ANALYSIS OF THE LEGAL FRAMEWORK ON PROFESSIONAL NEGLIGENCE BY HEALTH CARE PROVIDERS IN BARAU DIKKO TEACHING HOSPITAL, KADUNA, NIGERIA

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A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, NIGERIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWSDEGREE - LL.M.

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ZARIA, NIGERIA

OCTOBER, 2018.

DECLARATION

I declare that the work in this Dissertation entitled “Analysis of the Legal Framework on Professional Negligence by Health Care Providers in BarauDikko Teaching Hospital, Kaduna, Nigeria” has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other Institution.

Hope Lifted HARUNA _____ Signature _____ Date

CERTIFICATION

This dissertation entitled "ANALYSIS OF THE LEGAL FRAMEWORK ON PROFESSIONAL NEGLIGENCE BY HEALTH CARE PROVIDERS IN BARAU DIKKO TEACHING HOSPITAL, KADUNA, NIGERIA" by Hope Lifted HARUNAmeets the regulations governing the award of the degree of Master of Laws -LL.M of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

Dr. A.M Madaki Chairman, Supervisory Committee	_____ Signature	_____ Date
Prof. A.I. Bappah Member, Supervisory Committee	_____ Signature	_____ Date
Prof. A.I. Bappah Head, Department of Public Law	_____ Signature	_____ Date
Prof.S.Z.Abubakar Dean, School of Postgraduate Studies.	_____ Signature	_____ Date

DEDICATION

This work is dedicated to Mrs Justina Ele-ojo Collins (late) and all victims of medical negligence in Nigeria.

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spouses, I convey my deepest appreciation.. Thanks for your care. To all my friends who stood by me in prayers and encouragement. I say a very big Thank you. I love you all.

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ABBREVIATIONS

All ER	-	All England Law Reports
B.D.T.H	-	BarauDikko Teaching Hospital
D.L.R	-	Dominion Law Report (Canada)
F.W.L.R	-	Federation Weekly Law Report
FHC	-	Federal High Court
KDH	-	Kaduna State High Court
L.F.N	-	Laws of the Federation of Nigeria
MLSCN	-	Medical Laboratory Scientist Council of Nigeria
M .D .P .I.P	-	Medical & Dental Practitioners Investigating Panel
MLJ	-	Malayan Law Journal
MMLR	-	Medical Malpractice Law Report
N.W.L.R	-	Nigerian Weekly Law Report
NLR	-	Nigerian Law Report
WLR.	-	Weekly Law Report (UK)
WACA	-	West African Court of Appeal
WNLR	-	Western Nigeria Law Report
QB	-	Queen's Bench (UK)

ABSTRACT

The importance of health care professionals to the society cannot be overemphasized as the scope of duties performed by them and decisions they take have far reaching consequences on the lives of persons they come into contact with in their performance of duty. This research focused on the role of medical doctors, nurses/midwives and Medical Laboratory Scientist at BarauDikko Teaching Hospital, Kaduna and how they comply with the relevant laws and code of ethics in their relationship with patients. The research methodology used is a combination of doctrinal and empirical method. Doctrinal consist of recourse to relevant articles, commentaries, text books and cases while the empirical method involve gathering information through interviews and questionnaires distributed to relevant professionals at BarauDikko Teaching Hospital, Kaduna and patients analysed to know their level of awareness of duties of the relevant personnel and rights of patients. Furthermore, various sanctions against medical negligence by medical practitioners like civil, criminal and procedural disciplinary measures exist to combat medical negligence. However, there are line of defences available to any practitioner whose action is called to question. This research establishes that the Medical and Dental Practitioners Council in its role focuses on the sanity of medical practice rather than on compensating any victim of a negligent practitioner.Considering the importance of the role of the Medical and Dental Practitioners Council of Nigeria, it is recommended that erring members should be punished and compensation be given to victims of medical negligence, in deserving cases.

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CHAPTER ONE

GENERAL INTRODUCTION

1.9 Background to the Study

The importance of health care professional to the society cannot be overemphasized as the scope of duties performed by them and decisions they take have far reaching consequences on the lives of persons they come in contact with in their discharge of duty. The importance of their role notwithstanding, some health care professionals carry out their jobs with recklessness which has led to various degrees of disabilities and in extreme cases the death of the patients. A study in America revealed that as many as 98,000 patients die in hospitals each year as a result of preventable medical errors. It stated further that even if the lower estimate is used, deaths as a result of medical error are the eighth leading cause of death in America[1].

Health care professional have various duties imposed on them towards patients and by virtue of their calling, are not permitted to derogate from except in cases of unforeseen mishap. One of the primary function of health care practitioners is to put the welfare and wellbeing of their patients above every other consideration; money inclusive.[2] Whether some practitioners understand this fact is still a wonder considering the manner in which they treat patients who approach them and in most cases pay exorbitantly for such services.

[1] To Err is Human: Building a safer Health System. (1999)*Institute of Medicine.* Retrieved from kaiserhealthnes.files.wordpress.com/2013/04/to_err_is_human_1999_report_brief.pdf. Accessed on 7 May, 2016 at 10:20 am.
[2] The Declaration of Venice (Physician's Oath Declaration)

Furthermore, in the course of interaction of patients with the medical practitioners, a lot of things transpire ranging from collection of data, meeting the doctors for complaints and diagnosis, going to the laboratory for tests to administration of treatment and lots more. In the course of this journey, several activities take place and a mistake or neglect at any point of the transition has the capability of marring the entire process.

It is important to state at this point that one of the functions of law in the society is to safeguard society from the actions of those who will breach the law and provide remedy for those who have been so wronged. The issue of aperson's health is one of the most important focus for every human being. Whether for routine checks or actual infection, every person has at one time or the other had cause to visit a health care delivery outfit and in the process has had interactions with health care providers. The need to have a robust health care facility where one will not be exposed to unnecessary risk or danger assumes a paramount interest.

The cases of needless deaths and other avoidable harm inflicted on patients in the name of treatment by some health care providers have made a lot of people to turn to orthodox medicine including the unsafe ones. A careful study of the situation has revealed that while some health care providers do not understand the extent of their responsibilities towards their patients, some patients also do not even know what their rights are and as such cannot demand it. Furthermore, those who have travelled abroad or who have had reasons to interact with health care professionals from other countries particularly the developed ones will discover that their *modus operandi* is very different from what is obtainable in Nigeria and

one will begin to wonder whether we are operating a different level in terms of duty of care we owe our patients..

The fact that there are various challenges in our medical sector in Nigeria which ranges from poor and inadequate facilities, insufficient man power and resources and a host of other factors, the duty of care required is still enormous. It is unacceptable the way some health care providers create an impression that their services constitute a favour to the patients who are left at their mercy and crucial decisions are often taken together without reference to the the patient and if anything goes wrong, the patient is put in a position where the only option available to him is to resign to fate, like it is always the case and takes it as *the will of God*[3]. Any attempt to seek redress is seen as a complete waste of time as the hospitals will not want to own up to the negligence of their staff but will rather deal with the issue internally for the fear of damaging it's reputation, while the aggrieved relatives of the dead in most cases are left with no succor whatsoever.

Interactions with several persons[4], Newspaper publications[5] and Internet sites[6] reveals that there are various cases of medical infraction which are never reported or litigated upon due to a host of factors. It is however our view that this trend for Nigeria as a nation is dangerous as quite a number of persons now seek medical help outside the country due to the humane treatment they receive and this

[3] Chukwuneke, F.N (2015) *Medical Incidents in developing countries: A few case studies from Nigeria.* Nigerian Journal of Clinical Practice.Doi:10.4103/1119-3077.170821. http://www.njcponline.com accessed 23 September, 2017 at 8 am.
[4] Nixon, S. (Personal communication January 15, 2015).
[5] Mohammed, B. (2016) *On Medical Negligence by KAMSA*http://www.dailytrust.com.ng.news/saturday-column/on-medical-negligence-bykamsa/140582. Accesses 15 September, 2017 at 12:15pm.
[6] Loe R, (2014).*5 Doctors Suspended, 12 arraigned over negligence of Duties*, Daily Trust Newspaper Sep., 9 2014; dailytrust.com.ng/daily health/33821-5-doctors-suspended-12-arraigned-over-negligence. Accessed 27 June, 2016 at 11:55am.

is a disservice to the nation in that monies that should be contributing to the development of oureconomy is taken out to develop the economy of other nations through what is known as medical tourism.[7]

It is against the background of these all-important duties of health care professional that the question of negligence in their professional activitieshave been developed to ensure that in addition to any action that can be taken against negligent health care professional, he should be disciplined by the professional bodies to which such a practitioner belongs, to serve as deterrent to other erring members and build confidence in the medical profession by members of the public.

1.10 Statement of the Research Problem

A critical look at the various research works and interactions with members of the public will lead one to evaluate the level of knowledge and compliance by medical practitioners with the various laws and code of ethics establishing the profession. The adherence with relevant laws and ethics of the medical profession instils confidence in the medical system while derogation from the laws and ethics have a dangerous impact on the general wellbeing of the society. It is in view of this challenge of adherence or derogation from relevant laws and ethics that this research seeks to answer the following question.

First what actions of medical practitioners amount to negligence? Secondly,

[7] Makinde, O.A., Brown, B. & Olaleye, O. (2014). The impact of Medical Tourism and the Code of Medical Ethics on Advertisement in Nigeria. *The Pan African Medical Journal* doi: 10.11604/pamj.2014.19.103.5217, accessed on 8 February, 2016 at 10 am ; Obaro, H. *Is Nigeria Really a "Giant of Africa"?*.retrieved from https://www.naij.com/403504-medical-tourism-is-nigeria-really-a-giant-of-africa.html.; *Medical Tourism: Evidence of System Failure or What?* Retrieved from https:nigerianpilot.com/medical-tourism-evidence-of-system-faiure-or-what-2/.8 February, 2016 at 10:15 am

what is the awareness of members of the medical profession and public on the existence, scope and operation of relevant laws in curbing medical negligence? Thirdly, what is the level of compliance with the laws regulating medical practice with reference to medical negligence in medical institutions in Nigerian, Barau Dikko Teaching Hospital in particular? Fourthly, what are the implications of medical infractions if any? Fifth, are the remedies available for aggrieved person under our laws adequate for dealing with identified cases of medical infractions and capable of deterring persons from acting negligently where same is avoidable?

1.3 Aim and Objectives of the Research

A cursory look at the various research work and interactions with members of the public will lead one to seriously evaluate the level of compliance by medical practitioners with the various laws and code of ethics establishing the profession. This research seeks to identify cases of negligence as provided under relevant laws and case laws. Also, the level of compliance with relevant laws by health care providers will be examined. In pursuance of this research, the sufficiency of available remedies for the safety of society and compensation of aggrieved members of the public, given the reports that are seen on the pages of Newspapers and other information available will be examined.

In addition, most of the cases that are litigated upon before the court prove difficult to establish. This research will seek to find out what these difficulties are and how they can probably be surmounted. Where cases of breach or non-compliance with the ethics of the profession cannot be established due to

difficulties, confidence in the system will be eroded. It is therefore an objective of this research to highlight these difficulties and proffer workable solutions that can address this issue of proof to ensure that adequate compensation is made for negligent acts of such medical professionals.

Furthermore, this research work shall seek to evaluate the level of awareness of members of the medical profession and public on what constitutes duties of medical practitioners to patients and the rights of patients to redress when there is a negligent act or a wrongful act by a health care provider. A lot of people do not know that there exists legal framework for handling negligent and unethical conduct of negligent health care professionals hence the need to bring to the fore the various legal frameworks creating liabilities for various health care professionals.

It is noteworthy to mention that in most cases involving malpractice in a hospital, the blame or liability is usually placed on the doctors. Suffice to state however, that other professionals like nurses, midwives, laboratory scientists and others play vital roles in investigating, treating and handling of patients. It is therefore important to examine the various duties of these personnel and how they cooperate to ensure better service delivery and the fact that the negligent or unethical conduct of any of these personnel can mar the process of treatment of a patient.

1.4 Justification of the Research

This research work is predicated upon the fact that the society is experiencing ailments that were not common several years back, Examples are cancer and hypertension. Most of these new discoveries are life threatening ailments which require a very careful handling from health care professional as any negligent action can cause great suffering or even hasten death of patient.

An evaluation of the level of compliance by health care practitioners with the ethics of the medical profession under review serves as the beginning point of understanding any problem if it exist. If the level of compliance is low, the safety of the health of the society is in jeopardy hence the need to carry out this research.

It is therefore important that health care professionals become aware or rather reminded of the onerous task placed on them to alleviate sufferings of the ailing patients and avert death where possible. A study carried out in 2013 revealed that a lot of nurses have poor knowledge of the ethics of the profession and even laws of professional discipline guiding the profession[8].

Furthermore, Owing to the high level of illiteracy and ignorance on the part of even the educated as to what medical duties towards patients entail, a lot of medical professionals take advantage of this fact to act unethically towards patients and these patients not aware of their right condone and endure harsh treatment from such health care professionals. If the activities of such health care professional are allowed to go unchecked, the health of the society will be at risk hence the need for enlightenment in order to ensure that the people are aware of

[8]Oyetunde, M.O. and Ofi, B.A.(2013) Nurses' Knowledge of Legal Aspects of Nursing Practice in Ibadan. *Nigeria Journal of Nursing Education and Practice, Vol. 3,* No. 9 75-82. Retrieved from www.sciedu.ca/jnep Doi:10.5430/jnep.v3n9p75.Accessed 7 March, 2016 at 11:45 am.

their rights and that infamous conduct of health care professionals should not be condoned.

At the end of this research work, this research would have contributed to existing texts in the area of health care or medical law and also give handy information to persons who need to know what actions are actionable before regular courts and the various disciplinary bodies of the health care professionals under review.

Suffice to state that most writers in this area concentrate more on the activities of only medical officers or "doctors" as they are often called as if to mean that it is only their actions that affect the lives of the patient without paying close attention to the important roles of the Nurses, Midwives and Laboratory experts whose mistakes or negligent acts as well has damaging effect on the lives of the patients.

Hence the need to bring the actions of these other professionals into public knowledge to assist lawyers, non-governmental organizations and health care officers themselves to know the position of the law and the government especially National Orientation Agency (NOA) to enlightens members of the public of what their rights are and what to do where such rights are infringed upon.

Finally, this research work will also be of benefit to the general public, Bar and Bench as the decisions of some other jurisdiction shall be analysed to give our court the needed boost in the award of reasonable damages to aggrieved plaintiffs in suit for negligence as this will bring the country as whole to international standards in awards of damages.

1.5 Scope of the Research

This research focuses on the liabilities for negligence and unethical practice of Medical Officer, Nurses and Midwives and Medical Laboratory Scientist in Barau Dikko Teaching Hospital, Kaduna.Also, while looking at the various laws[9] creating these bodies, particular reference is made to disciplinary rules creating offences and disciplinary measures for erring personnel.Furthermore, in considering the activities of these identified health care professionals in Nigeria in general, particular when reference is made to Barau Dikko Teaching Hospital, Kaduna being the case study for this research.

1.6 Research Methodology

The research methodology proposed to be used is a combination of doctrinal and empirical method. Also primary and secondary resources is used as source of information. Relying on doctrinal method which deals with secondary sources of information, recourse was made to relevant articles in journals, commentaries, text books and cases.Furthermore, with respect to primary sources of information, reference was made to laws establishing Medical and Dental Practitioners, Nurses and Midwives and Laboratory Scientists.

In compliance with empirical method which relates to gathering of fresh information in this instance through data collection, oral and written interviews was conducted with relevant medical professionals at Barau Dikko Teaching Hospital, Kaduna,as well as questionnaires distributed to patients which was

[9] Medical and Dental Practitioners Act. Cap M80 Laws of the Federation of Nigeria 2004, Nursing and Midwifery (Registration, e.t.c) Act. Cap N143 Laws of the Federation of Nigeria 2004 and Medical Laboratory Science Council of Nigeria Act. Cap M25 Laws of the Federation of Nigeria 2004.

analyzed to determine the level of compliance with relevant laws and ethics in the discharge of duties by the relevant personnel and the awareness of patients on medico-legal issues and rights of patients.

1.7 Literature Review

Medical law is still an emerging jurisprudence in Nigeria and some people have argued that medical activities should not be drawn into public scrutiny due to the likelihood of it becoming counterproductive. Quite a handful of Nigerian authors[10] have contributed to the literature in the area of medical negligence, it is however noticeable that most of the writers concentrated on the civil or criminal action which can be maintained on particularly Medical doctors and in other cases the hospitals for the negligent acts of the doctors.

While it may be correct to state that in terms of hierarchy in the medical profession, the doctors have been viewed to be at the pinnacle[11] and are most time held responsible for the actions of other staff in his team, it is also a fact that the "Medical Doctor" is not the only one directly involved with patients as it is our opinion that the nurses are equally and in most cases involved in more interactions with the patients and their roles is increasingly becoming more autonomous[12]. Also, the attitude of quite a number of nurses and midwives leaves much to be desired. It is therefore important that the actions of these other members of the

[10] Yakubu J.A. (2002) *Medical Law in Nigeria.* Ibadan: Demyax Press Ltd., Dada J.A. (2013) *Legal aspects of Medical Practice in Nigeria.* Calabar: University of Calabar Press and some undergraduate and post graduate research works.

[11] This is however an arguable issue as the other health care providers are not relenting in the struggle of being given independent status and not being considered as an appendage to the "medical doctors"

[12] Reising D.L. (2007) *Protecting Yourself from Malpractice Claims.* Retrieved from https://americannursetoday.com/protecting-yourself-from-malpractice-claims. Accessed 6 June, 2016 at 8:10 pm.

medical team be given attentionas their actions can make or mar the treatment process.

From the work of Ukam[13], it is clear that a lot of industry was put into the research by assembling cases laws on diverse legal issues. However, the work as it is will only benefit the legal mind as the discourse was carried out from the case laws point of reference. An unlearned person who desires to know what the duties of some members of the medical profession entails may not find the material a helpful source. The intention of this research is however to state in clear and simple language the duties and conduct of the identified medical professionals that will amount to misconduct and subject of action in negligence and capable of being punished under the various disciplinary rules.

Furthermore, Bambale[14] did an elaborate research on the consent of persons before treatment is carried out. A clear distinction was made between express, implied and informed consent. He went further to emphasize the fact that express consent needs to be made by an informed patient in that the procedure to be carried out has to be explained to the understanding and satisfaction of the patient to enable him make an informed choice on the issue of treatment proposed. Notwithstanding the extensive research in diverse legal aspects of medical law in Nigeria, he highlighted the fact that illiteracy and poverty were identified as part of the issues responsible for non-information by medical practitioners to their patients and inability of the patients to take legal action in identified cases, he did not state

[13]*Quick Reference Reports Evidence Compendium (Q.R.R)Part 7*, (2012). Lagos: Orak Wise Publications pp. 582-637

[14] Bambale, Y.Y. (1994). Medico-Legal aspects of Implied Consent and the extent of its Application in Nigeria. *A Journal of the Law Society, A.B.U., Zaria,(Vol.3)*, pp. 87-95.

how these issues can be tackled. It is therefore one of the objectives of this research work to explore ways that the Nigerian public can be better informed of its rights and propose ways that identified cases of medical malpractice can be effectively addressed.

Yusuf Ali[15] did a good research in the aspect of handling litigation before regular courts on matters bordering on medical malpractice or negligence. He highlighted the difficulties faced by potential litigants who intend to bring actions before the court. These difficulties includes but not limited to the unwillingness of other members of the medical profession to testify against their colleagues and inability of the plaintiff to secure expert evidence due to the cost implication of attempting to do so. This writer however left out the aspect of discipline of erring members of the medical profession which can be carried out by the disciplinary committee of the professional body to which such professional belongs. It must be pointed out that one of the purposes of the establishment of the disciplinary rules of professional bodies is to enable the bodies purge itself of bad eggs thereby sanitizing the medical system and building confidence among members of the public in the health sector.

Ogwuche[16] produced a good compendium of cases that deal with various aspects of medical law and the attitude of the court especially in the western Jurisdiction. It is noticeable from his book that medical law as practiced in England and America is quite robust compared to what we have in Nigeria. The

[15]Ali, Y.O. (2007).*The Prospects of Litigation in Medical Practice or Negligence in Nigeria: An Analysis.R*etrieved from http://www.yusufali.net/articles/the_prospects of_litigation_in_medical_malpractice_or_negligence_in_nigeria.pdf . Accessed on 5 January, 2015.

[16] Ogwuche, A.S.(Ed.).(2002). *Compendium of Laws under the Nigerian Legal System First Edition.* Lagos:Miyati Chambers. Ogwuche, A.S.(Ed.).(2006) *Compendium of Medical Law under the Commonwealth &United States Legal System.* Lagos:Miyati Chambers. pp. 1-65.

book was probably designed to be a quick guide for trial attorneys and not an educative piece for general members of the public. While is in impracticable to have a comprehensive list of what will amount to Medical negligence, there is the need for the ordinary man to be able to identify situations that smacks of negligence to enable him proceed to the appropriate place for redress. As instructive as his works is, the works tends to benefit only members of the Legal profession but this research work is carried out with the aim of identifying duties of health care providers and further identifies how cases of breach can be identified and redress available to an aggrieved patient.

Okojie's[17] research is instructive on the issues of medical negligence in Nigeria. The work highlighted the history of medical ethics as a guide to medical practice all over the world. He went further to highlight various obstacles in the path of justice for victims of medical negligence which includes difficulty in securing expert evidence and issues of poverty. However, concrete solutions to these obstacles were not suggested and looking at the obstacles without practicable solution painted a very hopeless situation. This researcher's intention is to make effort to search out and proffer solutions to these obstacles which are real and act as a clog on the wheel of progress.

Morgan's[18] research covered advanced areas in medicine and their attendant consequences like genetic formation, legal status of embryo and foetus, ownership of the body and many other areas which are not familiar to our terrain given the

[17]Okojie, E. *Professional Medical Negligence in Nigeria*.www.nigerianlawguru.com/articles/torts/PROFESSIONAL MEDICALNEGLIGENCE IN NIGERIA.PDF.Accessed on 21 August, 2017 at 10.00 am

[18]Morgan, D. (2001).*Issues in Medical Law and Ethics.* United Kingdom: Cavendish Publishing Limited. pp. 83-103

present state of development in medical practice in Nigeria. While this work is appreciated as a good academic masterpiece which can aid research in policy formation in health care in Nigeria, a lawyer or victim of medical negligence may not be able to aptly get ready answers for steps to be taken where there is the need. We however, intend to state in the most simple terms what constitutes negligence and remedies available to an aggrieved person.

Dada[19] in his book dealt with different aspects of medical practice including medical ethics, negligence, trespass to person, and consent amongst others. In dealing with the issue of medical negligence, he stated that failure of heath care providers to exercise the ordinary care and skill a prudent and qualified person would exercise under the similar circumstance will amount to medical negligence. He went further to highlight common causes of negligent actions to include retention of objects, failure to attend and or give prompt attention and incompetent assessment of patients. The discourse in the text centred on general identification of negligent acts and remedies available to an injured person. The issue of sufficiency and adequacy of compensation in successful cases was not elaborately examined. In this research work, in addition to identifying cases of negligence and how they are dealt with, it is equally apt to evaluate the sufficiency of compensation as the goal of most plaintiffs in an action for negligence is to get adequate compensation for injury suffered as a result of the negligent act of the other person.

[19] Dada, J.A. (2013). *Legal Aspects of Medical Practice in Nigeria*, Calabar: University of Calabar Press. pp. 115-154

Olopade[20] looked at a lot of issues ranging from abortion laws, infanticide, medical negligence among others. With respect to negligence, it was considered under civil and criminal liabilities. Under civil liabilities, example of when a doctor will be liable for negligence includes failure to sterilize equipment, failure to cross-match blood for transfusion and administration of medical treatment without proper diagnosis. While a thorough discourse was carried out on acts that amount to negligence as it can give rise to civil actions for negligence, battery, assault, false imprisonment and criminal liability in murder, rash or negligent act, rape and indecent assault. The role of disciplinary procedures in dealing with medical infractions was not considered. In this research, it is our intention to consider the position of regular courts as well as various disciplinary Tribunals under the relevant laws of the health care practitioners under review so as to have a holistic view of how medical infractions are dealt with.

Umerah[21] considered a variety of issues through contributions from various writers. This work can safely be said to be one of the earliest texts on the interplay between medical practice and the law in Nigeria. A lot of issues in medical practice like medical ethics, forensic pathology, and medical jurisprudence among others were thoroughly discussed, particularly in dealing with a medical doctor as an expert witness.

[20]Olopade O. (2008). *Law and Medical Practice in Nigeria.* Ibadan: College Press & Publishers Ltd. pp. 200-268

[21] Umerah, B.C (Ed.). (1989) *Medical Practice and the Law in Nigeria*. Lagos:Longman Nigeria Ltd. pp. 80-86

Emiri[22] discussed a lot of medico-legal issues like reproductive medicine, the legal status of a surrogate mother to the child, organ donation, euthanasia or mercy killing which are gradually gaining ground in medical practice and has raised several legal issues. In handling medical malpractice, he acknowledged the difficulty in establishing case of negligence against health care practitioners who most times are the only ones that can actually explain what had happened to the injured person and also the evidence which the person will rely on in establishing his case is in the practitioners' possession. He noted further that the situation wherein burden of proof of negligence in United States of America has been shifted to doctors has become a powerful instrument in the hands of the injured person and this has helped in combating the problem of "Medical Conspiracy of Silence"[23] among health care providers. This author however, gave only a brief overview of the practice and procedure of disciplinary rules which is believed to be grossly inadequate considering the important role of disciplinary procedures in dealing with negligence among health care providers.

Levine[24] shared her personal experience during the accident of her husband that led to the several surgeries and finally amputation of his hand due to a medical error. After his discharge from the hospital, she managed to institute and action from which the hospital made an offer for settlement before the suit went to trial which was accepted by the plaintiff. In the text, useful suggestions like having alternative to the adversarial system where persons who have suffered financial

[22] Emiri, F.O. (2012).*Medical Law and Ethics in Nigeria.* Lagos: Malthouse Press Limited. pp. 1-8; 267-353
[23] Ibid p.283
[24] Levine, C. (2004) Life but no Limb: The Aftermath of Medical Error. In: Sharpe, V. A. (Ed.) *Accountability: Patient Safety and Policy Reform.* Washington, D.C: Georgetown University Press, pp.43-48.

loss due to medical errors can be accommodated like the federal no-fault schemes which may make available lower payment but with certainty and speed. In this author's case, her case was taken on contingency fee wherein the attorney's fee will be charged if eventually there is an award. She however noted this may not happen for everyone as attorneys are likely to take on cases that are more likely to succeed, hence her suggestion for an alternative recourse to the tort system which is rooted in litigation.

Sharpe[25] observed that about 98,000 Americans die each year as a result of medical error and stated that accountability is the needed response for the safety of patients as it concerns medical errors. According to the writer, accountability is call for public policy which is not limited to creating a system of openness on safety and error but one that will ensure just compensation, honest and humane treatment for patients and families who have suffered from harmful medical errors.

Hogan[26] in dealing with malpractice discussed the role of medical societies to teach physicians' behaviors that will help them avoid law suits which include keeping good record and being aware of the law. He further made reference to ways court can respond to physicians reluctance to testify in suits which can be by relying on the legal doctrine of *Res Ipsa Liquitor*. Furthermore, the development of malpractice issue in America from a time when the physicians tried to frustrate the injured person by denying that the alleged negligence ever took place to the

[25] Sharpe, V. A. (2004) *Accountability: Patient Safety and Policy Reform.* Washington: Georgetown University Press pp. 1-10.
[26] Hogan, N.C. (2003). *Unhealed Wounds: Medical Malpractice in the Twentieth Century*, New York: LFB Scholarly Publishing LCC pp. 45, 68-87.

current position wherein boards are put in place to ensure that physicians take up insurance and recommend cases where insurance company should make payments.

Baker[27] made an effort to clear the myth that awards in malpractice suit are responsible for increase in insurance premiums for physicians and practice of defensive medicine rather, the real cost of medical malpractice is actually the loss of lives, extra medical expenses, time out of work, pain and suffering. He pointed out the increase in premium is rather the competitive behaviour in the insurance industry.

On the argument that most medical malpractice suits are of frivolous laws suits, he observed that this is an exception rather than a general rule. In defending his position he made particular reference to the story of two young girls Jessica Santillan and Jeanella Aranda who received organs that was later discovered to be mis-match for their blood type. In two cases, the girls did not survive this error.

Bhat[28] in his text refuted the claim that medical malpractice system where physicians' actions are called to question was a significant factor affecting the supply of physicians.

Furthermore, a study of the works of writers like Levine[29], Sharpe[30], Hogan[31], Bhat[32] and Baker[33] reveals that the incidence of medical malpractice or medical negligence is not peculiar to Nigeria but a global problem facing the medical profession due to the importance of the functions undertaken by the practitioners

[27] Baker, T. (2005).*The Medical Malpractice Myth.* Chicago:The University of Chicago Press Ltd. pp.1-14, 78-81
[28] Bhat, V.N. (2001) *Medical Malpractice: A Comprehensive Analysis.* West Port C.T: Auburn House,p.2
[29] Levin, C., op. cit p.16
[30] Sharpe, V.A.,op. cit.17
[31] Hogan, N.C., op. cit. 17
[32] Bhat, V.N.,op. cit. 18
[33] Baker, T.,op. cit 18

and efforts is daily intensified to see how damage caused by practitioners can be mitigated. Levine[34] stated concerning Medical errors as follows:

> Medical error is more than an engineering problem, amenable to technological and "systems" solutions. Policies put in place to reduce medical error must also address the needs of individuals and families who suffer great and often permanent harm.

The fact of medical error is therefore a real problem that requires real workable solutions. However, as rich as these texts are, they are written from the background of predominantly American society and the extent of technological advancement of the practice of medicine therefore comes to fore in their discussions. While the materials are a rich source for this current research by enabling us to understand where we are and make proposals for the better, we have to carry out this present research from our own background putting into consideration our local laws as there can hardly be any meaningful growth beyond our current legal framework.

1.8 Organizational layout

This research work is divided into five chapters with each having sub-headings discussed there under.Chapter one introduces the topic providing hints to what the reader should expect in the course of reading the thesis; it comprise of a general introduction, Background of the study, Statement of the research problem, aim and objectives of the research, justification for embarking on such research, its scope, research method to be employed, literature review as well as the organizational layout.

[34] Levin, C., op. cit p. 43

Chapter two discusses the legal framework creating the duties and scope of misconduct for the identified health care professionals under review, namely: Medical Doctors, Nurses and Midwives and Medical Laboratory Scientists. It will further discuss the elements of Negligence and Contract as basis for liability in Medical negligence.

Chapter three examines general remedies for cases of professional Misconduct which includes civil actions, Criminal actions and Professional discipline by the identified professional bodes under review and defences to actions on medical negligence.

Chapter four is an Assessment of professional negligence by health care providers at Barau Dikko Specialist Hospital and Chapter five concludes by summary, findings and recommendation.

CHAPTER TWO

LEGAL FRAMEWORK ON PROFESSIONAL NEGLIGENCE BY HEALTH CARE PROVIDERS

2.5 Introduction

A proper understanding of what constitutes professional negligence by health care providers cannot be effectively discussed without looking into the laws establishing the profession which will reveal the essence of its existence and its duties. It is only when these duties are properly identified and understood that one can conveniently identify if any particular act is negligent or not.

This chapter therefore seeks to examine the legal framework for medical practitioners with a view to highlighting the negligent acts by these health care providers. This will be done by first examining the Medical and Dental Practitioners Act, Nursing and Midwifery (Registration, e.t.c) Act. and Medical Laboratory Science Council of Nigeria Act, Contract Laws as well as roles of these medical practitioners in order to clearly determine their negligent attributes.

2.2 Medical and Dental Practitioners Act

The Act[1] set the framework for Medical and Dental practice within Nigeria. It is divided into four (4) sections with 22 sections dealing with the establishment of the Medical and Dental Practitioners Council of Nigeria, Registration, professional discipline, miscellaneous and general sections respectively.

The first section of the Act, which comprises of seven sections deals generally with the establishment of the Medical and Dental Council of Nigeria,

[1] Medical and Dental Practitioners Act Cap M8, L.F.N. 2004

composition of the council, powers of the council, control of the council by the Minister, financial provisions, Appointment of Registrar, preparation of the register, publication of the register and list of correction.

This section provide for the responsibility of the Council which involves determination of knowledge and skill to be attained by persons seeking to become members of the Medical and Dental profession, preparation and reviewing of the Code of Conduct for members of the profession, supervising the practice of members of the profession among other functions.

The second section of the Act which covers sections 8-14 deals with the registration of persons who qualify to be members of the profession and eligible to practice as such. The third section of the Act covers sections 15-16 which covers professional discipline by the establishment of Disciplinary Tribunal and Investigation Panel. It also creates penalties for professional misconduct. This section shall be discussed fully in subsequent portions of this research.

The fourth and last section deals with offences and penalties, miscellaneous and supplementary provision, Regulations, Rules and Orders, Repeals, Savings, transfer of assets, liabilities, staff, interpretation and short title.

Furthermore, the Act contains schedules which deal with provisions relating to disciplinary Tribunal and investigating panel, its composition, procedures among other issues. This portion shall be dealt with under the subsequent portion of this research.

Also as part of the Act is a Subsidiary Legislation which is the Medical and Dental Practitioners (Disciplinary Tribunal) Rules, this deal with practice and procedure before the Tribunal. This shall also be dealt with in other parts of this research.

2.3 Scope of Professional Misconduct

In this sub-topic, professional misconduct is discussed under two broad headings thus:

1. Medical and Dental Practitioners Act
2. Code of Medical Ethics in Nigeria

This discussion is separately done for the purpose of clarity and easy understanding as follows.

2.3.1 Medical and Dental Practitioners Act

The portion of the Act that makes provision for professional misconduct are quite skeletal in nature.

By virtue of the Act[2], anyone who is guilty of infamous conduct in professional respect, who has been found guilty by any court of law or Tribunal in Nigeria or elsewhere for any offence which in the opinion of the DisciplinaryTribunal is incompatible with his status as a Medical practitioner or where such a person is fraudulently registered, he shall be guilty of professional misconduct.

[2]Section 16, Medical and Dental Practitioners Act, Cap. M8, L.F.N 2004.

Furthermore, section 17 of the Act makes it an offence for a person who is not a medical practitioner to hold himself out as one or practice as such. It is also an offence for one to take up the use of the title of physician, surgeon, doctor, licentiate of medicine or medical practitioner.

By the Act[3], it is also an offence to give false particulars for the purpose of procuring registration of the name as a medical practitioner. Furthermore, if the Registrar or any other person employed by the Council makes willful falsification of any matter relating to the register, he shall be guilty of an offence[4].

A critical evaluation of the sections of the Act on offences points to the fact that these regulations are concerned majorly with efforts to ensure the sanctity of the Medical Profession and shield it against quackery or practice by unauthorized persons.However, the extent of monitoring to ensure compliance leaves much to be desired as cases of people who are not qualified as medical practitioners but practice as such are rampant as there are very little of persons having been brought to book. As at February 2016, the Medical and Dental Council on its website had only list of six person as quacks in Nigeria.[5] This figure has sharply contradicted the studies conducted on issues of quacks in Nigeria. In a study conducted in early 2014, it was discovered that 50% of the Nigerian population have been treated by quacks[6]

[3] Section 17 (3) (a) (b), Medical and Dental Practitioners Act, Cap. M8, L.F.N (2004).
[4] Section 17 (4) (5) (a) and (b) , Ibid.
[5]https://www.mdcn.gov.ng./page /list -of-quack-doctors. Accessed on 23 Septembers 2017 at 10 am.
[6]Ugbodaga P. (2017).*Quacks and Medical Practice in Nigeria*https://sunnewsonline.com. Accessed on 23September, 2017 at 8 am.

2.3.2 Code of Medical Ethics in Nigeria (2008)

The Medical and Dental Practitioners Act empowers the Medical and Dental Council of Nigeria to make rules to serve as code of ethic for medical professionals covered by the Act.

What amounts to professional misconduct is discussed as contained in the 2008 edition which is an amendment of the 2004 Edition of the Code of Medical Ethics in Nigeria. Generally, the Code is divided into 11 parts. Our focus however is only on parts relevant to this study. Some acts have been identified as amounting to infamous conduct by the Code. They include:

2.3.2.1 Failure to comply with general principles: this principles are outlined under Rule 1 to 26 of the Code and includes:

i. Self-advertising by physician.
ii. Not acting in the best interest of the patient.
iii. Divulging patient's information without consent.
iv. Entering into sexual relationship with patient.
v. Complete loyalty and referral where the examination or treatment is beyond his capacity.
vi. Enticing patients from his colleague.
vii. Not practicing within the limit of his specialty.
viii. Smoking in clinic or hospital premises.
ix. Being unfriendly to patient and not expressing appropriate empathy for their condition.

x. Refusal to inform patient/relatives about fees charged for procedure before the patient gets committed to participate.

xi. Not getting informed and necessary consent.

If a practitioner violates the rules enumerated above, he may be punished. Suffice to state however that infamous conduct covers a wide variety of conduct which though not specifically enumerated, a practitioner may still be punished where it is the opinion of Disciplinary organ of the profession that such a conduct do not conform with the status of a practitioner. See the case of *M.D.P.D.T vs Okonkwo*[7] where the court described infamous conduct in the following terms:

> A charge of infamous conduct must be of a serious infraction of acceptable standard of behaviour or ethics of the profession. It connotes conduct so disreputable and morally reprehensible as to bring the profession into disrepute if condoned or left unpenalised.

Further, professional negligence amount to professional misconduct which is also punishable under the Code. Professional negligence according to Black's Law dictionary[8] is described as malpractice. For the purpose of this study, the definition of malpractice as given by the dictionary [9]where it is defined as "an instance of negligence or incompetence on the part of a professional" is hereby adopted.

2.3.2.2 Malpractice in form of issue of certificates e.g as it relates to death or illness must be given by attending registered practitioners and such

[7](2001) F.W.L.R (Pt. 44) 542
[8] Garner B.A (Ed.). (1999) Black's Law Dictionary, 7th ed, St. Paul. Minn West Group. p.1057
[9] Ibid ,p.971

certificates must not be falsified. Falsification of such certificates amounts to medical malpractice.

2.3.2.3 Deceit to patients: to extort money by keeping patients in the hospital as an in-patient when it is no longer necessary or charging for non-existent or unnecessary investigations for the purpose of increasing earning is a breach of the Code of Ethics.

2.3.2.4 Aiding the unprofessional practice of medicine, circulation of professional cards through other health care providers or insurance agents, shielding a Nurse, Midwife or other persons who have attempted procedures beyond their professional competence and caused undesirable complications shall amount to malpractice.

2.4 Nursing and Midwifery (Registration, E.T.C) Act

This Act[10] comprises of the Nursing and Midwifery regulation. It deals with minimum requirement for approval of an institution as a training institution for Nurses, procedure for examination and registration of person who wish to practice as Nurses and midwifes.

It is important to note that the practice of Nursing and Midwifery is somewhat intertwined in the Nigerian society and as such we shall consider them together. The Act also contains disciplinary rules for discipline of nurses and midwives.

2.4.1 Duties of Nurses and Midwives

[10] Nursing and Midwifery (Registration E.T.C) Act, Cap. N143, L.F.N. (2004).

For the purpose of clarity the duties of Nurses and Midwifes shall be separately discussed.

2.5.1.1 **Nurse:** A Nurse according to the Code of Professional Conduct as established by the Nursing and Midwifery Council[11] is :

> A person who has received authorized education, acquired specialized knowledge, skill and attitudes, and is registered and licensed with the Nursing and Midwifery Council to provide promotive, preventive, supportive and restorative care to individuals, families and communities, independently, and in collaboration with other members of the health team.

The Code further recommends that "Nurses must provide care in such a manner as to enhance the integrity of the profession, safeguard the health of the individual client/ patient and protect the interest of the society". The Code further makes a list of what can be termed duties of Nurses as it affects members of the public. These include:

i. Provide care to all members of the public without prejudice to their age, religion, ethnicity, race, nationality, gender, political inclination, health or social economic status.
ii. Uphold the health consumers' human rights as provided in the constitution.
iii. Ensure that the client/patient of legal age 18 years and above gives informed consent of nursing intervention. In case the health consumer is under aged, the next of kin or the parents can give informed consent on his behalf.
iv. Keep information and records of the clients confidential except in consultation with other members of the health team to come up with suitable intervention

[11] http://www.nmcnigeria.org/portal/index. Accessed 22October, 2015 at about 8:30 am.

strategies or in compliance with a court ruling or for protecting the consumer and the public from danger.

v. Avoid negligence malpractice and assault while providing care to the client/patient.

vi. Relate with a consumer in a professional manner.

vii. Not to take bribe or gifts that can influence you to give preferential treatment.

viii. Consider the views, culture and Beliefs of the patient/client and his family in the design and implementation of his care/treatment regimen.

ix. Know that all clients/patients have a right to receive information about their condition.

x. Provide information that is accurate, truthful and presented in such a way as to make it easily understood.

xi. Respect clients and patients' autonomy, their right to decide whether or not to undergo any health care intervention even where a refusal may result in harm or death to themselves or foetus, unless a court of law orders to the contrary.

xii. Presume that every patient and client is legally competent unless otherwise assessed by a suitable qualified practitioner. A patient or client who is legally competent can understand and retain treatment information and can use it to make an informed choice.

xiii. Know that the principles of obtaining consent apply equally to those people who have a mental illness.

xiv. Ensure that when clients and patients detained under statutory powers (e.g. Mental Health Act), you know the circumstances and safeguard needed for providing treatment and care without consent.

xv. Provide care in emergencies where treatment is necessary to preserve life without clients/patients consent, if they are unable to give it, provided that you can demonstrate that you are acting in their best interest.

xvi. Protect the public against danger or harmful agents.

xvii. Have regard to the environment of care and its physical, psychological and social effects on the client/patient.

xviii. Access the adequacy of resources and make known to appropriate persons and authorities, any circumstance which could place clients/patients in jeopardy or which militate against safe standards of practice.

xix. Contribute to policy making

2.5.1.2**Midwife:** A midwife is a person especially a woman who is trained to help women give birth to babies[12].The duties of midwife can be broadly classified under two (2) sub-heading as provided by section 27-40. Namely:

a. Duties to the patient

b. Duties to the child.

a. Duties to the Patient

The common and usual patient received by a midwife is a pregnant woman. First, for anyone to practice as a midwife, such a person must have been registered

[12]Wehmeier, S., Mclntosh, C., Turnbull, J. and Ashby, M. (Eds.) (2006). *Oxford Advanced Learner's Dictionary of Current English, 7th Edition.* Oxford New York, Oxford University Press:p.929.

by the Nursing and Midwifery Council of Nigeria as established under the Act[13] after passing the approved examinations by the Council. The midwife shall do the following:

i. Interview the patient and obtain information as regards the pregnancy and previous pregnancy if applicable. The condition of the patient is to be recorded at each pre-natal visit.
ii. The midwife is to appear scrupulously clean in her clothing and nails should be kept clean and short.
iii. Hands, forearms, instrument must be disinfected before being brought into contact with a patients generative organs.
iv. A midwife shall not leave a patient without giving an address at which she can be reached without delay.
v. The midwife shall not leave a patient after the commencement of the second stage of labour until the expulsion of the placenta and membrane and for as long a time as may be necessary.
vi. In case where labour is abnormal or there is threatened danger, the midwife shall send for a doctor and shall do the best until the doctor arrives and carry out his instructions.
vii. By regulation 39 of Midwifes Regulations[14], in all cases of illness of patient or child or any abnormality in pregnancy or course of delivery, medical assistance of a registered medical practitioner must be obtained.

[13] Section 4 Nursing and Midwifery (Registration, e. t. c.) Act Cap. N143
[14] Nursing and Midwifery (Registration, e. t. c.) Act Cap. N143

viii. It is the duty of the midwife to clean up the patient before making all internal examination, after the termination of labour, before passing catheter and after bowel action.

ix. Placenta and membranes shall be examined and certified complete before disposal.

x. Record of pregnancy, labour and peureperium shall be kept by the midwife and arrangement for destructions of such records shall not be made by the midwife. However, where keeping or preservation of such records becomes impossible, same shall be transferred to the local supervisory authority.

b. Duties to the Child

i. To carry out resuscitation of a child apparently born dead.

ii. Report case of danger or death in a child to parent and record such reports.

iii. Register birth in register of birth kept by the local government.

2.4.2 Scope of Professional Misconduct

A violation of any of the Code of Professional Conduct and Duties enshrined in the Midwifery Regulations as established by the Nursing and Midwifery Council of Nigeria may be termed misconduct in a professional respect. Unlike the Medical and Medical Laboratory practitioners whose enabling laws makes specific provision for actions which can be viewed as professional misconduct, the case of the Nursing and Midwifery practitioners is slightly different. However, the fact the Disciplinary committees are created to deal with professional misconduct, it can be safely concluded that a violation of the Code for professional conduct and duties of nurses and midwifes can be actionable.

2.5 Medical Laboratory Science Council of Nigeria Act

This Act[15] creates the legal framework for Medical Laboratory practitioners in Nigeria. The practitioners in this field are involved in screening body tissues like blood for the purposes of analysis to detect disease or abnormality if any.

The Act[16] is divided into three (3) sections dealing with various issues ranging from establishment of the Medical Laboratory Science Council of Nigeria, Establishment of the governing board, functions and powers of the board. Among the powers of the board as contained in section 7[17], the board shall have powers to strike off the name of members from register if found guilty of unprofessional conduct.

As is the case with Medical and Dental Practitioners, the Medical Laboratory practitioners have their rules known as the Rules of Professional Conduct for Medical Laboratory Scientists, Medical Laboratory Technicians and Medical Laboratory Assistants, 2011 (MLSCN, Rules 2011). The said Rules is divided into 8 parts (parts A-H) with 38 Rules dealing with various aspects of the profession. For the purpose of this study, we shall pick the rules that specifically deal with the duties of practitioners to clients/patients.

Rule 13(1)[18]establishes the obligation of practitioners to patients/ clients which among other involves maintenance of strict confidentiality of patients

[15] Medical Laboratory Science Council of Nigeria Act, Cap. M25, L.F.N 2004.
[16] Ibid
[17] Ibid
[18] MLSCN, Rules, 2011

information and test result.Rules 17, 18 and 19[19] considers the following acts as misconduct (malpractice):

i. Deceit and extorting money from patients.

ii. Aiding the unprofessional practice of Medical Laboratory Science.

iii. Association with unqualified or unregistered persons practicing of Medical Laboratory Science.

Furthermore, it is considered misconduct for a professional colleague to instigate a patient to institute litigation against his professional colleague where he obtains information that his colleague is engaged in unhealthy practices and procedures. The exception to this rule is when the patient is a relative of such practitioner. Suffice to state that this rule appears to serve as shield to erring practitioner as the rule[20] only requires him to be admonished by the other colleague or reported to the disciplinary panel set up by the Council. The question that has not be addressed is where a patient has suffered damage as a result of the action of the practitioner, how does he go about proving his case since it appears that this rule could even prevent another scientist from coming to testify in favour of the injured patient.

The cases of misdiagnosis of Medical Laboratory Science in the cases of late Chief Gani Fawehinmi[21] and Prof. Dora Akinyuli[22] comes to mind when they were both screened and declared free from cancer cells only for this diagnosis to

[19] Ibid
[20] Ibid, Rule 20(2).
[21] http://nigerianhealthjournal.com/?p=1348. Accessed 25 February, 2016 at 11:55am.
[22] http://ireporterstv.co/how-american-doctors-killed-professor-dora-nkem-akunyili-with-misdiagnosis-of-ovarian-cancer/accessed 25 February, 2016 at about 10:20 am.

be proved wrong after the disease had gotten to the advanced stage which claimed their lives.

Furthermore, where a practitioner has been convicted by a court of competent jurisdiction of a criminal act considered to be incompatible with the statute of a practitioner, it may be regarded as infamous conduct whether or not it is in connection with malpractice in the profession[23].Falsification of test results, aiding criminals by use of Laboratory or premises as hideouts for criminals is equally prohibited as viewed as infamous conduct in professional respect.

2.6 Negligence as a Basis for Liability

Negligence is "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of others' rights" [24].

Put in another way, it can be defined as "omission to do something which a reasonable man guided upon consideration which ordinarily regulates the conduct of human affairs would do or something which a prudent and reasonable man would not do"[25].For the purpose of this study, we shall adopt the definition given be Kodilinye and Aluko[26], where negligence was defined "as the breach of a legal duty to take care which results in damage undesired by the defendant, to the

[23] Rule 33-35, MLSCN Rules, (2011)
[24]Garner, B.A (Ed.) (1999). *Black's Law Dictionary 7th Edition.*St. Paul , Minn:West Group p.1056.
[25]*Aliyu vs Aturu* (1999)7, N.W.L.R, (Pt.612) 536, 553.
[26] Kodinlinye, G. and Aluko, O. Nigerian Law of Torts, Spectrum Books Limited, Second Edition Ibadan, (1999) p.38.

plaintiff". We rely on this definition, given the fact that, the work of these authors stand out as one of the earliest works on the subject of negligence and the definition contains the main elements of the subject relating to the topic under discourse, Medical negligence can be viewed as breach of duty of care by a medical person to another (Patient) which result in undesired damage to the person.

Negligence is one aspect of law that has a consensus on what its elements are. These elements are:

1. Duty of care
2. Breach of duty of care
3. Damage resulting from the breach[27]

2.6.1 DUTY OF CARE: This is a legal duty to take care which arises from practitioner holding himself out that he possesses the requisite skill and knowledge for him to be consulted. A duty of care will arise when one person is in position where his actions or omission as created by law will cause injury to another person. In medicine, the doctor is viewed to owe the patient a duty to use reasonable care and skill in treatment.

For duty of care to arise, there must exist a prior doctor patient relationship. Such relationship could arise by virtue of contract. In *Thake vs Maurice*[28], the plaintiffs went to the doctor for the purpose of permanently sterilizing the plaintiff because he did not want to have more children. The 2nd plaintiff turned out to be

[27]*British Airways vs Atoyebi*(2013) All F.W.L.R (Pt. 658), 866,903; *Ighreriniovo vs S.C.C. Nigerian Limited* (2013) All F.W.L.R (Pt700)1240.
[28](1986) QB644;(1986) 1All ER497.

pregnant sometime after the operation. The action succeed as the court held that the doctor was in breach of contract to make the plaintiff sterile and was also negligent not to have warned them that there was small risk of the plaintiff becoming naturally fertile again.

Aside a duty arising from contract, a doctor patient relationship can be inferred from surrounding circumstances. Where a patient walks into a doctor's office and is accepted for treatment, a relationship has been created. Also, where a doctor approaches a person to offer medical help whether for a fee or for charitable purposes, he comes under a duty to use reasonable care and skill in the treatment of the patient. While a doctor is not under a duty to assist for instance an accident victim found on the road, a duty will arise if he decides to stop to assist the person. Among other duties that could be termed negligent, the following are duties established by law for medical doctors[29]. Namely:

a) Failure to attend promptly to a patient requiring urgent attention when the practitioner was in position to do so. In the case of *Barnett vs Chelsea and Kensington Hospital Management Committee*[30], it was observed that it was negligent for doctor to refuse to attend to the patient that needed attention. The fact of this case was that the Plaintiff's husband together with his friends drank from a particular tea after which they began to vomit. Upon reaching the hospital, the doctor who was to attend to them , who though unwell and tired told the men through a message to the nurse that they

[29] Rule 29.4 The Code of Medical Ethics in Nigeria, 2008.
[30] (1968) 1E.R 1068; (1968)2 WLR.

should go home and consult their own doctor the following morning. The plaintiff's husband died of arsenal poising some few hours later. Though the doctor was not directly held liable for the death of the deceased as the deceased would have still died given his condition, the refusal to admit the patient for further investigation was however condemned by the Court.

b) Manifestation of incompetence in the assessment of a patient. In the case *Akintade vs Chairman, Medical and Dental Practitioners Disciplinary Tribunal*[31], the medical doctor was charged among other things for manifestation of incompetence in the assessment of the patient by failing to diagnose the patient as diabetic and for failing to realize post operative complication of feacal peritonitis. The Tribunal suspended him for 6 months but the suspension was reduced to 3 months at the Court of Appeal.

c) Making an incorrect diagnosis particularly when the clinical features were so glaring that no reasonable skillful practitioner could have failed to notice them.

d) Failure to advise, or proffering wrong advice to a patient on the risk involved in a particular operation or course of treatment, especially if such an operation or course of treatment is likely to result in serious side effects like deformity or loss of an organ, or function. In the case *La Fluer vs Cornelis*[32], the patient approached the doctor a plastic surgeon for an operation to enable her have a smaller nose, the doctor did not warn the patient that there was 10% chance of scarring as result of the operation.

[31](2005)9 N.W.L.R (Pt.930)338

[32]http://heinonline.org/HOL/LandingPage?handle=hein.journals/alblr21&div=35&id=&page=retrieved. Accessed 10 February, 2015 at 6:05 pm.

After the operation, the patient was scarred, the doctor was held liable in negligence for failure to inform the patient of the risk associated with the surgery.

e) Failure to obtain the informed consent of the patient before proceeding on any surgical procedure or course of treatment, when such consent, was necessary. Consent in this sense is informed consent and not one obtained under fraud or duress. The nature of treatment to be offered, likely complications, and alternative treatment if available should be discussed with the patient. In the Nigeria case of *Dr. Rom Okekearu vs Danjuma Tanko*[33], the Supreme Court made very instructive decisions on what will amount to battery. The fact of the case are as follows: The Plaintiff (Tanko Danjuma) claimed that while removing Zinc from his mother's roof, he sustained injury upon which he was taken by neighbors to the defendant's clinic even though he claimed the injury was not deep. At the clinic, the defendant claimed he asked for the closest relative of the plaintiff, when a woman came out as the plaintiff's aunt who according to the Doctor, said the Doctor should carry on with whatever treatment that was necessary. The defendant relying on this statement amputated the plaintiff's centre finger claiming that the finger was badly crushed and was only being held by a little piece of flesh. The plaintiff also claimed that the amputated finger was not given to him as same was disposed by the doctor "in accordance with

[33] (2002) FWLR(Pt131) 1888

standing medical practice"[34]

The trial Court, Court of Appeal and Supreme Court held that the action of the Defendant now Appellant, amounts to battery as the act of amputating the plaintiff finger was done without consent. The court further stated that consent especially to amputate a part of the body should be exact and unequivocal. The Court went further to opine that at age of fourteen the plaintiff should not have been ignored as he is capable of understanding whatever was intended to be done by the Defendant. The Defendant's argument that he got approval to carry out any treatment necessary was rejected by the court who went further to state that " In any action for battery, for consent to be valid and real, the doctor must explain to the patient or his Proxy the actual treatment he proposes to give the patient"[35]. The trial court awarded N100, 000.00 in general damages for permanent incapacity, negligence and battery resulting from the amputation of the left center finger of the plaintiff. This award was reduced to N50, 000.00 by the Court of Appeal holding that the defendant was not liable in negligence but for battery only and the Supreme Court upheld the decision of the Court of Appeal.

The fact that the act resulted in the improvement of the medical condition of the patient will not be an acceptable defence in law for any act constituting battery. In the case of *Mallette vs Shulman*[36] the medical practitioner treated the patient by the way of blood transfusion in disregard of a medical alert card in her purse stating that blood transfusion should not be administered to her under any

[34] Ibid p.1893
[35] Ibid p.1895
[36] Mallette vs. Shulman (1990) DLR 67

circumstance. Upon her recovery, she instituted an action for which the medical practitioner was held liable notwithstanding the benefit to the patient.

Therefore where a competent adult patient withholds consent for any treatment, the medical doctor is required by law to respect the wish of the patient as held in the case of *Medical and Dental Practitioner Disciplinary Tribunal vs Okonkwo*[37] where the Supreme Court dismissed the appeal brought by the Tribunal against the Medical Doctor who respected the wish of his 29 years old deceased patient who refused blood transfusion on religious ground and also refused to be transferred to another facility. The decision of the Tribunal that the doctor was guilty of infamous conduct in professional respect was upturned by the court who upheld the right of a competent adult to give or refuse consent to any form of medical intervention. This position has been reinforced by the rules[38]. However, where a practitioner is confronted with a minor below the age of 13, refusal of consent by parents can be overruled by court injunction where the medical practitioner is of the sincere belief that a treatment is required to save life[39]. In dealing with an unconscious patient, the Medical Doctor is required to search the clothing of such patient to ensure that that there is no pre signed instruction on medical treatment to be administered, when he has satisfied himself of the absence of such contrary instructions, the medical doctor is enjoined to give any treatment he considers necessary in the circumstance. However, where accompanying relatives produce a card containing instructions as to refusal of some kind of

[37] (2001)7N.W.L.R (Pt.711)206.
[38] Rule 22, The Code of Medical Ethics in Nigeria, 2008.
[39] Rule 21.3, The Code of Medical Ethics, 2008.

medical intervention and claims that same belongs to the unconscious patient, the medical doctor must reasonably satisfy himself as to the genuineness of such instructions as truly belonging to the unconscious patient before acting on same. Whatever the case maybe, whether consent is given or refused by a patient, the medical doctor is under duty to carry out his medical duties in the best interest of the patient.

Similarly in *Mohr vs Williams*[40] the physician obtained consent from the patient to operate on the right ear. The Physician however discovered during the operation for the first time that the left ear was even in a worse condition and he went ahead to perform operation on the left ear also. He was held liable in battery for not obtaining consent for the subsequent surgery.

In the case of *Abdullahi vs Pfizer*[41]during an epidemic of bacterial meningitis, measles and cholera in Kano, the defendant got the approval of the Nigerian government to test its new drug Trovan for the treatment of some infectious diseases. Upon the approval, a trial centre was opened at the Infectious Disease Hospital Kano where about 200 children were recruited for the trial of this new drug. After the exercise, about eleven children died while others suffered different degrees of disabilities including paralysis and blindness. The action was filed before the United States of America (US) District court for failure to seek the consent of the victims before the trial treatment was carried out on them which would have afforded them the opportunity to decide whether they wanted to participate in the trial session or not. After series of ruling as to whether the United

[40] Dada J.A op. cit, p.118
[41]http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/vol123_adbullahi_v_pfizer.pdf

States was the proper place to file the suit or not, the court ruled that the US was the proper place for the suit to be instituted. The matter was eventually settled out of court upon agreement that the sum of Seventy five million United States Dollars be paid as compensation to the relatives of the victims and victims respectively.

f) Making a mistake in treatment: This includes amputation of the wrong limb, carelessness that results in the termination of a pregnancy and prescribing the wrong drug, or dosage in error for a correctly diagnosed ailment.

g) Failure to refer, or transfer a patient in good time, when such referral or transfer was necessary. In the case of *Chairman, Medical & Dental Practitioners Investigating Panel vs Dr O. A. Adebiyi*[42]the doctor's action of not referring the patient to a better facility in good time was held to amount to gross negligence. This defendant was brought before the Medical and Dental Practitioners Disciplinary Tribunal on the treatment of a patient in his hospital who developed some complications after appendectomy was carried out on her. It was contained in the charge that the patient had severe life threatening post-operative complication but was not referred to a better facility in time and by the time she was transferred, her case had deteriorated and the patient died. The tribunal held the doctor liable among other complaints and directed that he be suspended from practice for a period of six months.

h) Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient. In *Mrs. Nancy Seth &1ors vs Barau*

[42](2014)1MMLR1.

Dikko Specialist Hospital Management Board & ors[43] the 1st plaintiff came into the hospital for delivery but for some reasons, the nurse on duty concluded that she may not be able to have a normal delivery and therefore sent for the doctor on call. The husband of the plaintiff was asked to make blood available in case the plaintiff may need it. This was complied with. The doctor was called several times from about 8 am but did not make it to the hospital until 6 pm in the evening. A caesarian section was carried out but the plaintiff lost the child. The blood that was donated was not used for the plaintiff but same could not be accounted for by the Laboratory staff or the theatre nurse. The plaintiff's injury equally got infected in the course of her stay in the hospital and she sued. The case did not proceed to trial because the hospital management accepted responsibility for the negligent acts of its staff involved in the treatment of the plaintiff and opted for out of court settlement for which monetary compensation was paid.

There was a similar incident in Lokoja at the Federal Medical Centre Lokoja[44], wherein one Mrs Justina Eleojo Collins (Now deceased) was admitted into the hospital on the 28th day of January, 2012 in preparation for the birth of her baby. The doctors in the management of the deceased were negligent in handling of the deceased as no proper attention was given to her as her case deserved from which she bled to death. The husband of the deceased brought the action before the Federal High Court Lokoja[45] but for inability to secure expert witness to help establish the fact that the death of the accused was as a result of the negligent acts

[43] Suit No: KDH/KAD/163/08 (unreported)
[44] H.L Haruna , and Adah, D. A, 2017, January 21.
[45] *Pst. Collins Adah vs. The Minister of Health & 2ors* FHC/LKJ/C5/18/12 (Unreported).

of the doctors who were responsible for her treatment and the fact that the tribunal said it will not hear the matter since it was already before a regular court, the case was withdrawn and taken to the Medical and Dental Practitioner disciplinary Tribunal. At the Tribunal, the doctors were found liable and sentenced to different months of suspension from practice with the highest being 6months suspension. Armed with the verdict of the Tribunal, the husband of the deceased headed back to the Federal High Court to re-list the matter earlier struck out but was ambushed with preliminary objections on the fact the action had become statute barred since the defendants were public officers within the definition of the Public Officers Protection Act. The court gave its ruling upholding the said preliminary objection but the action is currently on appeal at the Court of Appeal. If the appeal succeeds, the suit will be sent back for trial. This is five years after the incidence.

i) Failure to see the patient as often as his medical condition warrants or to make appropriate comments in the case notes of the practitioner's observations and prescribed treatment during such visits. It also includes failure to communicate with the patient or with his relatives as may be necessary with regards to any developments, progress or prognosis in the patient's condition.

Rule 15[46] provides that a practitioner who fails to exercise the degree of care and skill expected of his experience and status in or about matters of principle or details pertaining to Medical Laboratory Science procedure or the processing of data in the process of attending to a patient is liable for professional negligence.

[46] MLSCN Rules, 2011

However, Rule 16[47] classifies some particular acts as constituting professional negligence. These are:

i. Falsification of laboratory or patient record documentation;
ii. Tampering with, destruction or theft of equipment, specimens or teaching materials;
iii. Exhibition of verbally abusive, physically threatening or harmful behaviour;
iv. Gross impairment (physical or cognitive) by illicit use or prescription of Drugs;
v. Inappropriate or unauthorized use of laboratory equipment, supplies, reagents, data, and laboratory information systems or communication systems;
vi. Unauthorized clinical practice or unauthorized presence in a laboratory facility;
vii. Non-compliance with the work rules, policies or procedures of the laboratory;
viii. Failing to do scheduled laboratory equipment maintenance;
ix. Creating unnecessary risk of exposure to or harm from fire, environmental, chemical or bio-hazards.
x. Carrying out a test and producing a result falling short of a reasonable man's expectation of the status of the Medical Laboratory Scientist(s).

The Rules[48] Board reserves the right to make rules or acts which constitute professional negligence in addition to the ones contained under Rule 16 of the Rules.

With regards to Nurses and Midwifes, while the laws creating these professions does not make specific rules as to what will be termed negligence in

[47] Ibid
[48] Rule 16(2) MLSCN Rules, 2011

professional respect, it can be safely stated that a breach of the duties of Nurses and Midwife as created by the Laws will amount to negligence in professional respect for which a practitioner can be held accountable.

2.6.2 Breach of Duty: Breach as defined by Black's Law Dictionary is "a violation or infraction of a law or obligation"[49]. A plaintiff in an action for negligence will establish the particular legal duty which the medical doctor had violated. In other words, failure to perform a duty of care or performance below the expected standard of care amounts to a breach of duty of care.

This leads to determination of the standard of care required for the purpose of determining breach of a duty of care or otherwise. Standard of care is the tool or measurement with which the action of the doctor whose action is in issue is determined. When the courts are faced with making a finding that a breach of a duty of care has occurred, the test by the court is not that of the most experienced doctor but that of the skill and care expected of an average doctor in that circumstance. As rightly noted by Emiri[50], what a person in a learned profession undertakes to do is exercise a reasonable degree of care and skill as he does not undertake to perform a cure as there may be other people who have higher education than he does. The question that will be asked is whether the skill and care of a reasonable person in such circumstance was exercised by the practitioner and where that is done, the claim for negligence may not be established. For instance, the standard of care required from a consultant may not be the same as that required from a house officer in the same circumstance. So also, the standard

[49]Garner, B.A., op. cit. p.182
[50]Emiri, F.O.(2012) *Medical Law and Ethics in Nigeria*, Lagos: Malthouse Press Limited p.283

of care required from a specialist in his area of specialty may be higher than that required from a general practitioner. However, if a general practitioner holds himself out as a specialist, the standard of care required of him will be that of a specialist in that field.

Suffice to state that it is not every medical error or unsuccessful medical procedure that will amount to a breach of duty of care. In the case of *Hatcher vs Black*[51]the plaintiff a singer required surgery for a disease which affected the thyroid gland, the surgery was carried out successfully but a nerve was badly damaged which destroyed the plaintiff's voice. The doctor knew there was slight risk of such complication but did not inform her to keep her from worrying. The doctor was held not to be negligent.

2.6.3. Damage: For a Plaintiff to succeed in a claim for negligence he has to prove that there exist a duty of care which has been breached from which a damage or harm has resulted to the Plaintiff. This is to say, the action of the party who owes the duty of the care to the party must be responsible for the harm which the other party has suffered. Therefore, where there exist a duty which has been breached and no harm occurred, the claim for negligence may not succeed. Furthermore, if the result of the action is so remote or where there is an intervening act which breaks the chain of cause, the action may fail. In *Barnett vs Chelsea and Kensington Hospital Management Committee*[52], though the court

[51] (1954) Times; Shenoy, G.N. *Actionable 'Deficiencies' in medical practice.* http:// www.gynecendoscopy.org/text.asp?2011/2/1/25/85276 .Accessed 1February, 2017.

[52] (1968) All E.R 1068.

condemned the action of the doctor of his refusal to see or admit the deceased, the claim failed as the court observed that even if the deceased was admitted or attended to, he would have still died, thus the refusal by the doctor to attend to him cannot be said to be the cause of his death. However in *Emeh vs Kensington and Chelsea Hospital Management Committee*[53], the Plaintiff went through an abortion and sterilization process in the defendants Hospital. After sometime, she discovered that she was pregnant. She refused the suggestion for a second abortion and her child was born with certain deformities for which she sued the Hospital. The plea of the defendant of the action being unreasonable and *novus actus interveniens*(New intervening act)[54] was rejected as it was discovered that the sterilization was poorly done and that, it resulted to the deformity in the pregnancy and the failure of the plaintiff to undergo the abortion of the pregnancy which they claimed was the new intervening act was not fatal to the case. The claim succeeded.

Furthermore, there is this doctrine known as the doctrine of *Res Ipsa Liquitor*(The thing speaks for itself)[55] which is used as a basis of claim where though the harm or damage cannot be explained, the circumstance are so clear that it can only be tied to the act of the party whose action is complained of. It is however important to note that in cases of medical negligence, the courts are usually wary in applying this doctrine.

[53](1985) 1QB 1012; (1984) 3All ER 1044
[54]Lovells, H.(2017) *Novus actus interveniens.*https://www.hoganlovells.com/en/publications/novus-actus-interveniens. Accessed on 22 March, 2018 at 10:16 am.
[55] Garner, B.A., op. cit p.1311.

2.7 Contract as a Basis for Liability

Contract is also a ground for liability in medical law. Liability is defined as "The quality or state of being legally obligated or accountable; legal responsibility to another person or to society enforceable by civil remedy or criminal punishment"[56]. A contractual liability is therefore the liability that arises under a contract. In Medical law, once there is a doctor patient relationship, it is presumed that there is an implied term of contract that the medical practitioner will exercise due care and diligence in the treatment of the patient and failure to do so may bring him under an obligation for which the patient may be entitled to damages for breach of contract.

In *Lafluer vs Cornelis*[57], the doctor was held liable for breach of contract as his express terms to make the patient happy was not fulfilled because the patient ended up with a deformed nose and scar. While the action for negligence on the ground that the doctor did not disclose the material risk involved in the procedure failed because the court observed that the patient would have elected to go on with the surgery even if she was told of the risk, the doctor was held liable in contract because the patient told the doctor what she wanted and he promised to do it. In fact he made a sketch of what he intended to do and there was an agreement between the parties. His failure made him liable.

Furthermore, failure on the part of the doctor to perform may release the patient from the duty of paying for the services already rendered to the patient. To

[56] Ibid. p. 925
[57] supra. p.39

establish the liability of a doctor, the patient will have to prove the following:"(i)the contract or at a minimum, a prior doctor-patient relationship; (ii) the negligent act complained of or an intentional breach of the contract; (iii) a link between the injury and the treatment i.e causation; and (iv) resulting damage[58].Once these factors are satisfactorily proved by the plaintiff, his action against the health care provider will succeed on the ground of breach of contract.

Finally, the practice of medical practitioners are regulated by Acts creating such professional bodies. Codes of ethics are also put in place to guide the practice of such practitioners. These codes regulate the practice and create provisions for punishment for any member who errs in the practice of the profession. Also some aspects of the law like the law of Tort and contract also regulate the relationship of medical practitioners with patients as liability can arise therefrom. These Acts, Codes and aspect of the laws together create the legal frame work to combat medical negligence to ensure sanity in medical practice and compensation for those who get injured in the cause of relationship with medical practitioners.

[58] Emiri O.F., op. cit, p. 273

CHAPTER THREE

REMEDIES FOR PROFESSIONAL MISCONDUCT

3.1 Introduction

Medical actions and inactions have far reaching consequences on the quality and quantity of life of those who interact with health care providers. Medical actions have the capacity to promote good health or worsen the condition of health depending on the actions taken. However, anyone seeking medical attention goes with the desire and expectation that his suffering is ended or alleviated. Therefore, when this expectation result in the end results in causing damage, the question of what went wrong, who is responsible for the wrong, how will the injured be compensated and probably what will happen to the wrong doer is asked. For people to have confidence in the medical system there ought to be accountability in that if an error occurs, someone should be held accountable. According to Sharpe[1], accountability is call for public policy which is not limited to creating a system of openness on safety and error but one that will ensure just compensation, honest and humane treatment for patients and families who have suffered from harmful medical errors.

Furthermore, Levine commenting on the need for sanctions against medical negligence observed as follows: “Medical error is more than an engineering problem, amenable to technological and “systems” solutions. Policies put in place to reduce medical error must also address the needs of individuals and families

[1]Sharpe, V. A., op.cit p.17

who suffer great and often permanent harm"[2].

This chapter focuses on discussing the various sanctions against medical negligence by medical practitioners, the procedure to be adopted in activating the available sanctions, the adequacy or otherwise of the available sanctions and the line of defence open to any medical practitioners whose conduct is called into question.

Professional misconduct refers to wrongful actions in a professional capacity. When a professional misconduct occurs most often an injury is suffered. The questions sought to be answered in this Chapter are the ways in which such misconduct are dealt with.

Medical negligence could lead to legal actions in litigation which could be Civil, Criminal and Disciplinary in nature in appropriate cases. In addition to instituting legal action various professional bodies in the medical field also have in-house rules established by statutes creating the bodies for dealing with misconduct in professional respect.

3.2 Litigation as a remedy for Professional Misconduct

Litigation is the process of carrying on a law Suit[3]. It refers to step taken by an aggrieved person to institute a legal action in a competent court against a person and/or institution who has committed the offence. Usually lawsuits can be civil in nature i.e those instituted by private individuals to seek damages for

[2]Levine, C. (2004) Life but no Limb: The Aftermath of Medical Error. In: Sharpe, V. A(ed.) *Accountability: Patient Safety and Policy Reform.* Washington, D.C: Georgetown University Press, p.48.
[3] Garner, B.A op. cit. p.944

wrongful acts of another person or criminal i.e those instituted by the State against an offender mainly to punish the person for wrongful action. For the purpose of clarity, the nature of civil and criminal litigation will be discussed separately because the end of such litigation may lead to civil or criminal sanctions in appropriate cases.

3.2.1 Sanctions against Medical Negligence

Sanctions against medical negligence by medical doctors can be civil, criminal or disciplinary in nature. Each form of sanction is hereunder discussed.

a. Criminal Sanctions

Medical actions could also be ground for criminal liability which can lead to a verdict of guilt and sentence could be term of imprisonment, fine or both depending on the circumstances of each case. This is a situation where the state prosecutes the offender with the aim of punishing such a person. There are basically two codes[4] that create criminal liability for negligence in Nigeria which are applicable to the Southern and Northern states respectively. Section 303, 343 (1) (e) and 344 particularly creates criminal liability for negligent acts of medical practitioners. Where treatment is carried out in a rash or negligent manner from which injury of a serious nature or death occurs, the medical doctor could be charged. Furthermore, the court held in *Kim vs State*[5] that for a medical man to be

[4] Criminal Code Act, Cap. C38 Laws of the Federation of Nigeria, 2004 and Penal Code Act, Cap.P8 Laws of the Federation of Nigeria, 2004.
[5] (1992)4NWLR (Pt.233)17,39-40.

criminally liable for a negligent act, such act must be gross and not mere negligence.

It is important to note that a lot of deaths are traceable to avoidable medical errors. As captured by Dada[6]

> in a study by health Grades, it was found than an average of 195,000.00 hospital death in each of the years 2000,2001 and 2002 in the united states were due to preventable medical errors. Researchers examined 37 million patients' record and found that medical errors caused up to 98,000 deaths annually and should be considered a national epidemic.

If the United States with its sophisticated health Care system can have this staggering figure, the situation of Nigeria compounded by the epileptic health care delivery system can only be imagined if such a research is ever embarked upon.

In the case of *Rex vs John Akerele*[7], the appellant a licensed medical practitioner was charged with a 3 count charge of the offences of manslaughter, negligent and rash acts contrary to sections 325, 343(1) (e) and 343(1) (f) of the Criminal Code for which he was sentence to 3 years imprisonment with hard labour and fine. The facts of the case was that the appellant in pursuance of his medical practice was touring the Owerri province around 1940 wherein he administered an injection drug known as *sobita* as cure for yaws. It was discovered that *sobita* was a drug for which utmost care was required in its handling as an overdose could cause a condition known as *Stomatitis* which may lead to death. The injection was given to about 10 children including the deceased for which he

[6] Dada, J.A op.cit., p.155.
[7] (1941)WACA 56.

was charged as the deceased developed *Stomatitis* and other symptoms indicative of an overdose of *Sobita*. The appellant's appeal was dismissed and the verdict of guilt for manslaughter was upheld as the degree of negligence was held to be high and criminal in nature.

Similarly, in the case of *R vs Yaro*[8] the accused performed a tonsillectomy on a patient from which the patient died six days later as a result of haemorrhage and sepsis which arose from the tonsillar bed. The accused was convicted of manslaughter on the grounds of not possessing the requisite skill, use of primitive and unsterilized implement to perform the operation notwithstanding the fact that the accused led evidence to show that he had performed over 2000 of such operations without a casualty.

The court in the recent case involving the death of the famous musician Michael Jackson sentenced his physician Dr. Murray to 2 years imprisonment for criminal negligence as it was established in evidence that the doctor administered a lethal[9] dose of anaesthetic profonol and left the patient without any medical supervision.

In the case of *Chin Keow vs Government of Malaysia*[10] a doctor was found medically negligent for administering penicillin on a patient who had a history of negatively reacting to the drug. It was held that he would have known if he inquired as same was inscribed on her card as being a patient allergic to penicillin.

[8](1955) 21NLR 63.
[9] Kazeem A.A (2016) *Legal options available to victims of Medical negligence in Nigeria.* htts://www.legalnaija.com/2016/03/legal-options-available-to-victims-of.html retrieved 1 February, 2017 at about 12.00 noon.
[10] (1967) 2 MLJ 45.

It is important to state here that a good number of Nigerians do not know what drugs they are allergic to as there is little or no education for patients as to what amount to an adverse allergic drug reaction when any medication is used and when the patients do not understand this, there is no way they will report to appropriate authorities for necessary action. This therefore lead us to the problem wherein drugs are given to patient without any explanation as to what they may likely experience when consuming it. It may be argued that every patient has the responsibility to read the leaflets in most drug packs before consumption; even among the educated ones, only a handful actually do go through the leaflet and for the illiterates who are even more in number, one does not expects them to read as they cannot do so. This therefore places the burden of education and information on the shoulders of those in the medical field to help forestall such situations that could lead to avoidable death or serious disability.

b. Civil Sanctions

A civil action is one brought to enforce redress or protect a private or civil right; a non-criminal litigation[11]. Civil actions can be instituted against a medical professional in the event that there is a breach of duty of care which has resulted in damage to the patient. Action can be maintained by the injured victim, relatives or defendants of a deceased person and guardian of a minor as the case maybe. Sanctions here is could be for compensation for loss of earnings, expenses incurred as a result of the damage for example additional hospital bills, reduction

[11]Garner, B.A op. cit., p.30.

in life expectancy, pain and suffering amongst others[12]. Actions can be maintained under the following aspects of the law:

1. Contractual Actions

A contract is an agreement between two or more parties creating obligation that are enforceable or otherwise recognizable at Law[13] It is important to note that contract may be in express terms or implied terms. It is generally implied in medical relationship that the professionals will exercise reasonable care and skill in the treatment of his patient. Consequently, where there is a breach of an express or implied term, the medical practitioner can be sued for breach of contract. Whenever a patient submits himself for medical treatment, the law implies a contract. In the case of *Lafleur vs Cornelius* as citied in Emiri[14], the court held the plastic surgeon liable for breach of express contractual warranty. The warranty was said to have arisen when he said to his patient "there will be no problem, you will be very happy".

2. Tortious Action as Remedy for Professional Negligence

Most civil actions instituted against medical practitioners are under this branch of law which may include Assault, Battery, False Imprisonment and Negligence. A brief highlights of this class of actions will be considered hereunder:

[12] Dada, J.A. op. cit at p.140.
[13] Ibid., p.318.
[14] Emiri, F.O. (2012) Medical Law and Ethics in Nigeria, Malthouse Press Limited, Lagos p.271.

i. **Assault**: It is "the threat or use of force on another that causes that person to have a reasonable apprehension of imminent, harmful or offensive contact, the act of putting another person in reasonable fear of apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery[15]

The operational phrase in the definition is "reasonable apprehension of fear". Whatever any health care provider will do that will put a patient in reasonable apprehension that force may be used on him will amount to assault on the person of the patient. Usually, quite a handful of health care providers ignorantly invade the bodies of their patients without consent and this can constitute an actionable ground in law. In the words of the Dada giving an example of assault stated that "if a nurse walks menacingly towards a patient with needle to inject him against his will the tort is committed"[16].

ii. **Battery:** Battery is seen "as an intentional and offensive touching of another without lawful justification"[17]. The tort of battery is constituted when there is an unauthorized touch on a person from another person no matter how slight. As long as such a touch is intentional and without the other person's approval, an action in battery can lie.

It is important to note that an action in assault and battery is actionable perse i.e there is no need to proof any damage that arose as a result of the act of the assaulter. However, proof of damage can increase the amount of compensation

[15]Garner, B.A., op. cit., p.109
[16]Dada, J.A (2013) Legal Aspects of Medical Practice in Nigeria, University of Calabar Press, Calabar p.117
[17]Garner, B.A., op. cit., p.146

that will be awarded by the court. In medical parlance, carrying out examinations, administering treatment or surgical operation without the consent of the patient will amount to battery.

In the Nigerian case of *Dr. Rom Okekearu vs Danjuma Tanko*[18], the Supreme Court made very instructive decisions on what will amount to battery. The fact of the case are as follows: The Plaintiff (Tanko Danjuma) claimed that while removing Zinc from his mother's roof, he sustained injury upon which he was taken by neighbours to the defendant's clinic even though he claimed the injury was not deep. At the clinic, the defendant claimed he asked for the closest relative of the plaintiff when a woman came out as the plaintiff's aunt who according to the Doctor said the Doctor should carry on with whatever treatment that was necessary. The defendant relying on this statement amputated the plaintiff's centre finger claiming that the finger was badly crushed and was only being held by a little piece of flesh. The plaintiff also claimed that the amputated finger was not given to him as same was disposed by the doctor "in accordance with standing medical practice"[19]

The trial Court, Court of Appeal and Supreme Court held that the action of the Defendant now Appellant, amounts to battery as the act of amputating the plaintiff finger was done without consent. The court further stated that consent especially to amputate a part of the body should be exact and unequivocal. The Court went further to opine that at the age of fourteen the plaintiff should not

[18] (2002) FWLR(Pt131) 1888
[19] Ibid p.1893

have been ignored as he is capable of understanding whatever was intended to be done by the Defendant. The Defendant's argument that he got approval to carry out any treatment necessary was rejected by the court who went further to state that " In any action for battery, for consent to be valid and real, the doctor must explain to the patient or his Proxy the actual treatment he proposes to give the patient"[20].

The fact that the act resulted in the improvement of the medical condition of the patient will not be an acceptable defence in law for any act constituting battery. In the case of *Mallette vs Shulman*[21] the medical practitioner treated the patient by the way of blood transfusion in disregard of a medical alert card in her purse stating that blood transfusion should not be administered to her under any circumstance. Upon her recovery, she instituted an action for which the medical practitioner was held liable notwithstanding the benefit to the patient.

Similarly in *Mohr vs Williams*[22] the physician obtained Consent from the patient to operate on the right ear. The Physician however discovered during the operation for the first time that the left ear was even in a worse condition and he went ahead to perform operation on the left ear also. He was held liable in battery.

[20] Ibid p.1895
[21] (1990) DLR 67
[22] 104 N.W 12 (Minn.1905)

iii. False Imprisonment: a restraint of a person in a bounded area without justification or consent[23]. An action for false imprisonment will lie where a person is completely and totally restrained from moving from place to place against his free will and without any lawful justification.

It is a usual practice to have patient who cannot pay their medical bills "detained" until such a time when such bill is paid. Such act will constitute false imprisonment for which damage can be claimed as the right of lien does not extend to human being. In the unreported case of *Chief J. Owonam vs Dr. G.A. Ebong & Anor* as cited by Dada[24], the patient was detained for inability to pay his medical bills and it took the intervention of the court for him to be released by the hospital.

It is important to state at this point that while it is highly condemnable for patient to refuse to fulfil their obligation of payment of bills in the hospital, detaining the patient is however not the only option available to the hospitals. Options like institution of legal action for the recovery of the medical bills can be explored.

3.2.2 Burden of Proofin Civil Suit:

The Law[25] squarely places the burden of establishing civil liabilities on the one who alleges. This position of the law has created impediments in the ability of aggrieved persons to establish their cases before the court. The aggrieved persons

[23]Garner, B.A., op. cit p.619.
[24]Dada, J.A (2013)Legal Aspects of Medical Practice in Nigeria, University of Calabar Press, Calabar , pp.122-123
[25]Section 131, Evidence Act 2011.

in most cases of medical negligence will require the testimony of medical expert to help establish the case but due to poverty of the aggrieved persons and unwillingness on the part of the members of the medical practitioners to come forward as witnesses, the plaintiff before the court is fixed in a position that the cases cannot be established. In *Ojo vs Gharoro*[26]. The appellant was operated by the respondents and a broken needle was left in her abdomen. A second surgery was conducted to remove the needle after the x-ray revealing that the needle was in her abdomen. The appellant in her claim also stated that she was informed by another gynecologist that the manner in which the operation was performed by the respondent coupled with the fact that the needle was left in her womb has put her in position that she will not be able to conceive. The appellant's action for negligence failed among other things on ground that the fact that she was informed of the existence of the needle in her abdomen by the respondent and that she did not call an expert witness to established whether the needle left in her womb had actually put he in a position where she will not be able to conceive. The Supreme Court arrived at this decision notwithstanding the fact that the respondent admitted under cross examination that the surgical needles breaks or snaps easily and the fact that the x-ray and subsequently surgery were all at the expense of the appellant.

This researcher opine that the position of the law in this case is bad law as medical surgeons could take advantage of this decision to forget more dangerous instruments in the course of surgery as all the law requires is for them to inform

[26] (2006) 10 N.W.L.R, (Pt.987) 173

the patient and nothing more. This stand erodes confidence in the medical workers. The court are however enjoined to take a more liberal approach in treating cases of medical negligence due to the peculiar relationship involved in medical issues.

Similarly, *Unilorin Teaching Hospital vs Abegunde*[27] The Court of Appeal Justices after concluding that the doctor who issued the death certificate was careless, the filling system was poor and that on a specific date the Intravenous (IV) fluid got tissued and no doctor was around to reset it, still went ahead to hold that "those incident which smacks of negligent acts are infinitesimal when compared to the treatment doled to the deceased for the months he spent in appellant with proper attention"[28].

This decision ought to have been different in that the appeal of the appellant at least should have succeeded in part but to hold that negligence was not proved was an extreme which will not cure the lackadaisical attitude of some health care professionals such as filing the medical records of a different patient in the file of another patient which can create a likelihood of giving improper treatment to a patient.

Furthermore, in the case of *Abi vs C.B.N*[29], the case of appellant as plaintiff before the trial court was that he became deaf after receiving treatment at the 2nd Defendant's facility after being treated by the 3rd Defendant with gentamycin. The appellant was referred to another hospital by the 3rd respondent for evaluation and

[27] (2015) N.W.L.R (Pt.1447)421
[28] Ibid p.452.
[29] (2012)3 N.W.L.R(Pt.1286)1

management having sustained hearing defects following treatment with Gentamycin for diagnosis of cerebrospinal meningitis. The contention of the defendant was that given the appellants' condition, the drug administered to him notwithstanding the possible side effect of loss of hearing which was not told to the appellant was appropriate treatment. The appellant's claim failed due to the fact that he could not secure an expert evidence to establish that the loss of hearing was as a result of the treatment given.

The court went further to observe claims based on medical negligence in the following words

> I wish to observe that claims founded on medical negligence have been known to be difficult to establish and expensive as well. The evidence to be adduced by the injured usually is in the domain of the hospital and doctors. Where the records are tendered in court it does not have much impact. The injured will inevitably rely on expert testimony to tell the court whether a reasonable person in the position of the doctor would have made the same diagnosis, treatment or procedure adopted[30].

However, there is a common law doctrine of *Res Ipsa Loquitor* which is interpreted to mean "the thing speaks for itself"[31]. This doctrine is resorted to in the face of manifest irresponsibility of a medical practitioner which causes harm to a patient. The doctrine was applied in the case of *Igbokwe vs University College Hospital Board of Management*[32]. In this case, a patient with a mental condition was left in the care of a nurse who was instructed to keep an eye on her. The patient was found dead on the ground floor as she had apparently fallen from the

[30] Ibid p.43
[31] Garner, B.A., op. cit p.1311
[32] (1963)WNLR173

4th floor where she was confined. The claim of plaintiff succeeded on the basis of the doctrine of *Res Ipsa Loquitor* which was upheld by the court.

Some legal systems in countries like America, Britain, France and a host of others have taken note of the difficulty in strictly following the adversarial system wherein the burden of proof rests squarely on the injured person to prove that the health care provider had been negligent towards him. Consequently, a proposal was made by the American Medical Association to have a board where malpractice claims can be resolved and physicians disciplined for inappropriate actions[33]. France, Germany, Canada, Japan and Australia have developed some alternative system which ensure settlement of malpractice cases out of court through boards set up by Medical Associations for that purpose, by taking up a system of collective insurance from which insurance claims are paid from the collective pool, or by some independent government review boards set up by government to look into complaints and resolve them as quickly as possible without a lengthy and formal court trial[34].

Furthermore, certain aspects of the Rules[35] constitute a clog in the wheel of the ability of the doctors to assist patient in exposing the ills of colleagues. This rule provides thus:

> A doctor may find himself in a situation where he hears about the practice of another. It is professional misconduct for the doctor in possession of such information to instigate the affected patient to bring litigation against his professional colleague where he is neither directly nor indirectly related (i.e. through marriage or blood relationship) with the

[33]Bal, S.B. (2008).*An Introduction to Medical Malpractice in the United States.* Retrieved from http//www.ncbi.nlm.gov/pmc/artices/PMC2628513. Accessed 14August, 2016 at about 11 am.
[34] Ibid
[35] Rule 40.0 and 46.0, The Code of Medical Ethic in Nigeria, 2008

> complaint nor is personally aggrieved. Thus, if Dr A has prima facie evidence that DR B is involved in malpractice, it is a professional misconduct for doctor A to instigate B'S patient to sue B. Dr A should, instead, talk sense into Dr B to cease the action considered as malpractice and correct the situation as much as can be done, and report B to the Investigation Panel if B ignore the advice.

The above cited rule may be responsible for refusal of medical practitioner to voluntarily appear in court to testify against a colleague in the suit for negligence. In the case involving Mrs. Eleojo Collins, the husband's difficulty includes the refusal of doctors to testify and some told him that if they appear in court, they will be indicted by the code of Ethics.

Interestingly, Rule 6.0[36] enjoins Medical and Dental practitioners to expose without fear or favour any unprofessional, criminal act or omission on the part of the medical practitioner. It can be argued that notwithstanding the fact that this rule stated that the exposure should be before the Medical and Dental Council of Nigeria, this duty should extends to court since the Tribunal lack criminal jurisdiction. One thing that is however clear from the Code of Medical Ethics is that it targets sanitizing the medical field with respect to medical practitioners and not compensation to injured patients.

As a corollary to the above, the cost implication of instituting a legal action is enormous that an average Nigerian can hardly bear the cost. Even at the level of the Medical and Dental Council, the complainant is left to bear the cost in terms of attendance at the investigating panel and Tribunal whose sittings are mainly at

[36] Ibid

Lagos or Abuja. In the case of Late Mrs Justina Eleojo, the husband had to travel from Lokoja with his legal representatives all at his cost once to Lagos and several times to Abuja where the Tribunal had its sitting and five years on it does not look as if there is any reasonable ray of hope.

Also Rule 20[37] prevents a Medical Laboratory Scientist/Technician who has information of misconduct on a colleague from instigating litigation against such a person. He is to advice such colleague and where he refuses to heed the advice, a report is to be filed against him with the investigation Panel of the Council. The implication of this is that the clients who have been injured in the process of malpractice is left without any remedy as it may be difficult in the light of this Rule to get a professional colleague to testify against another professional colleague. Sub-section 2 of Rule 20 makes a professional misconduct for a colleague to instigate litigation against a professional colleague.

3.3 Professional Disciplinary Procedures

In addition to litigation whether criminal and or civil instituted against a medical practitioner, the professional body to which such a medical practitioner belongs to can initiate proceedings against such a person before the disciplinary panel of such body and appropriate verdict delivered after investigation and hearing.

3.3.1 Medical Doctors

[37]MLSCN, Rules, 2011

Section 15 of the Act[38] establishes the Disciplinary Tribunal and Investigation Panel whose duties are contained in section 15 3(a) to (d) of the Act[39] to include the following:

> (a) conducting a preliminary investigation into any case where it is alleged that a registered person has misbehaved in his capacity as a medical practitioner or dental surgeon, or should for any reason be the subject of proceedings before the Disciplinary Tribunal;
> (b) compelling any person by subpoena to give evidence before it;
> (c) deciding, if satisfied that to do so is necessary for the protection of members of the public, to make an order for interim suspension from medical or dental profession in respect of the person whose case they have decided to refer for inquiry; and for the case to be given accelerated hearing by the Disciplinary Tribunal within three months; or
> (d) deciding, if satisfied that to do so is necessary for the protection of the public or is in his interest, to make an order for interim conditional registration in respect of that person, that is to say, an order that his registration shall be conditional on his compliance, during such period not exceeding two months as is specified, as the panel may think fit to impose for the protection of members of the public or in his interest.

A close look at paragraph (b) above will reveal that it provides for a situation where a person maybe suspended for a time before he is actually heard. This provision apparently negates the principles of fair hearing and as such should be used only in extreme cases where the benefit of making such interim orders will far outweighs not making it to avoid damages being given against the council in a suit for breach of fundamental right to fair hearing as justice demand that a person should be heard before any judgement is passed on him.

[38] Medical and Dental Practitioners Act. Cap M80 Laws of the Federation of Nigeria 2004.
[39] Ibid.

The investigating panel consist of 15 members at least 3 of whom shall be dental surgeon. It is on the recommendation of this panel that the decision will be taken whether to try the erring practitioner before the Tribunal or not.Supplementary provision in the second schedule to the Act[40] is made in which the quorum of the disciplinary committee which is put at five[41].

The supplementary provision deals generally with Membership of the investigating panel and Disciplinary Tribunal, rules of procedure appointment and role of assessors amongst others. The assessor is a legal practitioner of not less than seven years standing to be appointed by the Council[42] on nomination of the Chief Justice of the Federation whose duties includes advising the Disciplinary Tribunal on any question of law as to evidence and procedure or any other matters specified in the provisions[43]. This duty is expected to be carried out in the presence of all parties to the proceedings before the Tribunal.

If a medical practitioner is found guilty by the Tribunal for any of the offences created under the Act[44] or under the Medical Code of Ethics, a verdict of having his name Struck off the list of practitioners, suspension for a period not exceeding six months and admonition may be delivered as the case may be[45].

Furthermore, the Medical and Dental Practitioners (Disciplinary Tribunal) Rules is a subsidiary legislation that regulates proceedings before the Disciplinary

[40]Section 15(5) Medical and Dental Practitioners Act. Cap M80 Laws of the Federation of Nigeria 2004
[41] Section 5 Second Schedule to the Act.
[42]Medical and Dental Practitioners Registration Council of Nigeria.
[43]Section 4, Second Schedule to the Act.
[44] Medical and Dental Practitioners Act. Cap M80 Laws of the Federation of Nigeria 2004
[45]Section 16 Medical and Dental Practitioners Act. Cap M80 Laws of the Federation of Nigeria 2004.

Tribunal. By the Rules, it is the responsibility of the chairman of the Council[46] to convene a meeting of the Tribunal upon receipt of the Report and charges from the Registrar to the Council[47]. The parties to the proceeding before the Tribunal as provide under Rule 4[48] are:

i. The Chairman of the Panel
ii. The Medical Practitioner or the Dental Surgeon whose conduct is the subject matter of the proceeding; and
iii. If the Tribunal so direct, the complainant who maybe represented by a legal practitioner.

The medical practitioner or dental surgeon whose conduct is in issue may appear either in person or be represented.

By Rule 9[49], the proceeding of the Tribunal is held and its findings and direction pronounced in public. Section 16[50] makes provision for sanctions for medical doctors to include striking of the Practitioners name off the register of practitioners kept by the council, suspension and admonition depending on the nature and gravity of the offence.

[46]Medical and Dental Practitioners Registration Council of Nigeria
[47]Ibid.
[48]The Medical and Dental Practitioners (Disciplinary Tribunal) Rules
[49]Ibid.
[50] Ibid

The Act[51] guarantees a right of appeal against the decision of the Tribunal to the Court of Appeal within 28 days from the date of service of the direction or decision of the Tribunal.

The Medical and Dental Practitioners Tribunal appear to be doing fairly well in terms of the outcome of the cases[52] determined by the Tribunal. Out of the ten cases decided in this law report, only two failed completely. Seven of the cases had different degree of harm to the patients including death, four of the cases out of seven which had the involvement of patient doctor relation had the complaints upheld with varying degrees of sanctions ranging from admonition to suspension from practice for six months. Three out of the ten cases was on advertisements and relationship among colleagues**.**

3.3.2 Nurses and Midwives

Nurses and midwives have their regulation as part of the Act[53]. The Act[54] establishes a body to be known as "Nurses and Midwives Disciplinary Tribunal" saddled with the following duties: "(a) Conducting preliminary investigation into any cases where it is alleged that a person registered has misbehaved in his capacity as a nurse or midwife or should for any other reason be the subject of

[51] Section 16(6) Medical and Dental Practitioners Act. Cap M80 Laws of the Federation of Nigeria 2004
[52]*Chairman, M .D .P .I .P vs Dr. O.A Adebiyi; Chairman (supra), M .D .P .I .P vs Dr.Chukwemeka Kevin Ezem &1ors*(2014)1MMLR16*; Chairman, M .D .P .I .P vs Dr. Vital Eseihien Uhomoihbi*(2014)1MMLR35*; Chairman, M .D .P .I .P vs. Dr. Azubuike Okezie*(2014)1MMLR44*; Chairman, M .D .P .I .P vs Dr. Chukuma Ohadugha*(2014)1MMLR61*; Chairman, M .D .P .I .P vs Dr. Sumade Adesegun Olumide* (2014)1MMLR79*; Chairman, M .D .P .I .P vs Dr. Okwudili Augustine Madueke & ors*(2014)1MMLR91*; Chairman, M .D .P .I .P vs Dr. James Adeniran& ors* (2014)1MMLR95*; Chairman, M .D .P .I .P vs Dr. J. A Umezurike* (2014)1MMLR99*; Chairman, M .D .P .I .P vs Dr. Felix Sawyers* (2014)1MMLR104.
[53] Nursing and Midwifery(Registration e.t.c) Act, Cap. N143, L.F.N. 2004.
[54]Section 17 Nursing and Midwifery(Registration e.t.c) Act, Cap. N143, L.F.N. 2004.

proceedings before the Tribunal; and (b) Deciding whether the case should be referred to the Tribunal."

The Nurses (Disciplinary Tribunal and Assessors) Rules and the Midwives (Disciplinary Tribunal and Assessors) Rules regulates proceedings before the Disciplinary Tribunal established by the Act[55]. The Act[56] empowers the Council[57] whose Chairman upon receipts of information or charges from the Secretary – General convenes the Tribunal before whom the nurse whose conduct is the subject matter of investigation is invited to defend the allegation against her. Section 13[58] of the Midwives regulation contains similar provisions as in the case of a nurse.

Where a Nurse or midwife is found guilty of any professional conduct, she can be reprimanded, have her name struck off the relevant register and suspended from practice or duty for a time not exceeding six months[59]. However, there is a provision under the Act[60] for application to have her name restored and if such application is favourably considered, the Nurse of Midwife may have her name restored to the Register of Nurses and Midwives kept by the Council[61]. The right of appeal lies from the decision of the Tribunal to High Court within 28 days of the service of the decision or direction of the Tribunal.[62]

[55]Ibid.
[56]Section 18, Nursing and Midwifery (Registration e.t.c) Act, Cap. N143, L.F.N. 2004.
[57]Nursing and Midwifery Council of Nigeria.
[58] Nursing and Midwifery (Registration e.t.c) Act, Cap.N143, L.F.N, 2004.
[59]Section 18 Nursing and Midwifery (Registration e.t.c) Act, Cap.N143, L.F.N, 2004.
[60] Nursing and Midwifery(Registration e.t.c) Act, Cap. N143, L.F.N. 2004.
[61] Nursing and Midwifery Council of Nigeria.
[62] Section 18(4) Nursing and Midwifery (Registration e.t.c) Act, Cap.N143, L.F.N, 2004.

An assessor who is a legal practitioner of not less than seven years standing to be appointed by the Council on the nomination of the Chief Justice of the Nigeria[63]. The role is to advise the Tribunal on questions of law. One wonders why there appears to be little or no known case of litigation against members of the nursing and midwifery profession in Nigeria.

3.3.3 Medical Laboratory Scientists/Technicians

The Act[64] establishes the Medical Laboratory Science Council of Nigeria Disciplinary Committee which is charged with the responsibility of hearing and determining cases of professional misconduct referred to it.

The Act[65] also creates the Investigation Panel whose duty is captured thus:

(a) Conducting investigation into any case where it is alleged that a member is involved in a conduct in his capacity as a member or should for any other reason be the subject or proceeding before the committee; and

(b) Deciding whether the case shall be referred to the committee.

Where the case of misconduct is established against a practitioner, the Committee[66] may recommend the striking out of the person's name from the register of practitioners kept by the Registrar to the Council[67] or a direction reprimanding such a person. Where a direction is given by the committee to strike out the person's name from the register, such a person may make application for

[63]Paragraph 4 of the Second Schedule to the Act.
[64] Medical Laboratory Science Council of Nigeria Act, Cap. M25, L.F.N 2004.
[65] Section 15(3) Medical Laboratory Science Council of Nigeria Act, Cap. M25, L.F.N 2004.
[66]Medical Laboratory Science Council of Nigeria Disciplinary Committee.
[67]Medical Laboratory Council of Nigeria.

the restoration of his name to the Committee[68] after the period stated in the initial direction striking out his name[69]. Furthermore, a right of appeal against the decision of the committee lies to the High Court within 28 days from the date of service of the direction of the committee on the affected practitioner.

An Assessor is appointed by the Council on the nomination of the Chief Justice of Nigeria and shall be a legal practitioner of not less than ten years standing. The function of the Assessor includes advising the Committee on any question of law as to evidence.

Paragraph 8 of the second Schedule to the Act[70] creates a situation whereby the decision of the Panel or Committee shall not be invalidated by any irregularity in that appointment of members of that body or by reason of the fact that any person who was not entitled to do so took part in the proceeding of that body. While the paragraph makes allowance for the Panel or Committee to act even where it is not properly constituted. It is however advised that the Panel or the Committee should be very careful in relying on this provision due to the fact that the function of the Panel or Committee is such that affects the rights of a person particularly where a verdict of guilt is returned. As such, issues of proper composition should be given due consideration to avoid where the decision of the Panel or Committee will be challenged unnecessarily culminating in waste of time and valuable resources.

3.4 Defences available to Medical Personnel

[68] Medical Laboratory Science of Nigeria Disciplinary Committee.
[69] Section 16(7) Medical Laboratory Science Council of Nigeria Act, Cap. M25, L.F.N 2004.
[70] Medical Laboratory Science Council of Nigeria Act, Cap. M25, L.F.N 2004.

Whenever a Medical Practitioner appear before the Tribunal or Court, there are defences which he can raise as complete defense to the action or to mitigate the compensation to be awarded. Some of the common defences include the following:

1. Contributory negligence
2. Limitation of action
3. Volenti non fit injuria
4. Accidents
5. Novus actus intervenies

3.4.1. Contributory Negligence

This defence envisages a situation where the victim whether actively or passively contributed to the injury he suffered. Where the defence is successfully pleaded, the quantum of damages to be awarded will be reduced even where the practitioner is held to be negligent. In *Crossman vs Stewart*[71], while the doctor was held to be negligent for not informing the plaintiff of the risk involved in the prolonged use of the prescribed drug, the plaintiff was held to have contributed to the effect she suffered as she continued to use the drug long after the period the defendant prescribed the drug and as such the damage claimed was reduced.

3.4.2. Limitation of Action

[71] (1977) 82 DLR (3d) 677.

Various legislation provides for time within which actions can be maintained before a court and when the action is not instituted within such time provided, the action will no longer be maintainable in law. An example Kaduna State Limitation Law which provides as follow "No action founded on contract, tort and any other action not specifically provided for in Part I and II of this Edict shall be brought after the expiration of five years from the date on which the cause of action accrued"[72].

3.4.3. Volenti non fit injuria

The maxim is interpreted to mean "there is no injury to one who consents"[73]. Where a person consents to a thing, he should not be heard to complaint where he suffers any injury from it. This defence has the potential to totally exonerate a medical practitioner where it is successfully pleaded. The court should however be wary of upholding this defence in malpractice suits due to the fact that notwithstanding the fact that consent was obtained from a patient, it cannot be said that the patient consented to the negligent act from which he has suffered injury. There is a presumption that a medical practitioner will use reasonable care and skill in the treatment of the patient, this duty should supersede the plea that the patient consented to the treatment especially where negligence is established.

3.4.4. Accident

[72]Section 18 Kaduna State Limitation Edict, Cap.89, The Laws of Kaduna State of Nigeria 1991
[73] Garner, B.A., op. cit. p.1700.

This defence will avail a defendant even where damage has resulted provided the practitioner was not negligent nor intended the damage. Most medical treatment notwithstanding how skilfully and carefully administered carries with it great risk as such proper scrutiny should be given to complaints raised by patients. In *White vs Board of Governors of H.W*[74], the defendant was absolved of liability although damage was done to the patient's Retina during an eye operation. The court held that proper skill and care was exercised notwithstanding the damage done to the patient.

3.4.5. Novus actus Intervenies

Where an event or series of events intervened between the negligent act of the defendant and the resultant injury which forms the basis of the claim of the plaintiff. It may either lead to mitigating the amount of compensation to be awarded against the defendant or totally exonerate the defendant from liability. In *Emeh vs Kensington and Chelsea Hospital Management Committee*[75], the Plaintiff went through an abortion and sterilization process in the defendants Hospital. After sometime, she discovered that she was pregnant. She refused the suggestion for a second abortion and her child was born with certain deformities for which she sued the Hospital. The plea of the defendant of the action being unreasonable and *novus actus interveniens*(New intervening act)[76] was rejected as it was discovered that the sterilization was poorly done and that, it resulted to the deformity in the pregnancy and the failure of the plaintiff to undergo the abortion

[74]Dada, J.A Legal Aspects of Medical Practice in Nigeria, University of Calabar Press, Calabar , (2013) 144
[75](1985) 1QB 1012; (1984) 3All ER 1044
[76]Lovells, H.(2017) *Novus actus interveniens.*https://www.hoganlovells.com/en/publications/novus-actus-interveniens. Accessed on 22 March, 2018 at 10:16 am.

of the pregnancy which they claimed was the new intervening act was not fatal to the case. The claim succeeded.For this defence, each case will be treated on its peculiar circumstance as to whether or not such act or the event breaks the chain of causation.

Conclusively, liabilities could arise in civil, criminal and professional discipline against medical practitioners. A litigant in a civil suit against a medical practitioner can be awarded damages for suffering suffered or compensation is paid to the relatives in the event of death. Where the negligent act of a medical practitioner becomes criminal in nature, the relevant sanctions as provided under our penal laws is invoked to punish such a practitioner. If a disciplinary proceeding is successfully completed before the disciplinary Tribunal created by the laws setting up the various medical professional bodies under review, varying degrees of sanction including withdrawal of practicing license, striking off the name of such practitioner from the register of practitioners kept by the various Councils, suspension from practice for a time and warning depending on the gravity of the offence. The problem however, especially in civil litigation is that of establishing the claims before the court due to the challenges like unwillingness on the part of professionals to testify and bottle necks created by the Code of Ethics regulating the practices of the health care practitioners in Nigeria. Where the claim is successfully established, certain defence are open to the medical practitioner in deserving situations which can completely exonerated or mitigate the punishment or reduce the damages to be awarded against the erring medical practitioner.

CHAPTER FOUR

ASSESSMENT OF PROFESSIONAL NEGLIGENCE BY HEALTH CARE PROVIDERS AT BARAU DIKKO TEACHING HOSPITAL, KADUNA

4.1 Introduction

Barau Dikko Teaching Hospital, Kaduna (B.D.T.H) was established in 1999 as a Specialist Hospital. It is a 240 bed space Tertiary facility which was converted to a Teaching Hospital in 2016 to serve as a training facility for Medical students of the Kaduna State University[1].

It is a common argument in Nigeria that lack of relevant laws is largely responsible for ineffective service delivery. It has also been argued at some quarters that lack of knowledge on the existence and application of the law is responsible for non-compliance to the relevant laws. Study of medical negligence reveals that there are sufficient legislations to regulate the conduct of medical professionals in the discharge of their duties. However, the level of compliance with laws relating to medical ethics and compensation mechanism available to injured patients seem inadequate.

4.1.1 Methodology and Data for the Study on Assessment of Professional Negligence by Health Care Providers at B.D.T. H., Kaduna

This chapter focuses on providing the descriptive overview of the following:

a. The method used in sourcing for the data used;

b. The sampling size, coverage and targets;

c. Analysis of the findings of the study.

[1] Haruna, H.L. and Suleiman, M. (25th September 2016).

4.1.3 **Background Data for the study**

The findings analysed below were derived from data gathered through the 24 item questionnaire[2] administered to samples of 100 respondents who have attended the Barau Dikko Teaching Hospital and interview conducted with patients and relevant health care providers to give insight to the level of compliance with relevant laws and code of ethics. The population size of the research work covers all the Patients, Medical doctors, Nurses/Midwives and Medical Laboratory Scientist/Technicians in Barau Dikko Teaching Hospital, Kaduna between the periods of June to September, 2016. However, due to the constraint of time and space only willing volunteers were involved in the study.

Out of the 100 respondents randomly drawn from the patients 52% were females while the remaining 48% are males. The patients sampled were predominantly adults with about 75% of them being between 25 – 50 years while those between the ages of 17-24 years accounted for about a quarter of the sample (25%) . The level of educational attainment within the sample of patients reveal a predominantly educated set of respondents with about three-fourth (76%) having attained qualification above secondary school education with about 3% also claiming to have post graduate qualifications.

Among the Medical doctors and Laboratory Scientist/Technicians interviewed, all of them have put in above 3 years of service in practice as Medical

[2] See Appendix A

doctorsand Laboratory scientist/Technicians while the Nurses/Midwives, claim to have put in service of above 10 years in practice as Nurses/Midwives.

As the above profile of respondents shows, the patients and relevant health care providers interacted with represent some broad heterogeneous groups with different characteristics as to educational status, years of service, age and gender groupings. They are therefore expected to provide, to a reasonable extent, a variety of responses to the questions.

As earlier stated, the entire population of study covered was one hundred (100) for the patients and all the questionnaires were retrieved. Our ability to achieve this was because the questionnaires were not given out and left with the patients as it may become difficult to retrieve them, rather the researcher gave them all out to those willing to participate and they were retrieved as soon as they were filled by the respondents. For the patients, all the questionnaires given out were as revealed on table below:

Table 4.1: Patients

Options	**Frequency**	**Percentage**	**Total**
No. of questionnaires returned	100	100%	100
No. of questionnaires not returned	0	0%	0
Total	100	100%	100

Source: Field Survey, 2016.

4.2 Patients' Assessment of Medical Doctors at Barau Dikko Teaching Hospital, Kaduna

The assessment of medical doctors on the level of compliance with relevant laws by patients and evaluation of the patients' knowledge on the existence and

application of laws regulating medical ethics was carried out through distribution of questionnaires to willing participant. The responses to the questions are hereunder represented in tables serially.

4.2.1 Visitation

Under this variable, the respondents were asked whether they had visited Medical doctors in Barau Dikko Teaching Hospital, Kaduna (B.D.T.H).

Table 4.2

Option	**Frequency**	**Percentage**	**Total**
Yes	100	100%	100
No	0	0%	0
Total	100	100	100

Source: Field Survey, 2016

Hundred percent (100%) of the respondents stated that they had visited doctors in Barau Dikko Teaching Hospital, Kaduna.

This investigation was made to ensure that the respondents are individuals who have had actual interactions with the medical doctors at B.D.T.H. thereby putting them in a position to be able to assess the quality of services offered by the medical doctors with regards to the compliance with the relevant rules or otherwise.

4.2.2 Quality of Service Rendered by Medical Doctors at B.D.T.H

Under this variable, the respondents were asked if they were pleased with the quality of service rendered to them by the doctors at B.D.T.H.

Table 4.3

Option	Frequency	Percentage	Total
Yes	63	63%	63
No	37	37%	37
Total	100	100%	100

Source: Field Survey, 2016

Sixty- three percent (63%) of the respondents stated that they were pleased with the quality of services rendered by medical doctors at B.D.T.H whereas, thirty- seven (37%) of the respondents said they are not pleased with the quality of services rendered.

From the responses from the respondents to this question, it is obvious that the number of respondents that are pleased with the quality of services rendered outnumber the respondents not pleased with the services of the medical doctors.

While this may appear to be good, the percentage of those not satisfied with the quality of service is too high considering the risk associated with the role being played by medical doctors on the lives of patients. Furthermore, bearing in mind that this questionnaire were distributed to only hundred patients from the large number of other patients that visit this particular medical institutions, there is a likelihood that if more patients are interviewed, the number of those who are displeased with the quality of service may increase or decrease.

4.2.3 Awareness of Medical Rights in Doctor/Patient relationship

Under this variable, the respondents were asked if they are aware that certain medical rights accrue to them in patient/doctor relationship.

Table 4.4

Option	Frequency	Percentage	Total
Yes	79	79%	79
No	21	21%	21
Total	100	100%	100

Source: Field Survey, 2016

Seventy-nine percent (79%) of the respondents stated that they were aware that in doctor patient relationship, they had rights while twenty-one (21%) answered in the negative implying that they are not aware of the existence of such rights

The implication of this response is that the patients who seek medical help are not as ignorant as they were in times past and may therefore insist on compliance by the medical doctors in dealing with them. In a study carried out by the Kano State Medical Students Association (KAMSA)[3], it was revealed that the number of petitions received by the Nigerian Medical Association overtime has increased from 92 between 1963-1999 to about 190 between 2000-2007, this is a testimony to the fact that members of the public are gradually speaking up in case of infraction because they know what they are entitled to expect from medical doctors and other health providers.

[3]Mohammed, B. op. cit., p.3.

4.2.4 Identification of Medical Rights

Under this variable, list of some rights like consent before medical interventions, surgical operations, detailed explanation of treatments in terms of risk and benefits, confidentiality of medical records among others was made and the respondent were asked to tick the rights they know accrue to them in doctor/ patient relationship.

Seventy-one (90%) of the respondent ticked all the rights implying that they knew they had the rights while Eight (10)% were unable to tick which of the rights they think they have.This implies that though they think they have medical right, they do not know what those rights are. This set of respondents is as good as those who do not know they have medical rights that needs to be enjoyed.

4.2.5 Redress to be sought in case of Infraction

Under this variable, the respondents were asked about the action they will take if they notice an infraction of their medical rights in the course of their doctor/ patient relationship.

Table 4.5

Option	Frequency	Percentage	Total
Leave it to God	39	39%	39
Report to superior authorities in the hospital	15	15%	15
Litigation	8	8%	8
Report to authorities in the hospital and litigation	38	38%	38
Total	100	100%	100

Source: Field Survey, 2016

Thirty-nine percent (39%) of the respondents said they will resign to fate and walk away, fifteen (15%) said they will only report to authorities in the hospital, eight (8%) stated that they will resort to litigation by involving their lawyers, while thirty –eight (38%) said they will report to authorities in the hospital and also resort to litigation.

It is sad to note that there are several cases of medical infraction which are never reported thereby putting others who will seek medical intervention to be at risk. Nigerians are adjudged to be religious people who always believe that any occurrence pleasant or otherwise is allowed by God.Therefore,there is no need to challengea medical error[4]. This attitude may be responsible for conduct of some medical doctors who are careless holding on to the wrong notion that a typical Nigerian will hardly question a medical error particularly where death has occurred as most Nigerians are not too comfortable with the issue of post mortem investigation which will require heavy cost and attendant waste of time in struggling to secure coroner's inquest form. Investigations reveal that post mortem investigation at B.D.T.H cost about Three Hundred Thousand naira only (N 300,000.00) while it cost about Five Hundred Thousand Naira only (N 500,000.00) at Ahmadu Bello Teaching Hospital, Zaria. These sum of money to an average Nigerian, is outrageously on the high side and will definitely militate against the outcome of any report lodged by the relative of any victim of medical negligence if it involves death and such families are not financially buoyant enough to finance the post-mortem examination so as to determine the cause of

[4]Chukwuneke, F.N., op .cit. p. 3

death. Some of the patients interviewed as to why they will take this option were of the view that even where a report is made against an officer, nothing will come out of it so there was no point wasting time and energy processing such report. When we inquired further on why the option of litigation was not popular among the respondents, some of them said rampant adjournments make court cases to last and the cost of securing the services of a lawyer is expensive.

4.2.6 Laws Regulating Medical Practice in Nigeria

Under this variable, the respondents were asked if they knew about the existence of laws that regulates medical practice in Nigeria.

Table 4.6

Option	Frequency	Percentage	Total
Yes	62	62%	62
No	38	38%	38
Total	100	100%	100

Source: Field Survey, 2016

Sixty – two percent (62%) stated that they are aware of the existence of such laws while Thirty-eight (38%) answered in the negative.

4.2.7 Identification of Laws Regulating Medical Practice in Nigeria

Under the variable, the respondents were give the list of the two major laws that regulate medical practice in Nigeria, which are the Medical and Dental Practitioners Act and the Code of Medical Ethics in Nigeria.

Table 4.7

Option	Frequency (Medical and Dental Practitioners Act)	Percentage	Frequency(Code of Medical Ethics in Nigeria)	Percentage
Yes	50	80%	45	72%
No	12	20%	17	28%
Total	62	100%	62	100%

Source: Field Survey, 2016

Twelve (20%) of the respondents have no knowledge about the Act but Fifty (80%) said they had knowledge about the existence of the Act. On the Code of Medical Ethics in Nigeria, Forty –five (72%) confirmed that they were aware of its existence, while Seventeen (28%) are not aware.

4.2.8 Internal Monitoring Mechanism for Medical Doctors at B.D.T.H

Under this variable, the respondents were asked if they were aware of any mechanism put in place by hospital to monitor the conduct of medical doctors towards patients.

Table 4.8

Option	Frequency	Percentage	Total
Yes	44	44%	44
No	56	56%	56
Total	100	100%	100

Source: Field Survey, 2016

Forty-four percent (44%) said they knew such mechanism existed however, Fifty- six (56%) said they do not know if such mechanism existed within the hospital.

4.3 Patients' Assessment of Nurses/Midwives at B.D. T H

4.3.1 Visitation

Under this variable, the respondents were asked whether they had visited Nurses /Midwives at Barau Dikko Teaching Hospital, Kaduna (B.D.T.H).

Table 4.9

Option	Frequency	Percentage	Total
Yes	100	100%	100
No	0	0%	0
Total	100	100	100

Source: Field Survey, 2016

Hundred percent (100%) of the respondents stated that they had visited doctors in Barau Dikko Teaching Hospital, Kaduna.

This investigation was made to ensure that the respondents are individuals who have had interactions with the Nurses/Midwives at B.D.T.H. thereby putting them in a position to be able to assess the quality of services offered by the Nurses/Midwives with regards to the compliance with the relevant rules or otherwise.

4.3.2 Quality of Service Rendered by Nurses/Midwives at B.D.T.H

Under this variable, the respondents were asked if they were pleased with the quality of service rendered to them by the Nurses/Midwives at B.D.T.H.

Table 4.10

Option	Frequency	Percentage	Total
Yes	37	37%	37
No	63	63%	63
Total	100	100%	100

Source: Field Survey, 2016

Thirty- seven (37%) of the respondent stated that they were pleased with the quality of services rendered by Nurses/Midwives at B.D.T.H whereas, Sixty-three (63%) of the respondent said they are not pleased with the quality of services rendered.

From the responses of the respondent to this question, it is obvious that the number of respondents that are not pleased with the quality of services rendered outnumber the respondents pleased with the services of the nurses/midwives. This indices is not good for a health care institution considering the role of nurses/midwives in the care and management of patients. In most cases, after diagnosis, consultation and prescription of drugs and line of treatment to be given to a patient, it is the nurses that are left to carry out the instructions of the doctors and if this percentage (63%) of our respondents are not pleased with the service of the Nurses/Midwives in this hospital, the implication is that the instruction of the doctors on the care and management of patients are not been properly carried out. Worried about this trend, we carried out interview among the nurses and the response of those interviewed can best be described as hostile. Some of them lamented the fact that they are not respected by the patients and their relatives. All the nurses interviewed save the Chief Matron of the Hospital maintained vehemently that they will not testify against a colleague if a case of negligence is reported against a nurse/midwife.

4.3.3 Courtesy in Interaction

Under this variable, the respondents were asked if the nurses/midwives they interacted with at B.D.T.H werecourteous in their dealing with the patients.

Table 4.11

Option	Frequency	Percentage	Total
Yes	22	22%	22
No	78	78%	78
Total	100	100%	100

Source: Field Survey, 2016

Twenty-two percent (22%) of the respondents answered in the affirmative while seventy-eight (78%) stated otherwise.

It can safely be argued that in terms of the relationship between patients and medical institutions, Nurses seem to be the closest with the patients and most inquiries are usually directed at them from patients and their relatives alike.The need to be courteous in the exercise of this duty need not be emphasised. A nurse according to the Code of Ethics for Nurses in Nigeria[5] is expected to know that all clients/patients have a right to receive information about their condition and such information to be provided has to be accurate, truthful and presented in such a way as to make it easily understood[6]

4.3.4 Awareness of Duties of Nurses/Midwives

Under this variable, list of some duties of Nurses/Midwives was made such as duties to correctly carry out the instruction of doctors in treating the patient, adequately inform, seek and obtain consent for any nursing intervention, to be friendly to a patient and send for a doctor in cases of abnormal or threatened

[5] http://www.nmcnigeria.org/portal/index. Accessed on 22 October, 2015 at 9:20 am.
[6] Ibid

danger in labour cases and the respondent were asked to tick the duties of the Nurses/Midwives they know.

Ninety (90%) of the respondents ticked all the rights implying that they knew they had the rights while Ten (10%) were unable to tick any of the duties.

The implication of this response is that the patients who seek medical help also know the duties of Nurses and patients and because they are aware of these duties, they are more likely to demand for them. Also, this awareness among the patient may be responsible for the response of the nurses who feel they are not respected by patients and their relatives because where a patient knows the duty a nurse owes him and the nurses refuse to discharge such duties, the tendency to become agitated is possible due to the fear of the implication of the action of the nurse or midwife. Patients have lost their lives or babies in the hands of careless nurses/midwives. An example is the case of one Mrs Justina Eleojo Collinswho had difficulty in labour but the midwives did not act promptly by informing the doctors on call; when they eventually did, the bleeding could not be controlled which led to the death of both mother and child[7]. It can therefore be explained that the tension in the minds of patients and or their relatives in the hospital environment may be responsible for the attitude which the nurses complained to be disrespectful. As rightly noted by the Chief Matron of the hospital, no amount of pressure should distract a nurse from carrying out her duty and doing the best she can for her patient because the true calling of a nurse is to be a compassionate care giver.[8]

[7] *Pst. Collins Adah vs. The Minister of Health & 2ors supra p. 45*
[8] Haruna, H.L. and Umar H. (25th September, 2016)

4.3.5 Redress to be sought in the event of Infraction

Under this variable, the respondents were asked what action they will take if they notice an infraction of their medical rights by a Nurse / Midwife.

Table 4.12

Option	Frequency	Percentage	Total
Leave it to God	39	39%	39
Report to superior authorities in the hospital	15	15%	15
Litigation	8	8%	8
Report to authorities in the hospital and litigation	38	38%	38
Total	100	100%	100

Source: Field Survey, 2016

Thirty-nine percent (39%) of the respondent said they will resort to God and walk away, fifteen (15%) said they will only report to authorities in the hospital, eight (8%) stated that they will resort to litigation by involving their lawyers only while thirty –eight (38%) said they will report to authorities in the hospital and also resort to litigation.

It is sad to note that there are several cases of medical infraction which are never reported thereby putting others who will seek medical intervention in a difficult situation. Nigerians are adjudged to be religious people who always believe that any occurrence pleasant or otherwise is allowed by God therefore there is no need to question a medical error.

4.3.6 Laws Regulating Nursing/Midwifery Practice in Nigeria

Under this variable, the respondents were asked if they knew about the existence of laws that regulates Nursing/Midwifery practice in Nigeria.

Table 4.13

Option	Frequency	Percentage	Total
Yes	40	40%	40
No	60	60%	60
Total	100	100%	100

Source: Field Survey, 2016.

Forty percent (40%) stated that they are aware of the existence of such laws while sixty (60%) answered in the negative.

4.3.7 Identification of laws regulating Nursing/Midwifery practice in Nigeria

Under the variable, the respondents were give the list of the two major laws that regulate Nursing/Midwifery practice in Nigeria, which are Nursing and Midwifery (Registration, E.T.C) Act and Code of Professional Conduct for Nurses and Midwifes.

Table 4.14

Option	Frequency (Nursing and Midwifery (Registration, E.T.C) Act.	Percentage	Frequency (Code of Professional Conduct for nurses and midwifes.)	Percentage
Yes	8	19%	0	0%
No	32	81%	0	0%

Source: Field Survey, 2016

Thirty-Two (81%) of the respondent could not identify that they had knowledge about the Act but 8 (19%) said they had knowledge about the existence of the Act. On the Code of Professional Conduct for Nurses and Midwifes in Nigeria, it was not ticked at all, implying that the respondents do not have knowledge on the existence of the Code.

4.3.8 Internal Monitoring Mechanism for Nurses/Midwives at B.D.T.H

Under this variable, the respondents were asked if they were aware of any mechanism put in place by hospital to monitor the conduct of Nurses with patients.

Forty (40%) said they knew such mechanism existed however, sixty (60%) said they do not know if such mechanism existed within the hospital.

Table 4.15

Option	Frequency	Percentage	Total
Yes	40	40%	40
No	60	60%	60
Total	100	100%	100

Source: Field Survey, 2016

4.4 Patients' assessment of Laboratory Scientists/ Technicians at B.D.T.H.

The assessment ofLaboratory Scientists/ Technicians on the level of compliance with relevant laws towards patients and evaluation of the patients' knowledge on the existence and application of laws regulating their ethics was carried out through distribution of questionnaires to willing participant. The responses to the questions are hereunder represented in tables serially.

4.4.1 Visitation

Under this variable, the respondents were asked whether they had visited Laboratory Scientists/Technicians at Barau Dikko Teaching Hospital, Kaduna (B.D.T.H).

Table 4.16

Option	Frequency	Percentage	Total
Yes	90	90%	100
No	10	10%	100
Total	100	100	

Source: Field Survey, 2016

Ninety (90%) of the respondents stated that they had visitedLaboratory Scientists/ Technicians in Barau Dikko Teaching Hospital, Kaduna while ten (10%) said they had not visited.

This investigation was carried out to ensure that the respondents are individuals who have had interactions with the Laboratory Scientists/Technicians at B.D.T.H. thereby putting them in a position to be able to assess the quality of services offered by the Laboratory Scientists/Technicians with regards to the compliance with the relevant rules or otherwise.

4.4.2 Quality of Service Rendered by Laboratory Scientists/Techniciansat B.D.T.H

Under this variable, the respondents were asked if they were pleased with the quality of service rendered to them by the Laboratory Scientists/Technicians at B.D.T.H.

Table 4. 17

Option	Frequency	Percentage	Total
Yes	39	43%	39
No	51	57%	51
Total	90	100%	90

Source: Field Survey, 2016

Thirty -nine (43%) of the respondents stated that they were pleased with the quality of services rendered by Laboratory Scientists/Technicians B.D.T.H whereas, fifty-one (57%) of the respondents said they were not pleased with the quality of services rendered.

From the responses of the respondent to this question, it is obvious that the number of respondent that are not pleased with the quality of services rendered outnumber the respondents pleased with the services of the Laboratory Scientists/Technicians. This indices is not good for a health care institution considering the role of Laboratory Scientists/Technicians in diagnosis of ailments. Once the area of proper diagnosis of ailment is faulty, the entire management and services offered will be counterproductive. In further interview with some patient who agreed to speak after assurance of their identities, a female patient narrated her experience with the Laboratory Scientists/Technicians at B.D.T.H where she was sent by the doctor for a liver function test. That as soon as the test result was ready, the doctor told her that by the result before him, she had severe liver damage as result of hepatitis and nothing could be done for her so she should prepare for her death. She said she came out of the doctor's office crying but she

ran into a family friend who is a medical personnel; the medical personnel said she should go for a second opinion in another laboratory outside the hospital. The same test was repeated and it was discovered that nothing was wrong with her liver function. The interviewee said it is possible the test was never conducted at all after she had made payment or the specimen collected from another patient was wrongly labelled as her own. When we inquired to know what action she took, she said she vowed never to come back to the hospital again for any treatment because she does not have confidence in the Laboratory Scientists/Technicians available there. However, while she lamented the extra cost of having to conduct the test in another laboratory, she said she was grateful to God that treatment had not been commenced on her based on a faulty test result.

Another complaint that was received during the interview was on the issue of non-accountability for particularly blood donated by relatives of patients who needed blood transfusion. Where the blood donated is not used, attempts to get to know what becomes of the blood even to assist other indigent persons who need the blood becomes impossible because the whereabouts of this blood will not be accounted for. We confronted the Head of Department of the Laboratory with this issue, while he agreed with us that there could be such challenges due to insincerity on the part of some staff, he however noted that the patients do not come to report such cases to the management.

4.4.3 Duties ofLaboratory Scientists/Technicians

Under this variable, the respondents were asked if they knew that Laboratory Scientists/Technicians have certain duties towards them as patients.

Table 4.18

Option	Frequency	Percentage	Total
Yes	69	77%	69
No	21	23%	21
Total	90	100%	90

Source: Field Survey, 2016

Sixty-nine (77%) of the respondents answered in the affirmative while Twenty-one (23%) stated that they were not aware that the Laboratory Scientists/Technicians have duties toward them.

The level of relationship between Laboratory Scientists/Technicians and patients in medical institutions is not a very close one since because in most cases, the Laboratory Scientists/Technicians only come into contact with the patients when they take specimen or samples form the patient for analysis in the Laboratory and thereafter the result is usually sent to the doctor for interpretation to the patient and further information.

4.4.4 Identification of Duties of Laboratory Scientists/Technicians

Under this variable, list of some duties of Laboratory Scientists/Technicians was drawn up like duties to ensure that a patient's test result and information is kept confidential, to respect the dignity and privacy of a patient at all times, to ensure that any specimen collected is not tampered with or unaccounted for and the respondent were asked to tick the duties of the Laboratory Scientists/Technicians they know.

Forty- Eight (65%) of the respondent ticked all the rights implying that they knew they had the rights, while Twenty- six (35%) were unable to tick any of the duties listed.

The implication of this response is that the patients who seek medical help also know the duties of Laboratory Scientists/Technicians. Therefore, they are more likely to demand for them.

4.4.5 Redress to be Sought in Case of Infraction

Under this variable, the respondents were asked about action they will take if they notice and infraction of their medical rights by a Laboratory Scientists/Technicians.

Table 4.19

Option	Frequency	Percentage	Total
Leave it to God	41	45%	41
Report to superior authorities in the hospital	14	16%	14
Litigation	6	7%	6
Report to authorities in the hospital and litigation	29	32%	29
Total	90	100%	90

Source: Field Survey, 2016

Forty-one (45%) of the respondent said they will resort to God and walk away, fourteen (16%) said they will only report to authorities in the hospital, six (7%) stated that they will resort to litigation by involving their lawyers only while twenty- nine (32%) said they will report to authorities in the hospital and also resort to litigation.

It is sad to note that there are several cases of medical infraction which are never reported thereby putting others who will seek medical intervention to be at a disadvantage. Nigerians are adjudged to be religious people who always believe that any occurrence pleasant or otherwise is decreed by God.Therefore, there is no need to question a medical error.

4.4.6 Laws Regulating Laboratory Scientists/ Technicians practice in Nigeria

Under this variable, the respondents were asked if they knew about the existence of laws that regulates practice of Laboratory Scientists/Technicians in Nigeria.

Table 4.20

Option	Frequency	Percentage	Total
Yes	36	40%	36
No	54	60%	54
Total	90	100%	90

Source: Field Survey, 2016

Thirty -six (40%) stated that the aware of the existence of such laws while fifty-four (60%) answered in the negative.

4.4.7 Identification of Laws Regulating Laboratory Scientists/Technicians Practice in Nigeria

Under the variable, the respondent were give the list of the two major laws that regulate Laboratory Scientists/Technicians practice in Nigeria, which are the Medical Laboratory Science Council of Nigeria Act and Rules of Professional

Conduct for Medical Laboratory Scientist, Medical Laboratory Technicians and Medical Laboratory Assistants, 2011in Nigeria.

Table 4.21

Option	Frequency (Medical Laboratory Science Council of Nigeria Act)	Percentage	Frequency (Rules of Professional Conduct2011)	Percentage
Yes	4	11%	0	0%
No	32	89%	0	0%

Source: Field Survey, 2016

Thirty-two (89%) of the respondent could not identify that they had knowledge about the Act but Four (11%) said they had knowledge about the existence of the Act. On the Rules of Professional Conduct for Medical Laboratory Scientist, Medical Laboratory Technicians and Medical Laboratory Assistants, 2011in Nigeria, one of the respondents ticked it implying that they are not aware of the existence of such Rules.

4.4.8 Internal Monitoring Mechanism for Laboratory Scientists/Technicians at B.D.T.H

Under this variable, the respondent were asked if they were aware of any mechanism put in place by hospital to monitor the conduct of Laboratory Scientists/Technicians with patients.

Table 4.22

Option	Frequency	Percentage	Total
Yes	18	20%	18
No	72	80%	72
Total	90	100%	90

Source: Field Survey, 2016

Eighteen (20%) said they knew such mechanism existed however, seventy-two (80%) said they do not know if such mechanism existed within the hospital.

4.5 Interview with Health Care Providers at B.D.T.H

After the collection of questionnaires and interview with the patients at B.D.T.H. Kaduna, we also had interviews with some of the Medical Doctors, Nurses and Laboratory Scientists/ Technicians to give a deeper insight into this topic under review. For ease of understanding, we shall present the interview with the different practitioners separately to wit:

4.5.1 Interview with Medical Doctors

On interaction with the doctors, a larger number of those interacted with, showed a good knowledge of the existence and application of the laws regulating medical practice in Nigeria. All the doctors interacted with understood clearly the implication of negligent acts which includes withdrawal of practicing licence, civil litigation and imprisonment in case of a crime. It is therefore heart-warming to know that our medical doctors are not ignorant of the laws even though ignorance of the law is not an excuse. However, on whether they will be willing to testify

against their colleagues in suits involving the negligent acts of a colleague, some said they will, while others said they will not.

On further inquiry from those who said they will not testify against a colleague whose conduct falls below the standard required, among the reasons given for their refusal is that they will not want to expose their colleagues and that there are so many problems plaguing the health sector like overworking, poor electricity, inadequate blood services, inadequate training which should first be addressed before anyone can be held accountable for negligent act. On the issue of the staff being overworked, one of the interviewee said that the World health Organisation recommendation on doctor patient ratio is one doctor to 600 patient but that in Nigeria, it was a case of one doctor to over 4000 patients, this in itself he said affects the quality of services to be provided.

Furthermore, some of the doctors when asked on why standard practices as seen in developed countries are not observed in Nigeria, they maintain that the issue of lack of equipment and the level of poverty among patients are the challenges facing the health care system in Nigeria.

We also made inquiry whether any of the doctors had been invited to appear before the disciplinary Panel/Committee or to a court to give testimony for himself, or against a colleague; all the doctors said they had never had such situations. This we found unbelievable considering the fact that most of those who participated in the interview were over 10 years in the practice of Medicine.

We enquired whether there had been any case of negligence in the hospital against a Medical doctor and how it was treated. In the case of the Medical doctors, the following was reported as having occurred in the past:

1. Refusal to respond to call.
2. Delay in the treatment of a patient
3. Death resulting from negligent conduct during a surgical operation.

In the first case, the doctor's posting in the department was extended. In the second case, he was reprimanded while in the last case which lead to death, the Medical doctor was asked to resign, tried and punished by the disciplinary committee. However, the nature of punishment meted out by the disciplinary committee was not stated.

In the course of interaction with these set of practitioners, we inquired whether there were any in-house rules within the hospital to deal with those who violated the codes of the profession or who were negligent in the discharge of their duties. In response, the Medical doctors said such rules existed. However, on whether there was a system in place to compensate a victim of negligence within the hospital, some of the doctors interviewed said that there was a system in the hospital to compensate aggrieved patients in case of negligence froma medical doctor, others said there was no compensation to a patient who is injured or dies as a result of the negligent act of a practitioner.

4.5.2 Interview with Nurses/Midwives

From the responses of the patients, it is manifest that a good number of the patients do not think well of the Nurses. About 78% of respondents do not think that the Nurses are kind and courteous towards the patients. Based on this discovery, we had interview with few Nurses to know what was responsible for this perception by the patients. Few among the Nurses who agreed to participate on the grounds that their identities must be kept anonymous maintained that patients are disrespectful towards them.

Furthermore, noticeable was the fact that the general response of the Nurses was that of defense. A good number of the Nurses however displayed a fair knowledge of laws regulating nursing ethics and practice, but went all out to blame the patients for any wrong doing that may occur in the course of patient-Nurse relationship. The implication of this therefore is that they are not likely to take responsibility for any negligent act complained against them. The entire Nurse interviewed except the Chief Matron[9] of the Hospital stated emphatically that they will not testify against a colleague as it is their firmly believe that whatever is termed negligence is an unintentional act and a mistake for which they should be excused no matter the outcome.

Also, the attitude of the Nurses goes to establish what has been termed "the conspiracy of silence" wherein professional colleagues will not be willing to speak out against their colleagues even when they know of a wrongful conduct of such

[9]Haruna, H.L. and Umar H. (25th September, 2016)

colleague. This makes establishment of negligent act against such group of persons a near impossible task.

On interview with the Chief Matron of the hospital, while she pointed out the problem of the facility being over stretched thereby putting the Nurses under pressure, she emphatically stated that nothing should prevent a Nurse/Midwife from doing her best for her patient.

On whether there has been any case of negligence concerning a Nurse in the hospital, she cited a case though without the identity of those involved of two Nurses who were on duty and refused to attend to an emergency case and when they discovered the parent of the sick child was a doctor, they decided to act but in the bid to hurry up, they almost administered a wrong injection. The Nurses after facing the panel within the hospital were transferred to another hospital. This in our opinion does not solve the problem of negligence as she may continue with such acts because no disciplinary in line with the Act[10] was taken against her.

One obvious fact from the interview conducted was the fact that there was no record of practitioners who were ever disciplined. Everything is being done in-house by way of query, warning or transfer; nothing is ever mentioned about patients.

It appears that what we may be tempted to tag "silent acrimony"[11] that exist between Nurses and other health care providers particularly medical doctors has

[10]Nursing and Midwifery (Registration e.t.c) Act Cap. N14

[11] It is common knowledge that there exist a battle of supremacy between nurses and doctors. The Nurses consider themselves professional and as such have been in this battle for them to be accorded the recognition as professionals in their own right.

impacted on the Nurses and this fact has put them on the defensive in the discharge of their duties.

Noticeable in the facility also is the fact that it is overstretched as the staff ratio is not proportional to the patients who attend the Hospital. The resultant effect of these factors as noted by the health care providers is that the few staff available are forced to work under pressure and as such are likely to make avoidable mistakes which an outsider can tag as a negligent act. For instance, the Chief Matron had noted that the required ratio of Nurses to patient according to the World Health Organization recommendation is 1:4 but the Nurses in the facility are confronted with a situation where 2-3 Nurses are left to cover more than 30 patients on admission with varying degrees of situations needing attention.

In the course of interaction with these set of practitioners, we inquired to know if there were any in-house rules within the hospital to deal with those who violated the codes of the profession or who were negligent in the discharge of their duties; the Nurses/Midwives said such rules existed but that there was no way of compensating a patient who is injured or die as a result of the negligent act of a Practitioner.

4.5.3 Interview with Laboratory Scientists/Technicians

The knowledge of the patients on the existence and the application of law regulating the practice of Medical Laboratory Science is fair. Also, the practitioners interacted with, displayed a good knowledge of the existence and application of the laws regulating the medical laboratory science in Nigeria. One

of the interviewee[12]explained measures put in place to ensure compliance with the ethics of the profession like the provision of a suggestion box to receive complaints from members of the public. He however noted that the box is not utilized as no complaints have come to the notice of the management through the box.

On inquiry as to whether there had been any case (s) of negligence reported against any Medical Laboratory Scientist/Technicians, only one case was mentioned. It involved a practitioner who mismatched blood used for transfusion on a patient, it is common knowledge that such mishap could be life threatening, the negligent officer was suspended from work for some time. One clear fact from the findings above is that it was not clear if anything was paidto the patient in form of compensation.

In the course of interaction with these set of practitioners, we inquired to know if there were any in-house rules within the hospital to deal with those who violated the codes of the profession or who were negligent in the discharge of their duties.The Medical Laboratory Scientists/Technicians said such rules existed and that provisions have been made for compensation to a patient in appropriate cases.**Discussion**

Comparing the interview with the relevant personnel to this research and the patients, it is observed that there are certain areas of discrepancies. On the issue of whether there was a system or mechanism in place to compensate victims where a practitioner is found to be negligent, we found that while some of the

[12]Haruna, H.L. and Banda, J.M. (5th October,2016)

practitioners said such mechanism existed within this hospital, others said it did not exist. The contradictions and lack of unanimity on the existence or otherwise of a compensation for injured patients or relatives of a dead victim of a negligent act of any medical personnel points to the fact that such arrangement either does not exist or is not reasonable enough to compensate a victim.

Comment [u1]:

Attempts to know if there were cases of negligence against the practitioners under review was not taken kindly by some persons we interviewed. Some of the medical doctors said there were a few cases while others said there was none. The Nurses/Midwives did not state if there was any case involving any of them, the inference that can be drawn from their response is that they were not willing to say if there was a complaint of negligence against any of its members and they will also not be willing to speak out against any colleague. Also the Medical Laboratory Scientist/Technicians said there was one case involving a practitioner.

As earlier noted, there appears not to be record of cases of negligence within the hospital of practitioners who had been disciplined for negligent conduct. The case of *Mrs. Nancy Seth &1ors vs Barau Dikko Specialist Hospital Management Board &ors*[13] which cut across all the above practitioners was never mentioned by any of the respondent to the interview. In this case, the plaintiff came into the hospital which was then known as Barau Dikko Specialist Hospital, Kaduna for delivery but for some reasons, the nurse on duty concluded that she may not be able to have a normal delivery and therefore sent for the doctor on call. The husband of the plaintiff was asked to make blood available in case the

[13]Suit No: KDH/KAD/163/08 (Unreported)

plaintiff may need it. This was complied with. The doctor who was called several times from about 8 am did not make it to the hospital until 6 pm in the evening. A caesarean operation was carried and the plaintiff lost the child. The blood that was donated was not used for the plaintiff but same could not be accounted for by the Laboratory staff or the theatre Nurse. The plaintiff's injury equally got infected in the course of her stay in the hospital and she sued. The case did not proceed to trial because the hospital management accepted responsibility for the negligent acts of its staff involved in the treatment of the plaintiff and opted for out of court settlement for which monetary compensation was paid. It is however important to point out here that both the plaintiff and her husband are legal practitioners.

Finally, it was difficult getting particularly the health care practitioners to participate in the research as the topic "medical negligence" sounded like they are being witch-hunted for services which they claim are being rendered under very difficult circumstances where requisite working equipment are not made available to them.

Several of the participants rather chose to participate under conditions that their identities will be kept anonymous. Also the work load on the medical practitioners was a challenge in getting them to participate adequately.

In conclusion, investigation into the reality or otherwise of medical negligence in Barau Dikko Teaching Hospital revealed among other things the fact that patients are not as ignorant as the researcher had assumed them to be as to the existence of their medical rights. The patients and practitioners alike displayed a good knowledge of the existence of laws which seek to regulate the relationship

between medical practitioners and their patients. However, action to be taken in the event of infraction leaves much to be desired considering the response of those who are willing to go through the rigours of litigation to demand their medical rights. The fact that negligence exist as revealed by the response of respondents to the questionnaire and interviews conducted implies that action needs to be taken to ensure that confidence is reposed in medical institutions across the country. Also, while the challenges in the health sector cannot be taken as excuse for medical practitioners to abdicate from their duties and cause needless sufferings to patients on account of negligent acts, the circumstances under which they have to work without necessary equipment, modern facilities, adequate staff strength notwithstanding.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

Overtime, medical actions have created legal concerns when they fail to conform to the required standard as provided under the laws regulating medical practice. While developed jurisdiction have a more radical approach of dealing with medical infractions, suffice to state that Nigeria is still at its infancy stage with few cases going before the regular court with little success due to the myriads of problems plaguing our judicial system ranging from inability to secure expert evidence, illiteracy, slow pace of administration of Justice to poverty to mention just a few. Notwithstanding these myriads of problems, with a little more effort and collaboration between the medical and legal fields, there may be increased sanity in the medical practice as offenders will be adequately dealt with and the injured person adequately compensated for injury suffered. Medical negligence is failure on the part of a medical practitioner to attend to his duties to a patient which result in damage or injury.

Statutes[1] and case laws make clear provisions on actions that could amount to negligence. These action ranges from wrong diagnosis of the patient's ailment to lack of consent to treat the patient. For negligence to be established, some elements have to be proved. First the patient must establish that there is a duty of care towards him from the health care provider. Second, the fact that such duty

[1]Medical and Dental Practitioners Act. Cap M80 Laws of the Federation of Nigeria 2004, Nursing and Midwifery (Registration, e.t.c) Act. Cap N143 Laws of the Federation of Nigeria 2004 and Medical Laboratory Science Council of Nigeria Act. Cap M25 Laws of the Federation of Nigeria 2004.

had been breached by the practitioner and lastly that damage/injury caused has resulted from the breach of that duty.

Negligent acts attract sanction such as litigation which maybe criminal or civil in nature as well as disciplinary actions from relevant bodies as created by law. The outcome of a civil litigation/action when successful maybe award of monetary compensation to the injured party but when unsuccessful, the injured party will go without remedy. In civil action, the burden of proof is solely on the party who alleges, which is often the injured person or his relatives and for negligence to be successfully proved, the claim must be sufficiently established to the satisfaction of the court as required by law. Suffice to note at this point that the challenge of proof is major impediment in establishing civil claims against health care providers largely due to the fact that the evidence required to establish the claim is usually in the domain of the health care providers who in most cases are unwilling to testify against themselves. Also, securing the attendance of persons who are deemed experts by the court is not a small task for victims who in most cases are poor and unable to afford the services. There is however a little ray of hope when there is an apparent damage which points to only one conclusion i.e that someone was negligent, the court in such circumstance will apply the doctrines of *Res Ipsa Loquitor* to compensate the injured person[2].

Similarly, where a negligent act has elements of crime, the medical practitioner may in addition to civil action face criminal prosecution which could

[2] *Igbokwe vs University College Hospital Board of Management* (1963) W.N.L.R.173.

attract imprisonment, fine or both upon conviction depending on the gravity of the offence.

Disciplinary proceedings can be commenced in addition to civil and criminal action against negligent acts. Where negligence is established before relevant disciplinary tribunals, the erring practitioner maybe reprimanded, suspended from practice for a time or have his name struck off the roll of such practitioners in Nigeria depending on the nature and gravity of the offence.

Health care providers are however not left without defences when facing accusation as our system of administration of justice creates room for anyone accused to defend himself before any verdict is passed on his action. Defences include limitation of action, contributory negligence amongst others. Where an accused practitioner successfully pleads a defence, it may lead to dismissal of the suit against him, reduction of the compensation to be awarded or acquittal in case of a criminal allegation or mitigation of sentence.

The research carried out at the Barau Dikko Teaching Hospital Kaduna led to some interesting discoveries like the fact that more patients have become aware of their medico-legal rights are now ready to demand for them. The implication of this is that the medical practitioners must brace themselves up to living up to their responsibilities because the patients are no longer ignorant as to what constitutes their rights.

Noticeable in the facility also is the fact that it is overstretched as the staff ratio is not proportional to the patients who attend the Hospital. The resultant

effect of these factors as noted by the health care providers is that the few staff available are forced to work under pressure and as such are likely to make avoidable mistakes which an outsider can tag as a negligent act. Also, they may not be able to promptly and adequately attend to patients as often as their condition may require. While these are impediments on the path of practitioners to fulfil their obligations, it is enjoined that the do their best within the limits of the resources available.

5.2 Findings

From the forgoing, the following findings are made:

1. Often, cases that go before the Medical and Dental Practitioners Disciplinary Tribunal have better success rate in that it often end up in favour of the complainants than cases before the regular courts. This could be attributed to the fact that upon receipt of complaint against a medical officer, the panel is empowered to carry out investigation and where a *prima facie* is made out, the practitioner will be invited to defend himself before the Tribunal. Also, at the Tribunal, the prosecution which is the Council[3]employs its best hand as witnesses to establish the case against the erring professional. From the eleven cases decided at the Medical and Dental Practitioners Disciplinary Tribunal cited in this work, about 8 were successful. However, the Tribunal does not have power to make orders as to compensation of the victim.

[3] Medical and Dental Practitioners Council

2. It takes a person who is financially stable and determined to be able to maintain an action on medical negligence whether at the Tribunal or in civil litigation as time and resources required to reach a logical conclusion is quite enormous. Some examples are as follows: the case of *Unilorin Teaching Hospital vs Abegunde*[4]where a patient died took 7 years to get to the Court of Appeal, *Abi vs C.B.N*[5], the patient became deaf after taking treatment at a Health Care Facility, the action at the High Court commenced in 2004 and the Court of Appeal judgment was delivered in 2011, a period of about 8 years, *Ojo v. Gharoro*[6]where a surgical needle was left in the abdomen of the patient commenced in 1993 and got up to the Supreme Court with judgment delivered in 2006, a period of 13 years and *Dr. Rom Okekearu v Danjuma Tanko*[7]where the patient's finger was amputated without consent occurred in 1991 and final judgment delivered in 2002, a period of 11 years.

3. That the Tribunal usually refuse to act if the case is already before the regular court and this extends the length of time for an injured person to get redress because the Tribunal will wait for the outcome of the court proceeding if the matter is already in court and where the matter is not in court, the complainant will have to wait for the outcome of the Tribunal before proceeding to the court within which time issues of Statute of Limitation may become an obstacle where the medical officer is a public

[4] (2015) N.W.L.R (Pt.1447)421
[5] (2012)3 N.W.L.R(Pt.1286)1
[6] (2006) 10 N.W.L.R, (Pt.987) 173
[7] Supra p.39.

officer within the definition of the Act[8] or other Statute of Limitation Laws. In the case of Mrs. Tina Eleojo Collins, the first suit[9] filed had to be withdrawn for the Tribunal to assume jurisdiction and after 2 years at the Tribunal, the effort to re- file the suit has been stalled by the courts ruling that the matter is statute barred and same is currently on appeal.

4. Relying on the strength of the responses to question 4 of the questionnaire wherein about 79% of the respondents were able to identify what constitutes their medico-legal rights, it is safe to conclude that the days of ignorance on what constitute medico-legal rights are gradually fading away. The implication of this knowledge is that Nigerians are becoming more conscious of their legal rights as it affects medical practice and as such, they are more likely to speak up and take action where these rights are infringed upon.

5. It was noted in chapter four that there was no clear record of staff that have undergone disciplinary action for violating rules of ethics in the course of work. This made it difficult for the researcher to have precise names, dates and verdict of any practitioner who had been disciplined in the hospital.

6. It was observed in chapter one that in countries where Medical Malpractice suits are well entrenched in their practice of law, the burden of compensation where awarded is so huge that it could bring a thriving medical career of a practitioners to a sudden end. One of the means devised

[8] Section 2, Public Officers Protection Act Cap P41, L.F.N.2004
[9] P*st. Collins Adah vs The Minister of Health &2ors* FHC/LKJ/C5/18/12(unreported)

in such countries is to take up insurance policies for individual practitioners and medical institutions so that Medical Malpractice claims if they arise, are usually handled by the insurance company which may have less damaging effect on the practitioners. In some cases also, Medical Associations like our own Nigerian Medical Association take up a collective insurance for its members from which pool medical malpractice claims are often paid.

5.3 Recommendations

Accordingly, the following recommendations are hereby put forward:

1. The Legislature should look into expanding the jurisdiction of Medical and Dental Practitioners Tribunal to include award of cost to the nominal complainant in deserving situations since the same practitioner whose conduct is subject of adjudication before the tribunal is the same defendant before the regular court. It is this researcher's belief that it is economically expedient for the Tribunal to be given the jurisdiction to award cost and anyone who is not satisfied with the award can appeal the decision instead of a situation where the complainant who most times is already drained financially to be pushed back and forth between the Tribunal and the court on issues bordering on the same set of facts. Alternatively, where the jurisdiction of the Tribunal cannot be increased to include monetary awards, the verdict of the Tribunal can be taken to the High Court for assessment of damages only where the practitioner is found guilty.
2. It is recommended that considering the peculiar circumstance of negligence

arising from doctor patient relationship, cause of action arising there from can be one of the exceptions to the laws creating time limitation within which actions can be instituted.

3. The Judiciary needs to look into strengthening Alternative Dispute Resolution (ADR) mechanisms to tackle matters arising from cases of medical negligence. Also, most of the cases of medical infractions that goes unnoticed affect the poor and indigent members of the society. Hence, Non-Governmental Organization (NGO) and Legal Aids services need to be adequately funded to carry out aggressive campaigns to enlighten members of the public on their medical rights on acts that amount to negligence. In addition to the campaigns, free legal services should be provided for those who cannot afford to fund litigation cost considering the financial burden of funding court litigation.

4. It is recommended that Rule 40[10] and Rule 20[11] of the Code of Medical ethics 2008which restrains practitioners from exposing professional colleagues involved in negligent act be repealed so that medical doctors can be totally free to assist by testifying in favour of an already injured and suffering person whose pains can only be better imagined against a professional colleague. The Nigerian Medical Association should look at the examples of countries like Canada and Japan where the medical associations assist patients in mediating in an allegation of negligence to settle the matters quickly and avoid the waste of time and resources

[10]Code of medical Ethics 2008
[11]MLSCN, Rules, 2011

dissipated in regular litigation which seldom succeeds due to several bottle necks already discussed. Also, the Nigerian Medical Association (N.M.A) is encouraged to consider the provision of free assistance in terms of expert evidence to victims of medical negligence as this will ensure that confidence is reposed in the medical system. The level of confidence in the Nigerian medical system is currently low as people prefer to run to even some east African countries for minor ailments that can be handled within the country on the reason that when something goes wrong someone will be held accountable. When the N.M.A steps in this way, it will be clear to all that they have nothing to hide and that they do not deliberately shield any practitioner who has erred. This will eventually lead to maintenance of high standards in Medical practice and millions of dollars lost annually to medical tourism may likely remain within the country for developmental purposes.

5. Medical practitioners must adhere strictly to the ethics of the profession because with the current level of the knowledge of patients on what constitutes their medical rights, they are more likely to demand for it and take action when there is non-compliance. To therefore avoid a situation where medical institutions will become burdened with the attendant consequences of litigation, they should carry out regular training and re-training of staff to educate them on the rules of ethics, its implication and legal effect as it is believed that health care providers may not perform below the standard expected if they are properly guided and trained. This is

apt as the individuals are equally becoming enlightened on their Medical rights.

6. It is recommended that proper record of staff who have been disciplined on general offences should be kept by the Hospital management to assist researchers and also serve as a deterrent to others who may deliberately or mistakenlywant to ignore the rules of professional ethics regulating such profession.

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QUESTIONNAIRE

This is a questionnaire developed by a Post Graduate student of Faculty of Law, Ahmadu Bello University, Zaria, to get the response of recipients on the research topic "Analysis of Legal Frame Work for Professional Negligence by Health Care Providers in Nigeria: A Case Study of Barau Dikko Teaching Hospital, Kaduna**".**

Please be assured that all information will be treated with utmost confidentiality.

PERSONAL DATA:

- Level of Education:……
- Age:……
- Sex:……

Please complete the questionnaire by ticking the appropriate alternative

SECTION A (Patients' Assessment of Medical Practitioners/ Doctors)

1. Have you ever visited a doctor? Yes ( ) No ( )
2. Are you pleased with the services of doctors in this Hospital? Yes ( ) No ( )
3. Do you know that you have certain rights as it relates to patient-doctor relationship? Yes ( ) No ( )
4. If your answer to no. 3 above is yes, from the list below, kindly identify any of the rights you know:
   i. That my consent must be sought and obtained before any medical examination is carried out on me.
   ii. That I must consent to any form of surgical intervention only after explanation of the consequences and implications.
   iii. That my medical records must be kept confidential.
   iv. That I have the right to refuse any treatment.
   v. That every treatment to be undertaken on me must be explained to me in form of risks, possible reactions and side effects.

   Answers:----------
5. Tick what action you will take if you feel aggrieved by the actions of a doctor
   i. I will leave everything to God to fight for me
   ii. I will report to superior authourities within the hospital
   iii. I will involve my lawyers and go to court
6. Do you know that there are laws regulating medical practice in Nigeria? Yes ( ) No ( )

7. If your answer to (6) above is yes, please state the laws you know.
    i. Medical and Dental Practitioners Act. Yes ( ) No ( )
    ii. The Code of Medical Ethics in Nigeria. Yes ( ) No ( )

8. Do you know if there exists any mechanism in this hospital to monitor the conduct of medical doctor's relationship with patients? Yes ( ) No ( )

SECTION B (Patients' Assessment of Nurses/Midwifes)

1. Have you ever visited a Nurse/Midwife? Yes ( ) No ( )
2. Are you pleased with the services of Nurse/Midwife in this Hospital? Yes ( ) No ( )
3. Are the Nurses/ Midwives kind and courteous towards you? Yes ( ) No ( )
4. Identify any of the duties of nurses/midwifes known to you
    i. To correctly carry out the instruction of doctors in treating you
    ii. To adequately inform, seek and obtain your consent for any nursing intervention?
    iii. To be friendly to you as a patient?
    iv. To send for a doctor in cases of abnormal or threatened danger in labour cases?

    Answers:----------
5. Tick what action you will take if you feel aggrieved by the actions of a Nurse/Midwife
    i. I will leave everything to God to fight for me.
    ii. I will report to superior authorities within the hospital.
    iii. I will involve my lawyers and go to court.
6. Do you know that there are laws regulating Nursing/Midwifery practice in Nigeria? Yes ( ) No ( )
7. If your answer to (6) above is yes, are you aware of the operations of the following laws:

i. Nursing and Midwifery (Registration, E.T.C) Act.

ii. Code of Professional Conduct for nurses and midwifes.

Answer:----------

8. Do you know if there exists any mechanism in this hospital to monitor the conduct of Nurses/Midwifes' relationship with patients? Yes ( ) No ( )

SECTION C (Patients' Assessment of Medical Laboratory Scientists)

1. Have you ever visited a Medical Laboratory? Yes ( ) No ( )

2. Are you pleased with the services of Laboratory practitioners in this Hospital?
   Yes ( ) No ( )
3. Do you know that Laboratory practitioners have certain duties towards you? Yes ( ) No ( )
4. If you answer to No. 3 above is yes, kindly identify any of the duties of Laboratory Practitioners known to you from the list below:
   i. Duty to ensure that your test results and information are kept confidential?
   ii. Duty to respect your dignity and privacy at all times?
   iii. Duty to ensure that any specimen collected is not tampered with or unaccounted for?
5. Tick what action you will take if you feel aggrieved by the actions of a Medical Laboratory Practitioner
   i. I will leave everything to God to fight for me.
   ii. I will report to superior authorities within the hospital.
   iii. I will involve my lawyers and go to court.

Answer:……

6. Do you know that there are laws regulating Laboratory practitioners practice in Nigeria? Yes ( ) No ( )

7. If your answer to (6) above is yes, please state any of the laws you know from the list below.
   i. Medical Laboratory Science Council of Nigeria Act.
   ii. Rules of Professional Conduct for Medical Laboratory Scientist, Medical Laboratory Technicians and Medical Laboratory Assistants, 2011

   Answer:----------
8. Do you know if there exists any mechanism in this hospital to monitor the conduct of Medical Laboratory Practitioners' relationship with patients? Yes ( ) No ( )