
CRITIQUE OF NIGERIA MEDICAL NEGLIGENCE LEGAL FRAMEWORKS: NEED FOR REFORMS

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ABSTRACT

With Nigeria as its focus, and using doctrinal legal research, this research work will constructively criticize Nigeria's medical negligence legal frameworks, focusing on the National Health Act, Criminal Code Act, and the Medical and Dental Practitioners Act. The study aims to assess the efficacy and adequacy of these frameworks, highlighting their weaknesses and suggesting potential reforms. Issues such as accountability, regulation, compensation, and awareness are explored in detail. The research findings reveal several deficiencies in Nigeria's medical negligence legal frameworks, including the lack of clear definitions, limited reporting mechanisms, complex compensation processes, and inadequate awareness. The research recommends various reforms to address these shortcomings, such as the establishment of a national health complaints commission, amendments to the Criminal Code Act, improvement of reporting mechanisms, streamlining of the compensation process, and promoting awareness through education and training. These reforms would prioritize patient safety, enhance accountability, and ensure justice for victims of medical negligence.

Keywords: Negligence, Medical Negligence, Legal Frameworks, Reforms, Doctors

I. Introduction:

Medical negligence is a pressing issue in many healthcare systems, and Nigeria is no exception. The legal frameworks surrounding medical negligence in Nigeria, encompassing the National Health Act, Criminal Code Act, and the Medical and Dental Practitioners Act, require careful examination and improvement. The effectiveness and adequacy of these frameworks must be assessed to identify their weaknesses and propose potential reforms.

This research work critically evaluates Nigeria's medical negligence legal frameworks, focusing on the aforementioned laws. The aim is to shed light on the deficiencies within these frameworks and suggest reforms that can enhance patient safety, improve accountability, and ensure justice for victims of medical negligence. According to Violato (2013), medical errors that are considered harmful or detrimental have been linked to various factors such as doctors' negligence, lack of knowledge, unprofessional behavior, fatigue, arrogance, laziness, and failure to recognize their own limits in medical expertise.¹

There have been numerous negative events occurring in various dimensions of medical treatments despite existing legal frameworks and proactive measures. Olofinlua, (2015)². The findings of this research expose the weaknesses in Nigeria's current medical negligence legal frameworks, such as the lack of clear definitions, limited reporting mechanisms, complex compensation processes, and inadequate awareness. These findings highlight the urgency for reforms to remedy these deficiencies. Issues such as accountability, regulation, compensation, and awareness will be explored in detail.

The research proposes specific reforms to address these shortcomings, including the establishment of a national health complaints commission to investigate and redress grievances related to medical negligence. Additionally, amendments to the Criminal Code Act are recommended to lower the burden of proof for criminal negligence and encompass negligence by medical institutions and

¹ D. Violato, Doctor-Patient Relationships, Laws, Clinical Guidelines, Best Practices, Evidence-Based Medicine, Medical Errors and Patient Safety. *Canadian Medical Education Journal*, 4, e1-e6. (2013)
<https://doi.org/10.36834/cmej.36652> < Accessed 24th, October 2023.>

² T. Olofinlua, Medical Negligence in Nigeria: When Hospitals Kill part 1. (2015)
<https://www.radianthealthmag.com/health-wellness/medical-negligence-in-nigeria>. < Accessed 24th, October 2023.>

administrators. Enhancements to reporting mechanisms, streamlining the compensation process, and promoting awareness through education and training are also vital reform recommendations.

By implementing these reforms, Nigeria can establish a more robust medical negligence legal framework that prioritizes patient safety, accountability, and justice. This work contributes to the existing knowledge by thoroughly evaluating Nigeria's present frameworks and offering practical solutions for reforms. Policymakers, legal professionals, healthcare providers, and patient advocacy groups can benefit from the insights provided, leading to a more equitable and effective system for handling medical negligence cases in Nigeria.

II. AIM:

The aim of the study is to constructively criticize Nigeria's medical negligence legal frameworks, focusing on the National Health Act, Criminal Code Act, and the Medical and Dental Practitioners Act. The study aims to assess the efficacy and adequacy of these frameworks, highlighting their weaknesses and suggesting potential reforms. The ultimate goal is to prioritize patient safety, enhance accountability, and ensure justice for victims of medical negligence in Nigeria.

III. OBJECTIVES:

1. To critically evaluate current medical negligence legal frameworks in Nigeria, including the National Health Act, Criminal Code Act, and the Medical and Dental Practitioners Act.
2. To identify the deficiencies and weaknesses in Nigeria's medical negligence legal frameworks, including the lack of clear definitions, limited reporting mechanisms, complex compensation processes, and inadequate awareness.
3. To propose specific reforms to address the shortcomings of the medical negligence legal frameworks, such as the establishment of a national health complaints commission, amendments to the Criminal Code Act, improvement of reporting mechanisms, streamlining of the compensation process, and promoting awareness through education and training.
4. To highlight the importance of accountability, regulation, compensation, and awareness in medical negligence cases and their impact on patient safety and justice for victims.

5. To contribute to existing knowledge by thoroughly evaluating Nigeria's medical negligence legal frameworks and offering practical solutions for reforms. Policymakers, legal professionals, healthcare providers, and patient advocacy groups can benefit from the insights provided, leading to a more equitable and effective system for handling medical negligence cases in Nigeria.

IV. Critique of Legal Frameworks

Nigeria's medical negligence frameworks, encompassing the National Health Act, Criminal Code Act, and the Medical and Dental Practitioners Act, require careful examination and improvement. This critique aims to assess the efficacy and adequacy of these frameworks, highlighting their weaknesses and suggesting potential reforms. Issues such as accountability, regulation, compensation, and awareness will be explored in detail.

A. National Health Act 2014:

Firstly, The National Health Act of 2014 sought to provide a regulatory and institutional framework for healthcare delivery in Nigeria. However, concerning medical negligence, it fails to provide clear guidelines for accountability and leaves the responsibility of regulation largely to professional bodies such as the Medical and Dental Council of Nigeria. This absence leads to ambiguity and potential misinterpretation, hindering the identification and disciplinary actions against negligent healthcare professionals. Clearer language and a comprehensive definition are necessary to ensure accountability and justice.

Section 30(1) National Health Act 2014, provides that a person may lay a complaint about the way and manner in which he or she was treated at a health facility or hospital and such complaint may be investigated.³ The provision allowing individuals to lodge complaints and have them investigated is a positive step toward ensuring accountability and addressing concerns regarding healthcare treatment. However, the Act should provide more specific guidelines and procedures for the complaint process, including clear timelines for investigations and the consequences for

³ Section 30(1) National Health Act

substantiated complaints. Without clear protocols, there may be inconsistencies in the handling of complaints and the effectiveness of the investigation process.

Section 50(1) – A person shall not-⁴

- (a) manipulate any generic material, including generic material of human gametes, zygotes or embryo; or
- (b) engage in any activity including nuclear transfer of embryo splitting for the purpose of the cloning of human being;
- (c) import or export human zygotes or embryo.

Section 50(1) of the National Health Act 2014 establishes certain prohibitions that individuals must adhere to. These include:

- (a) Altering or handling any form of generic material, including that which belongs to human gametes, zygotes, or embryos.
 - (b) Participating in any activities, such as nuclear transfer or embryo splitting, with the plan of producing a cloned human being.
 - (c) Bringing in or taking out human zygotes or embryos across national borders.
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- (a) The prohibition of manipulating any generic material, which encompasses generic material of human gametes, zygotes, or embryos.
 - (b) The prohibition of engaging in any activity, such as nuclear transfer or embryo splitting, with the intention to clone a human being.
 - (c) The prohibition of importing or exporting human zygotes or embryos.

⁴ Section 50(1) NHA

Section 50(2) of the National Health Act 2014 states that any person who contravenes or fails to comply with the provisions outlined in Section 50(1) commits an offense. If convicted, they are liable to face a minimum imprisonment term of five years without an option for a fine.

It is crucial to enforce these prohibitions as they aim to safeguard ethical boundaries and protect public safety. However, to enhance clarity and eliminate potential loopholes, it would be beneficial for the Act to provide a more comprehensive definition of terms like "manipulation" and "activities." Furthermore, clear justifications should be given for these prohibitions, along with an explanation of the potential risks or concerns associated with the practices in question.

The provision outlining severe penalties for contravening or failing to comply with the provisions in Section 50(1) demonstrates the seriousness with which the Act addresses issues related to genetic manipulation and human cloning. However, it is important to consider whether a mandatory minimum sentence of five years without the option of a fine is proportionate to the nature and severity of the offense. Striking the right balance between deterrence and punishment is crucial to ensure the effectiveness and fairness of the legal framework.

Furthermore, the Act provides limited provisions for the establishment of a national health complaints commission, which could investigate and redress grievances related to medical negligence. A robust and independent commission, adequately equipped with resources, authority, and powers of enforcement, is required to ensure the effective resolution of such cases.

Its failure to provide for clear guidelines for accountability leaves room for ambiguity in defining roles, responsibilities, and lines of accountability within the health system. This ambiguity can result in a lack of clarity regarding who is responsible for addressing issues such as medical malpractice, professional misconduct, or financial improprieties.

B. Criminal Code Act:

Section 317 of the Nigerian Criminal Code Act⁵ provides for the offence of manslaughter resulting from the unlawful killing of another person without intent to cause death or grievous harm. This

⁵ Section 317, Criminal Code Act

provision appears to recognize that there may be situations where a person causes the death of another unintentionally but unlawfully. However, the lack of clear guidelines on what constitutes "unlawful killing" and the varying circumstances that can influence the offense make it somewhat subjective and open to interpretation. This may create some challenges in ensuring consistent application of the law.

Section 343 of the Act⁶ deals with the criminal liability of individuals who provide medicine or medical treatment in a rash or negligent manner, endangering life or likely to cause harm. This provision acknowledges the importance of responsible and careful medical practice. However, the terminology used, such as "rash" and "negligent," may be subjective and their interpretation may vary. More specific guidelines or standards defining what constitutes "rash" or "negligent" medical treatment would provide greater clarity.

Section 303 of the Act⁷ focuses on the duty of individuals doing a surgical or any medical treatment to possess reasonable skill and exercise reasonable care, except in cases of necessity. This provision recognizes the importance of competent and careful medical practice. However, the terms "reasonable skill" and "reasonable care" can also be open to interpretation and may need more specific guidance or standards to ensure consistent application.

Overall, the above sections of the Nigerian Criminal Code Act acknowledge the importance of responsible medical practice and uphold the principle of holding individuals accountable for their actions, they could however benefit from clearer definitions and guidelines to ensure consistent interpretation and application. This would enhance legal certainty and fairness in the criminal justice system when dealing with medical malpractice cases.

The Criminal Code Act of Nigeria addresses offenses related to medical negligence. However, its provisions are outdated and inadequate to deal with contemporary issues and challenges faced in the healthcare system.

One significant limitation is the high threshold of criminal negligence required for prosecution. The Act imposes a stringent standard of recklessness or gross negligence, which proves

⁶ Section 343, CCA

⁷ Section 303, CCA

challenging to meet in many medical negligence cases. This high burden of proof limits the number of successful prosecutions, resulting in a lack of justice for victims and a failure to deter negligent practices.

Additionally, the Act does not adequately address negligence by medical institutions or administrators, as it primarily focuses on individual practitioners. This omission leaves patients without recourse when they experience substandard care due to systemic failures or institutional negligence. Amendments to the Act should incorporate provisions to hold institutions accountable and promote patient safety on a broader scale.

C. Medical and Dental Practitioners Act:

Section 16 Medical and Dental Practitioners Act⁸ - Professional Misconduct:

This section appears to be a significant aspect of the Nigeria Medical and Dental Practitioners Act as it outlines acts that can be considered as professional misconduct. It covers important grounds for disciplinary action, such as failure to exercise reasonable care or skill in diagnosis or treatment, incompetence or negligence in practice, and failure to maintain professional standards.

It is however important that Section 16 provides clear and specific definitions and guidelines for what constitutes acts of professional misconduct. Ambiguous language or vague terms may create confusion and inconsistencies in the implementation and interpretation of the provision.

It is important take note that Section 16 did not encompasses a comprehensive range of professional misconduct areas. This ought to consider ethical issues, patient confidentiality, informed consent, professional boundaries, conflicts of interest, and other relevant aspects of medical practice. A thorough and comprehensive coverage would help ensure that all necessary misconduct areas are addressed.

Despite its intentions to regulate the conduct and professionalism of healthcare providers, the Act faces several deficiencies in tackling medical negligence effectively.

⁸ Section 16, Medical and Dental Practitioners Act

One major issue is the lack of a robust system for reporting medical negligence cases. Although the Act mandates the creation of Medical Disciplinary Tribunals to address professional misconduct, reports of negligence remain significantly underrepresented. A comprehensive reporting mechanism and clear guidelines for initiating investigations are necessary to ensure accountability and transparency.

Although Section 17 Medical and Dental Practitioners Act⁹ provides disciplinary actions or sanctions that can be imposed upon a finding of professional misconduct, negligence, or incompetence, the provision should specify the possible consequences, such as warnings, fines, suspensions, or revocation of licenses, to ensure a proportional response to the severity and nature of the misconduct.

Moreover, the process for disciplinary actions outlined in the Act often lacks effectiveness and timeliness, leading to delayed justice for victims of medical negligence. Strengthening the disciplinary process, enhancing the independence and resources of the tribunal, and expediting proceedings would significantly improve the Act's effectiveness.

The absence of clear definitions, limited reporting mechanisms, complex compensation processes, and inadequate awareness contribute to a culture of negligence and hinder justice for victims.

D. Concept of Duty of Care, Degree of Care and Standard of Care

The concept of duty of care, degree of care, and standard of care are important components in assessing medical negligence cases. These concepts help to determine whether a healthcare professional breached their legal obligation in providing medical care to their patients. In Nigeria, the duty of care, degree of care, and standard of care have been defined and applied in various cases and legal texts.

The duty of care refers to the legal obligation of a healthcare professional to provide reasonable and competent care to their patients. This duty arises from the doctor-patient relationship and requires the healthcare professional to act in a manner that a reasonable and prudent medical

⁹ Section 17, MDPA

practitioner would under similar circumstances. The standard of care provides the benchmark against which the healthcare professional's actions are assessed. One notable Nigerian case that elucidated the concept of duty of care is the case of *Coker v. Whiteman*¹⁰. In this case, the Nigerian Supreme Court recognized the duty of care owed by healthcare professionals to their patients. The court stated that this duty is based on an implied contract between the doctor and the patient and requires the healthcare professional to exercise reasonable care and skill in the provision of medical treatment. The degree of care refers to the level of care that is expected from a healthcare professional based on their training, qualifications, and experience. It takes into consideration the specific circumstances of the case and the particular medical specialty involved.

A doctor or healthcare professional is expected to exercise the degree of care that is reasonably expected from a competent practitioner in their field.

In the Nigerian case of *Owoade v. Femi Kuku*¹¹ the Court of Appeal emphasized the importance of considering the degree of care required in medical negligence cases. The court was of the opinion that the standard of care expected from a pediatrician would differ from that expected from a general practitioner, highlighting the importance of assessing the appropriate degree of care in determining negligence.

The standard of care is defined as the level of care, precaution, and skill that a reasonable and prudent medical professional in the same field would exercise in similar circumstances. The standard of care is not fixed and can vary depending on factors such as the availability of resources, advancements in medical science, and the specific circumstances of the case. The legal principles and standards that govern medical practice in Nigeria, including the standard of care owed by healthcare professionals.

In conclusion, the concepts of duty of care, degree of care, and standard of care are essential in understanding medical negligence in Nigeria. These concepts help to define the legal obligations of healthcare professionals and provide a benchmark against which their actions are assessed.

¹⁰ (1983) 1 SCNLR 19.

¹¹ (2002) 18 NWLR (Pt 799) 390.

V. Critique of the Application of duty of care, degree of care and standard of care

In Nigeria, there are certain shortcomings and challenges in the application of these concepts within the medical negligence framework, which warrant critical evaluation and potential reforms.

A. Duty of Care:

The duty of care is a legal obligation healthcare professionals have towards their patients, requiring them to provide reasonable care that aligns with professional standards. In Nigeria, the application of the duty of care concept is generally recognized. However, challenges arise in establishing the existence and scope of this duty in medical negligence cases.

One issue is the lack of clarity in defining the boundaries of this duty, particularly in cases involving public healthcare institutions. It can be challenging to determine the extent to which the duty of care applies to individual practitioners, institutions, and the government itself. This ambiguity can lead to difficulties in holding responsible parties accountable for breaches of duty.

Another challenge lies in establishing duty of care in cases involving informal or non-traditional healthcare practices. Nigeria has a diverse healthcare system that includes traditional healers and alternative medicine practitioners. Determining the duty of care owed by these practitioners raises complex questions, as there may not be established standards or regulations specific to their practices.

By meticulously following laid down medical protocols, healthcare professionals can mitigate the occurrence of adverse events, safeguard patient safety, and minimize potential legal implications.¹²

B. Degree of Care:

The degree of care refers to the level of caution and expertise expected from a healthcare professional in each situation. While Nigerian medical negligence law recognizes the importance

¹² G. Eke, et al. Medication Administration Errors: A study of best Practice in six Nigerian Hospitals, *Nigerian Medical Journal*, 59(1), 26-31 (2018).

of this concept, there are challenges in defining and applying the appropriate degree of care in practice.

One significant challenge is the absence of clear and specific guidelines that define the expected degree of care across various medical specialties. The lack of standardized protocols and guidelines can make it difficult for courts to establish if a health care professional's actions fell below the reasonable standard of care. This can lead to inconsistent rulings and uncertainty in determining negligence.

Furthermore, the varying standards of care in different healthcare settings, such as rural areas versus urban centers, pose challenges to uniformly applying the degree of care concept. The disparities in available resources, training, and expertise across different regions may impact the expectations of care in specific contexts, making it more complicated to determine whether a breach of care occurred.

C. Standard of Care:

The standard of care given by a doctor or other health professionals represents the level of care and expertise which a reasonably skilled doctor or healthcare professional, practicing in the same field, would render under similar circumstances. However, the application of this standard in the Nigerian legal setting encounters certain difficulties. Enhancing Professional Competence and promoting standard medical protocol guidelines enhances professional competence by ensuring that healthcare professionals stay abreast of the latest evidence-based practices and protocol.¹³

One challenge involves the establishment of a clear and universally accepted professional standard of care that applies to all medical specialties and procedures. Nigeria currently lacks comprehensive and specific guidelines and protocols for various medical practices, making it challenging for courts to determine the appropriate standard of care in a given case. Consequently, judicial decisions often rely heavily on expert testimony, which can introduce subjective interpretations and disagreements.

¹³ E.R Ezeome, et al, Role perception, Satisfaction, and Stress among Physicians in University of Nigeria Teaching Hospital, Ituku-Ozalla. *Nigerian Medical Practitioner Journal*, 67(6), 35-39 (2015).

Another challenge involves the need to consistently update the standard of care to keep pace with evolving medical practices, technological advancements, and international best practices. It is crucial for Nigerian medical negligence law to actively incorporate these changes as the healthcare landscape rapidly evolves.

In Nigeria, there is a lack of comprehensive guidelines and protocols specific to various medical practices, making it challenging for courts to determine the standard of care in a particular case. As a result, judicial decisions may depend heavily on expert witness testimonies, which can introduce subjective interpretations and disagreements.

Another challenge lies in keeping the standard of care up-to-date with evolving medical practices, advancements in technology, and international best practices. Given the rapidly changing nature of healthcare, it is essential for Nigerian medical negligence law to consistently

apply duty of care, degree of care, and standard of care within Nigerian medical negligence law to deal with substantial difficulties. Uncertainties arise due to unclear obligations regarding duty of care, the absence of precise guidelines on the required degree of care, and outdated standards that fail to reflect current practices. Resolving these challenges requires a thorough review and enhancement of the legal framework. This may entail providing clearer definitions of duty, establishing specific standards for different medical specialties, and implementing mechanisms to regularly update and incorporate advancements in medical practices. Taking these steps will strengthen the application of these foundational concepts, ensuring fairness, consistency, and improved patient care within Nigeria's medical negligence framework.

VI. Findings:

A. National Health Act: The research finds that the National Health Act of 2014 lacks clear guidelines for accountability in cases of medical negligence. The absence of a well-defined definition of medical negligence within the Act leads to ambiguity and potential misinterpretation, hindering the identification and disciplinary actions against negligent healthcare professionals. There is also a limited provision for the establishment of a national health complaints commission, which affects the effective resolution of grievances related to medical negligence.

B. Criminal Code Act: The findings reveal that the Criminal Code Act's provisions for medical negligence are outdated and inadequate. The high threshold of criminal negligence required for prosecution poses a challenge in successfully convicting healthcare professionals. Additionally, the Act primarily focuses on individual practitioners and does not adequately address negligence by medical institutions or administrators.

C. Medical and Dental Practitioners Act: The research finds deficiencies in the Medical and Dental Practitioners Act's reporting and disciplinary processes. While the Act mandates the creation of Medical Disciplinary Tribunals, the reporting of medical negligence cases remains significantly underrepresented. The disciplinary process outlined in the Act also lacks effectiveness and timeliness, leading to delayed justice for victims.

D. Compensation and Awareness: The research identifies that the compensation process for medical negligence victims in Nigeria is complex, lengthy, and often favors healthcare professionals. The duty to prove is placed on the patients, making it difficult for victims to access justice and fair compensation. Additionally, both healthcare professionals and the public lack adequate knowledge about medical negligence, patient rights, and professional standards, highlighting the need for increased awareness.

The findings indicate that Nigeria's medical negligence legal frameworks suffer from deficiencies in areas such as accountability, regulation, compensation, and awareness. These shortcomings contribute to a culture of negligence and hinder justice for victims. Reforms are needed to establish a more robust framework that prioritizes patient safety, enhances accountability, and ensures justice for victims of medical negligence.

VII. Conclusion:

The research findings underscore the urgent need for substantial reform in Nigeria's medical negligence legal frameworks. The deficiencies identified, including the lack of clear definitions, limited reporting mechanisms, complex compensation processes, and inadequate awareness, contribute to a culture of negligence and hinder justice for victims. The recommended reforms, such as the establishment of a national health complaints commission, lowering the burden of proof for criminal negligence, improving reporting mechanisms, streamlining the compensation

process, and promoting awareness through education and training, would address these deficiencies. Implementing these reforms would lead to a more robust framework that protects patients' rights, holds healthcare professionals accountable, and ensures justice for victims of medical negligence.

VIII. Recommendations:

Based on the critique of Nigeria's medical negligence legal frameworks, the research recommends the following reforms:

1. Establishment of a National Health Complaints Commission: A robust and independent commission should be established to investigate and redress grievances related to medical negligence. This commission should be adequately equipped with resources, authority, and powers of enforcement.
2. Amendments to the National Health Act, Criminal Code Act, and the Medical and Dental Practitioners Act: The responsibility to prove negligence should be lowered to facilitate more successful prosecutions in cases of medical negligence. These acts should also incorporate provisions to address negligence by both individual healthcare professionals and medical institutions or administrators. This will ensure that accountability extends to all responsible parties and promote patient safety and justice.
3. Improvement of reporting mechanisms: The Medical and Dental Practitioners Act should be amended to provide a comprehensive reporting mechanism for medical negligence cases. Clear guidelines for initiating investigations should be established to ensure accountability and transparency.
4. Streamlining of the compensation process: The existing compensation process for medical negligence victims should be standardized and simplified. The burden to prove should be shifted more towards healthcare providers to enhance the availability of justice for victims.
5. Promotion of awareness through education and training: Comprehensive awareness campaigns, targeted training programs, and educational initiatives should be introduced to bridge the gap in

knowledge about medical negligence, patient rights, and professional standards within the healthcare system.

IX. Contribution to Knowledge:

This research work contributed to knowledge by critically evaluating Nigeria's medical negligence legal frameworks and providing valuable insights into their weaknesses.

The research has found deficiencies in current medical negligence frameworks and propose specific reforms to address these shortcomings. Policymakers, legal professionals, healthcare providers, and patient advocacy groups can benefit from these findings, which offer practical solutions to enhance patient safety, improve accountability, and ensure justice for victims of medical negligence in Nigeria.

The research through its recommendations has added value to bring about a more robust legal framework that would protects patients' rights and holds healthcare professionals accountable.