



THE LAW AND ETHICAL CODES OF MEDICAL
MALPRACTICE IN NIGERIA: AN ANALYTICAL
STUDY

BY

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ABSTRACT

Globally, medical profession is a career dedicated to the health service of humanity. It is a complex, risky, challenging and specialized field of learning where simple act, error or omission can be sufficient to trigger litigation against the practitioner. Medical profession is increasingly confronted with legal issues involving medical malpractice. In Nigeria, medical malpractice incidences have been on the increase in spite of the codes of medical ethics and the laws that regulate and guide the practice of medicine. These malpractices range from wrong diagnosis, poor infrastructure, failed surgery to failure to attend promptly to a patient who needs urgent attention. The researcher adopts the qualitative method and the findings revealed that medical malpractice in Nigeria is indeed on the rise. This research seeks to examine various causes of medical malpractice, the code of ethics and the criminal codes adopted in Nigeria. This research will also examine the legal liability of medical practice in both UK and Malaysia and learn from their experiences. The research also examines the views of the Islamic medical experts in the Malaysian context since the country has built up a reputation unique to serving the *Ummah* in the field of medicine.

خلاصة البحث

تتزايد المشاكل القانونية التي تواجه مهنة الطب على الصعيد العالمي، والتي تتعلق الممارسات الطبية الخاطئة. وفي نيجيريا بشكل خاص، تتزايد الممارسات الطبية الخاطئة على الرغم من وجود لائحة أخلاقيات المهنة الطبية والقوانين التي تنظم الممارسات الطبية. وتتمثل هذه الممارسات الخاطئة في التشخيصات الخاطئة، وضعف البنية التحتية، والعميات الجراحية الخاطئة، وعدم الاهتمام بالمريض الذي يحتاج إلى العناية العاجلة. وتم توظيف الأسلوب النوعي لهذه الدراسة. وأوضحت الدراسة أن الممارسات الطبية الخاطئة في نيجيريا. تطرق الباحث إلى دراسة الأسباب المؤدية إلى الممارسات الخاطئة، ولائحة الأخلاقيات والقانون الجنائي النيجيري. وتناولت الدراسة المسؤوليات الجنائية للممارسات الطبية الخاطئة في كل من المملكة المتحدة وماليزيا بغية الاستفادة من تجاربهما. كما تمت دراسة آراء المسلمين المتخصصين في الطب في ماليزيا حيث إن ماليزيا تحظى بسمعة في خدمة الأمة في مجال الطب.

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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In the Name of Allah, the Most Beneficent, the Most Merciful

*This work is dedicated to the memory of my parents: Alfa Tijani Alabi Falola and
Madam Nimotallahi Awero Falola. Oh Allah! By Your Mercy, reward them with the
highest Paradise.*

Ameen.

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LIST OF ABBREVIATIONS

AC	Appeal Court
ADR	Alternative Dispute Resolution
AIDS	Acquired Immune Deficiency Syndrome
ALL ER	All England Report
AMA	American Medical Association
AMR	All Malayan Reports
ANLR	All Nigerian Law Reports
APHM	Association of Private Hospitals of Malaysia
App Cas	Appeal Cases
BMA	British Medical Association
BMJ	British Medical Journal
BMLR	Butterworths Medico-Legal Reports
CFRN	Constitution of the Federal Republic of Nigeria
CJ	Chief Judge
CLR	Commonwealth Law Reports
CLRN	Criminal Law Report of Nigeria
CMEN	Code of Medical Ethics in Nigeria
CPD	Continuing Professional Development
CS	Caesarian Section
DLR	Dominion Law Reports
DM	Defensive Medicine
DPP	Director of Public Prosecutions
ed.	Edited
ed.	Edition
ENLR	Eastern Nigerian Law Report
etc.	(et cetera) and so forth
EWCA	England & Wales Court of Appeal
EWHC	High Court of England & Wales
FC	Federal Court
FCTA	Federal Capital Territory Abuja (Nigeria)
FIR	First Information Report
FNLR	Federation of Nigerian Law Reports
FSC	Federal Supreme Court
FWLR	Federation Weekly Law Report
GMC	General Medical Council
GP	General Practitioners
HC	High Court
HIV	Human Immuno Deficiency Virus
HL	House of Lords
HSO	Health Service Ombudsman
I&D	Incision & Drainage
Ibid	(ibidem) in the same place
ICT	Information Communication Technology
ICU	Intensive Care Unit
IGA	Information Governance Alliance

IMR	Infant Mortality Rate
IOP	Intraocular Pressure
JSC	Justice of the Supreme Court (Nigeria)
KB	Kings Bench
KJMC	Kelana Jaya Medical Centre
LFN	Laws of the Federation of Nigeria
Lloyd Rep	Lloyd's Report
LPELR	Law Pavilion Electronic Law Report (Nigeria)
LT	Law Times
LUTH	Lagos University Teaching Hospital (Nigeria)
MDCN	Medical and Dental Council of Nigeria
MDPCN	Medical and Dental Practitioners Council of Nigeria
Med LR	Medical Law Report
Miss	Mississippi
MLJ	Malayan Law Journal
MOH	Ministry of Health
MT	Monitoring Team
n.d.	No Date
NHMIS	National Health Management Information System
NHIS	Nigerian Health Insurance Scheme
NLR	Nigerian Law Reports
NMA	Nigerian Medical Association
NMC	Nigerian Medical Council
NMCN	Nursing and Midwifery Council of Nigeria
NMLR	Nigerian Monthly Law Report
NNLR	Northern Nigerian Law Report
NSCC	Nigerian Supreme Court Cases
NWLR	Nigerian Weekly Law Report
OT	Operation Theatre
PC	Penal Code (Nigeria)
PAH	Penang Adventist Hospital
PBUH	Peace Be Upon Him
PC	Privy Council
PSAHSC	Professional Standards Authority for Health and Social Care
PVS	Persistent Vegetative State
QB	Queen Bench
Rev	Reviewed
RMC	Royal Medical College (UK)
SC	Supreme Court
SCM	Supreme Court Monthly (Nigeria)
SCNJ	Supreme Court of Nigerian Judgments
UCHI	University College Hospital Ibadan (Nigeria)
UITH	University of Ilorin Teaching Hospital (Nigeria)
UK	United Kingdom
UKHL	United Kingdom House of Lords
UMMC	Universiti Malaya Medical Centre
UNTH	University of Nigerian Teaching Hospital
V-UF	Versicol-Uterine Fistula
WACA	West African Court of Appeal

WHO	World Health Organization
WLR	Weekly Law Report
WMA	World Medical Association
WNLR	Western Nigerian Law Report
WRN	Weekly Report of Nigeria

CHAPTER ONE

RESEARCH PROPOSAL

1.1 INTRODUCTION

In Nigeria, the knowledge and practice of medicine is an expanding field of professional learning. It is one of the most learned and noble amongst the original three learned professions.¹ Globally, medical profession is a career dedicated to the service of humanity. Its importance is to treat the patient and to ensure the high standard for health and well-being of the sick people. Medical practitioners deal with the most valuable properties of human being i.e., life.² This is the reason why they should give utmost prominence to the care of the sick. Failure of the medical practitioners to carry out their professional responsibilities as required by law and the code of medical ethics can lead to medical malpractice and can trigger off litigation against the practitioner.

There is no denying the facts that the Nigerian healthcare system is weak, poor and fragmented in nature both public and private.³ The system was designed on a narrow planning without adequate information as guiding principles before decisions

¹ Other professions that have the same status are Legal profession and the Priest. It is the ultimate duty of every healthcare practitioner in Nigeria to maintain and observe this professional ethics and primal position in the society. MDCN, *The Code of Medical Ethics in Nigeria*. (Rules of Professional Conduct for Medical and Dental Practitioners). Rev. edn. (2004), 9.

² Puteri Nemie J. K, *Medical Negligence Law in Malaysia*, (Malaysia: International Law Book Services, 2003), 1. According to their training, medical practitioners are dealing with the most precious commodity of human being, i.e. life, their duties are between life and death that is the reason why they are expected to be sympathetic, care, caring and show love to their patients.

³ Temitayo Olofinlua. "Medical Negligent in Nigeria: When Hospital Kills." *Radiant Health Magazine*, 8 June, 2011, 3. Said: "degree of medical negligence, even with its more highly developed and sophisticated health care system, then it follows that Nigeria, with its weaker health care infrastructure and under reporting of medical negligence cases, is even worse off. And while there is no incontrovertible data on the actual number of medical negligence cases in Nigerian hospitals, patients and medical practitioners alike acknowledge that number to be high".