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www.hegazylaw.com

1095 Corniche El Nile
Street 4th & 5th Floors,
Suites 35 & 43 Garden
City, Cairo, Egypt

Tel.: +202 27 93 49 39

Fax: +202 27 93 49 44

Email:
info@hegazylaw.com

HEGAZY
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Medical Negligence: Criminal and Civil Accountability in Egypt

Medical errors can result in permanent injury or death. A few cases reach the media's attention, but there are countless other cases that remain unknown. Often, the victims of medical negligence or their relatives settle with the doctor or hospital responsible and choose not to pursue the matter in court. Hospitals and clinics prefer this option to avoid negative publicity that could damage the medical facility's reputation and that of its doctors. Filing a criminal or civil suit takes much longer than signing a settlement agreement, yet the value of such cases is to publicly hold the individuals and institutions involved responsible for their actions before a court of law.

Criminal Sanctions for Medical Negligence

Criminal sanctions can only be filed against individuals in their personal or professional capacity. When a doctor's medical negligence results in a patient's death, the patient's relatives can file a police report against the doctor in his personal capacity under Article 238 of the Egyptian Penal Code.

Financial penalties are no longer commensurate with the severity of the crime.

Article 238 of the Egyptian Penal Code no. 58/1937 imposes a minimum sentence of six months' detention and/or a maximum EGP 200 fine for anyone whose error, negligent behavior, or non-compliance with existing laws and regulations results in the death of another. Negligence committed by an individual who is under the influence of drugs or alcohol, is acting in gross violation of professional standards, or has intentionally denied the victim assistance at the time of the incident engenders a harsher sentence. The sentence is increased to a detention period of 1-5 years and/or a fine ranging from EGP 100 to EGP 500 in the case of those aggravating circumstances. Negligently killing three or more victims does not affect the minimum sentence of one year's detention. Rather, the legislator sets the standard maximum at seven years and raises it to 10 years if there are aggravating factors.

Egyptian law is more lenient with regard to injuries caused by negligence. Article 244 of the Penal Code sets a maximum sentence of one year's detention and/or EGP 200 when the suspect commits the crime under standard circumstances and increases it to a maximum of two year's detention and/or EGP 300 for negligence under aggravated circumstances or negligence that results in the victim's permanent disability.

In some cases, the medical facility may be liable for hiring an unqualified professional or for lack of oversight. The family can file a civil case against the medical facility in such a case.

Civil Liability for Medical Negligence

Under Egyptian law, personal civil liability that depends on the existence of a crime cannot be proven unless the competent criminal court issues a final guilty verdict against the accused party. For this reason, medical negligence civil lawsuits can take years. This is because the law balances between two competing interests: the interests of the deceased or the injured party and that of the doctor who may have followed all of the correct protocols but was unable to prevent the incident. There are some legal methods to hold doctors and medical facilities accountable when a criminal case is not viable.

First, the victim can file a civil suit against the doctor or facility if the victim has evidence that either party took his/her money for a medical procedure under fraudulent or misleading purposes. An example would be if the victim paid the money expecting that a specific doctor would perform the procedure, but the procedure was performed by another doctor, or by a nurse. Secondly, the victim to file complaints with the Medical Syndicate and the Ministry of Health. The Medical Syndicate has the administrative authority to investigate cases of medical negligence and can issue a warning to the doctor or cancel the doctor's membership, which would prevent the doctor from practicing medicine in Egypt. The Ministry of Health has the authority to close medical facilities that are in violation of the Ministry's regulations.

Potential Medical Liability Law

A draft medical liability law is currently being discussed before the Egyptian parliament. Its provisions are expected to hold doctors to a higher standard of professionalism and impose harsher penalties in cases of medical negligence. This is a necessary legislative development because the current criminal sanctions are an insufficient deterrent. An EGP 200 fine in 1958 would be comparable to an EGP 50,000 fine today. Hopefully, amendments to the Penal Code will be on the horizon.

ماذا لو... صدر قانون جديد للتيسيرات الضريبية

ويعتبر مشروع هذا القانون هو امتداد لأحكام القانون رقم 173 لسنة 2020 بشأن التجاوز عن مقابل التأخير والضريبة الإضافية والفوائد وما يماثلها من الجزاءات المالية غير الجنائية وبتجديد العمل بالقانون رقم 79 لسنة 2016 في شأن إنهاء المنازعات الضريبية والذي تم نشره بالجريدة الرسمية بالعدد رقم (33) مكرر في أغسطس 2020.

وفي النهاية ماذا لو.. تم إقرار هذا القانون والعمل به سوف يتسنى للشركات العاملة في النشاط الاقتصادي الحصول على حد خصم على مقابل التأخير والضريبة الإضافية - سوف يتم تحديده وفقاً للمعطيات مع الموافقة على مشروع القانون - ولهذا القانون ميزة كبرى سوف تستفيد منه الشركات التي عليها متأخرات كبيرة من مقابل التأخير والضريبة الإضافية لمصلحة الضرائب المصرية.. حيث إن مشروع القانون قد أشار الى انه قد فتح باب السداد لجميع المستحقات الضريبية أياً كان تاريخ وجوب أدائها او سبب استحقاقها والتي سوف تعطى أريحية كبيرة للشركات الاقتصادية والتي يعد مقابل التأخير والضريبة الإضافية مع مرور الوقت منذ تاريخ استحقاقها هو العامل الأهم والأكبر من الدين الضريبي الملقى على عاتقها نظراً لأن مقابل التأخير يحسب وفقاً لكل نوع كل ضريبة على حدا (1.5%) شهرياً لمقابل تأخير عن ضريبة القيمة المضافة - ويحسب مقابل التأخير طبقاً لسعر الائتمان والخصم المعلن من البنك المركزي في الأول من يناير السابق على هذا التاريخ - تاريخ الاستحقاق - مضافاً إليه 2% مع استبعاد كسور الشهر والجنيه).

حيث انه وفقاً لسياسة الدولة في الوقت الراهن والتي تعكس حرص الدولة على التجاوب مع طلبات الممولين والمكلفين بالسداد وذلك للتيسير عليهم في ظل الأزمة الاقتصادية التي يشهدها العالم في الوقت الراهن وذلك على النحو الذى يتسق مع سياسة الدولة للتخفيف من الأعباء المالية والضريبية عن كاهل قطاع النشاط الاقتصادي وبالأخص القطاع الخاص وماله له من قدره على تنشيط الاستثمارات وتحفيز القطاعات الإنتاجية والصناعة والتصدير وبالإضافة الى زيادة موارد الدولة المصرية لمواجهة التداخيات الاقتصادية التي تواجهها.. أعلنت الصفحة الرسمية لرئاسة مجلس الوزراء المصري بتاريخ 26/5/2022 عن بيان صادر من السيد/ محمد معيط وزير المالية عن مشروع قانون ستقدم به الوزارة لتيسيرات ضريبية جديدة للممولين والمكلفين لمساندة الأنشطة الاقتصادية وتحفيز الإنتاج.. وهو مشروع قانون بالتجاوز عن مقابل التأخير والضريبة الإضافية وذلك تحت شرط سداد جميع الضرائب المستحقة قبل 30 يونيه 2022. علماً بأن مشروع القانون مازال قيد الاعداد والمناقشة حتى الآن

وقد حدد مشروع القانون أنواع الضرائب التي سوف يسرى عليها هذا المشروع وهى (ضريبة الدخل ، ضريبة القيمة المضافة ، وضريبة الدمغة ، رسم تنمية الموارد المالية للدولة) وذلك بشرط سداد الممول أو المكلفين بالسداد لجميع الضرائب المستحقة عليه أياً كان تاريخ وجوب أدائها أو سبب استحقاقها سواء كان ذلك (ضريبة أقرار ، ربط لعدم الطعن ، أو ربط بالاتفاق مع اللجنة الداخلية ، أو بناء على قرار لجنة الطعن أو حكم محكمة) وذلك في موعد غايته وفقاً للقرار 30 يونيه 2022. وقد أشار البيان أيضاً أن هذه التيسيرات الضريبية الجديدة التي سوف يتم إصدارها لا تخل بالإعفاء الضريبي المقرر بالمادة (110) من قانون الضريبة على الدخل رقم 91 لسنة 2005 والتي تمنح الممول او المكلف بالسداد إعفاء آخر بخصم 30% من مقابل التأخير في حالة الاتفاق بالمأموريات التابع لها

03 Sinai Committee Exemptions

On 24th March 2022, the President Abdel Fattah El-Sisi issued Decree No. 128 of 2022, excluding tourist establishments in Sharm El Sheikh, Dahab, and El-Aqaba Bay in South Sinai Governorate, from being subject to all provisions of the Integrated Development Law in the Sinai Peninsula, issued by Law No. 14/2012.

The Importance of the Decree

Previously, before the issuance of the decree, all companies that practicing commercial activities within Sinai Peninsula that wished to complete routine procedures such as adding or removing shareholders, amending the distribution of shares, amending their Articles of Association, or the changing their corporate structure had to obtain the approval of “The National Authority for the Development of the Sinai Peninsula” in addition to the approvals of the Ministry of Defense, Ministry of Interior and General Intelligence Services Authority.

After the issuance of such decree, companies no longer need to obtain the approval of The National Authority for the Development of the Sinai Peninsula, which used to be time-consuming and create difficulties.

Additionally, The National Authority for the Development of the Sinai Peninsula shall refer all applications related to lands, real estate, projects and companies within the areas subject to the provisions of this decision as they are to “the Governorate of South Sinai”, the General Authority for Investment and Free Zones “GAFI”, or the Financial Regulatory Authority “FRA”, or the competent government authorities.

Ownership Restrictions Remain

Land and real estate built in the areas subject to the provisions of this resolution is still limited to Egyptian citizens and 100% Egyptian owned legal entities.

Without prejudice to already acquired rights, the Egyptian state has full disposal rights over the land and real estate in South Sinai. The government implements a the usufruct system with a maximum of 75 years; giving the usufruct holder the right to build on the land for the duration of the usufruct period. The buildings themselves can be sold, in accordance with the model contracts distributed by the government in accordance with the decree.

In all cases, it is impermissible to conclude any transactions on land or real estate in the Sinai Peninsula without first obtaining the approval of the Ministries of Defense, Interior and General Intelligence, and any contract concluded in contravention of that requirement is absolutely null and void and may be challenged before the competent Egyptian courts.

04 Executing Arbitral Awards in Egypt

Companies wishing to execute foreign or domestic arbitral awards against an Egyptian respondent can do so in Egypt. The Civil and Commercial Arbitration Law no. 27 of 1994 gives arbitral awards the res judicata in Egypt and permits their executory judgment in most circumstances. Also, it immunizes them from being contested by the ordinary contestation procedures. Claimants can proceed with the enforcement of their arbitral awards after the 90-day period during which the respondent can file a claim seeking the award's annulment.

Furthermore, the law defines the procedures and the conditions of the arbitral award execution while considering the circumstances of the arbitral award issuance as it might be issued in the application of foreign law. Therefore, the Egyptian legislator describes detailed conditions and procedures for the execution of the arbitral award as follows:

- ❖ If the arbitration procedures were not subject to Egyptian Law, it is required to demand the execution of the arbitral award before the trial court of competent geographical jurisdiction. In the case of international commercial arbitration, the competent court is the Cairo Appeal Court. And if the arbitration procedures were subject to Egyptian law, the award shall be executed by order from the competent court.
- ❖ Egyptian law obliges the arbitral tribunal to hand over a copy of its award to the parties within 30 days from the issuance date. After that, the claimant may demand the execution of the arbitral award from the competent court by submitting certain documents, specifically an original copy of the arbitral award, a photocopy of the arbitration agreement, an official Arabic translation of the award if it had been issued in a foreign language and a deposit certificate of the award.

In addition, Egyptian law requires additional conditions related to the preservation of Egyptian public order. For instance, the award should not conflict with any other previous Egyptian judgment issued for the same dispute involving the same parties. In addition, the arbitral award itself shall not embody any violation of Egyptian public order, and the opposing party must be correctly notified in accordance with the appropriate procedures.

Also, the court may suspend the execution of the award if the respondent files a demand on reasonable grounds within 60 days starting from the day of the first court session. In this case, the court should issue its judgment within 6 months from the date of suspension. Notably, the legislator did not apply any sanction for exceeding this period. Therefore, some arbitration cases in Egypt may take longer to execute. Still, this does not contradict the overall purpose of the law, which is to make the execution of arbitral awards easier and guarantee the rights of parties who resort to alternative dispute resolution methods.

05

In-Depth: Fintech Law no. 5/2022

This February, the Egyptian Parliament approved Law no. 5/2022 regulating the use of financial technology (fintech) in non-banking financial activities.

The law aims to widen the scope of the electronic non-banking financial activities with the objective of cutting the costs of services provided by these activities, as well as promoting the role of the Egyptian Financial Regulatory Authority ("FRA") in making sure that non-banking activities observe transparency and rational governance.

The Fintech Law lists the non-banking financial markets and instruments subject to the supervision and control of the Financial Regulatory Authority ("FRA"), which include:

- ❖ Capital markets
- ❖ Insurance activities
- ❖ Real estate and mortgage financing
- ❖ Financial leasing
- ❖ Factoring
- ❖ Financing of medium, small and micro enterprises
- ❖ Consumer financing

Fintech Startups

Applications for the incorporation of companies desiring to engage in non-banking financial activities through financial technology techniques shall be submitted to the FRA on the form prepared for this, accompanied by the documents determined by the authority, including in particular the following:

1. A bank deposit certificate stating that the issued capital has been fully paid according to the nature of the company's activity.
2. 3 copies of the Memorandum of Association and Articles of Association.
3. A request submitted by the founders' representative including in particular the name of the company and a statement of the founders' names and the issued and paid-up capital.
4. The company's auditor's acknowledgment of accepting the appointment.

By a decision of the FRA's chairman, a committee comprising technical and legal elements is formed to express an opinion and submit to the authority's chairman to issue a decision regarding the establishment of these companies within 30 days, notwithstanding the failure to issue a decision during this period is considered a rejection for the incorporation.

The FRA may issue a temporary license for startups in financial technology for a period not exceeding two years, to support these startups in providing non-banking financial activities and products.

Furthermore, startups are exempted from licensing fees.

Regulations for Existing Companies

These companies are prohibited from practicing their activities inside or outside the Arab Republic of Egypt for residents or companies that conduct their activities in Egypt, except after obtaining a license to do so from the FRA.

FRA's Board of Directors determines the required fees for licensing the company's activity, which shall not exceed EGP 50,000 (fifty thousand Egyptian Pounds).

06

Child Custody and Visitation Rights

Child custody is one of the most important issues after divorce and one of the most common reasons of conflict between the separated couples. Egyptian law regarding these conflicts about child custody aims only to provide the child the suitable care he needs and is derived from Islam's Sharia.

Knowing that the children have special needs in their lives (physically, educationally, psychologically, etc..) they must live with the parent who can deal with these needs properly and fulfill them, so the custodial parent according to the Law No. 20/1929 amended by the Law no. 100/1985 is the mother. While many jurisdictions outside of Egypt give secondary or even joint custody to the father, Egyptian law gives the maternal grandmother, paternal grandmother, and several female relatives custodial priority over the father, with the father coming in 16th place. Under the draft personal status law being discussed by the Egyptian Parliament, the father would come in 4th place.

Mandatory physical and legal custody with child support lasts from birth until the child reaches the age of 15. After that period the judge asks the child which parent he or she prefers to stay with until the age of 21. For females, the voluntary custody arrangement may end with her marriage. Child support isn't obligatory after the age of 15.

Each one of the parents shall have the right to see the child. In the case that it is difficult to arrange visitation right of the children by agreement, the court shall organize it and it will take place where there is no psychological harm to children.

Visitation rights shall not be less than 3 hours a week between 9 am till 7 pm and preferably during holidays so as not to contradict with the child's educational obligations.

The draft personal status draft law is expected to regulate the child's overnight visitation the child with the non-custodial parent so that he can have the child for number of hours not less than 8 hours each week and not exceeding 12 hours (between 8 am and 10 pm)

In this case it would not permissible to combine overnight visitation and visitation in the same week. Overnight visitation would also be capped at a maximum of two days per month. A request of child's overnight visitation would be refused if the child is less than 5 years old or has a health condition that prevents overnight visitation), If the father is traveling, he may request virtual visitation via electronic means.

If the non-custodial parent doesn't pay the custody support or the alimony without acceptable excuse, he may not be allowed to have the visitation or the overnight visitation.

The primary custodial parent must fulfill these requirements:

1. Be in good physical and mental health as she/he should be a reasonable person able to raise the child safely.
2. Sane and competent and having reached the age of legal responsibility (21).
3. Have good morals, be trustworthy and not have been previously convicted in a crime of honor.

4. Belonging to the same religion as the child.

In the new personal status draft law, the non-custodial parent is expected to have more visitation and overnight visitation rights, which will help the children to become more psychologically stable as they will have a stronger, healthy relationship with both parents.

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