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The curious case of medical negligence in Nigeria

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ABSTRACT:

The preponderance of medical errors is not aimed at individual irresponsibility or the actions of a particular group of people. Dominantly, it is rather a collective dysfunction. Nigeria's healthcare systems have suffered criticisms borne out of the fact that most healthcare systems experience great deal of dearth in terms of availability of man power and infrastructure despite available medication. The statistics of the patients who have been in the receiving end of the problem are mostly of the lower class in rural communities who are in the most. The upper class is also affected but often remedies are sought by seeking treatment elsewhere. As a result most of the incidences are not recorded or filed as lawsuit. Ushie, Salami, Jegede & Oyetunde (2013) recently revealed from their study which examined patients' knowledge and perceived reactions to medical errors from 269 in-patients conducted among health caregivers in the University of Calabar Teaching Hospital, Nigeria, show that majority (64.5%) of respondents reported annoyance and disappointment with medical errors. Severity of error was (88.5%) and the perception of negligence mediated intention to litigate. Voluntary disclosure significantly reduced patients' intention to litigate caregivers Private and public hospitals must be effectively monitored to the effect that medical certifying bodies must provide or show that the recipient of such certification have proven or demonstrated integrity, competence, and professionalism in the medical profession. Effective monitoring must be in place to routinely and consistently observe medical inventories of public and private hospitals. Human right advocacy groups should be more proactive in this case, in helping patients with the litigation process which is usually expensive, time and resource consuming.

Keywords: *medical negligence, medical errors, in-patients , litigation*

INTRODUCTION

The reality of the matter is that, there is an epidemic of medical negligence and that 80 percent of these incidences involved death or serious injury to unsuspecting patients, bringing preventable, needless and untold grief to families, literally leaving patients worse than they were before they came to the hospital for assistance. One of a series of reports from the American association for justice on medical negligence reported on how two seminal studies on patient safety have shown that not only are hundreds of thousands of patients injured every year in the health care system, but very few of them sue.

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According to the Institute of Medicine, 98,000 people die in hospitals each year as a result of preventable medical errors, costing the health care system $29 billion in excess costs.

In Nigeria, Ushie, Salami, Jegede & Oyetunde (2013) recently revealed from their study which examined patients' knowledge and perceived reactions to medical errors from 269 in-patients conducted among health caregivers in the University of Calabar Teaching Hospital, Nigeria, show that majority (64.5%) of respondents reported annoyance and disappointment with medical errors. Severity of error (88.5%) and the perception of negligence mediated intention to litigate. Voluntary disclosure significantly reduced patients 'intention to litigate caregivers. Frustration/anger was not more likely to influence patient to litigate than feelings of resignation/forgiveness. Financial difficulties arising from error had an important influence on litigation. Health caregivers admitted possibility of errors; and insisted that although notifying patients/relatives about errors is appropriate, disclosure was dependent on the seriousness, health implications and the causes. Medical malpractice is professional negligence by act or omission by a healthcare provider in which the treatment provided falls below the accepted standard of practice in the medical community and causes injury or death to the patient, with most cases involving medical error. Failure of a Medical practitioner, and/or Hospital to observe their respective duties of care as required by law will result in breach of a specified duty.

Examples of situations where the required duty have been breached are; adverse drug events, improper transfusions, surgical injuries and wrong-site surgery, suicides, restraint-related injuries or deaths, falls, burns, pressure ulcers and mistaken patient identity. Studies have shown that majority of adverse incidents occurring in healthcare delivery are preventable mistakes (Holbrook, 2003; Forebode, 2006; Akintola, 2002). Failure to take medical history and later results to damage, for a medical practitioner to properly treat or diagnose a patient, he needs to take full medical history of that patient. If a doctor fails to take such history, he will be liable in negligence. In Malaysia, it was recently reported that, a doctor treated a patient (now deceased) without enquiring into the medical history of the patient, the Court held him liable for negligence as a result of the breach of duty to enquire into the medical history of the deceased. A medical practitioner who fails to listen and act on the complaint of complications made by a patient shall be liable in negligence. Many of such incidences have been reported there was an actual case of a young married couple who took their child for a medical checkup because the child was feverish, after due treatment and consultation, the child and unsuspecting parents were discharged. The following day the child had seizures and went into a coma, laboratory results later revealed that the child had been given an overdose of a particular prescribed medication. There are existing laws in Nigeria that curtail the excesses of doctors and expose incompetency.

However, it is important that patients who suffer from this negligence be made to seek redress where such issues are noticed or better still, that the issue of negligence or incompetence is drastically reduced or almost made nonexistent. There are a lot of cases involving medical malpractice characterized by gross incompetency mostly in private or individually funded hospitals. This is not to say that, government funded hospitals are free of medical malpractice but

the incidences are fewer in Nigeria. The case of medical malpractice is quite common mostly in privately and publicly funded hospitals, as several recorded cases have been reported in daily newspapers. But rather unfortunately, most of these cases do not see the light of day, as the medical staffs of these hospitals are quite ready to apologize and proffer compensations to families that are so affected in other to curtail or "hush" the spread of such incidences.

The Supreme Court of Nigeria defined Negligence to mean: "Lack of proper care and attention; carelessness behaviour or conduct; a state of mind, which is opposed to intention; the breach of duty of care imposed by common law and statute resulting in damage to the complaint". Medical malpractice is fraught with many ills, sometimes leading to the demise of the affected patient or near death experience for the patient under medical treatment, followed by remedial complications. There are many instances where medical malpractice can be pointed out are: causing an injury to a patient while undergoing surgery, errors such as failure to ensure adequate sterilization, the choice of the wrong drug treatment, premature discharge of patient from hospital, failure to spot the warning signs of infection, failure to remove foreign objects inserted into a patient foreign object may include; scalpel, forceps, retractors or swabs. Error in diagnosis, failure to diagnose is not actionable per se, unless the patient so affected, can prove that failure to properly diagnose results into injury. It is not enough that a medical practitioner owes a duty of care; the breach of the duty of care, it is also important to show that there is consequential damage as a result of the breach; otherwise, the claim of the patient will fail.

As mentioned earlier, there are many incidences in Nigeria involving medical malpractice but it usually "hushed up" before it gets to the public, this is due in no small amount to poverty, ignorance, and illiteracy among patients and to some extent the level of religiosity of the family members of such patients. It is pertinent to note here, that there are several needless funeral ceremonies, if the families of the deceased where a little more enlightened about medical procedures, right of patients in hospital, the right to ask questions, and give reasons for any particular use of medical material. This is not asking patient or family members to become doctors, but that a lot of mishaps and accidents can be averted or forestalled if the families and care givers of the patient have little knowledge about medical processes

The distinction has to be made between medical mistake which is excusable in law and mistake which will constitute negligence. In medical mistake, the law regards as excusable this is because the court accepts that ordinary human fallibility preclude liability, while in mistake that constitutes negligence, the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the reasonably skillful or competent doctor. The true position is that an error of judgment may, or may not, be negligent; it depends on the nature of the error. If it is one that would not have been made by reasonably competent professional man professing to have the standard and type of skill that the defendant holds himself out as having, and acting with ordinary care, then it is negligence. If, on the other hand, it is an error that such a man, acting with ordinary care, might have made, then it is not negligent. It should be noted that gross mistake is always treated as medical negligence.

The principle of negligence as it relates to medical practice is quite cumbersome and the stakes are always high for both the hospital and the patient so affected. Generally, in negligence, both the legal burden and evidential burden of prove is placed on the claimant. Therefore, in medical practice, a patient who is aggrieved from the way he/she was treated; or he/she does not give consent to treatment shall have cause of action in negligence. In the light of this, a patient is expected to prove that the medical practitioner owes him a duty of care; he has breached this duty, and the breach result in consequential damage. On duty of care, a medical practitioner is not expected to be a miracle worker who will guarantee cure, but he is expected to carry out the duty of care owed to the patient on the standard of care set by law. However, if a medical practitioner treats in contrary to the standard of care set by law, he may be liable in negligence. Also, a Hospital equally has its own duty of care owe to a patient on administrative matters, such as employment of competent staffs, provision of safe equipment, etc. the standard of care expected of a Hospital is that of are assumable hospital placed in the same category. It merits mentioning that failure of a medical practitioner or Hospital to exhibit respective standard of care will amount to breach of duty of care which may result in to damage.

Harvard Medical Practice study (1990) reports that the burden of proving negligence is placed on the patient, however, there are instances where the patient will be unable to prove or proffer evidence to prove negligence, hence, the need for the doctrine of *Res ipsaloquitor*. If successively pleaded and upheld, the medical practitioner or the Hospital shall be liable in negligence. It merits mentioning that justice is not a one-way traffic, in light of this, a medical practitioner or Hospital will have opportunity to defend itself and plead certain defense (Contributory negligence or *Volenti non fit in juria*) in order to mitigate or completely exonerated from liability in negligence. In negligence generally, it is not in doubt that to prove negligence is not an easy task, at times it requires calling of expert witness to give expert evidence before a patient will succeed in an action in negligence. This should not stop families of those so affected this is because, if these series of malpractice continues goes unchecked, hospitals and medical Practioners will not be made accountable and in so doing, leading to gross misconduct and absolute professional recklessness.

To conclude, private and public hospitals must be effectively monitored to the effect that medical certifying bodies must provide or show that the recipient of such certification have proven or demonstrated integrity, competence, and professionalism in the medical profession. Effective monitoring must be in place to routinely and consistently observe medical inventories of public and private hospitals. Human right advocacy groups should be more proactive in this case, in helping patients with the litigation process which is usually expensive, time and resource consuming.

Professor Oluwatelure a consultant clinical psychologist of the department of Psychology Adekunle Ajasin University Ondo State, suggested that It will be necessary to encourage managers of the health care delivery system in African countries to increase education by organizing public lectures and workshops on the role that families, caregivers, custodians and the

general public, need to play to reduce this escapable, needless and preventable occurrence. Enlightenment programmers are needed at various levels of the society to reduce the level of ignorance, and to foster necessary confidence to engage doctors and nurses with questions as to better understanding the reasons for any medical intervention, if medical Practioners are of the opinion that there every procedure will be met with questions from the knowledgeable patients or care givers, there will be less room for negligence and quackery.

REFERENCES

1. Akintola, S.O. (*2002)* "Medical Negligence in Nigeria: An Appraisal" *University of Ado-Ekiti Law Journal, Vol.1, pp.35-46*
2. Harvard Medical Practice Study (1990). Patients, Doctors and Lawyers: Studies of Medical Injury, Malpractice Litigation, and Patient Compensation in New York.
3. Holbrook, J. (2003). The Criminalization of Fatal Medical Mistakes. *British Medical Journal*; 327(7424):1118-9.
4. Institute of Medicine (1999). To err is human
5. Oluwatelure, F.A (1996) A scale to measure attitude to hypertension. *Journal of Educational Research and evaluation;* 1 (2), 251 – 255
6. Oyebode, F. (2006) Clinical Errors and Medical Negligence. *Advance Psychiatric Treatment*; page, 12(3).
7. Ushie, B.A., Salami, K. K., Jegede, A. S.,& Oyetunde, M. (2013) Patients' knowledge and perceived reactions to medical errors in atertiary health facility in Nigeria, African Health Sciences 2013; 13(3): 820 - 828 http://dx.doi.org/10.4314/ahs.v13i3.43