DOI: https://doi.org/10.67203/abulj.2025.ol20ecmj

ISSN: 3043-6958

VOL. 43 (2), 2025: 219 –241

AHMADU BELLO UNIVERSITY LAW JOURNAL

FACULTY OF LAW

AHMADU BELLO UNIVERSITY, ZARIA - NIGERIA.

website: https://abulj.org.ng | **e-mail:** abulj@abu.edu.ng

WHEN HEALING TURNS HARMFUL: EXPLORING MEDICAL NEGLIGENCE AND THE RISE OF LITIGATION

IFEOLUWAYIMIKA BAMIDELE*

AKINLEYE BISOLA**

YUSUF MISTURAH ENIOLA***

Abstract

This paper critically examines medical negligence in Nigeria's healthcare system and the resulting rise in legal actions. It explores how failures in professional medical practice can transform healthcare from a healing process into one that causes harm and triggers legal liability. The objectives are to analyze the legal framework on medical negligence, review recent judicial decisions and disciplinary actions, and propose reforms that balance patient rights with practical realities of medical practice. Using a doctrinal research method, the study considers key laws such as the Criminal Code, the Medical and Dental Practitioners Act, and the National Health Act, alongside relevant case law and literature. Findings reveal increasing litigation driven by growing patient awareness, regulatory gaps, and technological advances that expose errors. Enforcement remains inconsistent, and outdated precedents overshadow recent rulings. The paper recommends updating legal provisions, improving judicial and professional education, and drawing on core texts and comparative approaches to strengthen outcomes.

Keywords: Medical Negligence, Duty of Care, Litigation, Harm.

* Afe Babalola University Ado-Ekiti, Nigeria, Barrister and Solicitor of the Supreme Court of Nigeria. Email: Ifeoluwayimikab@Abuad.Edu.Ng

**Lecturer, Department of Private and Business Law, Afe Babalola University, Ado-Ekiti, Nigeria, Barrister and Solicitor of the Supreme Court of Nigeria. Email: Akinleyeai@Abuad.Edu.Ng

***Student College of Law, Department of Private and Business Law, Afe Babalola University, Ado-Ekiti, Ekiti State, Nigeria. Email: misturaheniola17@Gmail.Com

1.1 Introduction

Medical negligence occurs when healthcare professionals fail to deliver the expected standard of care, causing harm to patients. The medical field is viewed as a noble profession because it aims to preserve life. Patients usually select a doctor or medical facility based on reputation. They have two main expectations from their healthcare providers: first that they will use their knowledge and skills to treat patients effectively, and second, that they will avoid any actions that could potentially harm the patients, whether through negligence, carelessness, or recklessness[1]. In recent years, incidents where healing turns harmful have resulted in a marked increase in litigation in Nigeria.

Medical negligence is based on the tort law concept of negligence introduced by Lord Atkin in the 1932 case *Donoghue v. Stevenson*[2]. To prove a case of negligence, it must be demonstrated that a duty of care existed, that this duty was violated, and that the violation directly caused damage or injury to the person affected. [3] This topic is justified by the need to address a growing wave of court actions against medical professionals, which has legal, ethical, and economic implications. The methodology adopted is doctrinal, relying on analysis of case law, statutory provisions, journal articles, and authoritative textbooks. The study is limited to medical doctors due to their central role in healthcare delivery but references other professionals where relevant.

[1] MS Pandit , S Pandit, 'Medical Negligence;Coverage of the profession, duties, ethics, case law, and enlightened defense - A legal perspective' *Indian Journal* (2009) accessed 2 December 2024.

[2] **1932 S.C. (H.L.) 31.**

[3] Babafemi odunsi, 'medical negligence and the rise of litigation in nigeria' *Beijing Law Review* (2023) <https://www.scirp.org/journal/paperinformation?paperid=126067> accessed 2 December 2024.

1.1 Concept of Negligence

Negligence occurs when an individual or organization does not meet certain conduct standards. For instance, if a person fails to take reasonable precautions that any sensible individual would take, or engages in actions that a reasonable person would avoid, leading to someone else being harmed or losing something important, this is categorized as negligence.[4] **According to Black's Law Dictionary**, negligence is the failure to exercise the care that a reasonably prudent person would exercise in similar circumstances. It can also be described as the violation of a duty of care that has resulted in injury to the person owed that duty.[5] The ingredients of tort of negligence are**;** that the defendant (doctor/nurse/hospital) owed a duty of care to the plaintiff (patient), that the defendant was in breach of that duty and that the plaintiff suffered damage as a result of the breach of duty.[6]

1.2 What Is Medical Negligence?

Medical negligence, also referred to as clinical negligence, occurs when a healthcare professional or institution fails to uphold their duty, resulting in preventable harm to a patient. Instances of medical negligence can include incorrect diagnoses, delays or oversights in diagnosis, inappropriate or unnecessary treatments, and surgical mistakes.[7] It is important to understand that not every mistake made by a medical professional constitutes medical negligence. For an action or inaction to be deemed medical negligence, the injured patient must demonstrate that the healthcare provider did not meet the established medical standard of care. Essentially, this means the provider's conduct was not consistent with what another reasonably competent doctor, possessing similar

[4] G Kodilinye, O Aluko, '*The Nigerian Law of Torts'* (Spectrum Books Ltd, Ibadan, 3rd edn, 2019).
[5] Black's law dictionary 12th edition.
[6] I Sagay, '*Nigerian Law of Torts'* (University of Lagos Press, 9th edn, 2013).
[7] ibid.

qualifications, would have done under comparable circumstances. Additionally, it's necessary to prove that the provider's actions or lack thereof directly led to the injuries sustained.[8] Medical negligence can also be described as the improper, unskilled, or negligent treatment of a patient by any healthcare worker, including physicians, dentists, nurses, pharmacists, or others in the field. It's important to highlight that various healthcare professionals, such as nurses and laboratory technicians, can be held accountable for medical negligence, which contradicts the common misconception that only doctors are liable in such cases.

1.3 The Principle of Standard of Care

Medical professionals are seen as highly skilled individuals, so the expected standard of care for them is that of a reasonably competent colleague in the same field when faced with a similar situation. The key measure is whether a competent practitioner would have anticipated the potential for harm and taken precautions to prevent it. Consequently, there is no legal responsibility for unforeseen complications. However, if a patient experiences harm due to a unique characteristic that could have been identified and addressed, liability may arise. Additionally, it is important to note that as the risks associated with a specific procedure increase, so too does the expected level of skill and care from the practitioner. These established standards are crucial for determining whether a healthcare provider's actions fell short of the acceptable level of care, which can result in claims of medical negligence.[9]

1.3.1 Duty of care: The first element of evaluating negligence is whether the defendant had a legal obligation to care for the plaintiff. Certain circumstances can create this legal duty, acknowledging a relationship between the two parties.

[8] The law offices of Dr.M.WILSON, 'What Is Considered Medical Negligence?' *Wilsonlaw* (2024) < https://wilsonlaw.com/blog/what-is-considered-medical-negligence/> accessed 2 December 2024.
[9] David McQuoid-Mason, 'What constitutes medical negligence?' *Spring* (2010)< https://journals.co.za/doi/pdf/10.10520/EJC132059> accessed 3 December 2024.

A duty of care exists when the law identifies a connection that necessitates one party to exercise the same level of reasonable caution as another individual would in a comparable situation.[10] This standard also reflects the care expected from a reasonably skilled healthcare professional in similar circumstances. Various factors might influence this standard, such as the specific expertise of the practitioner, their practice location, and the particular situation involved. In Nigeria, the Medical and Dental Council (MDCN), empowered by the Medical and Dental Practitioners Act, has established a Code of Medical Ethics. This Code, effective since 2008, outlines the professional behavior required of medical practitioners and governs their activities. Section 28 of the Code states that medical and dental professionals have a duty of care towards their patients, indicating they must pay attention, act diligently, and safeguard their patients' well-being.

1.3.2 Breach of duty: The next element is for the court to assess whether the defendant failed to fulfill this obligation by acting or failing to act in a way that an average person would in similar situations.[11]When a healthcare provider does not meet the required standard of care, it constitutes a breach of that duty. This can include mistakes in diagnosis, treatment, follow-up care, or overall health management.

1.3.3 Causation: Causation involves the plaintiff demonstrating that the defendant's breach of duty resulted in their injuries and losses. It also considers whether the defendant could have anticipated that their actions might lead to harm. If an injury arises from an unforeseen occurrence, it may be deemed unpredictable, potentially absolving the defendant of liability. [12]It is necessary to show that the breach directly caused harm to the patient, indicating that the

[10] The Carlson law firm 'How to prove the four elements of negligence' *Carlson attorney* (2023) < https://www.carlsonattorneys.com/four-elements-negligence/> accessed 3 December 2024.
[11] ibid
[12] ibid

negative outcome would likely not have happened had the provider adhered to the proper standard of care.

1.3.4 Damages: The last element of negligence involves damages, which refer to the injuries or losses suffered by the plaintiff that a reasonable person in a similar scenario would anticipate. Monetary compensation is often the only feasible remedy for these injuries, which can include medical expenses, lost income, emotional distress, and more. These damages may encompass physical injuries, psychological harm, added healthcare costs, and similar factors.[13]

1.4 Common Types of Medical Negligence

1.4.1 Misdiagnosis: Misdiagnosis occurs when a healthcare provider incorrectly identifies a patient's medical condition. This can happen if the provider misinterprets the symptoms as a different illness or fails to recognize the patient's actual condition. The result can be inappropriate treatment being delivered, or worse, a lack of treatment altogether, which may worsen the patient's health and pose life-threatening risks[14]. In the case of *University Of Ilorin Teaching Hospital V. Akilo*[15], it was determined that a medical practitioner employed by the appellant could be held liable for negligence if they acted without proper care and skill, leading to errors in treatment, such as incorrectly identifying fractures as dislocations and vice versa. Similarly, in *The State Of Lagos V. Dr. Ejike Ferdinand* [16] the defendant was found guilty of recklessness and negligence in providing medical care, which resulted in the patient's injury. The court concluded

[13] (n 6).
[14] Nayyars solicitors ' 9 types of medical negligence' *Nayyars solicitors* (2024)< https://nayyarssolicitors.co.uk/types-of-medical-negligence/> accessed 4 December 2024.
[15] [2002] FWLR (Pt.28) 2286.
[16] (unreported Suit No. LD/8963C/2019).

that Dr. Orji placed a tight cast without performing an X-ray and did not secure informed consent, leading to compartment syndrome in the patient's leg.[17]

1.4.2 Surgical Negligence: Surgery inherently carries risks, but sometimes errors occur that should not happen. These significant mistakes, often referred to as 'never events', can include leaving foreign objects inside a patient or operating on the wrong part of the body In the case of *Ojo V. Gharoro And Ors*[18], the Plaintiff/appellant was informed by the defendant/respondent that she had a growth in her Fallopian tube, which required surgical removal. She agreed to undergo the procedure. However, after the surgery, she experienced abdominal pain, prompting an x-ray that revealed a broken needle inside her abdomen. Consequently, the appellant filed a lawsuit against the defendant/respondents, seeking both special and general damages for negligence. In severe instances, a patient may endure the wrong procedure due to clerical errors. Additionally, surgical negligence can happen when a surgery is unnecessary or when informed consent from the patient has not been properly obtained.

1.4.3 Anaesthesia: Anaesthesia is a fundamental part of many medical treatments that most of us will encounter at some point, whether in hospital settings or for dental work. Negligence can arise from incorrect administration of anaesthesia or from failing to adequately monitor the patient's condition. Consequences can include patients regaining consciousness during surgery or experiencing brain damage due to inadequate oxygen supply. In the case of the *University Of Nigeria Teaching Hospital Management Board And Others V. Hope Nnoli*[19], Mr. Hope Nnoli was the sole qualified chemist at U.N.T.H., while an unqualified intern, Mr.

[17] Adegoke adedoyin, Sharon omoregie, 'Case Review: The State Of Lagos V. Dr. Ejike Ferdinand Orji [Unreported Decision In Suit LD/8963C/2019]' *Mondaq* (2023) <https://www.mondaq.com/nigeria/professional-negligence/1330996/case-review-the-state-of-lagos-v-dr-ejike-ferdinand-orji-unreported-decision-in-suit-ld8963c2019> accessed 4 december 2024.
[18] 4 [2006] 10 (PT 98) SC 173.
[19] [1994] 8 NWLR (Pt. 363).

Nwuzor, was working under him. On February 20, 1989, Mr. Nwuzor prepared chloroquine syrup, which resulted in the deaths of several children aged between one and four. A post-mortem examination revealed that chloroquine syrup was the cause of death. Following a significant public outcry, the Management Board of the Teaching Hospital conducted an investigation to identify those responsible for the overdoses. Both Mr. Nnoli and Mr. Nwuzor were found negligent in connection with these events.

1.4.4 Prescription and Medication Errors: Each day, countless prescriptions are written and filled, but occasionally errors can occur. These mistakes may include prescribing incorrect medications or dosages, providing medicines that shouldn't be taken together, or giving medications to individuals who are known to have allergies. The implications of such errors can be severe, ranging from gastrointestinal issues to fatal reactions. *University Of Nigeria Teaching Hospital Management Board and Others V. Hope Nnoli*[20]

1.4.5 Long-Term Negligent Treatment: Many medical conditions demand ongoing care or treatment over time. When healthcare providers do not adequately monitor the effects of treatment or fail to organize necessary follow-up appointments, this can lead to medical negligence. Such oversight can worsen existing conditions or even result in new health problems.[21]

1.4.6 Pregnancy and Birth Injuries: Birth injuries refer to any harm inflicted on the mother or the baby during pregnancy or childbirth. These injuries can have lasting effects on both parties, including conditions such as cerebral palsy, bowel trauma, or maternal diabetes. *Montgomery v lanarkshire health board*.[22]

[20] ibid.
[21] Nayyars solicitors ' 9 types of medical negligence' *Nayyars solicitors* (2024)< https://nayyarssolicitors.co.uk/types-of-medical-negligence/> accessed 4 December 2024.
[22] **(2015) UKSC 11.**

Negligence may also occur in wrongful birth scenarios, such as when a vasectomy is unsuccessful or parents are not made aware of potential birth defects.[23]

1.4.7 Dental Negligence: It's essential to understand that negligence isn't limited to doctors in hospitals; it can also occur in dental practices. Dental negligence may arise from a variety of failures such as poorly executed surgical procedures, misdiagnosis, or insufficient patient care.[24]

1.4.8 Negligent Cosmetic Care: Cosmetic surgery is becoming increasingly popular among people of all genders, leading to a rise in negligence cases related to these procedures. When cosmetic care is inadequate, it can cause long-term physical and emotional harm, often requiring additional treatment. Instances of negligence can happen with various cosmetic procedures, including Brazilian butt lifts, Botox treatments, and liposuction.[25] A disputed plastic surgeon from Lagos, Anuoluwapo Adepoju, was indefinitely suspended by the Medical and Dental Council of Nigeria (MDCN) following claims that her procedures led to the death of a patient, Nneka Onwuzuligbo.[26]

1.5 Principles Governing Medical Negligence

In medico-legal cases related to negligence claims, both Expert Witnesses and the courts need to consider several important factors. Firstly, it is crucial to understand that proving medical negligence can be quite challenging. Just because someone suffers an injury during medical treatment, it doesn't automatically imply that they have experienced medical negligence. The evaluation of whether a healthcare professional has acted negligently is primarily based on two key tests: the Bolam Test and the Bolitho Test. These two tests serve as fundamental

[23] ibid.
[24] ibid.
[25] ibid.
[26] Jayne Augoye, 'Popular Lagos plastic surgeon suspended over botched surgery' *Premium times* (2020)< https://www.premiumtimesng.com/news/top-news/427702-popular-lagos-plastic-surgeon-suspended-over-botched-surgery>accessed 4 december 2024.

components in assessing medical negligence. [27] According to the Bolam Test, a healthcare professional is deemed not negligent if their actions align with a responsible medical opinion. However, the Bolitho Test further requires that this opinion must also be deemed logical by the court. Therefore, a practitioner can only be found liable for clinical negligence if they fail both of these tests.[28]

1.5.1 The Bolam Test

The Bolam test serves as the primary standard for determining if a duty of care has been violated. This legal precedent originated from a 1954 in the case of ***Bolam v Friern Hospital Management Committee*** [29]incident involving John Bolam, a patient who sustained fractures during electro-convulsive therapy (ECT) at Friern Hospital in London. At that time, it was not standard practice to use muscle relaxants or restraints during ECT, nor was it common to inform patients about the risk of fractures. Bolam claimed that the absence of these precautions amounted to negligence and decided to sue the hospital. The outcome of the case established what is now referred to as the "Bolam test" for assessing clinical negligence. Mr. Justice McNair, in his guidance to the jury, stated that a doctor cannot be deemed negligent if their actions align with those considered appropriate by a responsible group of medical professionals skilled in that specific area. In simpler terms, if a considerable number of reputable practitioners would have acted similarly in the same situation, the accused would not be judged negligent.

The core principle of the Bolam test is its respect for clinical judgment and acknowledgment of varying professional opinions. This standard underscored the

[27] The Uk centre for medico-legal studies 'how the bolitho test changes the understanding of medical negligence' < https://www.ukcmls.co.uk/articles/tony-elliott/how-the-bolitho-test-changed-the-understanding-of-medical-negligence> accessed 20 December 2024.
[28] The Uk centre for medico-legal studies 'The psychological consequences of medical negligence' < https://www.ukcmls.co.uk/articles/tony-elliott/the-psychological-consequences-of-medical-negligence> accessed 20 December 2024.
[29] **[1957] 1 WLR 583.**

significance of peer validation and created a framework that, for many years, shielded healthcare providers from negligence claims, as long as their actions could be defended by a medical consensus.

1.5.2 The Bolitho Test

The Bolitho Test is utilized by courts to evaluate claims of clinical negligence. According to the test, a doctor cannot be deemed negligent if it can be shown that they acted in line with a reasonable body of medical opinion, as long as the court finds that opinion to be logical. In applying the Bolitho test, the court adopts an investigative stance toward the medical evidence presented in each case.[30]

This test emerged from the Bolitho case, which occurred four decades after the Bolam case and offered a refined approach to determining clinical negligence. The case involved Patrick Bolitho, a child who experienced severe brain damage due to a delay in intubation by a pediatric registrar, ultimately resulting in his death. The Bolitho estate contended that earlier intubation would have saved the child's life, suggesting negligence on the part of the health authority.

The House of Lords modified the original Bolam test in this case, introducing an element of judicial scrutiny into the process. It was determined that while the opinions of medical professionals are crucial, it is ultimately the court's role to assess whether the relied-upon opinion is reasonable and justifiable. The Bolitho ruling established that if the court determines that a professional opinion fails to endure logical analysis, it can find the defendant negligent. In essence, the test asserts that a doctor is not negligent if they can demonstrate adherence to a reasonable body of medical opinion, provided the court deems that opinion

[30]Timms solicitors, 'Bolitho test' < https://www.timms-law.com/personal-services/clinical-negligence/bolitho-test/> accessed 20 December 2024.

logical. The Bolitho test requires the court to critically examine the medical evidence unique to each case.[31]

This modification to the Bolam test highlights that mere consensus among medical professionals on a treatment method is not enough. Their agreement must be founded on logical principles and reasonable reasoning that can hold up to judicial scrutiny. Therefore, the Bolitho ruling ensures a protective measure against the uncritical acceptance of medical opinions, advocating for clinical decisions rooted in responsible and justifiable reasoning.[32]

1.5.3 Post Bolitho- *Montgomery v Lanarkshire Health Board*[33]

Before this change, the legal standard that governed a doctor's professional responsibilities was based on the Bolam test and the Bolitho addendum. A physician would not be deemed negligent if there exists a credible body of medical opinion that logically supports their actions. Since the Bolam-Bolitho test largely depends on a review by peers regarding what a "reasonable doctor" would do, it has been referred to as a "physician-centric" method for evaluating medical negligence. In recent years, this approach has faced increasing scrutiny in international legal contexts.[34] Nadine Montgomery's baby was born with serious disabilities due to a complication known as shoulder dystocia during delivery, and her obstetrician failed to inform her about a 9-10% risk associated with it before the birth. Although her negligence claim against the obstetrician was dismissed by Scottish courts in 2010, the Supreme Court ruled in 2015 that a doctor's duty includes 'taking reasonable care to ensure that the patient is informed of any

[31] Apex health associates, 'bolam to Bolitho- understanding clinical negligence in the Uk' < https://www.apexhealth.net/post/bolam-to-bolitho> accessed 20 December 2024.
[32] ibid.
[33] **(**2015) UKSC 11.
[34] Han Yee Neo, 'From Bolam-Bolitho to Modified-Montgomery; A Paradigm Shift in the Legal Standard of Determining Medical Negligence in Singapore' *Annals Singapore* (2017) <https://annals.edu.sg/pdf/46VolNo9Sep2017/MemberOly/V46N9p347.pdf> accessed 5 december 2024.

significant risks related to any recommended treatments, as well as any reasonable alternatives. The determination of what is considered significant is based on whether a reasonable person in the patient's circumstances would likely recognize the importance of the risk or whether the doctor should be aware that the patient would attach significance to it.' If the informed consent process is not carried out adequately, it can be argued that the treatment provided afterwards did not meet the appropriate standards for that patient.[35] In the past i.e Bolam and Bolitho era, pursuing a successful claim for medical negligence was often a daunting and unlikely challenge. However, we are now in a new phase of clinical negligence where the situation has significantly changed. The previous reliance on whether a group of medical professionals would have acted similarly is no longer the standard. For legal practitioners, clinical negligence cases now necessitate evidence that can withstand examination and is logically sound. Meanwhile, medical professionals face the challenging task of evaluating a patient's ability to comprehend the risks, significance, and consequences, as well as obtaining informed consent in a fast-paced clinical environment.[36]

1.6 Nigerian Legal Framework

In Nigeria, medical negligence is addressed through a combination of statutory provisions, common law principles, and professional regulations.

1.6.1 Statutory Provision. Key legal frameworks and specific sections pertinent to medical negligence include:

1.6.1.1 Criminal Code[37]: According to Section 343 of the Criminal Code, (1) any individual who engages in conduct that is recklessly or negligently dangerous to human life, such as (e) administering medical or surgical treatment to a person; or

[35] Medicolegal partners limited, 'From Bolam to Montgomery – the changing definition of clinical negligence' *Medicolegal partners* (2019) < https://www.medicolegal-partners.com/2019/07/11/bolam-to-montgomery/>accessed 6 December 2024.
[36] (n 31).
[37] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004.

(f) distributing, selling, or providing any medication or harmful substance, is committing a misdemeanor and can face up to one year of imprisonment. Additionally, Section 303 addresses the crime of manslaughter due to gross negligence that results in death.

1.6.1.2 Penal Code Act (Applicable in Northern Nigeria)[38]:

Section 119 addresses reckless or negligent actions that endanger human life or personal safety, stating that anyone who acts in a manner that recklessly or negligently jeopardizes life or safety will be subject to imprisonment, fines, or both.

1.6.1.3 Medical and Dental Practitioners Act[39]

Section 16: Establishes a Disciplinary Tribunal for Medical and Dental Practitioners, which is responsible for handling cases of professional misconduct, including medical negligence.

Section 18: Grants the Tribunal the authority to impose penalties on practitioners found guilty of serious professional misconduct, including negligent acts.

1.6.1.4 National Health Act[40]:

Section 23: Requires healthcare providers to inform patients about their health conditions, treatment options, and potential risks, ensuring that patients give informed consent.

Section 24: Affirms the right of patients to refuse treatment and requires healthcare providers to honor such decisions, provided that patients are informed of the medical consequences.

[38] Penal Code Act, Cap P3, Laws of the Federation of Nigeria 2004 (applicable in Northern States).
[39] Medical and Dental Practitioners Act(Cap M8, Laws of the Federation of Nigeria 2004):
[40] National Health Act, No. 8 of 2014, Laws of the Federation of Nigeria.

1.6.1.5 Code of Medical Ethics[41]:

The Medical and Dental Council of Nigeria (MDCN) enforces the Code of Medical Ethics, requiring diligence and accountability in patient care. Specifically, Section 28 of the Code addresses medical negligence by imposing a duty of care on all registered medical and dental practitioners. It states that every practitioner must pay adequate attention to patients, act diligently and skillfully, and avoid any act or omission that could endanger a patient's life or well-being. Failure to meet this standard constitutes professional misconduct, which may lead to disciplinary action before the Medical and Dental Practitioners Disciplinary Tribunal.

1.7 The Rise of Litigation

The increasing number of lawsuits related to medical negligence has become a significant concern worldwide, affecting healthcare systems, professionals, and patients alike. Patients or their families initiate lawsuits against healthcare providers when they believe they have been harmed due to mistakes, omissions, or deviations from accepted medical practices. These lawsuits often seek compensation for physical injuries, emotional distress, loss of income, or wrongful death. A key driver of this rise in litigation is the growing awareness among patients. With more access to information online, patients are becoming better informed about their rights and medical standards. Additionally, social media has amplified this awareness, as stories of medical mistakes shared on these platforms frequently attract public attention, motivating patients to pursue legal action[42]. To mitigate the risk of lawsuits, many healthcare practitioners are resorting to Defensive Medicine strategies. This defensive approach leads doctors to order unnecessary tests and procedures in an effort to avoid overlooking any

[41] Medical and Dental Council of Nigeria, Code of Medical Ethics in Nigeria (MDCN, 2008).
[42] Babafemi Odunsi, "Medical Negligence and the Rise of Litigation in Nigeria," *Beijing Law Review*, (Vol. 14) No. 2, June 2023.

potential diagnoses, which can paradoxically increase the likelihood of lawsuits if something is missed.[43]While litigation can hold healthcare providers accountable, the increasing volume of lawsuits can result in higher healthcare costs and diminished access to care. As providers become more cautious in their practices, it can ultimately impact patients seeking essential medical services. Below are a few prominent cases of medical negligence;

1.7.1 *R v Akerele*[44]

In May 1940, Dr. John Oni Akerele, a qualified medical practitioner, administered an injection of sodium bismuth tartrate (sobita) to 36 children suffering from yaws. The preparation of the sobita was negligently mixed too strong, leading to severe reactions in the children. Ten of the children died as a result. Dr. Akerele was charged with manslaughter for causing the deaths through criminal negligence. Dr. Akerele was convicted of manslaughter in the West African Court of Appeal. He appealed the conviction, arguing that the negligence was not of a criminal degree.The Privy Council upheld Dr. Akerele's conviction, affirming that his negligence was of a criminal degree. The Court emphasized that there is a distinction between negligence that gives rise to civil liability and negligence that is so gross as to be criminal. In this case, the preparation of the sobita was deemed grossly negligent, leading to the deaths of the children.[45] This case is a seminal example of how gross negligence in medical practice can lead to criminal liability. It serves as a precedent in determining the threshold of negligence required to establish criminal responsibility in medical negligence cases. The case emphasizes the importance of adhering to established medical standards and protocols to prevent harm to patients.

[43] MS Pandit, S Pandit , "Medical Negligence: Coverage of the Profession, Duties, Ethics, Case Law, and Enlightened Defense - A Legal Perspective," *Indian Journal of Urology*, 2009.
[44] [1941] 1 All ER 72. Privy Council.
[45] ibid.

1.7.2 *Barnett v Chelsea & Kensington Hospital Management Committee* [46]
Three men, including Mr. Barnett, went to the emergency department of Chelsea & Kensington Hospital after experiencing severe vomiting, stomach pain, and other symptoms. They informed a nurse on duty, who then contacted the on-call doctor. Without examining the patients, the doctor advised them to go home and see their general practitioner in the morning. Tragically, Mr. Barnett died a few hours later from arsenic poisoning. His widow sued the hospital for negligence, claiming that had her husband received timely medical attention, he might have survived. The court held that the hospital and its doctor owed a duty of care to Mr. Barnett once he presented himself at the hospital. However, despite this duty, the court found that the doctor's breach of duty (failure to examine Mr. Barnett) did not cause Mr. Barnett's death. Medical evidence showed that, even if treatment had been given, Mr. Barnett would have died due to the lethal amount of arsenic he had already ingested. Since the "but-for" test for causation was not met, the hospital was not held liable for negligence. **(But-For Test):** To establish negligence, the plaintiff must prove that the defendant's breach of duty caused the harm. In this case, the court applied the "but-for" test i.e., but for the doctor's failure to examine and treat Mr. Barnett, would he have survived? Since Mr. Barnett would have died regardless of the doctor's actions, the causation requirement was not satisfied.[47]

1.7.3 *Danjuma Tanko v Dr Rom Okekearu*[48]

Danjuma Tanko, a 14-year-old boy, injured his finger while dealing with zinc sheets and was taken to Dr. Okekearu's clinic for treatment. Without securing consent from Tanko or his guardian, Dr. Okekearu amputated the boy's finger. Later, Tanko claimed that the procedure was performed negligently, leading to disfigurement and permanent disability. Feeling wronged, he sued Dr. Okekearu

[46] [1969] 1 QB 428. Court of Appeal.
[47] ibid.
[48] (2002) 15NWLR (PT. 791) 657.

for negligence and battery. The Supreme Court upheld the Court of Appeal's decision, confirming that Dr. Okekearu was responsible for battery since the amputation was an intentional act carried out without consent. Despite the doctor's potentially good intentions, the lack of consent made the action unlawful. The court deemed the compensation of ₦50,000 as fair and just.[49] While the court found Dr. Okekearu liable for battery, the case underscores the importance of informed consent, a fundamental aspect of medical negligence[50]. To avoid negligence claims, doctors must obtain informed consent from patients or their guardians before proceeding with any procedures, especially surgeries or amputations. Failure to do so can lead to claims of both negligence (if the procedure was poorly executed) and battery (if done without consent). This case serves as an important reminder for healthcare professionals to respect patient autonomy and adhere to proper consent procedures.

1.7.4 *Surgeon Captain Ct Olowu v Nigerian Navy*[51]

Surgeon Captain C.T. Olowu, a consultant obstetrician and gynecologist, was charged with failing to perform his military duties with due care under Section 62(b) of the Armed Forces Act. This case emerged after he inadequately managed the labor of a high-risk patient, Mrs. Joy Bassey, at the Naval Medical Centre. His slow response in attending to her led to severe complications, including a ruptured uterus, the death of the fetus, and the removal of Mrs. Bassey's uterus, which left her infertile. A General Court Martial (GCM) found him guilty and demoted him from Captain to Commander. This conviction was confirmed by the Court of Appeal and later by the Supreme Court. The Supreme Court dismissed Olowu's claims, stating that the GCM had proper jurisdiction, his right to a fair hearing

[49] Law global hub, 'Dr. Rom. Okekearu V. Danjuma Tanko' lawglobalhub (2023)< https://www.lawglobalhub.com/surgeon-captain-c-t-olowo-v-the-nigeria-navy-2006-lljr-ca/> accessed 6 january 2024.
[50] ibid.
[51] (2011) LLJR-SC.

remained intact, and there was adequate evidence of negligence. The Supreme Court upheld both the conviction and the sentence.[52] The case of Surgeon Captain Olowu v. Nigerian Navy serves as a significant precedent regarding medical negligence within military law. It emphasizes the legal responsibilities of healthcare practitioners and the increasing trend of litigation related to medical errors. The case illustrates the imperative for healthcare professionals, even in military settings, to maintain the highest standards of care to avoid serious legal and professional repercussions.

1.7.5 Dr. Orji Geoffrey Ikenna v Zitadel Medical & Diagnostics Ltd[53]

This case was decided by the National Industrial Court in October 2022, the claimant, a medical doctor, challenged his employer's internal finding that he was guilty of medical negligence. Zitadel Medical & Diagnostics Ltd had issued a disciplinary decision without giving Dr. Ikenna a fair hearing or following proper investigative procedures. The court reviewed the evidence and emphasized that, while employers in the healthcare sector may discipline staff for negligent acts, such findings must be reached through a process that respects the rules of natural justice, including proper notice and an opportunity to defend oneself. The judgment is important because it highlights that allegations of medical negligence are not only clinical issues but also employment law matters requiring compliance with due process.

1.7.6 The State of Lagos v Dr. Ejike Ferdinand Orji[54]

Dr. Ejike Ferdinand Orji, who serves as the Medical Director of Excel Medical Centre located in Ikoyi, Lagos, faced charges of medical negligence following the improper treatment of a 16-year-old patient named Somi Ezi-Ashi. This patient

[52] Law global hub, 'Surgeon Captain C. T. Olowo V. The Nigeria Navy' *lawglobalhub* (2024)< https://www.lawglobalhub.com/surgeon-captain-c-t-olowo-v-the-nigeria-navy-2006-lljr-ca/> accessed 6 january 2024.
[53] (NICN/ABJ/24/2020)
[54] [Unreported Decision In Suit LD/8963C/2019] Judgment delivered January 2023.

experienced a significant deformity in her left limb as a result of Dr. Orji's careless medical practices. The court deemed Dr. Orji's conduct to be severely negligent and below the expected standards for a medical professional. The conviction and subsequent sentencing highlight the judiciary's dedication to holding healthcare providers responsible for their negligent actions. [55]This case illustrates the enforcement of legal principles concerning medical negligence, emphasizing the necessity for medical professionals to adhere to established standards to protect patients from harm. It also signifies the judiciary's commitment to safeguarding patient rights and ensuring that cases of negligent medical practice are addressed legally.

1.8 The Impact of Medical Negligence: Consequences For Patients

1.8.1 Emotional and Psychological Consequences

Cases of medical negligence, similar to other personal injury incidents, can result in enduring psychological impacts. Individuals affected by medical negligence may experience heightened anxiety, making them reluctant to undergo future medical procedures, or they could suffer from depression related to their treatment. In some instances, the event may be perceived as traumatic, potentially leading to symptoms of post-traumatic stress disorder (PTSD) which can develop after someone has gone through or witnessed a highly distressing event[56].

Thus, a traumatic incident caused by medical negligence can very well trigger PTSD. The most prevalent symptom of PTSD is re-experiencing the traumatic event. Consequently, patients who encounter medical negligence may have flashbacks, nightmares, or recurrent sensations related to their injury. For instance, in cases of infant mortality, mothers may feel as though they have been

[55] Mondaq, 'case review –the state of lagos v dr ejike ferdinand' *Simmons cooper partners* (2023) < https://www.mondaq.com/nigeria/professional-negligence/1330996/case-review-the-state-of-lagos-v-dr-ejike-ferdinand-orji-unreported-decision-in-suit-> accessed 20th December 2024.
[56] (n 3).

deprived of their children, leading them to relive that painful experience repeatedly.[57]

1.8.2 Defensive Medicine and Cost

Defensive medicine refers to situations where healthcare providers carry out additional tests, prescribe excessive treatments, or request multiple specialist consultations not because they are clinically indicated, but to shield themselves from potential negligence claims. In Nigeria, the rise in medical litigation and patient awareness has encouraged many practitioners to adopt this approach. While it may appear precautionary, it often leads to unnecessary procedures that increase hospital bills, lengthen hospital stays, and strain both patients and the healthcare system financially. For instance, doctors may order multiple diagnostic imaging studies even when clinical guidelines recommend a single test, simply to forestall allegations of oversight[58].

1.8.3 Public Awareness

Public awareness of medical rights and standards of care in Nigeria has expanded significantly in recent years, driven largely by increased access to information, social media discourse, and advocacy by professional bodies and civil society groups. Patients now routinely research symptoms, treatment options, and their legal rights before and after seeking care, which makes them more vigilant about medical errors or omissions. This heightened awareness has fueled a surge in negligence claims, as individuals are more willing to challenge perceived lapses through litigation or complaints to regulatory authorities. Reports of high-profile cases, such as State of Lagos v Dr. Ejike Ferdinand Orji[59], widely circulated through online platforms, have further educated the public on the possibility of legal remedies for substandard treatment. Media exposure and patient advocacy

[57] ibid.
[58] ibid.
[59] Unreported Decision in Suit LD/8963C/2019] Judgment delivered January 2023.

have emboldened more Nigerians to demand accountability from healthcare providers.

1.9 Recommendations and Reforms

To effectively reduce cases of medical negligence and address the increase in litigation, Nigeria's healthcare and legal systems need focused reforms. Firstly, comprehensive updates to existing laws are necessary to clearly define care standards and include recent international best practices. For instance, the National Health Act 2014 could be revised to outline specific responsibilities regarding informed consent and proper documentation, drawing inspiration from the Montgomery v Lanarkshire Health Board[60] case, which highlights the importance of patient autonomy. Enhancing these legal requirements would ease the process for courts and regulatory authorities to evaluate breaches and enforce accountability.

Secondly, the Medical and Dental Council of Nigeria (MDCN) should take the initiative to revise and regularly update the Code of Medical Ethics in Nigeria. The existing code, while comprehensive, fails to adequately address recent developments in clinical practices, digital health, and patient rights. By including updated guidelines on documentation, communication, and patient safety measures, the MDCN can reduce confusion and assist healthcare providers in meeting expected standards.

Moreover, promoting continuing medical education and legal awareness among practitioners is essential. Many negligence claims arise from a lack of understanding of changing professional standards or legal requirements. Regular training sessions, workshops, and certifications focused on risk management, documentation, and informed consent would better prepare healthcare professionals to steer clear of common errors.

[60] (2015) UKSC 11.

Furthermore, improving patient education and public involvement is crucial. When individuals are aware of their rights and obligations, they are more likely to engage in shared decision-making and less likely to misinterpret genuine mistakes as negligence. Public awareness campaigns, informative pamphlets from hospitals, and accessible complaint mechanisms can build trust and diminish adversarial relationships.

Finally, judicial reforms are necessary to speed up negligence cases and promote alternative dispute resolution (ADR) methods such as mediation. This would help ease the burden on courts, lower costs for patients and healthcare providers, and lead to faster resolutions. Such reforms would aim for both accountability and fairness, ensuring that the rise in litigation strengthens the healthcare system rather than hindering its ability to ensure safety, trust, and justice.

1.10 Conclusion

Medical negligence is a significant issue in Nigeria, transforming the intended healing process into situations that cause avoidable harm. The increase in legal actions indicates that patients are becoming more aware of their rights and are actively demanding accountability when care standards are not met. While this trend fosters justice, it also introduces challenges such as defensive medical practices, elevated costs, and strained relationships between doctors and patients.

To tackle these problems, it is essential to implement balanced reforms that update legal structures, revise the Code of Medical Ethics, and enhance education for both healthcare providers and patients. Promoting transparency and shared decision-making can help decrease instances of negligence and nurture trust within the healthcare system. Ultimately, Nigeria should aim for a framework where litigation is uncommon because preventive actions and ethical practices have become standard.