

The Law Industry Trends

Medical Negligence In Nigeria And Its Consequences

Medical negligence is defined as the failure to provide adequate healthcare to a patient by accepted medical standards and practices. Medical negligence occurs when a doctor, hospital, or other healthcare providers do not meet the standards required to ensure the protection of patients from unnecessary risk, harm, and suffering.

**by: Al-amin Amusan,
Intern,
Libra Law Office**



The professions within medicine and practice situations are varying and dynamic. This makes it difficult for individuals outside the medical field to know what is expected from a practicing healthcare professional at any given time. However, this difficulty has not diminished the questions that arise and demand for answers from those who depend on healthcare providers every day. How do we identify cases of medical negligence? What remedies and compensation are available to victims?

In this article, firstly, we will identify the laws guiding medical conduct for professionals, and then we will digress into the consequences for medical negligence in Nigeria.

The Medical and Dental Council of Nigeria (MDCN) was established by the Medical and Dental Practitioners Act of 2004 to regulate the professions of medicine and dentistry

THE LAW AND MEDICAL PRACTITIONERS

In Nigeria, medical professionals are held accountable by the Medical and Dental Practitioners Act of 2004 which established the Medical and Dental Council of Nigeria (MDCN).¹ The MDCN was acclaimed to register physicians and dentists, and in 2008 the Code of Medical Ethics was published by the MDCN.² This document codified standards of professional conduct for physicians and dentists. Nigerian medical and dental standards are established by this code.

The Code of Medical Ethics in Nigeria defines professional negligence as:

1. Failing to provide prompt care to a patient who needed it right away when the practitioner had the opportunity to do so.
2. Evaluating a patient incompetently.
3. Giving incorrect diagnosis when the clinical features were so obvious that no practitioner with a reasonable level of skill could have missed them.
4. Failing to disclose or providing incorrect information to a patient about the risks associated with a specific procedure or course of treatment, particularly if such a procedure or course of treatment is likely to have serious side effects like deformity or organ loss.
5. Failure to obtain the patient's consent before beginning any surgical procedure or course of treatment, when such consent was required, whether informed or not.

¹ The MDCN is the professional health regulatory agency for the professions of Medicine, dentistry, and alternative medicine in Nigeria

² Cap. 221, Laws of the Federation of Nigeria, 1990.

LIBRA LAW OFFICE

4, Probyn (Onisowo) Road, Ikoyi, Lagos, Nigeria


Postal Address: P.O Box 53015, Falomo, Ikoyi, Lagos, Nigeria

Telephone: 01-6281981 | +234 (0) 9046537758

Email: libra@libralawoffice.com

www.libralawoffice.com

 @Libralawoffice

 Libra Law Office

PROVING MEDICAL NEGLIGENCE

Before any liability to pay damages can be established, negligence must be proven in three ways. The case of First Bank of Nigeria Plc. V. Banjo (2015) laid out the conditions that must be satisfied:

1. It must be established that the defendant had a responsibility to use reasonable care for the plaintiff.
2. The defendant did not use reasonable care
3. The plaintiff's injury was brought on by the defendant's negligence.

THE CONSEQUENCES OF MEDICAL NEGLIGENCE

In some circumstances, a victim of medical negligence may seek justice through criminal law. If a medical practitioner's negligence causes a patient to die or become permanently disabled, the practitioner may be charged with gross negligence, which would be a crime against the state; if the practitioner's negligence causes a patient to die, the practitioner may be charged with manslaughter. A medical practitioner may be charged with additional offences while performing their duties.

CIVIL ACTION LAWSUIT

According to Section 343(1)(e) of the criminal code, *"any person who gives medical or surgical treatment to any person whom he has undertaken to treat in such a rash or negligent manner as to endanger human life or to be likely to cause harm to any other person is guilty of a misdemeanor and is liable to imprisonment for one year."*³ This provides the Victim with the opportunity to file a claim of civil action against the medical practitioner or institution.

This action will be brought forward when the negligence shown is ordinary tortious negligence.⁴ Ordinary tortious negligence must display three things:

- That the medical practitioner owed a duty of care to the patient
- That the duty of care was broken
- That the patient suffered damages as a direct result of the breach.

The burden of proof is on the Claimant who must provide evidence to show that the doctor's actions or omissions constitutes as a breach of duty. Filing a civil suit for negligence could result in a case of vicarious liability against the hospital or medical practice.

3. Ref section 343-344, Nigerian criminal code Act

4. Defined as a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances.

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VICARIOUS LIABILITY

Black's Law Dictionary defines vicarious liability as '*Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties.*' This means that if hospital staff do not carry out their duties effectively, the hospital could be held liable as a result. This is based on a principle from the case *Dickson Igbokwe v University College Hospital Board of Management* (1961), in which Irwin J. affirmed that "*the hospital authority is responsible for the acts or omissions of all of its staff, whether they are physicians, doctors, nurses, or other employees.*"

THE PANEL AND THE TRIBUNAL

Within the MDCN are two disciplinary bodies: the panel and the tribunal.⁵ The Panel is the body responsible for carrying out investigations into allegations of "infamous conduct" (misconduct) of a medical practitioner before handing over the case to the tribunal. If the tribunal finds the medical practitioner guilty, it may remove the practitioner from the registrar, suspend his/her license for up to a period of six (6) months, or issue a warning (admonishment). This, however, does not shield them from civil and criminal prosecution.

IN CONCLUSION

There are legal safeguards to protect the rights of patients in Nigeria, however, more effort must be put into educating the average Nigerian on their rights and how to seek justice when any cases of negligence occur. Considering that the medical sector in Nigeria is still underdeveloped compared to the international standard, this information must be made free and accessible given the frequent nature in which these cases arise.

Barristers, Solicitors, Arbitrators & Notaries

5. The membership of both the Investigating Panel (IP) and the Disciplinary Tribunal (DT) are drawn from very highly experienced medical and dental practitioners; their proceedings are guided by the dictates of natural justice, equity, and the rule of law.


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