BETWEEN DUTY OF CARE AND REMEDY: A CRITICAL ANALYSIS OF LEGAL RESPONSE TO MEDICAL NEGLIGENCE IN NIGERIA

Munirat Suleiman*
Okara Egbe*
Faruk Tanko Tunga*

Abstract

Medical negligence is a critical issue within the Nigerian healthcare sector. Its rising incidence and significant risks to patient safety and well-being have prompted increased scrutiny of the legal mechanisms available to address these concerns. This paper examines the adequacy of the existing legal framework governing medical negligence in Nigeria, analyzing its doctrinal foundations and institutional mechanisms. It highlights judicial precedents that have established the principles of duty of care, breach of duty, and causation, which are essential in proving negligence, as well as identifies significant challenges in enforcing medical negligence laws in Nigeria. The identified challenges include the scarcity of expert witnesses, prolonged legal processes, and inadequate public awareness of patients' rights. The paper recommends targeted reforms, including the establishment of specialized medical negligence courts, the creation of more explicit statutory guidelines on medical negligence, and the implementation of public awareness campaigns to educate citizens on their rights and the legal remedies.

Keywords: Medical negligence, Medical Negligence in Nigeria, duty of care, Nigerian healthcare sector.

Introduction

Medical negligence has emerged as a pressing issue within Nigerian healthcare and legal systems, raising significant concerns about the standard of care, patients' safety, accountability, and access to justice. At its core, medical negligence, which is a civil wrong, refers to a breach of the duty of care by a medical professional, resulting in harm or injury to a patient;[1] whereas medical malpractice is criminal and or professional misconduct.[2] The legal framework governing medical negligence is crucial in determining the extent to which victims can seek and obtain redress, as well as how healthcare professionals can be held accountable. In Nigeria, this framework is embedded within a mix of statutory provisions, judicial precedents, and ethical guidelines issued by medical regulatory bodies such as the Medical and Dental Council of Nigeria (MDCN).

The need for a comprehensive legal approach to medical negligence cannot be overstated, especially in a developing country like Nigeria, where the healthcare system is often characterized by inadequate infrastructure, a shortage of qualified personnel, and systemic inefficiencies. Despite the

* LLB, BL, LLM. Department of Private and Business Law, Faculty of law, Nasarawa State University Keffi.
* LLB, BL, LLM, PhD. Department of Private and Business Law, Faculty of law, Nasarawa State University Keffi.
* LLB, BL, AICMC. Senior Legislative Aid, National Assembly Nigeria.

[1] Many of the cases that find their way to courts are not treated as medical negligence but as medical malpractice, which accounts for the mournful remedies, if any, and failures in addressing patients' concerns. Medical malpractice was defined in Nwobike v. F.R.N. (2022) 6 NWLR (Pt. 1826) 293 SC as "an evil or improper practice; professional misconduct; treatment falling short of reasonable skill or care; illegal attempt of a person in position of trust to benefit himself at others' loss. See also Olarewaju v Afribank Plc (2001) 13 NWLR (Pt. 731)

[2] For details of medical error in Nigeria see Chukwudi Victor Odoeme, Dennis Ugwuja & Chigozie Sergius Onah (2023): Medical Error Litigation in Nigeria: A Proposal for Change, Journal of Legal Medicine, DOI: 10.1080/01947648.2023.2238564: https://doi.org/10.1080/01947648.2023.2238564

existence of legal provisions under tort law, criminal law, and regulatory codes, the enforcement and accessibility of these mechanisms remain significantly challenged. Victims of medical negligence often face institutional inertia, legal ambiguities, procedural bottlenecks, and a lack of awareness about their rights. Consequently, many cases of medical negligence, errors or malpractice go unreported, uninvestigated, and unpunished, thereby weakening public trust in the healthcare system and the rule of law.

In the Nigerian legal landscape, tort law, particularly the tort of negligence, remains the primary basis for pursuing claims of medical negligence. However, proving medical negligence in court requires satisfying complex legal elements, including the existence of a duty of care, breach of that duty, causation, and resultant damage. These requirements are often difficult to establish in a system that lacks adequate medical documentation, expert witnesses, and patient-centred legal aid. Moreover, there is a noticeable paucity of judicial decisions and statutory clarity on the scope of medical negligence, making it difficult for both legal practitioners and litigants to easily and profitably navigate the terrain.

The regulatory oversight offered by the MDCN and other health-related professional bodies is also fraught with limitations. Disciplinary proceedings are often perceived as slow, opaque, and biased in favour of medical practitioners. This raises questions about the adequacy of professional self-regulation in ensuring accountability and protecting patient rights. Furthermore, criminal liability under Nigeria's penal laws, such as charges of manslaughter or assault occasioning harm, has rarely been invoked in medical negligence cases, partly due to the reluctance of prosecutorial agencies and the high evidentiary threshold required for criminal prosecution.

Against this backdrop, this research sets out to critically appraise the legal framework governing medical negligence in Nigeria, examining its substantive and procedural dimensions. It explores the challenges faced by litigants and legal practitioners in navigating this area of law and assesses the efficacy of existing legal and institutional mechanisms. In doing so, the study also highlights the prospects for reform, particularly the need for clearer statutory provisions, judicial activism, professional accountability, patient advocacy, and access to affordable legal redress.

The research is both timely and relevant, given the increasing incidence of reported cases of medical negligence and errors, the growing demand for improved healthcare standards, and the broader call for legal reforms in Nigeria. It seeks to contribute to the academic discourse, inform policy formulation, and offer practical recommendations aimed at strengthening the legal framework for medical negligence in Nigeria in line with international best practices and the constitutional right to life and dignity.

Medical Law is the branch of law that concerns itself with the rights of patients on one hand and the rights and responsibilities of medical professionals on the other hand. Its major branches are negligence, torts, and confidentiality. The practice of medico-legal issues is suboptimal in Nigeria, unlike in high-income countries where knowledge of patients' rights is high and the healthcare professionals are also well indemnified to cover for eventualities.[34]

Medical negligence refers to the failure of a healthcare provider to exercise the standard of care that is expected in the medical profession, leading to harm or injury to the patient. The concept of medical negligence arises when a medical practitioner fails to exercise reasonable care in treating a patient, leading to injury or death. In Nigeria, the legal framework governing medical negligence is embedded in statutory provisions, common law principles, and ethical codes such as the Hippocratic Oath. Despite the existence of these legal and ethical guidelines, numerous challenges hinder the effective enforcement of medical negligence laws.

Medical negligence may fall into one of these categories:

---

[3] Faculty of Law, Veritas University Abuja, Nigeria. 08065655005, vicodoeme@yahoo.com

[4] Selbyen Oluokun, LL.B, B.L, M.A. (International Relations, Kent) Principal Research Fellow, National Judicial Institute, Abuja.

(a) Wrong diagnosis: If a competent doctor would have discovered the patient's illness or made a different diagnosis, which in turn would have led to a better outcome than the one achieved.
(b) Inappropriate treatment: If a doctor treats the patient in a way that no other competent doctor would, the patient could have a medical negligence claim.
(c) Wrong treatment: In a similar vein, it may also be negligence if the doctor selects the appropriate treatment but administers it incompetently.
(d) Failure to warn a patient of known risks: Doctors have a duty to warn patients of known risks of a procedure or course of treatment- this is known as the duty of informed consent. Suppose a patient, was not properly informed of the possible risks and elects to go through with a procedure. In that case, the doctor may be liable for medical negligence if the patient is injured by the procedure (in a way that the doctor should have warned could happen).[5]

In Nigeria, the issue of medical negligence is increasingly gaining attention due to the rising number of reported cases of malpractice. The legal framework governing medical negligence in Nigeria comprises a combination of statutory laws, judicial precedents, and ethical codes of conduct. However, the effectiveness of these laws in protecting patients and ensuring accountability among healthcare providers remains a subject of debate.

According to a study conducted by Akinyemi and Atilola, approximately 40% of patients surveyed in selected tertiary hospitals in southwestern Nigeria reported experiencing some form of medical error during the course of treatment, ranging from medication mishaps to misdiagnoses and surgical complications.[6] Similarly, the Lagos State Health Facility Monitoring and Accreditation Agency (HEFAMAA) revealed that between 2016 and 2021, over 600 complaints relating to medical malpractice and substandard services were received from private health facilities alone, leading to sanctions and closure of some facilities.[7]

In another investigation, the Nigerian Medical Association (NMA) disclosed that at least 103 formal cases of alleged medical negligence were filed against healthcare providers in Nigeria between 2010 and 2019. However, many more went unreported due to patients' limited access to legal recourse or awareness.[8] The Medical and Dental Council of Nigeria (MDCN) has also had to sanction numerous medical practitioners over professional misconduct. For instance, in its 2018 annual disciplinary tribunal report, the Council struck off six doctors from the medical register and suspended ten others, all of which involved in varying degrees of negligence and ethical breaches.[9]

Even more troubling is the apparent underreporting and non-litigation of many negligence cases. A report by the CLEEN Foundation in 2020 suggests that more than 70% of victims of medical errors do not file formal complaints, either due to fear, lack of knowledge, or mistrust in the judicial system.[10] This not only contributes to the recurrence of such incidents but also hampers accountability mechanisms in the health sector.

The cumulative implication of these statistics is that Nigeria faces a significant public health and legal challenge concerning medical negligence. The gaps in regulation, patient rights enforcement, and professional accountability mechanisms demand a rigorous academic inquiry to propose legal, policy, and institutional reforms. Such research becomes particularly essential in light

---

[5] Ighreriniovo v S C C Nigeria Ltd & Ors (2013) LPELR – 20336 (SC) Kabo Air Ltd. v Mohammed (2015) 5 NWLR (Pt. 1451) 38

[6] Akinyemi, J. O., & Atilola, O. (2014). *Prevalence of Medical Errors in Nigeria: A Study in Selected Tertiary Hospitals*. Nigerian Journal of Clinical Practice, 17(5), 567–573.

[7] HEFAMAA. (2022). *Annual Report on Health Facility Monitoring Activities in Lagos State (2016–2021)*. Lagos State Ministry of Health.

[8] Nigerian Medical Association (NMA). (2019). *Report on Medical Negligence and Litigation in Nigeria (2010–2019)*. NMA Legal Committee Publications.

[9] Medical and Dental Council of Nigeria (MDCN). (2018). *Annual Report of Disciplinary Tribunal Proceedings*. Abuja: MDCN Legal Department.

[10] CLEEN Foundation. (2020). *Health Service Delivery and Citizens' Complaints in Nigeria: A Report on Human Rights Violations in the Health Sector*. Abuja: CLEEN Foundation.

of the country's fragile health system, where public trust and health outcomes are undermined by unchecked professional misconduct and systemic inadequacies.

The general rules apply in establishing that the physician who owed the duty of care is in breach of that duty. An action in medical negligence must be able to prove the existence of a duty of care; Failure to exercise such duty of care by the medical practitioner; Resultant injury to the patient as a result of the breach of duty; and causation, a causal link between the acts complained and damages suffered.[11] Using doctrinal method, this work adds to the existing literature on medical negligence, as well as identifies as challenges scarcity of expert witnesses, prolonged legal processes, and inadequate public awareness of patients' rights. The work recommends targeted reforms, including the establishment of specialized medical negligence courts, the creation of more explicit statutory guidelines on medical negligence, and the implementation of public awareness campaigns to educate citizens on their rights and the legal remedies.

Legal Framework Governing Medical Negligence in Nigeria

Statutory Provisions

The statutory framework governing medical negligence in Nigeria is primarily rooted in general legal principles that govern civil and professional liability, rather than in a single, codified legislation dealing specifically with medical malpractice. Nevertheless, various statutory instruments, including the Constitution of the Federal Republic of Nigeria, the Criminal and Penal Codes, the Medical and Dental Practitioners Act, and other relevant statutes, collectively form the legal architecture within which cases of medical negligence are addressed. These statutes define the duties of medical professionals, the rights of patients, the regulatory powers of professional bodies, and the legal remedies available to victims. A detailed examination of these statutory provisions reveals both the scope and limitations of Nigeria's legal response to medical negligence.

The primary statutory provisions that govern medical negligence in Nigeria include the Nigerian Constitution, the Medical and Dental Practitioners Act, and the Consumer Protection Act.[12]

Although the Nigerian Constitution does not expressly mention "medical negligence," it provides the fundamental legal basis for protecting the rights and welfare of citizens. Notably, Section 33(1) guarantees the right to life, while Section 34(1) guarantees the right to the dignity of the human person. These provisions are relevant in cases of gross medical negligence resulting in death or degrading treatment. Courts have sometimes invoked constitutional rights in medical malpractice cases, especially where there is evidence of severe neglect leading to the violation of a patient's fundamental human rights. These constitutional guarantees impose a duty on medical practitioners and healthcare institutions to provide care that preserves life and dignity.

The Nigerian Constitution provides a general framework for the protection of citizens' rights, including the right to life (Section 33), which is closely related to healthcare delivery. Although the Constitution does not explicitly mention medical negligence, the right to life imposes an implicit duty on healthcare providers to avoid actions that could endanger the lives of patients.[13]

The Criminal Code Act (applicable in Southern Nigeria): The Criminal Code contains provisions that can be invoked in instances of criminal liability arising from medical negligence. For example, Section 303 of the Criminal Code imposes a duty on any person who undertakes to administer surgical or medical treatment to exercise reasonable skill and care. It provides that such a person is criminally responsible for any consequences resulting from neglect in applying such skill and care. This section establishes a standard of care expected of medical professionals and opens the door to criminal prosecution in cases of gross negligence resulting in serious harm or death. Similarly, Section 343 addresses negligent acts likely to spread infection of disease, while Section 324 deals with manslaughter, which can be invoked where a patient dies as a result of gross medical negligence.

[11] B K Dey,' Medical Negligence: An Overview', accessed 27 May 2024
[12] Consumer Protection Act, Cap C25 LFN 2004.
[13] The Constitution of the Federal Republic of Nigeria 1999

Section 303 of the Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, plays a central role in the legal regulation of medical negligence in Southern Nigeria. It provides as follows:

> It is the duty of every person who, except in the case of an emergency, undertakes to administer surgical or medical treatment to any other person, to have reasonable skill and to use reasonable care in doing so; and such person is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe that duty.[14]

This provision imposes a statutory duty on anyone who undertakes the treatment of another person to exercise reasonable care and skill. A breach of this statutory duty that results in harm or death may lead to criminal liability, distinguishing it from the civil liability under the tort of negligence. While civil negligence seeks to compensate the victim, criminal negligence under Section 303 aims at punishing conduct that falls below acceptable societal standards, especially where it results in fatal consequences.

The scope of Section 303 has been interpreted by Nigerian courts to encompass situations where medical practitioners, through recklessness or gross incompetence, cause harm or death to a patient. The duty created by this provision is not limited to doctors alone; it extends to any person who undertakes to provide medical or surgical treatment, including nurses, paramedics, and traditional health practitioners.[15]

In R v Izobo (1953) 20 NLR 47, the defendant, a self-styled native doctor, administered a harmful concoction to a patient, leading to death. The court found him criminally liable under Section 303 for failing to exercise reasonable care, even though he was not a licensed medical practitioner. The case underscored that once a person voluntarily assumes the role of a healthcare provider, they are held to the legal standard of reasonable care and skill.[16]

Similarly, in Okonkwo v The State (1998) 4 NWLR (Pt. 544) 476, the Supreme Court emphasized the importance of consent and professional duty in medical practice. Though this case was more focused on the issue of refusal of treatment based on religious grounds, the court reaffirmed the principle that medical practitioners must exercise care consistent with their professional training and legal obligations.[17]

Despite its clarity, Section 303 has seen limited enforcement in Nigeria, largely due to systemic weaknesses in criminal investigation and prosecution in medical cases. Victims or their families often lack the awareness or resources to initiate complaints, and law enforcement authorities are usually reluctant to pursue criminal charges against medical professionals unless the negligence is glaring and egregious. Additionally, proving criminal negligence requires a higher threshold of evidence, beyond reasonable doubt, making convictions under this section difficult.

The legal requirement of causation under Section 303 further complicates enforcement. Prosecutors must prove that the breach of the duty of care directly caused the patient's harm or death. In many instances, the absence of forensic evidence, lack of medical records, and unwillingness of other professionals to testify hinder the successful prosecution of such cases.[18]

Nonetheless, Section 303 remains a critical statutory anchor in Nigeria's legal response to medical negligence. It not only codifies the duty of care expected of health practitioners but also establishes a legal deterrent against gross professional misconduct that endangers life and public health. Its proper implementation through judicial activism, prosecutorial diligence, and public awareness can serve to improve standards of care and accountability in the Nigerian health sector.

The Medical and Dental Practitioners Act (Cap M8 LFN 2004): The Medical and Dental Practitioners Act is the primary legislation regulating the medical profession in Nigeria. It establishes

---

[14] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, s. 303.

[15] O. C. Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria*, 2nd Edn (Ibadan: Spectrum Books Ltd, 1980), pp. 219–220.

[16] *R v Izobo* (1953) 20 NLR 47.

[17] *Okonkwo v. The State* (1998) 4 NWLR (Pt. 544) 476.

[18] A. Adekunle, "Medical Negligence in Nigeria: An Analysis of the Legal and Institutional Framework," *Nigerian Journal of Public Law*, Vol. 10, No. 2 (2019), p. 142.

the Medical and Dental Council of Nigeria (MDCN), which is responsible for the registration, discipline, and regulation of medical practitioners and dentists in the country. Under this Act, medical practitioners are required to adhere to the code of ethics prescribed by the MDCN. Failure to comply with these ethical standards can result in disciplinary actions, including suspension or revocation of a medical license.

The Consumer Protection Act (Cap C25 LFN 2004): The Consumer Protection Act provides a framework for the protection of consumers, including patients, against unfair practices by service providers. The Act empowers consumers to seek redress for injuries or harm caused by defective products or services, including medical services. However, the effectiveness of this Act in addressing medical negligence is limited by the general lack of awareness and the complexities involved in proving negligence. Others include the National Health Act, 2014.[19]

Judicial Precedents

Judicial precedents play a crucial role in shaping the legal framework for medical negligence in Nigeria. Courts in Nigeria have developed certain principles and standards for determining liability in medical negligence cases. They include:

Duty of Care: This is at the heart of every case of medical negligence. In the case of Okonkwo v Medical and Dental Practitioners Disciplinary,[20] the Supreme Court of Nigeria affirmed that medical practitioners owe a duty of care to their patients. This duty requires healthcare providers to act with the skill and care expected of a competent practitioner in their field.[21]

Breach of Duty: A breach of duty occurs when a healthcare provider fails to meet the standard of care required by law. In Akingbade v Fasanmade,[22] the court held that a breach of duty arises when the actions of a medical practitioner fall below the accepted standard of practice in the medical profession.[23]

Causation and Damages: For a claim of medical negligence to succeed, the plaintiff must establish that the breach of duty directly caused the injury or harm suffered. In Ogundipe v Awobokun,[24] the Court of Appeal emphasized the need for clear evidence linking the breach of duty to the harm caused.[25]

Furthermore, to prove negligence, one must show that a required standard of care was violated and that the violation was the legal cause of the injury. In First Bank Nigeria Plc. v Banjo,[26] the court identified certain elements of negligence that must be proved to ground medical negligence. They include that the defendant owed the plaintiff a duty of due care; That the defendant failed to exercise the said due care, and that the defendant's failure was the cause of the injury of the plaintiff. To assert professional misconduct, the court will determine if the act or omission of the medical practitioner falls short of the standard expected of other medical practitioners.[27] In law generally, the burden of proving negligence (i.e that the defendant was in breach of the duty of care he owed to the plaintiff) always lies on the plaintiff.[28] In Abubakar & Anor v Joseph & Anor,[29] it was held that "the burden of proof of negligence falls on the plaintiff who alleges negligence." The rationale is that medical negligence is a question of fact, and it is the duty of the person who asserts medical negligence to prove it. Unfortunately, many cases of medical negligence fail at this point, as proving medical negligence in the manner expected by the law poses a great obstacle for the victim. The actions of

[19] National Health Act, 2014.
[20] Tribunal (2001) 7 NWLR (Pt. 711) 206
[21] Ibid
[22] (1968) LLR 220
[23] Akingbade v Fasanmade (1968) LLR 220.
[24] (2014) LPELR-22693(CA)
[25] Ogundipe v Awobokun (2014) LPELR-22693(CA)
[26] (2015) 5NWLR (Pt.1452) 253 C.A
[27] 20 2 (2015) 5 NWLR (PT 1452) 253
[28] Kodilinye & Aluko, The Nigerian Law of Torts (Spectrum Books Ltd. 2007) 147

[29] (2008) LPER 48 (SC)

many victims around the world fail because of the inability to prove that negligence occurred or show how it happened; in other words, a lack of direct evidence.

Medical negligence cases in Nigeria have been litigated with varying degrees of success. The Nigerian legal system primarily relies on tort law principles, particularly negligence, to determine liability in such cases. A landmark case is Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal[30] where the Supreme Court affirmed the professional duty of care required of medical practitioners. However, many cases of medical negligence in Nigeria remain unreported due to patients' lack of awareness and systemic legal inefficiencies.[31]

The statutory framework includes the Medical and Dental Practitioners Act, which establishes the Medical and Dental Council of Nigeria (MDCN) as the regulatory body for medical professionals. The MDCN is empowered to discipline erring practitioners, but its enforcement mechanisms have been criticized for inefficiency and lack of transparency. Additionally, the Constitution of the Federal Republic of Nigeria (1999) guarantees the right to life and dignity, which can be invoked in cases of gross medical negligence. Comparatively, medical negligence laws in jurisdictions like the United States and the United Kingdom provide more robust protection for patients.[32] In the UK, the Bolam v Friern Hospital Management Committee (1957) case established the Bolam test, which assesses whether a doctor acted in accordance with a reasonable body of medical opinion. In the U.S., malpractice litigation is more frequent due to well-defined statutes and higher public awareness. These systems ensure better patient compensation mechanisms, efficient judicial processes, and professional accountability.[33]

Patients in Nigeria are entitled to rights such as informed consent, access to quality healthcare, and confidentiality. These rights are reinforced by international treaties such as the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. Also, the Hippocratic Oath, which underpins medical ethics globally, mandates physicians to prioritize patient well-being. However, in Nigeria, violations of these rights often go unchecked due to weak regulatory enforcement.

Patients should be educated and made aware of the physician's rights, but this must be done in a way that balances the rights of the physician with the rights and responsibilities of the patient. In the context of medical practice, informed communication enhances mutual respect, trust, ethical engagement, and professional accountability. A healthy doctor–patient relationship is built on mutual respect. While patients have the right to be informed about their diagnosis, treatment options, and risks, physicians also have rights, such as the right to decline treatment in non-emergency cases, the right to work in a safe environment, and the right to professional autonomy. Making patients aware of these rights helps prevent abuse, unrealistic expectations, or misinterpretation of medical decisions. Aso, educating patients about the physician's right, such as the right to decline treatment under certain ethical, religious, or legal grounds (e.g., refusal to perform abortions in some jurisdictions) can reduce friction. Patients are less likely to feel mistreated if they understand that physicians are also bound by professional ethics, personal values, and institutional policies.

However, while educating patients on physician rights is important, it should not be used to shield healthcare professionals from accountability or discourage patients from lodging complaints when genuine negligence or misconduct occurs.

Challenges in Proving Medical Negligence

There is a significant lack of awareness among the general populace regarding their rights and the legal remedies available in cases of medical negligence. Many patients, particularly in rural areas, do not know they can seek legal redress when they suffer harm due to medical malpractice. This lack of awareness results in underreporting of cases, which further perpetuates the problem.

---

[30] Supra

[31] *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal* (2001) FWLR (Pt. 44) 542.

[32] Code of Medical Ethics in Nigeria (Revised Edition, Medical and Dental Council of Nigeria, MDCN, 2008).

[33] *Bolam v. Friern Hospital Management Committee* [1957] 1 WLR 582.

The Nigerian judicial system is plagued by bottlenecks, making litigation a lengthy and expensive process. Court cases can take years before resolution, discouraging victims from pursuing legal action. The slow pace of the judicial process makes it difficult for aggrieved patients to obtain timely justice. Additionally, the cost of legal representation is often prohibitive, leaving many patients unable to afford legal proceedings against negligent medical practitioners.

The weak regulatory framework governing medical practice in Nigeria is another critical challenge. The Medical and Dental Council of Nigeria (MDCN), which is responsible for regulating and disciplining erring medical practitioners, often lacks the resources and institutional capacity to effectively carry out its mandate. This has led to a situation where many cases of medical negligence go unpunished, further eroding public trust in the healthcare system.

Corruption and professional protectionism also contribute to the persistence of medical negligence. There have been allegations that regulatory bodies and medical associations shield erring doctors from facing the full consequences of their actions. This culture of impunity makes it difficult for victims to obtain justice and discourages the enforcement of medical standards.

The absence of adequate medical records and expert witnesses is another significant hurdle in proving cases of medical negligence. In many instances, medical records are poorly maintained, making it difficult for victims to establish a clear link between the negligence of a healthcare provider and the harm suffered. Furthermore, the reluctance of medical professionals to testify against their colleagues in court cases hampers the ability of plaintiffs to prove their claims beyond a reasonable doubt.

Proving medical negligence in Nigeria is fraught with challenges. Some of the key difficulties include:

Lack of Expert Witnesses: Medical negligence cases often require expert testimony to establish the standard of care and whether it was breached. However, there is a scarcity of medical experts willing to testify against their colleagues, which hinders the prosecution of such cases.

Prolonged Legal Processes: The Nigerian judicial system is notorious for its slow pace, and medical negligence cases are no exception. The prolonged duration of litigation discourages many victims from pursuing legal action, leading to a lack of accountability for negligent healthcare providers.

Inadequate Legal Awareness: Many Nigerians are unaware of their legal rights concerning medical negligence. This lack of awareness, coupled with the complexities of legal procedures, results in a low rate of reported cases and a limited number of successful claims.

Methodology

This research is primarily qualitative and analytical, focusing on legal texts, judicial precedents, and academic commentaries to evaluate the effectiveness of the existing legal framework in addressing medical negligence. The study was designed to explore statutory provisions, relevant case law, and their implications for healthcare professionals and patients.

The data collection relies on secondary sources, including primary legal documents such as the Nigerian Constitution, statutory provisions, and case laws, alongside secondary materials like legal textbooks, journal articles, and reports from regulatory bodies. Comparative analysis incorporates international guidelines and peer-reviewed resources to critically evaluate Nigeria's legal framework on medical negligence and its alignment with global practices.

Ethical Considerations and Prospects

Medical ethics play a significant role in the legal framework of medical negligence. The Hippocratic Oath, which emphasizes the principle of "do no harm," serves as a moral guideline for medical practitioners. The ethical obligations of medical practitioners are reinforced by the Code of Medical Ethics in Nigeria, issued by the MDCN.[34] However, the enforcement of these ethical standards is often inconsistent, leading to varying levels of accountability.

[34] Medical and Dental Council of Nigeria, Code of Medical Ethics in Nigeria, MDCN, 2008.

The prospects for reforms are that legislative reforms are essential to strengthening the legal framework on medical negligence in Nigeria. There is a need for specific legislation that clearly defines medical negligence, establishes liability, and provides for adequate compensation mechanisms. Clearer statutory provisions will help improve the enforcement of medical malpractice laws and create a more effective legal system for addressing negligence claims.

Strengthening regulatory bodies is crucial for improving accountability within the medical profession. The Medical and Dental Council of Nigeria (MDCN) should be given more autonomy and resources to investigate and discipline erring practitioners effectively. Transparency in disciplinary proceedings will help restore public confidence in the regulatory system and ensure that negligent medical practitioners are held accountable for their actions.

Public awareness campaigns should be implemented to educate citizens on their rights regarding medical negligence. Government agencies, civil society organizations, and professional bodies should collaborate to raise awareness about legal remedies available to victims of medical malpractice. Increased awareness will empower patients to demand better healthcare standards and seek redress when their rights are violated.

The establishment of specialized medical malpractice courts or tribunals would help expedite the resolution of medical negligence cases. These specialized courts would focus exclusively on medical malpractice claims, ensuring that cases are handled by judges with expertise in healthcare law. This would lead to faster adjudication of cases and more consistent legal precedents in the area of medical negligence.

Encouraging alternative dispute resolution (ADR) mechanisms such as mediation and arbitration can provide a less adversarial and more cost-effective means of resolving medical negligence disputes. ADR mechanisms can help reduce the burden on the judicial system while ensuring that victims receive timely compensation for harm suffered due to medical negligence.

By implementing these reforms, Nigeria can create a more robust legal framework for addressing medical negligence, ultimately leading to improved patient protection and greater accountability within the healthcare sector. Strengthening enforcement mechanisms, improving judicial efficiency, and fostering a culture of accountability are essential steps toward achieving a fair and responsive legal system for medical negligence in Nigeria.

Conclusion

The line dividing medical negligence from medical malpractice in Nigeria is murky. Although unfortunate, it does provide a leeway to elicit some form of accountability in cases of medical negligence if a few procedural reforms are allowed or judges become very proactive. The point is that the High Courts in Nigeria have concurrent jurisdiction for both civil and criminal matters. All that needs to be done is for the judge to conduct a nuanced analysis of medical cases before it, to isolate cases of medical negligence and thereafter proceed with the civil part of the suit bordering on medical error,[35] regardless of what identity it bears (medical negligence or medical malpractice). Medical malpractice, which is as criminal in Nigeria, may be taken simultaneously or abandoned. The intent is to provide the victim with some relief.

The legal framework on medical negligence in Nigeria, though evolving, remains inadequate in providing comprehensive protection to patients. The combination of statutory provisions, judicial precedents, and ethical guidelines forms the current legal landscape, but significant gaps and challenges persist. By addressing these challenges through legal reforms, improved access to justice, and heightened public awareness, Nigeria can create a more robust system that ensures accountability in the healthcare sector and better protects the rights of patients. Moreso, Medical professionals in Nigeria should be abreast with the laws guiding medical practice as ignorance of the law is not an excuse.

[35] For details of medical error in Nigeria see Chukwudi Victor Odoeme, Dennis Ugwuja & Chigozie Sergius Onah (2023): Medical Error Litigation in Nigeria: A Proposal for Change, Journal of Legal Medicine, DOI: 10.1080/01947648.2023.2238564: https://doi.org/10.1080/01947648.2023.2238564

To address medical negligence effectively in Nigeria, specific recommendations are necessary to strengthen the existing legal framework. These recommendations are as follows:

1. The Nigerian government should enact a comprehensive Medical Negligence Act to clearly define the scope of liability, establish a streamlined legal process for claims, and improve access to justice for victims.
2. Public awareness campaigns should be launched to educate patients about their rights and available legal remedies in cases of medical negligence, ensuring that more victims come forward to seek justice.
3. Judicial reforms should be implemented to expedite the hearing and resolution of medical negligence cases, possibly through the establishment of specialized health law tribunals or courts.
4. Regulatory bodies such as the MDCN should be strengthened through better funding, increased independence, and stricter oversight mechanisms to ensure that erring medical practitioners are held accountable.
5. The Nigerian judiciary should adopt a more proactive approach in awarding adequate compensation for victims of medical negligence, which would serve as both a remedy for affected individuals and a deterrent to medical practitioners.
6. While medical negligence may not be minimized or reduced via continuous professional training and stricter licensing requirements should be enforced to ensure that healthcare providers adhere to best medical practices, reducing the incidence of negligence and improving the overall quality of healthcare in Nigeria, it observance is highly necessary.
7. Lawyers should be part of a hospital SERVICOM unit. Their inclusion helps ensure legal compliance and reduces risks associated with malpractice and regulatory breaches. Lawyers play a key role in addressing patient complaints related to negligence or poor service, offering legal guidance and helping to resolve issues before they escalate into lawsuits. They also assist in drafting and reviewing hospital policies to ensure they align with relevant laws, including patient rights, labor laws, and data protection regulations. By educating staff on legal standards such as informed consent and confidentiality, lawyers help protect patients' rights. Additionally, they support early dispute resolution, fostering trust and improving service delivery. Overall, their presence strengthens accountability and enhances the effectiveness of the SERVICOM initiative in hospitals.

Besides, clear and explicit statutory provisions should be introduced, providing comprehensive guidelines on the responsibilities, liabilities, and remedies for healthcare professionals and patients. This would help eliminate ambiguities in the law and ensure consistency in its application. Establishing specialized medical negligence courts or tribunals is crucial to expedite the resolution of such cases. These courts would reduce delays often experienced in the judicial process, making justice more accessible and efficient for victims. Public awareness campaigns are essential to educate citizens about their rights and the legal options available in cases of medical negligence. Both governmental and non-governmental organizations should actively conduct these campaigns using diverse platforms to ensure widespread reach and understanding. Encouraging medical experts to provide testimony in negligence cases is another key aspect. Policies should offer legal protections to these experts against professional backlash while providing financial incentives to motivate their participation. These measures would enhance the credibility of legal proceedings and facilitate fair adjudication. By implementing these recommendations, Nigeria can significantly improve its legal framework, ensure accountability among healthcare providers, and safeguard the rights of patients affected by medical negligence.