

Assessment of Medical Negligence by Medical Practitioners in Nigeria

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Abstract

The Medical and Dental Practitioners Act is a Federal Statute in Nigeria that regulates everything with regards to medical practitioners. The Act also talks about acts of medical practitioners that will amount to professional negligence, and prescribes the duties that medical practitioners owe to their patients and established bodies to handle cases of malpractice or professional misconduct by practitioners. Doctrinally, this article looked at the issue of negligence by practitioners in discharging their duties that happens on a daily basis across the world. We found that recent developments in Nigeria have seen cases of medical negligence by doctors both in hospitals and other institutions like schools get swept under the rug/carpet after a period of time, even in this era where the social media space has become an active tool of advocacy and fight for justice. We suggested ways to make sure that medical practitioners actually perform their duties with a reasonable standard of care expected of them. It was opined that practitioners who violate any ethical code of conduct guiding their profession gets the prescribed punishment provided, and aggrieved parties get enough compensation for damages, especially in instances where the negligent act results into the death of a person.

Keywords: Negligence, Assessment, medical negligence, medical practitioners.

INTRODUCTION

Internationally, human beings on a daily basis, sustain damages from acts of carelessness by others which may be intentional, unintentional, or accidental. Negligence is the failure to act with the prudence that a reasonable person would exercise under the same circumstances.¹ Reported cases of medical negligence seems to be on the rise in Nigeria. There are complaints on the social and main stream media of the permanent damage caused to patients by the negligent acts of medical practitioners in Nigeria. It is a known fact that the upper middle class and the upper class in Nigerian travel abroad for medical tourism. The incumbent president and the immediate past president have also sought medical treatment abroad severally. All these stemmed from the negligence of medical practitioners, lack of adequate medical equipment, brain drain in the medical sector among others.

Nigerians also have a poor complaints culture as they are usually reluctant to call out a negligent medical practitioner

or may be ignorant that a tort has been committed against them. Medical practitioners are also known to be reluctant to report their colleagues. This article will address medical negligence, laws and statutory bodies regulating medical practice in Nigeria, and duties owed to patients by medical practitioners and legal redress available for medical negligence.

CONCEPTUAL CLARIFICATIONS

It is of absolute necessity to identify the key concepts and have a brief knowledge and understanding of what them. These concepts are considered and discussed below.

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¹ Advanced English Dictionary.

Tort

Tort is a civil wrong, other than breach of contract, for which a remedy may be obtained, usually in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another². Tort is a Latin word derived from the word, *tortus*. It means 'wrong'. Tort, in plain language means a legal wrong for which the law provides a remedy. The purpose of the law of tort is to remedy injury or wrong, by giving a person the legal right to sue in civil law for compensation and or other remedy. Although, the law of tort does not have any generally acceptable and recognized definition, academicians, legal scholars, legal luminaries and various heads of courts have attempted to define this concept to the best of their knowledge. Tort is defined as any wrongdoing for which an action for damages may be brought. A tort may be defined broadly as a civil wrong involving a breach of duty fixed by law, such duty being owed to persons generally and its breach being redressible primarily by an action for damages.³ Monetary damages is the normal remedy for tort but an injunction is another important remedy. An injunction is a court order forbidding the defendant from doing or continuing to do a wrongful act. The law of tort enforces rights and liability and provides remedy in the areas covered by it which includes: malicious prosecution, trespass to chattel, that is, conversion and detinue, trespass to land, negligence, nuisance, defamation, deceit, passing off, etc. Tort can also be classified according to the kind of rights they protect. Some of these rights include:

- 1) Personal interests.
- 2) Property interests.
- 3) Economic interests.
- 4) Miscellaneous interests.
- 5) Interference with relationships.
- 6) Interference with judicial process; and
- 7) Interest in reputation.

Negligence

Negligence is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against

unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights⁴. Negligence is the breach of a legal duty to take care, which results in damages suffered by another individual. The tort of negligence does not consider the intention of the tort-feasor. The concept of negligence has been defined by academicians, legal luminaries and various heads of courts in summary as culpable carelessness.

In the case of *Odinaka v Moghalu*, *AKPATA JSC* said "Negligence is the omission to do something which a reasonable man, under similar circumstances would do or, the doing of something which a reasonable and prudent man would not do"⁵. *ANDERSON B in Blyth v Birmingham Water Work Co. Said "Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do"⁶. The Nigerian Supreme Court in *U.T.B (Nig) v. Ozoemena*,⁷ defined negligence as "Lack of proper care and attention; careless behaviour or conduct; a state of mind which is opposed to intention; the breach of duty of care imposed by common law and statute resulting in damage to the complainant."*

The tort of negligence has developed over the years and it has been designed to redress the damages suffered by aggrieved parties as a result of negligent act(s) of another person. It is also worthy to note that not all careless acts give rise to a successful claim in tort. In simplified terms, it means that not all careless acts amount to negligence. For an individual to be successful in a claim for damages in negligence, there are three important elements that must be established. These elements have been laid out in the case of *First Bank Nigeria Plc. V. Banjo*⁸. They are as follows

- 1) That the defendant owed a duty of care to the plaintiff;
- 2) That the defendant breached the duty of care; and
- 3) That the plaintiff suffered damage as a result of the breach.

If for any reason, the person who has suffered as a result of the negligent act of another person cannot prove any of the above-mentioned elements, the action for claiming negligence fails⁹. The exception to this rule is in situations

²Black's Law Dictionary, 12th Edition, B. A. Garner, ed.

³Kodilinye and Aluko, *The Nigerian Law of Torts* (3rd edn, Spectrum Books Limited, 2018).

⁴Black's Law Dictionary. 12th Edition, B. A. Garner, editor.

⁵(1883) 11 QBD 503 at 507 CA.

⁶(1856) 11 Ex 781 at 784; 156 ER 1047; (1843-60) All ER 478. ⁷(2007) 1 SC (Pt. 2) 211.

⁸(2015) 5 NWLR (PT. 1542) 253.,

⁹See the case of *Sterling Bank v. Akintoye Akinbode* 2018) LPELR-50669 CA.

where the doctrine of *res ipsa loquitur* applies. It is a Latin maxim which means, the fact speaks for itself. In this situation, the act of negligence is so clear that there is no need for the aggrieved party to prove he/she has suffered a damage. Instances where this doctrine applies simply entails that the burden of proof shifts from the plaintiff to the defendant. The defendant will have to prove beyond the balance of probabilities that he/she is not to be held liable for any damages suffered by the aggrieved party.

The case of *Donoghue v Stevenson*¹⁰ is the locus classicus for the tort of negligence. This is the case of a man that bought a bottle of ginger beer brewed by the defendant respondent. His lady companion drank it and then became ill. They didn't know the bottle contained the decomposed remains of a snail which wasn't seen until the lady was refilling her glass because the bottle was opaque. The lady raised a claim in the tort of negligence based on the duty of care owed by the producer to her as a consumer, which had been breached. The House of Lords held; that the manufacturer of the beer was liable to the plaintiff customer.¹¹

Medical Negligence

The medical profession is commonly regarded as a noble profession which is bound by rules and regulations both nationally and internationally. All licensed medical practitioners are expected to carry out their duties in accordance with the provisions of the various rules and regulations guiding their operation. These rules also provide methods of handling any form of malpractice by medical practitioners including negligent acts. Medical negligence can be defined as a situation or act whereby a licensed medical practitioner fails to exercise a reasonable duty of care ought to be exercised by a competent health practitioner in the course of discharging his duty therefore causing injury to another individual.

The Black's Law Dictionary also defines medical negligence as the failure to provide medical, dental and psychiatric care that is necessary to prevent or to treat serious physical or emotional injury or illness.¹² There has been an increase in negligent acts by medical practitioners over time. Medical negligence can take various forms such as a doctor forgetting an instrument inside his patient after operating, nurses being sluggish in attending to sick patients, pharmacists administering drugs to patients without a proper prescription, etc. The failure of a medical practitioner to exercise reasonable degree of skill and care will also be deemed to be medical negligence. It is the

failure of a skilled doctor to exercise a reasonable degree of skill and care expected of an average medical doctor. It should be noted that once a doctor undertakes to treat a patient, there is an already existing duty of care, whether or not, there is an agreement. This article seeks to consider the decision of the Nigerian courts on cases regarding this concept and proffer solutions to reduce negligence in the health sector.

Medical Practitioner

A medical practitioner is any individual who, after undergoing the prescribed and recommended medical or dental education programme, has paid his practising fees, has met the stipulated requirements and is issued a license by the appropriate or relevant body which enables him/her to practice as a registered personnel of that particular profession in medical system. They are all called health worker, be you Medical Doctor, Pharmacist, Nurse and Midwife, Laboratory Scientist and other para-medics. Medical doctors comprises of physicians, obstetricians, cardiologists, gynecologists, pediatricians, among a host of other specialists/disciplines in medicine.

Medical Negligence In Nigeria

In Nigeria, each profession in the medical system have their regulatory bodies and statutes that sets out the rules and regulation for their practice. The Medical and Dental Council of Nigeria (MDCN) is the umbrella body that prescribes the rules of professional conduct and ethics for medical practitioners (doctors). It is established by the Medical and Dental Practitioners [MDP] Act, 1988. Other than a court litigation, there are other means to ensure accountability of medical practitioners. They are:

- a. The professional self-regulation method, and;
- b. Public procedure for holding doctors accountable.

This paper's focal point of discussion is the Acts established by the National Assembly on medical and dental practice. We shall mention the other professions in passing in our work as deemed relevant or necessary to bring out clarity of understanding.

ACTS OF MEDICAL PRACTITIONERS THAT CONSTITUTE PROFESSIONAL NEGLIGENCE

Generally, when a medical or dental practitioner, in the pursuit of his profession, has conducted himself in such a manner regarded as disgraceful or dishonorable by his professional brethren of good repute and competency, then he is guilty of infamous conduct in a professional

¹⁰ [1932] A.C.562 at 577.

¹¹ (1932) AC 562 HL *Atia v British Gas Plc.* (1987) 3 WLR 1101 CA. *Haley v London Electricity Board* (1964) 3 All ER 185 HL.

¹² Bryan A. Garner; *Black's Law Dictionary*, 12th Edition p.1133.

respect. The list of acts that amounts to an infamous conduct are in-exhaustible because of the nobility of the profession and the highest ethical standards required of its members. Some of the acts of medical practitioners that will constitute medical negligence are as follows:

Failure To Offer Immediate Attention to a Patient

It is expected of a medical practitioner to offer or give immediate attention to a patient, especially when it is an emergency situation requiring immediate treatment. In the case of *Dickson Igbokwe v. University College Hospital Board of Management*¹³, the deceased was admitted into the defendant's hospital as an in-patient in the maternity ward of the hospital. She was diagnosed with post-natal psychosis after delivery. A nurse was assigned to watch over her and did not so she jumped from the fourth floor of the hospital and died. The hospital was held liable because the deceased was not closely watched by the hospital staff despite being diagnosed of a mental imbalance.

Wrong or Incorrect Diagnosis

A medical practitioner is expected to conduct a proper diagnosis on a patient's illness or sickness before going ahead to administer any form of treatment. In the case of *De Freville v Dill*¹⁴, a medical practitioner carelessly certified a man as being of unsound mind. He was held liable in damages for the unjust detention of the patient in a mental patient ward. In *University of Ilorin Teaching Hospital v. Mrs Theresa Akilo*¹⁵, the Court of Appeal, Ilorin Division held that: 'A medical doctor is liable in negligence if without due care and skill he wrongly diagnosed a patient's ailment resulting in error of treatment. In such situation, it cannot be argued with any seriousness that such wrong diagnosis in anyway linked to administration or the management and control of the appellant.'

Making a Mistake in Treatment

Mistakes can occur in the course of medical practitioners carrying out their duties. Any patient that sustains injury because of a medical practitioner's mistake can bring an action against that person and recover damages. In the Nigerian Supreme Court case of *University of Nigeria Teaching Hospital Management Board & Ors v. Hope Nnoli*¹⁶, Mr Hope Nnoli was the only qualified chemist working with the U.N.T.H. An unqualified pupil chemist, Mr. Nwuzor, was undergoing internship with Hope Nnoli. On the 20th February, 1989, Mr. Nwuzor compounded chloroquine

syrup, which caused the death of children aged between one and four years. A post mortem examination conducted on the bodies of the children confirmed that the cause of the death was the chloroquine syrup. There was a public outcry and the Management Board of the Teaching Hospital carried out an investigation to determine the person or persons responsible for the excessive drug dosage. After the investigation, Mr. Hope Nnoli and Mr. Nwuzor were found liable in negligence.

Failure to see a patient as often as his medical condition warrants or Neglect of a Patient

Where a medical practitioner fails to see a patient regularly as a result of the health conditions or where there is a neglect of that patient, such practitioner will be liable for negligence. In the case of *Denloye v Medical and Dental Practitioners Disciplinary Committee*¹⁷, Dr. Denloye, a medical practitioner was found guilty of professional misconduct on five count charges. The first count charge was on the ground that the appellant neglected his patient, Fatilatu Bisiriyu. The doctor was directly in charge of treating the patient under the Western Nigeria Ministry of Health. The Medical and Dental Practitioners Disciplinary Tribunal found him guilty and his name was subsequently struck off from the register. He appealed the decision of the tribunal at the Court of Appeal and they ruled in his favour because the tribunal did not adhere to the principles of fair hearing. This case proves that a medical doctor will be liable for negligence where he intentionally neglects a patient put under his care.

Retention of Objects During/after an Operation

This happens where a doctor after performing a surgery at the theatre with the Theatre nurse who is responsible for swab count being present, leaves behind, in a patient's abdomen, swabs, towels or instruments after the operation. This will amount to negligence on the doctor's part, and a claim for negligence will suffice. The suit of negligence will be against the doctor who carried out the operation, the nurse and the hospital management. In the case of *Mahon v Osborne*¹⁸, swabs of cotton wool were left inside of his abdomen after a medical surgery. The patient was unconscious throughout the period of the operation and had no knowledge of how and why cotton swabs were left in his stomach. He sued for negligence and the court held in the plaintiff's favour. The defendants were liable for negligence.

¹³*Dickson Igbokwe v. University College Hospital Board of Management* [1961] WNLR 173.

¹⁴(1927) All ER 205; 96 LJKB 1056.

¹⁵*University of Ilorin Teaching Hospital v. Mrs Theresa Akil* [2000] 22 WR.

¹⁶*University of Nigeria Teaching Hospital Management Board & Ors v. Hope Nnoli* [1994] 8 8 NWLR (pt.363) 407

¹⁷*Denloye v. Medical and Dental Practitioners Disciplinary Committee* [1968] All NLR 306, ¹⁸(1939) 1 All ER 535; 2KB 14.

Other Acts of Practitioners that Constitute Negligence Include

- 1) Manifestation of incompetence in the assessment of a patient.
- 2) Failure to refer or transfer a patient in good time when such a referral or transfer was necessary.
- 3) Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient.
- 4) Failure to advise, or proffering wrong advice to a patient on the risk involved in a particular operation or course of treatment.
- 5) Failure to obtain the consent of the patient (informed or otherwise) before proceeding on any surgical procedure or course of treatment, when such a consent was necessary.

PUNISHMENT FOR NEGLIGENT ACTS BY MEDICAL PRACTITIONERS

Where a practitioner has cause to appear before the Medical and Dental Practitioners Disciplinary Tribunal for the second time on a charge of professional negligence, and is found guilty, such a person shall not have the option of being admonished. He shall be suspended from practice for a period not less than six months. A practitioner who becomes habitually negligent in a professional respect could have his name struck off the relevant register¹⁹. Where the practitioner's act of negligence is such that it results in the patient being permanently disabled or leads to death, the practitioner will be guilty of gross negligence and is liable to²⁰:

- a) suspension for a period of six months; or
- b) having his name struck off the medical or dental register, as the case may be.

METHOD OF SEEKING REDRESS FOR NEGLIGENCE OF A MEDICAL PRACTITIONER

In ensuring that medical practitioners conduct themselves in a professional and ethical manner, the Medical and Dental Practitioners Investigating Panel and the Medical and Dental Practitioners Disciplinary Tribunal have been established to investigate and hear matters on professional negligence and misconduct. The Medical and Dental Practitioners Investigating Panel is responsible

for investigating allegations of infamous conduct among practitioners. It is regarded as the court of first hearing in matters of alleged infamous misconduct.²¹ When an allegation is made against a medical practitioner, the Panel will conduct an investigation to find out, whether or not, there is substance in the allegation against a practitioner. If it is established that there is substance, the matter will be transferred to the Medical and Dental Practitioners Disciplinary Tribunal for trial. The tribunal has the status of a High Court of the Federal Republic of Nigeria. During trial, the concerned practitioner(s) must be given adequate opportunities to defend their actions and conduct. It must be in line with the principle of fair hearing as provided for in Section 36 of the Constitution of the Federal Republic of Nigeria (as amended)²². Where the tribunal fails to adhere to the principle of fair hearing, the decision may be quashed if it is appealed at a Court of Appeal. This is seen in the case of *Denloye v. Medical and Dental Practitioners Disciplinary Committee*²³. Where the tribunal finds the practitioner guilty of infamous conduct in a professional respect as contained in the charge preferred against him, the tribunal can impose any of the following statutory penalties depending upon the gravity of the offence and the attitude of the practitioner before and during the investigation and/or trial:

- (A) Order the Registrar to strike the person's name off the relevant register or registers.
- (B) Suspend the person from practice for a period specified in the directive, not exceeding six months.
- (C) Admonish the person.

DUTIES OF A MEDICAL PRACTITIONER TO A PATIENT

The relationship that exists between a patient and a medical practitioner is a fiduciary relationship. This means that there is trust between the two parties, with the patient putting his trust in the practitioner to treat him properly and administer the right drugs to cure him and not worsen his condition. This relationship is said to be in existence once a patient subjects himself to examination by a qualified practitioner. One may also say that subjecting connotes that there is an already established duty of care that the practitioner owes the patient. As contained in the Code of Medical Ethics in Nigeria and the National Health Act, a medical practitioner owes a patient the following duties:

¹⁹Rule 29, Code of Medical Ethics in Nigeria.

²⁰Rule 30, Code of Medical Ethics in Nigeria

²¹Rule 27(a)(i), Code of Medical Ethics in Nigeria.

²²1999 CFRN (as amended).

²³*Denloye v. Medical and Dental Practitioners Disciplinary Committee* [1968] All NLR 306

Confidentiality

A practitioner is compelled to treat information obtained about his patient as a result of the patient-doctor relationship, a secret and should not divulge to any third-party. The medical records of a patient should not be accessible to any individual who is not his/her practitioner. A patient can give consent to a doctor to disclose information. Preferably, the consent should be in writing. Confidentiality covers information on criminal abortion, venereal disease, attempted suicide, concealed birth and drug dependence. An exception is in situations whereby a discretionary breach of confidentiality is necessary to protect the patient or the community from danger. Where a statute mandates that there must be notification of a disease, the patient's consent will be of no importance as it is overridden by the provisions of such statute.

Disclosing of Essential Information

Medical practitioners are under the duty to disclose to patients, every information pertaining to their state of health. This information should cover the health status of the patient except in cases where there is substantial evidence that a disclosure would be disadvantageous to the patient²⁴, the treatment procedures and options available to the patient²⁵, the benefits, the risks, the costs and consequences of each treatment option²⁶ and the patients' right to refuse treatment and the implication of the refusal²⁷, failure to disclose the name of drugs given to a patient amounts to professional misconduct.

Informing Patients of Optional Treatment

Instances may arise where an ailment is susceptible to more than one treatment and, where this is the case, the medical practitioner is charged with the responsibility of calling the patient's attention to the alternative treatments and advise them on the risks and benefits of these treatment options. It is the patient's right to know of other options and decide to opt for one that suits him/her.

DUTY OF CARE

In proving negligence, a patient must prove that there was a duty of care owed to him by the medical practitioner. This duty of care arises from the fact that one person possesses a special skill and knowledge based on which the other

people consult him. In a medical context, a doctor owes a duty to use reasonable care and skill in administering treatment. This point was buttressed in the case of *R v. Bateman*²⁸, Lord Hewart C.J said: '*If a person holds himself out as possessing special skill and knowledge, and he is consulted, as possessing such skill and knowledge by or on behalf of a patient, he owes a duty to the patient to use due caution in undertaking the treatment...*'

A duty of care will be established if a medical practitioner approaches an ill or injured person with the sole intention of assisting the individual. The Criminal Code Act in Section 230 provides that a person who undertakes to administer surgical or medical treatment to another must possess reasonable skill and use reasonable care in acting.²⁹ A contractual relationship is of no importance in establishing this duty, neither is it important that the treatment be administered for a consideration or reward. Once a doctor consents to treat a patient, a duty of care has been established. This is the position at common law. In a claim for medical negligence, a patient must prove that there was indeed an existing doctor-relationship.

Denning L.J, in the case of *Roe v. Minister of Health*³⁰, pointed out that: 'Every surgical operation is attended by risks'. In the case of *Gluadwell v. Steggai*³¹, the plaintiff, who was a ten-year old girl, complained of a knee pain. The father of the girl summoned the defendant who happened to be a clergyman who also "practiced as a medical man", to treat his daughter. The treatment was disastrous. It was held that the defendant was liable in negligence although there was no contractual relationship between the defendant and the plaintiff.

STANDARD OF CARE

The standard of care of a medical practitioner is an objective one. It is judged by the action of the man in the street, i.e. the ordinary man. In the medical context, negligence is judged by the standard expected of a reasonable doctor in the position of the defendant. An inquiry to determine whether a defendant is negligent is an inquiry as to whether the doctor's conduct amount to a breach of duty of care that he owes his injured patient.

If a doctor holds himself as possessing specialist qualifications or expertise, a higher standard would be

²⁴Section 23(1)(a), National Health Act.

²⁵Section 23(1)(b), National Health Act.

²⁶Section 23(1)(c), National Health Act.

²⁷Section 23(1)(d), National Health Act.

²⁸*R v. Bateman* [1925] 94 UKB 791

²⁹Section 230 of the Criminal Code Act, Cap C38, LFN 2004

³⁰*Roe v. Minister of Health* [1954] 2 QB 66

³¹*Gluadwell v. Steggai* [1839] 85 p. 2nd 505

required of him. If he decides to undertake treatment for which he does not have the required skill, he could be guilty of negligence. It is immaterial that the doctor is rendering such service out of charity or goodwill. There are some policy factors to be considered in determining a doctor's liability for negligence such as, availability of equipment, prevailing knowledge at the relevant time, etc. In raising negligence from mistake in diagnosis, the court will employ the standard of an ordinary skilled doctor. Negligence can take the form of mis-diagnosis, negligent surgery, negligent advice or failure to warn of potential risk inherent in a treatment procedure, negligently allowing a dangerous patient to be at large, inadequate supervision of inexperienced staff, etc.

In the case of *Mrs. Deborah Agere & Anor v. S Ojobo*³², the plaintiff brought an action in negligence for the loss of the first male child, pains, emotional and psychological depression resulting from the gross negligent manner in which the defendant carried out the delivery of the plaintiff's pregnancy. The court held that where a patient relies on the skill and knowledge of a medical service provided in relation to his health, a duty of care exists on the part of the medical service provided towards the patient. As such, whether or not there is a breach of duty of care will be determined by measuring the action of the practitioner with a standard of care expected of a reasonably skilled medical practitioner in that particular circumstance.

DEFENCES FOR ACTS OF MEDICAL NEGLIGENCE

In normal sense, no medical practitioner should escape liability for damage or injuries caused to a patient as a result of negligence and failure to apply the reasonable standard of care required by a skilled personnel in treating a patient. However, the law has provided defence open to a practitioner who is a victim of a claim for medical negligence. This is to ensure that the practitioners are not held liable for all damages suffered by patients, even when it is self-inflicted or the treatment is carried out due to emergency. Some of the defence that may be raised by a medical practitioner in a claim for medical negligence include:

Consent

Where the consent of a patient, parent or guardian is express or implied, it can be pleaded to justify the medical care administered even though the outcome of the treatment is not what was expected, provided that the practitioner, in carrying out his treatment observed the standard of care expected of an ordinary and skilled medical personnel in

his shoe. The defence of consent can be pleaded when a claim is brought for assault and battery in the course of a medical treatment. Consent will be implied where a patient is found in an unconscious state, or in a state of emergency where there is nobody to give express consent. An express consent may take the form of oral consent or by signing the relevant consent documents and so forth. A patient may give implied consent by taking the form of presenting oneself for treatment, holding out an arm to receive an injection, and by nodding one's head in affirmation especially where the patient cannot speak.

Necessity or Emergency

In a case of necessity or emergency, a medical practitioner will not need the consent of the patient before proceeding to administer treatment or carry out an operation that will save the life of the patient. What will amount to an emergency is a question of fact to be determined by the court based on the facts of each case. There are rules that guide in determining what is an emergency to justify trespass to a person of a patient by giving medical care without proper consent. Some indicators of an emergency include:

- i. Medical care must be essential and urgent in the circumstance.
- ii. The patient must be unfit and incapable of giving consent; and
- iii. The relatives who are in a position to give consent must not be easily accessible.

Where these conditions exist, there is *prima facie*, a medical emergency that requires treatment without the usual consent to be given by a patient.

PUBLIC INTEREST AND SAFETY

Where in the interest of public safety a medical condition of a patient must be disclosed and a medical practitioner goes ahead to do so, it would not be considered breach of patient's confidentiality for which a medical practitioner would be sued. A good example was the case of Mr. Patrick Sawyer, a Liberian-American man who came into the Nigeria in 2014 on July 20th when the ebola epidemic broke out. Dr. Adadevoh of blessed memory and her team on suspecting, immediately carried a clinical diagnosis on the patient, Patrick Sawyer which turned out positive that the patient had contracted the virus disease, alerted the Nigerian government and in collaboration with WHO sprang into action and was able to successfully curtail the spread of the virus disease in the country.

³²*Mrs. Deborah Agere & Anor v. S Ojobo B/595/94 Unreported*

Novus Actus Interveniens

It means 'a new act intervening'. It is a Latin phrase which means there will be appearance of a new act or event in the causal chain between initial event, in a sequence and the result causing a break in the continuity of the same³³. There is a new act intervening when after a medical personnel's breach of duty by a wrongful act or omission, an independent event takes place which causes the plaintiff's death, aggravates his injury or causes other injury or damage to the plaintiff. This new act intervening may be the action of the plaintiff, which in some cases, maybe the sole new cause or be a contributory negligence only;³⁴ or the act of a third party.

CONCLUSION

In light of the foregoing, it can be established that the provisions of the Medical and Dental Practitioners Act is robust and explicit. It establishes that there is a duty of care that exists between a doctor and patient once the doctor consents to administer treatment to that patient, or when a doctor, out of his own good will or charity decides to assist a patient needing treatment. It is quite unfortunate that there are people who fall victims of medical negligence which in most scenarios may lead to a permanent loss of body parts or even death. For the purpose of addressing this issue, this article talks about the duty of care owed to a patient by a medical practitioner, the standard of care to be applied by a medical practitioner in carrying out his duties, the punishment for negligent conducts of practitioners and the defenses available to a practitioner in a claim for medical negligence. This article also makes mention of the decisions of the courts in suits for medical negligence, thereby establishing acceptable standards of practice for medical practitioners to maintain the nobility and integrity of the profession.

RECOMMENDATIONS

The need for an improvement in the standard of health care service delivered by medical practitioners in Nigeria cannot be overemphasized. In a bid to reduce damages or injuries suffered by patients resulting from negligent acts, it is important to say that every individual has a part to play, i.e., patients, medical practitioners and the government. First off, patients should imbibe the culture of exercising their legal rights. In Nigeria, people believe in leaving it for God or accepting things as the will of God when the damage suffered was obviously caused by the negligent

practice of medical practitioners who owed them a duty of care. Patients should be encouraged to seek redress for any damages or injuries suffered. This will also make the medical practitioners administer treatment with the reasonable skill and expertise expected of them.

The Medical and Dental Association should also ensure that persons to be issued a practicing license are actually deserving of it. This means that medical practitioners should be equipped with the skills necessary to administer treatment to patient, operate on patients successfully and prescribe the right drugs without doing so in excess. Hospitals, both private and public, in employing members of staff should ensure that they employ medical practitioners who are qualified, fit and to treat patients. It is also important that they thoroughly scrutinize the credentials of practitioners and can even take the pain of confirming that such a person has his name in the register and also pays his regular practicing fee as prescribed. This will help in identifying quacks and avoiding any liabilities that will be incurred as a result of a negligent act carried out by a quack doctor. Hospitals should ensure that their equipment are not obsolete and out of date. Technological advancement in the medical sector is rapid, therefore, hospitals should make sure they have the latest machinery to carry out tests, run correct diagnostics and carry out necessary treatments.

The government, in a bid to reduce cases of medical negligence should make sure that the punishment prescribed by the laws such as the Criminal Code Act, the Penal Code Act for negligent acts of medical practitioners are more stringent and it should be enforced irrespective of the personality of the accused person. There is need to create more awareness in sensitizing the public of the existence, functions, operations and locations of the various chapters of the Medical and Dental Practitioner's Disciplinary Tribunal in the country. The process should be made less formal, accessible, flexible and free from any extra financial burden for aggrieved patients or relatives of patients who have suffered various degrees of negligent acts resulting in damage caused by negligent medical practitioners to report complaints to the disciplinary body. Once this is done, it will encourage patients or relatives of patients that are victims to report to the disciplinary tribunal for immediate disciplinary actions to be taken to fish out negligent practitioners from the system and help sanitized the health sector. The government by way

³³<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7689111/> accessed on 19/05/2023.

³⁴*Mange v Drurie* (1970) NNLR 62 *Ekwo v Enechukwu* (1954) 14 WACA 512.

of promoting this cause can subsidize the cost of the running the activities of the tribunal by allocating funds to it. If all these are put in place, cases of medical negligence will be drastically reduced to the barest minimum, even if not totally eliminated. It will be a huge step in a positive direction.

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