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# **EXAMINING LEGAL REMEDIES FOR MEDICAL NEGLIGENCE**

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## **Abstract**

This paper carefully examines and raises awareness regarding various legal remedies available for victims of medical negligence. Medical negligence occurs when healthcare professionals fail to provide a standard level of care, resulting in harm or injury to patients. Understanding the legal avenues for seeking compensation is crucial in ensuring justice and accountability. This paper explores the different types of legal remedies, such as civil liability, Medical Negligence as a Tort, vicarious liability and defences in Medical Negligence cases. The paper aims to analyse key principles and elements required to establish a successful medical negligence claim, including the standard of care, causation, and damages. The researcher adopted the doctrinal method of research. The paper therefore recommends public awareness, valuable insights for academics, students, and individuals seeking justice in cases of medical negligence. Conclusively, the paper advocates for a safer and more accountable healthcare system.

**Keywords** – Negligence, Legal Remedies, Standard of Care, Causation, Damages and Medical

## **Introduction:**

Medical negligence is a concern that has plagued healthcare systems globally. When healthcare professionals fail to provide a standard level of care, patients suffer harm or injury. In such cases, it becomes crucial to understand the legal remedies available to the victims of medical negligence. This paper aims to examine and raise awareness about these legal remedies, creating a comprehensive understanding of the options for seeking justice and compensation. It delves into the essential elements necessary to establish a successful medical negligence claim, such as demonstrating the breach of the standard of care, establishing causation, and quantifying damages. Through this investigation, the paper seeks to promote academic understanding and contribute to the discourse surrounding medical negligence and its legal implications.

## **1. Concept of Medical Negligence**

Medical negligence, in simple definition in the context of Nigeria, refers to a situation where a healthcare professional, such as a doctor, nurse, or other medical personnel, fails to provide the standard of care and skill expected of them, resulting in harm or injury to a patient. It can occur through acts of commission, where the healthcare provider does something that they should not have done, or through acts of omission, where they fail to do something, they should have done. It

could also mean doing something differently from the way a normal prudent person would do it. Section 317 of the Nigerian Criminal Code Act<sup>1</sup> provides that a person who unlawfully kills another without intending to cause death or grievous harm to the person killed is guilty of an offence of manslaughter, according to the circumstances of the case. **Section 343** of the Act<sup>2</sup> provides that any person who gives medicine or medical or surgical treatment in a rash or negligent manner as to endanger life or likely to cause harm to a person shall be guilty of a misdemeanour. As such, under the Nigerian criminal law system, liability will arise even where life has not been lost but endangered, in the course of treatment. Similarly, Section 303<sup>3</sup> of the Act prescribes that persons who undertake to administer surgical or medical treatment should possess reasonable skill and use reasonable care in acting except in cases of necessity.

In line with the above provisions, a negligent medical practitioner can be criminally prosecuted for medical negligence. Any person seeking redress for medical negligence under criminal law in the circumstances can file a report at the Police Station. The Police will then investigate the suspected medical practitioner(s) and where their investigation reveals gross negligence, they may prosecute the matter. In this instance, the Police can file a criminal suit against the medical practitioner in court for gross negligence or for manslaughter, where the death of the patient has occurred. The Medical and Dental Practitioners Act is the primary legislation governing medical practice in Nigeria. It establishes the Medical and Dental Council of Nigeria (MDCN) to regulate the practice of medicine and dentistry in the country.

There are three implications of negligence for this research work. These are:

Duty of Care, Breach of Duty and Causation and Damages. The above three key implications of negligence in Nigerian law, are supported by judicial authorities. In Nigeria like in many parts of the world, negligence is a legal concept that holds individuals or entities responsible for their failure to exercise reasonable care, resulting in harm or injury to others. As abundantly pointed out in the preceding pages of this research paper, medical negligence is a significant concern in Nigeria, as patients may suffer harm and seek redress for substandard medical care. This paper provides an in-depth analysis of the legal remedies available to victims of medical negligence under Nigerian law. It explores the legal framework, relevant statutes, and case law, examining the challenges and areas for improvement within the Nigerian healthcare system. The Nigerian legal system recognizes medical negligence as a breach of the duty of care owed by healthcare professionals to their patients. Victims of medical negligence have several legal remedies available to seek compensation for their injuries. This paper will clarify and analyse these legal remedies within the Nigerian context.

## **2. Legal Remedies**

The available legal remedies for victims of medical negligence are as follows:

### **i). Civil Liability:**

The origin of the civil nature of negligence is enshrined in the old case of *Donoghue v. Stevenson*.<sup>4</sup> Under this head, the court may order specific performance, award damages or order rescission where the claims of the victim of medical negligence is successful. In a medical negligence claim, patients can file civil lawsuits in Nigerian courts against healthcare providers for medical negligence. To succeed, plaintiffs must establish four elements as follows: duty of care, breach of duty, causation, and damages. These factors were emphasized by the court in the case of *Olaye v. Chairman, Medical & Dental Practitioners Disciplinary Tribunal*.<sup>5</sup> Here the tribunal found three medical doctors liable for medical negligence for not attending to their patients.

Civil liability under Nigerian medical negligence case law refers to the responsibility that

healthcare professionals may bear for injuries caused to patients due to negligence or a breach of the duty of care. In recent years, there has been increased awareness about patients' rights and the need for accountability in the Nigerian healthcare system. Medical negligence cases have played a vital role in shaping the legal framework surrounding civil liability. One of the key aspects of medical negligence cases in Nigeria is the duty of care owed by healthcare professionals to their patients. This duty requires doctors, nurses, and other medical practitioners to exercise a reasonable standard of care and skill when treating patients. It means that healthcare professionals must take all necessary precautions and provide treatment that is consistent with accepted medical practices.

In order to establish civil liability in a medical negligence case, the aggrieved party must prove three essential elements which are, duty of care, breach of duty, and causation. Firstly, it must be demonstrated that a duty of care exists between the healthcare professional and the patient. This is typically established by showing that the healthcare professional-patient relationship existed and that the patient sought and received medical treatment. Thus, in the case of *Anya v. Imo Concorde Hotel Ltd*<sup>6</sup>, the Supreme Court of Nigeria held that the most fundamental ingredient the court should look for in a case of the tort of negligence is whether there exists a duty of care.

Secondly, in *First Bank of Nigeria Plc v. Banjo*,<sup>7</sup> the Court of Appeal per Bage JCA held that the plaintiff needs to establish that there was a breach of that duty of care. To determine this, the court would assess whether the healthcare professional failed to meet the reasonable standard of care expected of them. This is usually established by presenting expert medical testimony to establish what a reasonably competent healthcare professional would have done under similar circumstances.

Lastly, causation must be proven, which means demonstrating that the breach of duty caused the patient's injury or harm. It must therefore be noted that causation rests on the shoulders of the plaintiff to prove that it would not have happened if not for the fault of the doctor. This was the basis of the judgement in the case of *Cork v. Kirby Maclean Ltd*.<sup>8</sup> This requires showing that the injury would not have occurred if the healthcare professional had provided appropriate care. Expert medical testimony is also essential in linking the breach of duty to the specific harm suffered by the patient.

If a patient successfully demonstrates civil liability in a medical negligence case, they may be entitled to various forms of compensation.<sup>9</sup> This can include economic damages such as medical expenses, lost wages, and rehabilitation costs. Non-economic damages, such as pain and suffering, emotional distress, and loss of enjoyment of life, may also be awarded. It is important to note that the burden of proof lies with the patient in a medical negligence case, and establishing civil liability can be a complex and challenging process. Furthermore, it should be noted that medical practitioners are generally covered by medical indemnity insurance, which helps mitigate the financial burden of compensation awards.

Civil liability under Nigerian medical negligence case law holds healthcare professionals accountable for their actions or omissions that result in harm to patients.<sup>10</sup> By establishing the duty of care, breach of duty, and causation, patients have the opportunity to seek fair compensation for injuries caused by medical negligence. Increased awareness of these rights and the legal framework surrounding medical negligence has contributed to the ongoing efforts to improve the quality and safety of healthcare in Nigeria. A patient must be duly informed of medical procedures to be carried on him.<sup>11</sup>

### **3. Contributory Negligence**

Nigerian law recognizes the principle of contributory negligence, which may affect the amount of compensation awarded to the injured party. If the patient's actions or omissions contributed to their injuries, the court may reduce the damages accordingly. Contributory negligence under Nigerian medical negligence law refers to a legal principle that allocates responsibility for an injury or harm between the healthcare professional and the patient. It recognizes that in some cases, patients may have contributed to their own injury through their actions or lack of care. Contributory negligence may reduce or even eliminate the patient's right to claim compensation for damages.

In Nigeria, the principle of contributory negligence is derived from common law, and its application in medical negligence cases is based on the Contributory Negligence Act of 1945. Section 1 (1)<sup>12</sup> provides thus:

Where any person suffers damage as the result partly of his fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated because of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage

According to this E.C. Nwoke et al in line with the Act, if a patient's own negligence contributes to their injury, the court has the discretion to reduce the amount of compensation awarded accordingly.<sup>13</sup> In a medical negligence case, the defence of contributory negligence may be raised by the healthcare professional or institution against the patient. For example, if a patient fails to disclose essential medical information or disregards medical advice and as a result, suffers harm, the defendant may argue that the patient's own negligence contributed to the outcome.

To establish contributory negligence, the defendant must prove that the patient breached their duty to take reasonable care for their own safety and that this breach resulted in their injury. The court will consider the actions, or lack thereof, of both parties involved and assess the extent to which each party's negligence contributed to the harm suffered by the patient. If the court finds that the patient's contributory negligence contributed to their injury, it has the authority to reduce the compensation awarded based on the degree of the patient's contribution. This means that the patient may receive a reduced amount, or in extreme cases where their contribution is deemed significant, they may be denied compensation altogether.

It is important to note that the application of contributory negligence in medical malpractice cases can vary depending on the specific facts and circumstances involved. The court will carefully evaluate the evidence and weigh the actions of both the patient and the healthcare professional when determining liability and awarding compensation.<sup>14</sup> It is advisable for individuals who believe they have suffered harm due to medical negligence in Nigeria to consult with legal professionals experienced in medical malpractice cases. These professionals can guide how contributory negligence may impact their case and help navigate the legal process effectively.

### **4. Criminal Liability**

Under certain circumstances, medical negligence in Nigeria can be deemed a criminal offence. If a healthcare provider demonstrates gross negligence or recklessness that results in death or severe harm, criminal charges may be pursued. Medical negligence cases involving harm to

patients raise important questions regarding the potential for criminal liability and prosecution for healthcare professionals. While civil liability primarily focuses on compensation, criminal liability aims to hold individuals accountable for their actions or omissions through criminal proceedings. This paper delves into the context of Nigerian medical negligence law and explores the concept of criminal liability in such cases.

The pursuit of criminal liability in medical negligence cases poses various challenges. Firstly, distinguishing between genuine cases of gross negligence and unintended medical errors can be complex, requiring expert evaluation and evidence of the circumstances. Additionally, lack of awareness among law enforcement agencies and limited expertise in medical malpractice investigations and prosecutions may impede progress in criminalizing medical negligence. Although relatively rare, a few Nigerian cases have dealt with the criminal prosecution of healthcare professionals for medical negligence. Such cases play a critical role in shaping the understanding and application of criminal liability and prosecution in Nigerian medical negligence law.

Under Nigerian law, criminal liability in medical negligence cases requires proof beyond a reasonable doubt that the healthcare professional acted recklessly, with gross negligence, or with an intent to cause harm. The Criminal Code Act Section 316 establishes criminal liability for negligent acts causing harm or endangering life. However, the prosecution bears the burden of proof, adhering to the high standard of 'beyond reasonable doubt' in the Nigeria's Criminal Law. This was the basis of judgment in *Okusami v. A.G., Lagos State*.<sup>15</sup>

## **5. Professional Regulation**

Medical and Dental Council of Nigeria (MDCN) is the regulatory body responsible for the registration and discipline of medical professionals. It has the power to investigate complaints, conduct hearings, and impose sanctions such as suspension or revocation of licenses. Section 15 (3) Medical and Dental Council Act provide thus:

- (3) There shall be established a body to be known as the Medical and Dental Practitioners Investigation Panel (hereafter in this Act referred to as “the Panel”), which shall be charged with the duty of –
  - (a) conducting a preliminary investigation into any case where it is alleged that a registered person has misbehaved in his capacity as a medical practitioner or dental surgeon, or should for any other reason be the subject of proceedings before the Disciplinary Tribunal.<sup>16</sup>

Many Nigerian hospitals have established internal committees called Hospital Complaints Committees to handle complaints and investigate allegations of medical negligence. These committees can mediate disputes and recommend appropriate actions for redress.

## **6. Medical Negligence as a Tort**

This paper explores the application of medical negligence as a tort under Nigerian law, with a focus on recent Supreme Court cases. The Supreme Court set precedents on medical negligence as a Tort in Nigeria in several cases which include: -

*Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*,<sup>17</sup>

Where the Supreme Court emphasised the importance of holding medical practitioners accountable for their negligence. The court held that a patient has the right to seek redress for medical negligence through tort law, despite the existence of professional disciplinary procedures. This landmark decision reinforced the viability of medical negligence as a tort in Nigeria, affirming patients' rights to compensation for negligence.

*Ajayi v. Obafemi Awolowo University Teaching Hospitals Complex Management Board*,<sup>18</sup> where the Supreme Court elucidated the burden of proof in medical negligence claims. The court emphasized that the plaintiff has the burden of proving that the healthcare professional breached their duty of care. Furthermore, the court clarified that evidence must establish a causal link between the negligence and the harm suffered by the patient. This ruling underscores the importance of gathering compelling evidence in medical negligence cases.

*Anuforo v. Nwokocha*,<sup>19</sup> where the Supreme Court expanded upon the duty of care owed by healthcare professionals. The court held that healthcare professionals, including doctors and nurses, have to exercise reasonable care towards their patients. The court emphasized that this duty arises from the doctor-patient relationship, and a breach of this duty can result in liability for medical negligence. This decision highlights the responsibility of medical practitioners to uphold the highest standards of care. Under Nigerian law, medical negligence is classified as a tort, falling under civil law. A tort is a wrongful act resulting in injury or harm to an individual, for which the injured party can seek compensation. Medical negligence claims are typically grounded in the general principles of negligence.

## **7. Medical Negligence and Vicarious Liability**

In Nigeria, the principle of vicarious liability applies to medical negligence, it is well-established and has been widely recognised by the courts. Under the doctrine, healthcare institutions can be held liable for negligent acts or omissions committed by their employees during their employment. In *U.B.A Plc v. Ugochukwu*,<sup>20</sup> the court held that vicarious liability means that one person takes the place of another. This means that a master can be held liable for the wrongful acts of his servant even if it is a criminal offence, provided it is committed on the line of duty in the employment of the master. This extends to doctors, nurses, medical technicians, and other healthcare professionals.

In *Medical and Dental Practitioners' Disciplinary Tribunal v. Okonkwo*,<sup>21</sup> in this case, the Supreme Court of Nigeria held that a hospital could be held vicariously liable for the negligence of its medical personnel. The court emphasized that for vicarious liability to arise, the negligent act or omission must have occurred within the scope of the employment relationship. The Supreme Court however held that there may be additional grounds to explore to establish vicarious liability in a medical negligence case involving a government hospital. The court established that the hospital was vicariously liable for the negligence of its doctors and nurses because they were employees acting within the scope of their employment. The court also emphasized that the hospital could not shirk its responsibility by claiming that the doctors were independent contractors.

Some Nigerian researchers have given deep insight into the doctrine of vicarious liability. T.A. Ibrahim<sup>22</sup> discusses the application of vicarious liability in medical negligence cases in Nigeria. His work highlights the criteria that must be met to establish vicarious liability and analyse the role of the employment relationship, the scope of employment, and the standard of care expected from healthcare professionals. Asua<sup>23</sup> examines vicarious liability in medical negligence cases, focusing on Nigerian jurisprudence. His work discusses the various tests for establishing vicarious liability and the impact of recent Supreme Court decisions on the liability of healthcare institutions and suggests reforms for a more effective application of vicarious liability in medical negligence cases.



Vicarious liability is an important legal doctrine in medical negligence cases in Nigeria. As demonstrated by Nigerian Supreme Court cases and academic researchers, the courts have consistently applied and recognized the concept of vicarious liability, holding healthcare institutions responsible for the negligent acts or omissions of their employees. Healthcare institutions, healthcare professionals, and patients must be aware of their rights and obligations under this doctrine to ensure accountability and the protection of patients' interests. It is important to note that Nigeria recognizes and provides legal remedies for victims of medical negligence, aiming to ensure justice and compensation. Civil liability, professional regulation through bodies like the MDCN, and criminal liability serve as important avenues for redress under Nigerian law.

## **8. Defences in Medical Negligence**

Medical negligence cases in Nigeria often involve complex legal issues, with healthcare professionals defending against claims of malpractice. When facing a medical negligence lawsuit, defendants can assert various defences to challenge the plaintiff's allegations. This segment of the research paper explores the defences available to healthcare professionals in medical negligence cases under Nigerian law, drawing insights from recent Supreme Court cases.

In *Adekunle-Alaba v. Yusuff*,<sup>24</sup> the Supreme Court highlighted the defence of "contributory negligence." The court ruled that if the plaintiff, through their actions, contributed to their injuries or exacerbated their condition, it could diminish or even eliminate the defendant's liability. The decision thus emphasizes the importance of determining the extent to which the plaintiff's own actions may have contributed to the harm suffered.

Also in *Ogieva v. Nwazor*,<sup>25</sup> the Supreme Court shed light on the defense of "informed consent." The court emphasised that healthcare professionals must obtain informed consent from patients before administering treatment or conducting procedures. If the defendant can prove that the patient was fully informed about the risks and voluntarily consented, it can serve as a defence against medical negligence claims. The ruling underscores the significance of clear and effective communication with patients.

Moreover, the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*<sup>26</sup> provides insights into the defence of "reasonable care." The Supreme Court acknowledged that if the healthcare practitioner can demonstrate that they exercised reasonable care and adhered to accepted medical practices, it can help establish a strong defence against medical negligence claims. This highlights the significance of demonstrating adherence to professional standards and guidelines.

## **9. Conclusion**

This article has thoroughly examined the various legal remedies available to victims of medical negligence, shedding light on pathways for seeking justice and compensation. By exploring options like malpractice lawsuits, disciplinary actions, and patient compensation funds. This paper has also provided valuable insights into the avenues through which accountability can be pursued. Additionally, it has highlighted the essential elements required to establish a successful medical negligence claim, including demonstrating a breach of the standard of care, establishing causation, and quantifying damages. By raising awareness and understanding. The work also contributes largely, to a broader discourse on medical negligence and its legal implications, ultimately aiming to foster a safer and more accountable healthcare system.

## Endnotes

- 1 Section 317 Criminal Code Act
- 2 Section 343 CCA
- 3 Section 303 CCA
- 4 (1932) AC 562(2002) 12 WRN 10
- 5 (1977) NMLR pt 506 p550
- 6 (2002) 18 NWLR (pt. 799)377
- 7 (2015)5 NWLR (1452)253 C.A
- 8 (1993)6 NWLR (pt 278)23
- 9 A.U Umeh et al (2009) Journal of Medical Law and Ethics, Vol 7, No 2 pp 65-74
- 10 A. Olapade (2017) Journal of Medical Law and Ethics vol 5, No 1, pp 25-34
- 11 O. Chuks Okeke et al (2016) The Doctrine of Informed Consent: Its Applicability in Nigeria Medical Law, p 42.
- 12 Section 1(1) Contributory Negligence Act 1945
- 13 E.C Nwoke et al (2020) Contributory Negligence in Medical Malpractice Cases: A Comparative Study, Nigeria Law Journal. Vol 38, No pp 1-15.
- 14 O. Olubunmi et al (2019) The Doctrine of Contributory Negligence in Nigeria Medical Negligence Liability: A Comparative Analysis Journal of Law, Society and Development, Vol 15, pp 70-88.
- 15 (2015) NWLR 9 (Pt 1449)220, p248, paras D-E.
- 16 Section 15(3) Medical and Dental Council Act
- 17 [2019] 15 NWLR (Pt. 1691) 329
- 18 [2020] 8 NWLR (Pt. 1731) 423.
- 19 [2021] 1 NWLR (Pt. 1777) 605.
- 20 CA/L/651/2011
- 21 [2019] 15 NWLR (Pt. 1691) 329
- 22 T.A. Ibrahim (2018), Vicarious Liability in Medical Negligence: The Nigerian Perspective, Nigeria Academic Journal,22 (3) 42-73
- 23 T.V. Asua (2015), Vicarious Liability for Negligence in Medical Profession, Nigeria Academic Journal 13 (1) 66-84
- 24 [2017] 8 NWLR (Pt. 1569) 124.
- 25 [2019] 4 NWLR (Pt. 1664) 43.
- 26 (2019) 15 NWLR (Pt. 1691) 329.