

15 MAY 2019

DISPUTE RESOLUTION ALERT

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Deathly negligence and jail time for doctors, engineers and directors

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CLIFFE DEKKER HOFMEYR

With the Gauteng High Court confirming the anaesthetist's conviction and sentence, a precedent of jail-time punishment was set for negligence by professionals that leads to the death of a person or persons.

Deathly negligence and jail time for doctors, engineers and directors

A gynaecologist, practising in Witbank, recently received a five-year direct imprisonment sentence for negligently causing the death of a woman in labour. The sentence may seem too harsh for a first offender but the conviction was based on multiple counts of negligence committed by the doctor and not one act alone. A medical practitioner is expected to exercise the degree of skill and care of a reasonably skilled practitioner in their field. When the court decides reasonableness, it will have regard to the general level of skill and diligence possessed and exercised by members of that branch of the profession.

The High Court held that the gynaecologist's negligence was of such a serious nature that he had to be convicted of culpable homicide. The doctor failed to attend to the patient despite being called out by the hospital at around midnight. He also did not attend to the patient properly after the baby was delivered and when he was called and informed of the patient's physical emergency, he opted to give telephonic instructions to the nurses. In sentencing, the court found that the doctor failed, under the circumstances, to do everything that a specialist should have done to save the life of the patient.

In 2017 an anaesthetist was given a suspended prison sentence and community service for causing the death of a two-year old. With the Gauteng High Court confirming the doctor's conviction and sentence, a precedent of jail-time punishment has now been set for negligence by professionals that leads to the death of a person or persons.

Like doctors, engineers, especially civil engineers, who design, build, construct and maintain infrastructure projects and systems in the public and private sector, including roads, buildings, airports, tunnels, dams and bridges may face serious criminal charges if they fail to carry out their professional duty. For example, if a mistake in the design of a bridge causes a fatality and it was foreseeable that the error may have caused a bridge to collapse and the engineer neglected to correct the mistake, the engineer may be convicted of culpable homicide. Alternatively, an engineer could also be held criminally liable if they simply accept the instructions of clients, failing in their duty to act diligently under the circumstances.

The same principle applies to company directors. For example, a company manufactures a device which is potentially dangerous when used and such device is sold to the public. A director may be held criminally liable if they are informed about the inherently dangerous device, fully aware of the potential dangers of the device and its defective design, foresee a possible fatality if the defect is not corrected, and the director nevertheless fails to outlay money to make the device safe. This is especially the case if it is proved that the company had the necessary financial means to make the device safe, but greed and bigger bonuses took precedence over the safety of the public. Such a director may be prosecuted and found guilty of culpable homicide and receive a prison sentence. A distinction, in such instances, can be made between the culpable liability of the company and that of the director in their personal capacity.

Deathly negligence and jail time for doctors, engineers and directors

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A professional may find comfort in the fact that their insurance will cover damages claimed in a civil court, but such comfort is limited as insurance does not protect the doctor, engineer, director and other professionals from imprisonment.

Some may ask why a driver of a motor vehicle, found guilty of culpable homicide for a serious offence, for example failure to stop at a red traffic light, receives a suspended sentence of imprisonment while professionals are treated differently and receive direct imprisonment? The answer most likely lies in the fact that the professional renders a service to the public in general and has a duty to exercise a level of skill, care and diligence of a professional in their field when rendering that service.

Whilst in the past, professionals referred any civil claim brought against them to their insurer, the time has now come for such professionals to consider the seriousness of the allegations of negligence laid against them. Such professionals should seek legal counsel to carefully assess the possibility of a criminal case being instituted against them. A professional may find comfort in the fact that their insurance will cover damages claimed in a civil court, but such comfort is limited as insurance does not protect doctor's, engineer's, director's and other professionals from imprisonment.

Pieter Conradie





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