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A CRITIQUE ON 'PROFSSIONAL MEDICAL NEGLIGENCE' IN NIGERIA

· **Helen I Oriafo [PhD, B.L]**
*Lecturer in Law-Igbinedion at University College of Law Okada, Edo State.
<oriaifo.helynn@iuokada.edu.ng> <https://orcid.org/0009-0009-6776-9475>

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Abstract

The Medical Profession is considered a noble profession premised on the fact that it helps in the preservation of life. In the health sector of developed and developing countries, patients' safety is of major priority. Typically, patients want excellent, caring and cost effective treatment guaranteeing respect of confidentiality and preservation of dignity. Patients expect that their physicians would be competent, humane and efficiently able to detect, diagnose and address their overall healthcare needs. Consequently, the Medical Practitioner is expected to exercise utmost care and diligence as is expected of all professionals. The standard expected of him is very high as he deals with human life which is so dear and once lost can never be regained. Unfortunately, over the years Nigerians have continued to experience challenging situations in the hands of Medical Professionals which sometimes include loss of limbs and total loss of life in worst cases. Currently, there is an alarming increase in cases of Medical Negligence reported in social media and newspapers. In the light of the above, the authors critically examine the relational basis between medical practitioners and patients as well as incidental rights and duties of both, more particularly the medical practitioner. The paper maintains the need for duty of care and diligence as well as concomitant damages in cases of negligence. The authors concluded by highlighting the socio-cultural and religious vagaries associated with a secular and multi-cultural Nigerian society, which oftentimes negatively affects many aggrieved patients from instituting litigation on claim of medical negligence.

Keywords: Medical Negligence, Healthcare Providers, Duty of care, Patients safety, multi-cultural.

1. Introduction

The role of the Medical Practitioner in any society cannot be over emphasized in terms of his relations to the general public. Generally, he is saddled with lots of responsibilities ranging from providing proper diagnosis to the treatment and counselling of patients. Indeed, the Medical Profession is considered a noble profession because it helps in preserving life. In developing countries for instance, patients' rights are of major priority. Typically patients want excellent, caring and cost effective treatment, with their confidentiality respected and their dignity preserved. Increasingly, there is the need for patients to be protected from medical practitioners who no longer see their professional calling principally as that of saving lives but as that of money making. The need for the protection of patients is not new in advanced country, considering the fact that remedy is provided through legislations as well as the judiciary, remedy aimed at ensuring that negligent Medical

Practitioners are made to pay damages to affected patients.[1]

This study aims to evaluate the requisite degree of care and competence expected from physicians in the process of detection, diagnosis and addressing of the overall healthcare needs of patients. Furthermore, the Medical Practitioners in the discharge of their duty are expected to exercise utmost care and diligence as is expected of all professionals. The standard expected of him is very high as he deals with human life which is so dear and once lost can never be regained.

2. Theoretical Background

There have been chains of scientific articles devoted to the problem of medical negligence. The most dominant and catchy includes: TBE Ogiamien,[2] M. O. Izzi,[3]
Anya Kingsley Anya,[4] and plethora of judicial authorities appertaining to medical negligence. To get a proper perspective of what Medical Negligence entails, it will be essential to commence by defining 'Negligence' which is the tort from which Medical Negligence derives from. Negligence is the breach of care to a person and such breach leads to injury to the person to whom the duty was owed. It is a legal concept in the common law legal system usually used to achieve compensation from injuries not accidents.

However, the concept is sometimes used in criminal law as well. Negligence is not the same as 'carelessness' because someone might be exercising as much care as they are capable of but still falls below the levels of competence expected of them. It can generally be defined as a conduct that is culpable because it falls short of what a reasonable person does to protect an individual from foreseeable risks of harm.[5]

The area of tort law known as negligence has to do with harm caused by carelessness not necessarily intentional harm. Lord Wright actually supplied an explanation with respect to negligence in the realm of torts, to the effect that, 'in strict legal sense, negligence means more than heedless or careless conduct whether is omission or commission. It properly connotes the complex concept of duty, breach, damage thereby suffered by the person to whom the duty is owned.'[6]

The Black's Law Dictionary defined Negligence as 'the omission to do something, which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do or the doing of something, which a reasonable and prudent man would not do.'[7] Negligence is the failure to use such care as reasonable prudent and careful person would use under similar circumstances. It is the doing of some acts which a person of

[1] TBE Ogiamien, Medical Practice and Law: Nigerian Observer, February 20, 1994, P.15
[2] Ibid.,
[3] https://clelawtutor.com//
[4] Anya Kingsley Anya, *Right to Object to Particular Medical Treatment: Examining the implicated Professional Ethics and Moral Notion in a Secular Society*, Kogi State University Law Journal, vol. 2 & 3 2008-2009, Pp. 144, 161. Also **Retrieved** April 10, 2024, from <ResearchGate.net>: Anya Kingsley Anya, *Withheld Consent and Attendant Death: Emerging Development in Nigeria*, Vol. 5 No.1, Port Harcourt Law Journal, April 2013, Pp. 74, 81. Also Retrieved Aril 10, 2024 from <www.anyakingsleyanya.com>
[5] Wikipedia, the free encyclopaedia
[6] <https://clelawtutor.com>
[7] 8th ed., (1991) P. 1035

ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances.

Baron Anderson in Blyth Birmingham Water Works also observed that, 'Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something, which a prudent and reasonable man wound do.'[8] Furthermore, in the Supreme Court case of *Odinaka v Moghalu*, Akpata JSC summarized Negligence as the 'omission to do something which a reasonable man under similar circumstances would do or the doing of something which a reasonable and prudent man would not do.'[9]

From the above cases, one can state that Negligence is the failure of a person to exercise a duty of care that rests on him and which causes damage to another person in all facets of human endeavour whose activities have direct dealing with human, whether it is the roadside brick artisan or the highly skilled aeronautic engineer.[10]

Medical Negligence on the other hand can be defined as the improper, unskilled or negligent treatment of a patient by a physician, dentist, nurse, pharmacist or other health care professional. Medical negligence means the failure on the part of a medical practitioner or any certified health care provider to exercise a reasonable degree of skill and care in the treatment of a patient, such that if a doctor treats a patient in a negligent manner causing harm or worsening the existing health condition, the patient can bring an action on negligence against the doctor claiming damages for the harm suffered.[11] Situation such as in above, usually arise only in the event of negligence, especially on the part of the medical professional, who does not take sufficient care in treating his patients.

3. Research methodology

The research methods are consideration of nature and scope of negligence, particularly as it affects medical profession, such as: gross negligence, comparative negligence, contributory negligence and vicarious negligence. The research also focused on philosophy of the tort of negligence, Standard of Care Owed to Patient by Medical Practitioners, Practitioners and Professional Ethics, determination of negligence, standard of care, duties of practitioners and rights of patients as well as analysis of regulatory legal acts.

4. Research data and related discussion

The first part of the research base consists of medical negligence and incidental duties. This part examined the difference between negligence in tort and medical negligence as it relates to medical jurisprudence. This part will reflect on the quality of care expected of a qualified practitioner. The investigation demands the special need to impose sundry duties such as duty of care, privacy and respect for dignity. The second part focuses on patients' rights. The third

[8] (1986) 11 Exch. 781 at 784
[9] (1992) 4 NWLR (Pt. 283) P. 155
[10] M. O. Izzi, An Overview of Medical Negligence in Nigeria, Port Harcourt Law Journal, vol. 4 (2012) P. 15
[11] Hygeia HMO

part dwells on regulatory framework and corollary analysis and finally the ensuing critique of the relationship.

In order to place our cards on the table, there is need to examine the categories of negligence.

A. Gross Negligence

This is when a person acts with a reckless disregard for the harmful consequences of their action. Gross Negligence is the most serious type of negligence and a finding of gross negligence can result in a higher amount of damages. While this recklessness falls short of an actual intent to commit harm, it also goes beyond ordinary negligence. For example, a driver who was involved in an accident while speeding on a highway might be found liable for ordinary negligence, but a driver who hits a child while speeding through a school zone is acting with a reckless disregard that could form the basis for a finding of a gross negligence.

B. Contributory Negligence

Contributory Negligence refers to the plaintiff's own negligent actions which contributed to the injuries that he or she sustained. It is an all-or-nothing approach to liability that can have harsh consequences for personal injury plaintiffs. It should however be noted that in jurisdictions where contributory negligence is allowed as a defence in personal injury lawsuits, a plaintiff could be denied compensations if the defendant can show that the plaintiff was even one per-cent responsible for the accident that caused their injuries.

C. Comparative Negligence

Comparative Negligence arises when multiple parties involved in an accident share some of the blame. In this case, the apportionment of liability is determined by a jury and the amount awarded is reduced by the percentage of fault that is attributed to the plaintiff. For instance, in a situation where someone injured himself or herself on a wet floor even though there was a wet floor sign present. In this scenario, the injured person is usually deemed responsible for knowing their surroundings and [isn't due any damages]clarify]. For example, in an action by a bicyclist for damages for injuries suffered when hit by a driver making a right-hand turn. The driver who was negligent in not slowing down while making the turn might however be able to support a defence of contributory negligence by showing that the bicyclist was using their cell phone while on their bike.

D. Vicarious Negligence

Vicarious Negligence occurs when one party is held responsible for the actions of someone in relation to them. For instance, if the person responsible for the accident is a minor, but their parent permitted them to behave in a way that led to the accident (allowed underage drinking or driving without a licence for instance), this could constitute vicarious negligence. In some cases, a company may be found to be vicariously negligent for the actions of an employee if their own rules allowed or facilitated these actions.

For Negligence of any kind to be proved, three ingredients must be established by the plaintiff, to wit:

I. That the defendant (doctor/Nurse) owed a duty of care to the plaintiff (patient).

II. That the defendant was in breach of that duty (breach of duty).

III. That the plaintiff suffered damage as a result of the breach of duty (causation).

However, where there is a breach of duty owed by a doctor/nurse to his patient to exercise reasonable care and/or skill in treating or attending to his/her patient, resulting in some bodily, cosmetic, mental or financial disability, the doctor/nurse will be held liable in negligence.

With respect to standard of care, a doctor in actual practice owes the patient a reasonable standard of care to make sure that the right treatment is given. If he defaults in this mode of care, he is still not liable to medical negligence claim except when such patient that is treated has an adverse effect to the treatment given to him by the medical practitioner. Significantly, the court in addressing this standard in the case of *Hunter v Hankey* noted that:

> The plaintiff who had suffered injury as a result of the breaching of a hypodermic needle while she was receiving an injection alleged that the accident has been caused by the Standard of care and competence which it was its duty to display is giving the injection.[12]

Flowing from the above case, the court established a threefold test to establish deviation from the customary practice and it enunciated the following rules to wit:

a. It must be proved that there is a usual and normal practice.

b. It must be proved that the defendant has not adopted the practice.

c. It must be established that the course which the doctor adopted is one which no professional man of ordinary skill would have taken if he had been acting with ordinary care.

Furthermore, there is need to consider the regulating ethics for medical practitioners. The importance of Professional Ethics to Medical Practitioner cannot be over- emphasized due to the delicate nature of human life which is indeed very precious. It becomes necessary that medical practitioners are guided and regulated by law. Accordingly, resort will be heard to the definition of ethics by Bernard Knight, 'a code of behaviour accepted voluntarily within the profession of opposed to status and regulations imposed by official legislation. Ethics is no more than rules that deal with conduct distinguishing what is right from hat is wrong.'[13]

Drawing attention from the above, it should be noted that the practice of Medicine in Nigeria is regulated by the Medical and Dental Practitioners Act 1988, which established the Medical and Dental Council, charged with the responsibility of regulating the standard of medical education, the discipline of Medical Practitioners and the maintaining of persons entitled to practice medicine.

[12] (1995) SC 200
[13] Bernard Knight, Legal aspects of Medical Practices (New Folk: Churchill Living Stone (1982) P.1

Generally, the principal objective of the Medical Profession is to render service to humanity with full respect to the dignity of the profession and man.

Curiously, our investigation will examine the quantum of negligence required in the determination of medical negligence. To this end, the court will decide if the act or omission of the doctor falls short of the standard expected of other medical practitioners.[14] In fact in *White House v Jordan,* Lord Emund Davies stated that: 'the test (of negligence is the standard of the ordinary skilled man, exercising or professing to have that special skill. If a surgeon fails to measure up to that standard in any respect, either (sic) clinical judgment or otherwise, he has been negligent.'[15]

To establish liability in the circumstances, it is pertinent that the claimant establishes the existence of a duty of care and the breach of that duty.[16] He must also establish that there was gross negligence on the part of the medical practitioner as stated by Lord Porter in *Akerele v R,*[17] *'t*hat the degree of negligence required is that it should be gross and that neither a jury, nor a court can transform negligence of a lesser degree into gross negligence merely by giving it that appellation.'[18]

There is no doubt that a doctor owes a patient a duty of care in Negligence if the healthcare professional has accepted to treat and not cause injury in the course of examination. Duty of care in law can be assumed or imposed. The obvious example of an assumed obligation is that of contract, where parties voluntarily agree to be bound to each other. The over-reaching legal and policy consideration in respect of all duties of care in tort is to whether it would be fair, just and reasonable to impose such a duty on the given circumstance.

Historically, there has been reluctance on the part of the judiciary to hold doctors guilty in negligence, probably because doctors and lawyers belong to two of the oldest professions and just like lawyers, doctors should be accorded some degree of protection from threat of negligence arising in the course of the discharge of their duties. The above was succinctly illustrated by Lord Denning in the case of *Hatcher v Black* where it was held that:

> It would be wrong, and indeed bad law to say that simply because a misadventure or mishap occurred, the hospital and the doctors are liable. It would mean that a doctor examining a patient, or a surgeon operating at a fable, would be forever looking over his shoulders to see if someone was coming up with a dagger….His professional reputation is as dear to him as his body, perhaps more so.[19]

The decision in the *Bolam v Friern Hospital Management Committee*[20] is an English case that lays down the standard of care in cases involving professionals. Mr. Bolam was a

[14] Doughty v General Dental Council (1988) AC 104
[15] (1981) 1 WLR 246 at 258 HC
[16] Sideway v Board of governor of the Bethlehem Ragal Hospital and the Moudsley hospital (1985) AC 871
[17] (1981) IWLR 246 at 258 HL
[18] (1943) AC 255 at 262
[19] (1954) The Times 2nd July, CA
[20] (1957) 1 WLR 582

voluntary patient at Friern Hospital, a health institution run by the defendants. He agreed to undergo electro convulsive therapy. He was not given any muscle relaxant and his body was not restrained during the procedure. He flailed about violently before the procedure was stopped and he suffered some serious injuries including fractures of the acetabula. He sued the defendant for negligence and that they were negligent for not issuing relaxants, not restraining him and not warning him about the risks involved.

The principle of the standard of care developed by Justice McNair states that:

> How do you test whether an act or failure is negligent? In an ordinary case, it is generally said that you judge by the action of the man in the street. He is the ordinary man. In one case, it has been said that you judge it by the conduct of the man on the top of a clapham omnibus. He is the ordinary man. But where you get a situation which involves the use of some special skill or competence, then the test whether there has been negligence or not is not the test of the man on top of the clapham omnibus because he has not got this special skill…. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is a well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art…[21]

McNair J., further observed that:

> 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 the other 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.[22]

However the British courts departed from the conventional understanding of the Bolam's test in the case of *Bolitha v City and Hackney Health Authority*,[23] which held that there would have to be a logical basis for the opinion of each in order to achieve a defensible conclusion. This means that a judge will be entitled to choose between two bodies of expert opinion and to reject an option which is 'logically indefensible.' This has been interpreted as being a situation where the courts set the law not the profession.

Lord Hewart., CJ, in examining the relational interaction between a medical professional and patient, observed that: 'If a person holds himself out as possessing special skill and knowledge and he is consulted as possessing such skill and knowledge, by or on behalf of a patient he owes a duty to the patient or client to use due caution in undertaking the

[21] (1998) 7 AC 2
[22] (1998) 7 AC 2
[23] (1988) 7 AC 2

treatment.'[24]

Significantly, there are other duties that inures to the patient, and it includes the following:

I. Duty to Provide Adequate Counselling

In Sideway v Bethlehem Royal Hospital Governors,[25] the plaintiff gave consent for an operation that would relieve her of pain in her neck. The surgeon did not tell her of the possibility of damages to her spinal cord which was in any case remote. The plaintiff then suffered partial paralysis in her arm after the operation, and she sued contending that her consent was nullified if all the possible risks were not disclosed to her before she gave her consent.

Consequent on the above, it is worth considering the death of Mrs. Stella Obasanjo wife to the President of the Federal Republic of Nigeria between 1998 and 2005. She died in a Spanish clinic from post-surgery complications. A tribunal in Spain suspended the doctor from Medical practice for three years and was told to pay the sum of $120,000 as damages to the son of the deceased.[26]

II. Duty to carry out proper diagnosis

This is to ascertain the true states of his patient and to help determine the mode of treatment. For instance, in De Freville v Dill, it was reported that the Medical Practitioner carelessly certified a man as being of unsound mind.[27]

In fact, a doctor has a duty to carry out proper examination before embarking on treatment. Therefore, where x-ray tests, blood tests, urine tests or other similar tests are required to determine the ailment and treatment, a medical practitioner ought to carry out a diligent examination.[28]

III. Duty to Administer proper treatment

A Medical Practitioner has a duty to give proper treatment to a patient and failure to do this may render the Medical Practitioner liable. For example, in a claim for damages in a particular case, the court held that the evidence disclosed was a prima facie case of negligence on the part of the defendant medical personnel which had not been rebutted and the defendants were accordingly liable.[29]

IV. Duty to Warn Patients of Inherent Risk

A Medical Practitioner has a duty to warn a patient on the risks of the method or treatment chosen, and side-effects especially where alternative medical procedure are available so that the patient may make a reliable and rationale choice.[30]

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[24] In the case of *R v Bateman* (1925) All ER 45
[25] (1985) 1 All ER 643 AC 871
[26] The Nigerian Television Authority, 2003
[27] (1927) All ER 205
[28] BT v OCI (1999) NSWSC 1082
[29] *Cassidy v Ministry of Health* (1951) 1 All R 573
[30] For instance in *Rogger v Whitaker* (1992) HCA SB (1992) 175 CLR 479 FC 92 1045
Campbell J., found Rogger liable in that he had failed to warm Whitaker that as a result of the surgery, she might develop a condition known as sympathetic ophthalmia in her left eye.

5. The regulatory framework on the rights of a patient in Nigeria

The rights of persons who seek medical attention have been enshrined in both national and international legal instrument, notwithstanding their health status. In Nigeria, the rights of patients are highlighted in the constitution, the Patients' Bill of Rights 2018 as well as the corresponding duties of health care practitioners. However, these rights have been continuously hindered by weak enforcement, inadequate finding, insufficient health care providers, inadequate infrastructure lack of awareness and illiteracy. Some of the rights however would include: access to all relevant information, access to patients cards and providers qualifications, full disclosure of all the cost of treatment, access to confidentiality of all medical records, good quality of care, access to respect and dignity of care form the care providers, access to emergency care, right to visitation according to providers rules and regulations, information on interruption as disengagement of health care services, express dissatisfaction with mode of treatment, respect and dignity of care from the care provider. [31]

Notwithstanding the above, there is need to regulate health care in Nigeria. In Nigeria, the Medical Council is vested with powers to enforce discipline amongst erring members through the Medical Practitioner Disciplinary Tribunal.[32] Through the tribunal, the council can invoke their disciplinary powers:

(i) Where a registered person adjudged by the disciplinary tribunal to be guilty of infamous conduct in any professional respect or,

(ii) Where a registered person is convinced by any court of law or

(iii) The disciplinary tribunal is satisfied that the name of any person has been fraudulently registered.

Furthermore, the constitution of the Federal Republic of Nigeria refers to the right to health. This right to health can be deduced from the right to life under Chapter IV of the 1999 Constitution"[33] the African Charter on Human and Peoples Right (Article 14 of the African Charter on Human and People Right (Ratification and Enforcement Act LFN 1990); The World Health Organization; The National Health Act 2014.[34] It should be noted that Section 1 part 3 of the National Health Act contains several Rights and obligations of users and health personnel. Above all, the Medical and Dental Council is solely response for assuring the competence, for assuring the competence, licensing and regulator of Medical Professionals in Nigeria. It has an effective code on medical negligence and responds effectively when claims are made against medical professionals. For instance, in Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal,[35] the need for enforcement was addressed in order to redress many breaches which usually go unpunished due to lack of mechanism within the Act itself for the monitoring of practitioners by the council.

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[31] (2002) 15 NWLR (Pt. 791) 657 SC

[32] Section 33 of the 1999 Constitution., but see particularly S.16 (2) of the Medical and Dental Practitioners Act, 1988 [Hereafter, The MDPA 1988]

[33] Chapter 11 of the 1999 Constitution of the Federation Republic of Nigeria as Amended 2011

[34] Section 20 of the National Health Act, 2014

[35] (2000) FWLR (Pt. 44) 542

6. Critical Analysis of Medical negligence

A critique of medical negligence must accommodate the challenges confronting the Nigerian patients as well as an examination of possible way forward.

There is a toxic mix of problems including inaccessibility of quality health care, in Nigeria. The performance of government in the health sector has been abysmal and investment in infrastructure has been poor. Meagre remuneration for health workers has created more serious challenges in the health sector.

One major challenge faced by patients within the Nigerian context is the problem of cultural attitude towards litigation and the problem of delay in judicial process and high cost of litigation. For instance, in the aspect of medical litigation, the situation perhaps can further be attributed to widespread religious inclinations of ascribing medical and other tragedies to divine predetermination or fate over which humans have no control, and ones which entertain the belief that no court action can undo what has been done.

In a related vein, the religious attitude of adopting forgiving spirits, in some cases, also operate in influencing some people in not seeking legal redress in court in the event of medical misfortune attributable to the act or omission of a doctor. Large scale poverty with attendant inability to afford legal expenses can also be cited as a factor that might have made medical litigation an unattractive choice for many Nigerians.

Beyond financial limitations, there is also the issue of relative doubt of confidence in the Nigerian justice system as a discouraging factor. In the light of the forgoing factors, it is not uncommon for an aggrieved Nigerian, for different reasons, to leave things to God rather than pursue legal redress in court. Again, the current epidemic power supply in Nigeria also has an adverse effect on medical practice as some hospitals in the rural areas have to rely on kerosene lamps to perform surgeries, which leaves the patient at the mercy of the medical practitioners who has to do this delicate function in a poorly lit theatre as against a properly lit one which is the standard expected. Based on the above challenges and others there is need to educate the Nigerian patient on their rights to standard health care.

This will help them appreciate their position as patients and know what to expect from the medical practitioners. It will also aid them in taking appropriate legal action when there is a breach instead of adopting passive attitude and also place them in a position to take well-informed decisions when the need arises.

It is expected that the government should also look into the problem of regulating medical practice as the medical council does not seem to have in place effective monitoring teams that can go round health facilities across Nigeria with a view of ascertaining proper compliance with the recommended standard by the council. In support of the long standing medical and Dental Practitioners Act, codes of Medical Ethics and related provisions, some proactive measures have been introduce at different times in Nigeria to sanitize the realms of Medical Practice. The National Health Insurance Scheme Act for example prescribes that Health Maintenance Organizations (HMO’s) undertake periodic monetary and evaluation of health

care providers as well as organizing regular seminars for them, including the provision of monthly statistical returns on healthcare providers performances at different health care institutions and facilities. These provisions were designed to ensure the maintenance of functional health care system, maintaining professional standards at the different facilities and reducing the incidence of systemic error.[36]

7. Conclusion

Medical Negligence is an increasing public health concern among health care providers worldwide, as it affects safety posing a significant risk to victims. In Nigeria, cases of Medical Negligence have been on the increase. The Government, Policy makers, and health care organizations in response at various times have enacted laws, adopted standardized regulations and processes for regulating the medical sector. The extent to which these measures and others have gone in improving patients' safety and untainted medical evaluations remains debatable, especially in consideration of series of accounts of untoward incidents emanating from the realms of medical treatment in different dimensions in the face of extant legal and pro-active measures. It is advisable for the government through the approved relevant bodies to ensure that only properly trained and periodically retrained doctors and healthcare providers are employed in both private and public health facilities.

The medical council should also ensure to have effective and efficient monitoring teams capable of going round health facilities in Nigeria with a view to ascertaining proper compliance with laid down rules and regulations. However, it is also important to note the words of Lord Denning in Roe v Minister for Health:

> If the anaesthesia had foreseen that the ampoules might get cracked with cracks that could not be detected on inspection, they would no doubt have dyed the phenol a deep blue and this was negligence. It is so easy to be wise after the event and to condemn as negligence that which is only a misadventure. We ought always to be on our guard against it, especially in cases against doctors and hospitals. Medical science has conferred great benefits on mankind but this operation is attended by risks.[37]

As laudable as this position taken by Lord Denning is, one must acknowledge the grievous nature of a surgeon's mistake or error of judgment in his field of practice which could result to loss of limbs or outright death. There is the dire need to balance the interests of all partners so no one party suffers.[38] The reform required in the Nigerian health factor is a system that effectively handles the issue of accountability and responsibility on all sides, improves the standard of care generally expected form practitioner without promoting defensive medicine. By way of effectively handling the problem of judicial delay, and technicalities, it is advisable that an alternative dispute resolving system that is designed specifically for

[36] Iyioha, I.O. (2015) '*Medical Negligence*,' in Iyioham I. & Nwabueze SRN (eds.) Comparative Health Law and Policy; Critical Perspectives on Nigeria and Global Law, Pp. 68, 93
[37] (1954) 2 All ER 131
[38] (1954) 2 All ER 131

medical practice be put in place. All of these will help in achieving best Medical Practice in Nigeria.

There is also an urgent need for government to adequately educate and sensitize the public on Patient Bill of Right (PBOR) in order to ensure quantitative health services delivery.