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Policy Paper on the Need for the Establishment of a Specialized Tribunal for Medical Negligence Cases in Nigeria: An Imperative for Fair and Efficient Adjudication

Biola Olayinka Pedro[1,2,3]

[1]District of Columbia (DC) Bar Association, Washington DC, USA
[2]Saskatchewan Law Society, Saskatchewan, Canada
[3]Nigerian Bar Association, Abuja, Nigeria
Email: abiola.pedro@gmail.com

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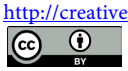

Abstract

Acts of medical negligence have raised several questions as to the efficacy and adequacy of Nigeria's existing legal framework. Acknowledging the severity of this matter, this publication explores the intricacies surrounding medical negligence in Nigeria, whilst examining the complexities and shortcomings within the existing legal framework. As patients and their families seek redress for injuries or loss of life resulting from substandard care, the current legal framework faces considerable challenges in addressing the complexities of medical negligence cases. There is a pressing need for a holistic and comprehensive reform in the field of these cases that will not only safeguard the rights of the affected victims and their families, but will also ensure the expeditious, fair and just adjudication of cases of medical negligence related to medical practitioners. This publication delves into the urgent need for a specialized court dedicated to adjudicating matters of medical negligence in Nigeria. By exploring the inadequacies of the existing legal system and advocating for the establishment of a specialized court, the aim is to shed light on a crucial aspect of healthcare reform that not only safeguards the rights of patients, but also ensures accountability within the medical profession. This paper also aims to explore the multifaceted dimensions of medical negligence, offering a scholarly analysis of its legal implications within the Nigerian context.

Subject Areas

Law

Keywords

Medical Negligence, Specialized Tribunal, Nigeria, Medical Malpractice, Specialized Courts

1. Introduction

On the 2nd of April, 2025, news broke about an incident involving a pregnant woman, her husband and a private medical facility located in the Ibeju Lekki axis of Lagos State, Nigeria. Specifically, a grieving husband—Mr Akinbobola Folajimi—alleged via a video post that went viral on social media that his wife Kemi died from pregnancy complications occasioned by a refusal by the private medical facility to administer urgent care to her. He alleged that the refusal was on account of his inability to make a down-payment of N500,000.00 (Five Hundred Thousand Naira) only as allegedly demanded by the private medical facility. The videos posted appeared to show that the victim passed away whilst in transit from the private facility to another medical center. The owner of the private medical facility subsequently released a statement refuting and denying the grieving husband's claims. Whilst acknowledging that the pregnant woman was brought to their facility, he argued that an immediate blood transfusion and surgical intervention were required upon the medical facility's assessment of the patient. He alleges that the husband was advised to take the patient to Epe General Hospital due to the complexity of the case, and insisted that payment was never demanded at any point in time [1].

Without litigating the merits of the above case, many questions will immediately arise. Who bears the responsibility for the deaths of the unborn child and the pregnant woman? What specific recourse (if any) does the husband and his family have? Did the private medical facility owe the deceased patient and her unborn child a duty of care, and did they take necessary action to protect the unborn child and the pregnant woman? What options are available to the medical facility and the medical practitioners to redeem or defend their reputation? More importantly, who do they all take their grievances to, and how long will it take before they receive clarity or closure with respect to their grievances?

The above incident is a tragic but all-too-common occurrence in Nigeria. Many people with urgent medical emergencies including late-stage pregnancy patients, victims of some form of heart attack or stroke, patients with urgent respiratory discomforts like asthma, hit-and-run victims and even gunshot victims are amongst some of the many cases where their survival has hinged on the nature and urgency of medical attention received. In addition, non-urgent and/or scheduled medical interventions like routine surgeries and cosmetic procedures also fall under this broad category in question. In many instances, medical intervention has saved lives. But in far too many cases, loss of life or permanent incapacitation/disability has ended up being the outcome due to an inability to receive ade-

quate medical care at the most critical time.

The Nigerian health sector has undergone tremendous transformations marked by improvements in medical knowledge, an expansion in medical facilities and an increased sensitization on professional ethics. In spite of these laudable developments, there exists an increasing concern relating to the incidents of medical negligence. This alarming frequency of medical negligence cases in Nigeria has resulted in the infliction of physical, emotional and financial harm to the victims and their families.

The series of medical negligence incidents is a grim reminder of the delicate state of Nigeria's healthcare sector which, in spite of the aforementioned progress, is still considered to leave a lot to be desired. This is further exacerbated by the fact that many Nigerians, especially those with the means to do so, opt to seek medical consultation and treatment abroad due to a fundamental erosion of trust in the domestic healthcare system. As a consequence, a significant portion of the population is left with no choice but to seek their medical needs within the country, and at the mercy of the Nigerian medical system.

2. Scope of Medical Negligence

Primarily, the law of negligence concerns itself with wrongdoings which are violated by breaches of the duty of care. The tort of negligence is the failure to use the care which an ordinary, reasonable and prudent man would have used in the particular circumstances [2].

The foundation of the modern law of negligence is the House of Lords decision in ***Donoghue v, Stevenson*** **[3]**. In the words of Lord Atkin: "*Who then is my neighbor? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the act or omissions which are called into question. The duty of care so stated was based on the existence of a danger of physical injury to persons or property*" [4]. This breach of duty of care requires some form of actual and recognized type of damage which must be associated with something unlawful [5].

Furthermore, in tort of negligence, where a person is charged with the duty to carry out an act, it is no doubt that the fact that it causes harm and even though not intended to cause harm, may be immaterial; an action will automatically lie and as such a case falls within the category of "*damnum absque injuria*" [5] this is the foundational basis of medical negligence.

Medical negligence connotes an omission or failure of a medical practitioner to do something which a fellow medical practitioner under the same circumstances would do, or doing something which a fellow practitioner and prudent practitioner would not do. Medical negligence is the incorrect, careless or negligent treatment of a patient by a medical professional. It may involve careless behavior on the part of a nurse, doctor, surgeon, pharmacist, dentist, primary caregiver or any other medical personnel.

The majority of medical malpractice claims where the victim alleges injury from medical treatment are based on medical negligence [6]. The fundamental constituent of medical negligence is that the medical practitioner acts in a negligent and injurious manner, in which a reasonable doctor in the affected doctor's professional standing and circumstances would not have acted or expected to have acted [7]. Medical negligence is founded on the principle that a person who undertakes to do work which requires a special skill set holds himself out as having that skill; the lack of it then becomes blameworthy; *imperitia culpae adnumeratur.* The obligation to exercise that skill does not depend on any contract or undertaking [8], but is based on the grounds that a reasonable man who owes a duty of care would exercise the care of a skilled man in doing the operation [9].

Medical practitioners owe a duty in tort towards their patients, irrespective of whether a contract exists with the patient [10]. The standard of care that is expected of them has been expressed by McNair J. in *Bolam v. Friern Hospital Management Committee* [11] as follows:

"I myself would prefer to put it in this way, that he is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art".

Medical negligence can happen in many ways, among which are:

1) Wrong-site surgery- when a doctor performs surgery on the wrong body part;

2) Surgery-related equipment or tools that are left inside the body after the procedure is completed;

3) The administration of too much or not enough anaesthesia;

4) Injuries to internal organs or nerves as a consequence of a surgeon's intervention;

5) Utilization of instruments that have not been adequately cleaned or sterilized, thereby leading to infections;

6) An unneeded operation that caused further injury to the patient;

7) Misdiagnosis and/or the misinterpretation of a patient's lab work or imaging;

8) Refusal by a medical practitioner or medical facility to administer medical intervention on account of a lack of payment or police report;

9) Delayed medical intervention on account of an over-burdened medical workforce and;

10) Incompetent, inefficient and understaffed medical facilities, amongst others.

2.1. Liabilities of Medical Practitioners

In every profession, there are liabilities that professionals may incur. These liabilities are shaped by the nature of the work done by the professionals. For instance, in the legal profession, where costs are incurred due to a delay caused by a legal practitioner, the court can order that the legal practitioner pay such cost. In addition, the misappropriation of a client's money is viewed as serious and infamous

conduct in the legal profession.

In the area of professional negligence, the expectation of a medical practitioner is arguably higher than that of a lawyer [12]. When a patient submits himself or herself to a medical practitioner for treatment and the medical practitioner undertakes to treat such a patient, the doctor–patient relationship is established, and as such is expected to diagnose and treat the patient with adequate care [13].

It is pertinent to note that varying degrees of contractual relationships exist between medical practitioners and their patients. The terms of these contracts may be express and implied. A Consent Form is an example of an agreement containing express terms [14]. It is an implied term of medical treatment that a medical practitioner owes the patient a legal duty of care, and it is the right of the patient to be attended to promptly and competently. Where a medical practitioner who holds himself out as possessing special skills and knowledge is consulted, he owes his patient a duty of diligence, care, knowledge, skill and caution in administering treatment.

As a matter of law and practice, medical practitioners are required to be dedicated to providing competent medical care with compassion and respect for human rights and dignity [15]. Although the law does not imply a warranty that the doctor will achieve the desired result or a guarantee that the treatment will be successful; reasonable care and skill must be deployed [16].

2.2. The Standard of Care in the Medical Profession

Having established that medical practitioners owe a duty of care to their patients, the matter of whether or not there has been a breach of duty of care must be proved. This test is both subjective and objective. The standard of practice in the medical field is that medical practitioners must exercise the standard of skill, which is usual in their profession. It is no defense that they acted to the best of their skill if such skill falls below the required standard [13].

In establishing the standard of care required of medical practitioners, there are differences of opinion and different theories on the standard of due care for medical practitioners. The best-known and most often quoted definition of the standard of due care required of medical practitioners is McNair J's direction to the jury in the Bolam's case [17], commonly called the Bolam Test. The test states thus:

where there is a situation that involves the use of some special skill and competence, the test as to whether there has been a lack of due care is the standard of the ordinary skilled man exercising and professing to have that special skill.

Ultimately, the law does not require the medical practitioner to attain the highest or the lowest standard. It is sufficient that he exhibits the degree of care, skill and judgment which an average practitioner of that experience, placed in the same circumstance, would show. This standard will of course vary according to what is expected of the individual practitioner. For example; a medical practitioner on his housemanship is not expected to show the same standard of skill and care in com-

parison to the skilled medical officer working in a special area [18].

Therefore, to succeed in proving medical negligence, an aggrieved party must establish that the medical practitioner owed them a duty of care, there was a breach of the duty and the breach caused the victim injury or damage [19]. To find a medical practitioner guilty of negligence, it must be shown that he did what professional colleagues would say was a mistake and that he ought not to have made. In other words, the action of the medical professional must be such that it falls short of the standard of a reasonably skillful medical professional [20].

2.3. Jurisprudence of Medical Liability

1) Medical Ethics

Medical ethics is an integral part of the jurisprudential medical liability of medical practitioners. The point is that the Hippocratic Oath of the profession is only an indication of the principal ethos and not a professional edict [13]. Various medical associations have developed and codified medical ethics in the form of a code of conduct for members of the profession [13].

2) Obligation under Contract

The contractual basis for liability for a civil wrong has come a long way and is rooted in common law. Just as in any other aspect of life, once a contractual relation between a medical practitioner and a patient is established, liability attaches to default by either party [13].

3) Tortious Liability

The court has always preferred to treat the case of medical negligence under the law of tortious liability to advance the negligence to the law of vicarious liability of the hospitals for the negligence of the medical practitioners. The main basis for tortious liability in medical malpractice is personified in the much-acclaimed international right to self-determination of the individual [13].

4) Equitable Ground

In determining the liability of a medical practitioner, the metrics are anchored on the rules of tort, contract or equity.

5) Doctor-Patient Relationship

The Medical and Dental Practitioners Act is very important in dealing with the doctor-patient relationship. Section 6(3) and 18 (2) of the Act conferred on the Council, the power to make the code of ethics for the medical practitioners in Nigeria [14], and this gave birth to the Code of Medical Ethics in Nigeria.

2.4. The Nigerian Legal Regime and Medical Negligence

Medical practice in Nigeria is not without a legal framework. Medical practice is regulated by a series of laws, among which The Constitution of the Federal Republic of Nigeria 1999 (as amended); the Medical and Dental Practitioners Act; the Nursing and Midwifery (Registration etc.) Act; the National Health Act 2014; the Code of Medical Ethics in Nigeria; the Medical Oath; the Compulsory Treatment and Care for Victims of Gunshot Act; the Patients' Bill of Rights; the Phar-

macy Act and the Criminal Code Act, amongst others.

These statutes are very critical to medical practice in Nigeria, as they provide for the rights of patients and healthcare providers. The statutes set the basic minimum standard of care and professional conduct expected from healthcare providers. Section 1(1) of the Medical and Dental Practitioners Act establishes the Medical and Dental Council of Nigeria [14], and vests it with the power to determine the standards of knowledge and skills to be attained by persons seeking to become members of the medical or dental profession. It also has the power to review the standards from time to time, and the Council is empowered to maintain registers of the names, addresses, qualifications and other particulars of persons entitled to practice medicine and dentistry in Nigeria [14].

All these laws regulating medical practice in Nigeria do not adequately address the issue of medical negligence of the medical practitioners arising out of their medical practice. Section 15 of the Medical and Dental Practitioners Act establishes the Medical and Dental Practitioners Disciplinary Panel. The jurisdictional frontiers of the Medical and Dental Practitioners Disciplinary Tribunal are infamous conduct in professional respect, conviction by a court of law where a person is convicted of an offence which in the opinion of the Medical and Dental Practitioners Disciplinary Tribunal is incompatible with the status of a medical practitioner, or dental or surgeon and fraudulent registration of medical practitioners [14].

The Medical and Dental Practitioners Disciplinary Tribunal would have been the appropriate venue or tribunal where cases of medical negligence could be properly handled, given the knowledge of medical practices of the members of the tribunal. Medical practice is a province of practice that is only understood by people who are knowledgeable in the medical line. This is particularly relevant because most judges who adjudicate on medical negligence matters in conventional courts are not fully grounded in medical knowledge, as medical terminology is always albatross for judges particularly when expert witnesses are brought to the courts to testify.

2.5. Inadequacies of the Medical and Dental Practitioners Act Cap M8 2004 LFN

Whilst the Medical and Dental Practitioners Act establishes a framework for regulating medical and dental practice in Nigeria, there are some potential failures and criticisms regarding its provisions and composition [21].

3. Limited Representation in Tribunal and Panel [22]

The requirement that all members of the Disciplinary Tribunal and Panel must be fully registered medical practitioners may typically lead to a lack of diversity in perspectives and expertise. This could potentially undermine the ability of these bodies to make well-rounded decisions, especially in cases involving complex legal issues.

4. Lack of Public Participation [22]

The Act does not explicitly provide for the involvement of patient advocacy groups or other stakeholders in the disciplinary process. This lack of public participation reduces transparency and accountability, as it limits the input of those directly affected by the conduct of medical practitioners.

5. Limited Legal Oversight

Whilst the Act establishes rules for the conduct of proceedings before the Disciplinary Tribunal, it does not provide any specific mechanisms for independent legal oversight or review of its decisions. This means that the potential for miscarriages of justice or inconsistencies in the application of disciplinary measures is significantly high.

6. Complexity of Procedures

The Act and its subsidiary legislation contain detailed procedural requirements for disciplinary proceedings, which are complex and difficult to navigate for both complainants and respondents. This complexity essentially leads to delays or errors in the adjudication process.

Addressing these potential failures and criticisms may require total reform of the sector and a possible amendment of the Act to enhance transparency, accountability, and fairness in the regulation of medical practice in Nigeria.

6.1. Remedies and Adequacies to the Victim of Medical Negligence

After a successful claim of negligence against a medical practitioner, the remedies for victims are usually damages in the form of financial or monetary compensation. If a patient succeeds in a claim of medical malpractice, they may be able to recover compensation for both economic and non-economic damages. In the tragic event that a patient dies from medical malpractice, their family members may be able to recover damages through a wrongful death claim [23].

The remedies can be general damages or special damages depending on the claim of the victim before the court. In a claim in negligence, the aggrieved party is entitled to special and general damages, where negligence is proved and items of special damages are fully pleaded with particulars and are strictly proved. In the case of general damages, evidence identifying the damage will suffice, and not the quantum which is at the discretion of the court [24].

In general damages, the yardstick that determines the quantum of the amount the court awards is pain and suffering of the victim arising from the negligence of the medical practitioner, loss of amenities of life, loss of future earnings and loss of life [23].

Special damages are the losses that are capable of being calculated with reasonable accuracy, and will normally consist of accrued pecuniary losses. A claim for special damages in an action for personal injuries due to medical misconduct in-

cludes loss and expenses incurred from the date of the defendant's negligent act and the date of judgment. Special damages examples include medical expenses, nursing fees, loss of earnings during the period and other items of loss arising therefrom, which are capable of precise calculation.

However, events overtime show that incidents of medical negligence often result in severe emotional trauma, physical, diminished in the quality of life and financial burden on the victims and their families. On several occasions, the damages awarded at the end of long litigation process will neither be adequate nor sufficient to cover the costs of ongoing medical care, therapy and/or a protracted rehabilitation process. This ultimately diminishes the effectiveness of whatever compensation or damages received by the aggrieved parties.

6.2. The Need for the Establishment of a Specialized Tribunal for Medical Negligence Cases

Medical negligence cases are *sui generis*. The intricacies involved- coupled with the increasing incidents- underscore the urgent need for a specialized tribunal dedicated to hearing and determining such matters. Overtime, several incidents have established that the intersection of law and medicine, particularly in cases of medical negligence, presents unique challenges that the traditional court systems are often ill-equipped to manage effectively.

The concept of medical negligence hinges on three principal standards:

1) A duty of care;

2) A breach of this duty of care and;

3) The resultant effect of the breach [25].

As such, the determination of whether these standards have been established involves an acute examination of medical knowledge and practices. These cases are often hampered by procedural complexities, unnecessary delays and a lack of personnel with specialized knowledge to effectively adjudicate on them. This gap thwarts the justice administrative procedure, and ultimately leads to unjust and unfair outcomes.

The need to establish a specialized tribunal to hear and determine cases related to medical negligence is based on the following:

1) Specialized Knowledge and Expertise: A dedicated tribunal would possess the requisite medical expertise to make informed decisions, thereby improving the quality of justice rendered. Unlike generalist judges, tribunal members would include medical professionals and legal experts specializing in healthcare law, thereby ensuring a well-rounded understanding of the issues at stake.

2) Efficiency and Accessibility: Experience has shown that medical negligence- like other cases in our traditional courts- can be a protracted drain on resources, thereby exacerbating the distress of the parties involved. A tribunal, focused solely on issues presented within a set period of time (say, for example 90 days), could streamline procedures, adopt more flexible processes and quickly reduce the backlog of cases. This increased efficiency would enhance access to justice for victims of medical negligence, many of whom are deterred by the daunting

prospects of traditional litigation.

3) Consistency and Fairness: The adjudication of medical negligence by a specialized body would automatically lead to more consistent outcomes, establishing clearer precedents for what constitutes negligence. This consistency aids in the fair treatment of similar cases, providing a more predictable legal environment for both medical practitioners and patients.

4) Education and Prevention: Beyond its adjudicative functions, such a tribunal could play a crucial role in identifying systemic issues within healthcare delivery, promoting broader educational initiatives, and recommending policies to prevent future incidents of negligence. This proactive stance towards prevention-rooted in the insights gained through adjudication, could contribute significantly to the improvement of healthcare standards.

6.3. Establishment, Quorum and Jurisdiction of the Medical Tribunal

1) Establishment Of Medical Tribunal

From the foregoing, a proposed solution is to seek to amend the existing Medical and Dental Practitioner Act cap M8 by scrapping the existing Tribunal and establishing a broader special Tribunal to be named Medical Tribunal, with special jurisdiction and judicial division all over the country to hear and determine civil and possibly criminal claims, as well as the disciplinary proceedings and remedies against erring medical practitioners.

The special tribunal by its creation will have a concurrent jurisdiction with the State High courts. Its decisions would become appealable to the court of Appeal under the provisions of Section 240 of the 1999 Constitution of the Federal Republic of Nigeria as Amended, which allows the court of appeal to hear and determine appeals from the State High Court, High Court of the FCT, Federal High Court, National Industrial Court and any other tribunal as may be created by an Act of the National Assembly.

2) Jurisdiction

The tribunal will have exclusive jurisdiction to hear and determine appropriate punishment for negligence committed in the line of duty, and at the same time would be able to entertain the civil claim of damages instituted before it either by the victims or family against the erring practitioner.

This would fast-track proceedings, and would further decongest the regular courts by prioritizing the timely resolution of cases. Hearings will be conducted on a day-to-day or weekly basis where necessary, to expedite the adjudication process.

There would also be an absolute prohibition of procedural technicalities that have overtime impeded the swift dispensation of justice. There will be a specific focus on substantive issues and evidence pertinent to the cases.

The Medical Tribunal would be empowered to impose appropriate sanctions and punishments on healthcare practitioners found guilty of medical negligence,

including but not limited to suspension or revocation of medical licenses on one hand, and the award of damages in form of compensation in favour of victims and/or their family in the same proceedings on the other hand, which will further eliminate the need to institute fresh cases in a regular courts, as is obtainable in the present-day system.

This ensures that victims of medical negligence have access to timely and adequate remedies, including compensation for damages suffered as a result of the medical practitioner's negligence.

3) Quorum

In addition, the medical Tribunal with National jurisdiction and established judicial divisions in all the states of the federation would ensure accessibility and uniformity in adjudicating cases. There should also be the establishment of a quorum comprising the equivalent of a high court judge and two reputable members of the Nigeria Medical Association (NMA) and the Nigerian Bar Association, thus ensuring a balance of legal expertise and medical insight. Whilst the legal practitioners will provide the legal expertise for interpreting statutes, regulations, and previous caselaw as well as for ensuring that the tribunal's procedures and judgments adhere to legal standards and principles. The presence of at least two reputable members of the NMA brings specialized medical knowledge to the tribunal by providing crucial insights into medical standards of care, the practice and procedure of medical practice, and the interpretation of medical evidence. This expertise will bridge the gap between legal and medical perspectives, ensuring that the tribunal's decisions are informed by a deep understanding of both fields.

7. Other Recommendations

1) In addition to the above, there should be a requirement for medical practitioners to periodically undergo re-certification assessments to maintain their licenses, with a focus on competency in areas relevant to patient safety and quality of care.

2) There should also be initiatives aimed at promoting medical ethics and professionalism among healthcare practitioners, emphasizing the importance of patient care, honesty, and integrity.

3) There should equally be encouragement to the establishment of ethics committees within healthcare institutions to provide guidance and oversight in ethical dilemmas and issues related to patient care.

4) There should be an establishment of an independent regulatory body tasked with overseeing healthcare facilities and practitioners, conducting regular inspections and enforcing standards of care.

5) There should be the establishment of implementation mechanisms for reporting adverse events and near misses within healthcare settings, thereby fostering a culture of transparency, accountability and continuous improvement.

6) There should be a centralized database for collecting and analysing data on

incidents of medical negligence, thereby facilitating proactive measures to prevent future occurrences and improve patient safety.

7) Finally, there should be ongoing sensitization of the general public to their rights as patients and families of patients. The more aware people are, the more likely they will be willing to seek recourse for any damage occasioned as a result of medical negligence.

8. Conclusions

The establishment of a specialized Medical Tribunal, equipped with the necessary jurisdiction, quorum and composition represents a crucial step towards addressing medical negligence in Nigeria. By prioritizing efficiency, accountability and justice, these proposed legal reforms aim to safeguard the rights and well-being of patients whilst upgrading the standards of medical practice.

By incorporating these additional recommendations into the proposed legal reforms, Nigeria can further strengthen its efforts to address medical negligence effectively and promote a health care system characterized by accountability, patient safety, and quality of care.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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