronic pathological state or permanent injury.

Patient's Journal This document records daily changes in the hospitalised patient's condition, response to treatment, recommended tests and their results, and clinical evaluation of the patient's state until discharged.

Physiopathological Pathway This is the actual chain of events which took place and links the initial pathological features with the intermediate and final ones.

Post-Surgery Evaluation Sheet This sheet describes monitoring of the patient with respect to general conditions and the specific surgical operation performed. It is also very important when examining the quality of healthcare in this phase (early detection of complications, early and correct actions to avoid them, etc.).

Pregnancy Monitoring Sheet In cases of pregnancy this document indicates all examinations, records of vital signs, incidents occurring to the mother, development of the foetus (size, weight, heartbeat, etc.), results of screening for chromosomopathies and malformations, etc.

Pre-Surgery Examination Sheet This document is compiled when surgical intervention is necessary. Pre-surgery examinations are carried out by an anaesthetist, according to established procedures, and patients are classified with respect to their ASA index or risk level. This sheet is very important in view of the information which must be given to patients and of the risks which they knowingly accept.

Real Medical Conduct This is the actual conduct of a physician during diagnosis, prognosis and treatment. Evaluation of the correctness of these various diagnostic, prognostic and therapeutic phases is carried out by comparing them with the ideal conduct.

Record of Assistance at Birth This is a clearly compiled record of the phases of the birth clarifying problems, the time when they are detected and at which moment each professional intervened.

Reports of Complementary Examinations These refer to diagnostic tests, the results of which are interpreted and reported by the specialists who made them, e.g. imaging, neuro-physiological, psychological tests, etc.

Source Hierarchy This is the gradation of scientific sources of non-equivalent importance into (1) Guidelines, (2) Consensus Documents, (3) Operational Procedures, (4) Literature (Treatises), (5) Literature (Journals).

Standard of Care This is a medical treatment guideline, which can be general or specific and may vary between healthcare centers. It specifies appropriate treatment based on up-to-date scientific evidence and collaboration between medical professionals involved in the treatment of a given condition. The

medical malpractice plaintiff must establish the appropriate standard of care and demonstrate that the standard of care has been breached, with expert testimony.

Statistical Law This is limited to stating that the occurrence of an event is accompanied by the occurrence of another event in a certain percentage of cases and with relative frequency.

Sufficient Condition This is a single condition which, if verified, guarantees that a particular occurrence will take place.

Topographic Criterion This describes the correlation between the injury and the anatomo-functional location at which the hypothesised causal factor acted; it takes on importance mainly in the framework of the injuriousness of physical energy, i.e. mechanical, electrical, radiating or chemical energy, or due to bacterial or viral agents. The criterion may be deemed to be satisfied in the case of direct topographic correspondence (e.g., fracture of the skull due to a fall), indirect (counter-coup) or at a distance (pulmonary embolism after contusion of lower limbs).

Universal Law This law derives from consolidated and unanimously shared scientific knowledge.

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