

## The Law Industry Trends

### An Overview On Nigerian Medical Negligence: Liability

When a doctor, medical personnel, or healthcare institution engenders harm to a patient by failing to uphold the standard of care deemed necessary when supervising, diagnosing, or treating a patient, the implications of the act or omissions of negligence on the lives of the patients often ranges in severity.

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## INTRODUCTION

When a person visits a hospital for medical checkup, diagnosis, treatment, surgery, and other purposes, the medical practitioner assigned to care for a patient is to act and carry out his duties as he ought to. There is a measure of care which the medical practitioner has a duty to uphold and this duty is usually referred to as Duty of Care. Where the medical practitioner in the course of carrying out his duties, performs below the standard required of him, or omits acting accordingly it can be said that the medical practitioner has breached the Duty of Care.

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Breach of duty often arises in cases of harm to a patient which results in physical or psychological damage prompted by the medical practitioner's failure to uphold the degree of care that a reasonably competent and skilled medical professional, who has a comparable background and practices in the same medical community, would have given to a patient under the same set of circumstances. As is generally characterized as the standard of care for medical professionals.

When a doctor, medical personnel, or healthcare institution engenders harm to a patient by failing to uphold the standard of care deemed necessary when supervising, diagnosing, or treating a patient, the implications of the act or omissions of negligence on the lives of the patients often ranges in severity. However, they can have severe consequences including the loss of limbs, worsened health conditions; development of new health complications, psychological issues are often subsequently developed. The life of the victim tends to be negatively altered due to the negligence of the medical practitioner.

## EXAMPLES OF MEDICAL NEGLIGENCE

Examples of medical errors that constitute as negligence are:

- Using the incorrect type or dosage of anesthetic during surgery.
- Ignoring certain signs during childbirth; for example, where a C-section is needed in the process of natural birth but the doctor fails to notice the signs.
- Leaving an existing chronic condition like heart disease undiagnosed.
- Post-surgical negligence.
- Prescribing wrong medications to patients.
- Retention of objects in operation site.

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## THE LEGAL FRAMEWORK OF MEDICAL NEGLIGENCE IN NIGERIA

The primary piece of legislation governing the medical industry in Nigeria is the Medical and Dental Practitioners Act (the Act) of 2004. The Act provides for the establishment of The Medical and Dental Council of Nigeria (MDCN), which manages the registration of medical and dental professionals. The MDCN codified the standards of professional conduct for medical and dental practitioners in its Code of Medical Ethics in Nigeria, 2008, in order to fulfill its statutory obligations under the Act. The authorized medical and dental practices in Nigeria are outlined in this code.

The Medical and Dental Practitioners Disciplinary Tribunal and the Medical and Dental Practitioners Investigating Panel were also established under the Act. When charges of infamous conduct in a professional capacity are made against a medical professional, the Panel is tasked with conducting preliminary inquiries into those claims. If the Panel determines that the allegations are true, it then refers the case to the Tribunal for a trial.

### LIABILITY OF MEDICAL NEGLIGENCE

In case of Bolam Vs. Friern Hospital Management Committee,<sup>1</sup> the House of Lords formulated the Bolam's rule as: *"A doctor 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. Putting it another way round, a doctor is not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view"*.<sup>2</sup>

The BOLAM's rule has been adopted by the Supreme Court in the case of Jacob Mathew vs. The State of Punjab,<sup>3</sup> as the benchmark to assess the Medical Negligence.

The question of liability would arise when the medical professional did not carry out his responsibility as expected. The victims of medical malpractice may file a complaint under criminal law, bring a lawsuit for a civil violation, or use the Act's complaint process.<sup>4</sup>

### CRIMINAL LIABILITY IN MEDICAL NEGLIGENCE

Medical negligence can be regarded as a crime when the negligence or misconduct of the medical practitioner amounts to grave circumstances such as the death of the victim, permanent disability, loss of a limb or limbs, etc.

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1 (1957) 1 WLR 582

2 Neha Pandey 'Medical Negligence Concept and Liability' <<https://legaldesire.com/medical-negligence/>> accessed 2nd August.

3 (2005) 6 SCC 1

4 Resolution Law Firm Nigeria, 'Liability and Proof of Medical Negligence' <<https://www.mondaq.com/nigeria/professional-negligence/1004164/liability-and-proof-of-medical-negligence-in-nigeria>> accessed 2nd August 2022.

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The Criminal Code<sup>5</sup> and the Penal Code<sup>6</sup> are the two codes that regulate criminal liability in Nigeria. The Criminal Code regulates criminal conduct in the Southern Region while Penal Code regulates criminal conduct in the Northern Region.

Section 303 of the Criminal Code provides that there is a duty on persons doing a dangerous act such as administering surgical and medical treatment and their responsibility for the consequences that may result to the life or health of any person by reason of any omission to observe or perform that duty. The Section does not by itself create an offence but creates a duty where it would have been doubtful whether or not one existed in criminal law. It establishes liability for consequences of the breach of that duty. In circumstances where it is applicable, it makes negligence the basis of criminal liability for offences against the person (excluding murder) where the need to establish intention, knowledge and such mental elements as the basis of liability would have been required.<sup>7</sup>

In other circumstances, the medical professional may not be held responsible as long as he acts in good faith and uses reasonable caution in performing his obligations.

## **CIVIL LIABILITY IN MEDICAL NEGLIGENCE**

A civil action is a lawsuit filed by a private person against another private person. Usually, this action seeks monetary compensation for damages resulting in injury or loss alleged to be caused by the defendant. A defendant who loses in a civil action does not face the risk of prison or fines, like in criminal court. A person found liable in a civil action, upon a verdict in favor of the plaintiff, must pay whatever monetary damages the jury (or sometimes the judge) awards to the plaintiff.<sup>8</sup>

When a medical practitioner is involved in medical malpractice that causes injury or death to the patient, the patient or family of the patient (in a case where the malpractice leads to the death of the patient), can pursue a civil claim against the medical practitioner. To be eligible for damages, the patient must prove:

- The doctor had a responsibility to the patient.
- The required level of care and how the doctor fell short of it.
- It is a harm that is compensable.
- The patient's harm was brought on by the breach of the standard of care.

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5 Cap 77 Laws of the Federation of Nigeria 1990.

6 Penal Code Cap 89 Laws of Northern Nigeria, 1963

7 Medical and Dental Practitioners' Disciplinary Tribunal v Okonkwo (2001) LPELR 1856 (SC)

8 Criminal Defense Lawyer published by NOLO <<https://www.criminaldefenselawyer.com/resources/civil-liability.htm>> accessed 17th August 2022

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The seminal case of *Donoghue v. Stevenson*<sup>9</sup> established the duty of care premise and laid the groundwork for the tort of negligence.

Miss May Donoghue was given a bottle of ginger beer, purchased by her friend. She later discovered that the bottle contained a decomposing snail, which she had been unaware of while initially consuming the contents of the bottle, since the bottle was not made of clear glass. She later fell ill and got diagnosed with gastroenteritis. Donoghue could not sue for breach of contract because she had not purchased the drink herself. Ordinarily, such cases of defective products would be brought under breach of contract of sale, but as the plaintiff did not purchase the product, the only way remedy could be obtained was to bring an action for remedy for damages for the negligence of the manufacturer. The main issue in this case was whether or not Stevenson owed Donoghue a duty of care in the absence of a contractual relationship between them.

The outcome of *Donoghue v Stevenson* established several legal principles and precedents.

Firstly, the House of Lords decision upheld carelessness as a tort. If a respondent's act results in harm to the plaintiff, the plaintiff may file a civil action against the respondent. In the past, the plaintiff had to present evidence of a contractual arrangement, such as the sale of an object or an agreement to render services, in order to establish negligence. Donoghue could not demonstrate a contract with the maker Stevenson because she had not bought the beverage. However, Lord's decision determined that Stevenson was still accountable for the quality of his output.

*The Donoghue v. Stevenson decision gave rise to Lord Atkin's contentious "neighbor principle" which broadened the scope of the negligence tort to include those other than the perpetrator and the immediate victim.*

Secondly, the case demonstrated that manufacturers have a responsibility to take care of the users or final consumers of their goods. According to Lord Atkin's ratio decendi, "a manufacturer of products, which he sells... to reach the ultimate consumer in the form in which they left him... owes a duty to the consumer to take reasonable care".

Thirdly, the *Donoghue v. Stevenson* decision gave rise to Lord Atkin's contentious "neighbor principle" which broadened the scope of the negligence tort to include those other than the perpetrator and the immediate victim. It prompted a discussion about just who might be harmed by careless behavior. Donoghue was not a party to the contract; rather, she was a "neighbor" who had received the ginger beer as a gift. Lord Atkin said of this principle "you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then in law is my neighbor? The answer seems to be persons who are closely and directly affected by my act that I ought to have them in mind when I am considering these acts or omissions".<sup>10</sup>

9. (1932) UKHL 100, SC

10. *Donoghue v Stevenson* (supra)

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## WHEN DOES THE DUTY OF CARE OF A MEDICAL PRACTITIONER ARISE?

The duty of care exists because of the relationship between a doctor and patient. Once this relationship has been established by the doctor accepting the patient to be under his care, the following duties are automatically established:

1. Duty to exercise caution when applying the knowledge and skill expected of a reasonably competent physician.
2. Duty to possess the skills necessary for a reasonably competent health care practitioner engaged in the same specialty.
3. Duty to possess the medical knowledge required of a reasonably competent medical practitioner engaged in the same specialty.
4. Duty to exercise the same level of care as would be expected of a practitioner in the same medical field who is reasonably competent.
5. Duty to treat a patient, as well as to inform a patient of the pros and cons of a particular treatment.
6. Duty to duly inform a patient of everything he needs to know concerning his treatment or sickness, such as his diagnosis, seriousness of his treatment, and the risk of such treatment.
7. Duty to obtain patient's free and informed consent. This can be achieved only by providing the necessary information to a patient and attending to the patient's questions. The duty to get the consent of patients is a continuous process
8. Duty to respect patient confidentiality which can also be called the duty of professional secrecy. Patient confidentiality here refers to the information given out to the practitioner by the patient, as well as discoveries made by the medical practitioner in the course of treatment of the patient.

## CONCLUSION

Whilst it is almost certain that medical practice will occasionally result in situations in which patients suffer harm or injury while receiving treatment from medical practitioners, it can be deduced that a doctor can be held liable only if the failure of treatment is due to his negligence.

When a medical practitioner's criminal liability arises, the criminal code and penal code that govern criminal matters in Nigeria will be referred to, while the patient must be able to prove certain elements to be eligible for civil liability damages.

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