

An Appraisal of the Role Played by State Courts in Combating Medical Negligence in Cameroon: A Review of Selected Case Laws

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Abstract

This paper critically appraises the role of state courts in combating medical negligence in Cameroon through a review of selected judicial decisions. The research adopts a qualitative methodology, relying on doctrinal analysis and case study approaches to explore the effectiveness, consistency and limitations of judicial responses to medical negligence and malpractices. By examining a purposively selected sample of landmark cases from Cameroonian courts, the study assesses how legal principles are interpreted and applied, the adequacy of judicial remedies and the broader implications for patients' rights and healthcare accountability. The findings reveal a gradual, yet uneven evolution in judicial attitudes towards medical negligence, marked by procedural delays, limited expertise in medical matters and inadequate enforcement of judgments. The paper concludes that while courts have an essential role in promoting accountability and deterrence, there is a pressing need for judicial reforms, capacity building and enhanced legal frameworks to ensure justice for victims of medical negligence in Cameroon.

Keywords: role played, state courts, combating, medical negligence, Cameroon, review of selected case laws

1. Introduction

The practice of medicine has existed from time immemorial which is why medical practice is often regarded as a profession of great antiquity.¹ The medical profession or medical practice evolved to maintain and restore human health by the prevention and treatment of illnesses in human beings. By exercising their

profession or sworn duty, medical practitioners have inadvertently been engaged in the protection of human rights over the years. Negligence within the context of the medical profession has become the order of the day in modern societies. In fact, it is an established rule of law that physicians/medical personnel owe their patients a duty of care. In the 1800s, Oliver Wendell Holmes Jr., an American Judge, carried out a study wherein he examined the history of negligence, in search of a general theory of tort. He concluded that from earliest times in

¹ Ezinne Vivian & Chidinma Blessing Nwakoby, 'Medical Negligence in Nigeria.' *Journal of Education, Humanities, Management & Social Sciences (JEHMSS)*, (2013) pp. 7-28.

England, the basis of tort liability was fault or failure to exercise due care.¹

The existence of this duty is predicated on the right to life, which is a sacrosanct right under international law. In a bid to protect the right to life and the right to the highest attainable standard of health, physicians have a duty to take care *vis-à-vis* their patients. The duty of care in this connection falls within the context of medical negligence, and over the years, medical negligence has often arisen where the degree of care required is not observed.² Medical negligence and malpractices have become a growing concern in the world today, characterized by the difficulty, and in some countries, the inability of victims to go about seeking justice and redress. Even though English common law has for a long time imposed a liability for the unjust acts of others,³ it was only during the earlier part of the 19th century when the industrial revolution was induced by a series of accidents caused by industrial machinery that negligence started to gain acknowledgement as a distinct and independent base of tortious liability.⁴

The idea of the duty of care has over the years been considered to be founded on the assumption that in a civilized and developed society, every person has an obligation not to cause injury to his neighbour, and that there should be liabilities for failure to exercise due diligence in the exercise of one's profession.⁵ Within the context of the law of torts,⁶ the duty of care is a legal obligation levied on an individual, requiring adherence to a standard of reasonable care while performing any act that will possibly or foreseeably cause harm to another.⁷

Over the years in the medical field, the

responsibility of a medical personnel is to offer professional care to sick persons who do not have the ability to help themselves. It follows that from time immemorial, a legal duty has always been imposed on physicians to exercise professionalism in terms of the provision of the highest attainable standard of care to people placed under their watch (patients). As far back as 1937, it had already been recognized that there was a dwindling old-time relationship of mutual confidence between doctor and patient upon which the practice of medicine depended.⁸ More so, studies and research have over the years revealed evidence of medical negligence, manifested in the form of: staff's rudeness, lack of care and concern for patients, failure to administer the right medication, mistakes in diagnoses, negative attitudes to patients, leaving or forgetting surgical instruments in the bodies of patients, etc.⁹ In a bid to ensure strict application of the duty of care in the medical profession, mechanisms have over the years been laid down. In Cameroon for example, for a person to practice medicine, he must be professionally qualified and fulfil the conditions set out in the laws regulating the practice of medicine.¹⁰

It is worth noting that the ancient concept of the duty of care was first articulated by Brett M.R in 1883 in the case of *Haven v. Pender*.¹¹ In this case, Brett M.R clearly stated that:

"Wherever one person is... placed in such a position with regard to another that everyone of ordinary sense... would at once recognise that if he did not use ordinary care and skill... he would cause danger or injury to the person or the property of the other, a duty arises to use ordinary care and skill to avoid such danger."¹²

The concept of the duty of care was further developed by Lord Atkin in the landmark case of *Donoghue v. Stevenson*.¹³

¹ Oliver Wendell Holmes Jr. (1881). *The Common Law*. London: Macmillan.

² Oseni T.I.A. (2019). Medical Duty of Care: A Medico-Legal Analysis of Medical Negligence in Nigeria. *American International Journal of Contemporary Research*, 9(1), pp. 56-63.

³ Such as medical negligence.

⁴ Hassan King Obaro. (n.d.). Legal Imperatives of Medical Negligence and Medical Malpractice. Available online at: <https://www.njmonline.org>. Accessed on January 28, 2024.

⁵ *Ibid.*

⁶ A Tort is a civil wrong, breach of which remedy is a civil action for liquidated or unliquidated damages.

⁷ Chris Turner. (n.d.). *Unlocking Torts*, 4th Edition. London: Routledge Publishing. p. 26.

⁸ E. Pierre Gould. (1937). The Defence of Medical Negligence. *Medico-Legal Criminological Review*, 5(2), pp. 191.

⁹ Campbell. D. (2011). Hospital Patients Complain of Rude Staff, Lack of Compassion and Long Waits. *The Guardian*. Available online at: <https://www.theguardian.com/society/2011/feb/23/hospital-patients-rude-staff-long-waits>. Accessed on January 28, 2024.

¹⁰ Law No. 80/6 of 14 July 1980 to Regulate the Practice of Medicine in Cameroon; Law No. 80/7 of 14th July 1980 to Organize the Medical Association in Cameroon.

¹¹ (1883) 11 QBD 503.

¹² Brett M.R in *Haven v. Pender* (supra).

¹³ (1932) AC 562.

In this 1932 case, Donoghue and her friend stopped for a drink at a café. The friend ordered the drinks and paid for them. Donoghue's drink, ginger beer, was supplied in a dark opaque bottle. She filled her glass and drank some of the contents. As she poured the rest of the contents, (the dregs) out of the bottle, a partially decomposed snail fell out of the bottle into the glass. Donoghue became very ill suffering nausea, gastro-enteritis and shock. As it was a friend who bought the drink for her, Donoghue was unable to sue in her own right in contract because of the doctrine of privity of contract. She nevertheless sued and claimed £500 damages from the manufacturer for his negligence and was successful. The House of Lords was prepared to accept that there could be liability on the manufacturer, even though there was lack of a contractual relationship (privity of contract) between the manufacturer and the claimant.

Lord Atkin applied a new rule of law to this case, "the duty of care". As he put it:

"you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? ...persons who are so closely and directly affected by my acts, that I ought reasonably to have them in my contemplation as being so affected when I am directing my mind to the acts or omissions in question."¹

Lord Atkin's Neighbour principle provides that as far as there exists foreseeability of harm, then failure to observe reasonable care translates into negligence.

Also, in the words of Alderson. B in the case of *Blyth v. Birmingham Waterworks Co.*² "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do."³ This definition by Alderson B raises questions as to who is a reasonable man.

Medical negligence is a form of negligence common today as a result of the absence of professionalism in the exercise of the medical profession. Over the years, medical practitioners have been held liable for professional negligence

when they fail to exercise their skills or acts with the degree of care expected of their experiences and status in the process of attending to a patient.⁴ The issue of medical negligence is founded on the non-provision of the duty of care owed to the patient. Michael A. Jones with regard to the issue of medical negligence stated that:

"Normally, there will be no difficulty in finding a duty of care owed by the doctor to his patient, at least where the claim is in respect of personal injuries, and this is true even when there is a contractual relationship. The practitioner may also owe a duty of care to the patient in respect of pure financial loss. In addition, there are a number of circumstances where a doctor may also owe a duty of care to a third party, arising out of the treatment given to the patient, but the incident and extent of such duties are more problematic."⁵

Also, in the case of *Cassidy v. Ministry of Health*⁶ Lord Denning stated that:

"In my opinion, authorities who run a hospital, be they local authorities, government boards, or any other corporation, are in law under the self-same duty as the humblest doctor. Whenever they accept a patient for treatment, they must use reasonable care and skill to cure him of the ailment. The hospital authorities cannot of course do it by themselves. They have no ears to listen through the stethoscope, and no hand to hold the knife. They must do it by the staff and if the staff are negligent in giving treatment, they are just as liable for that negligence as anyone else who employs others to do his duties for him. Is there any possible difference in law, I ask, can there be, between hospital authorities who accept a patient for treatment and a railway or shipping authorities who accept a passenger for carriage? None whatever. Once they undertake the task, they come under a duty to use in doing of it, and that is so whether they do it for reward or not."⁷

The issue of whether or not a medical

¹ *Ibid.*

² (1956) 11 EX Ch 781.

³ *Ibid.*

⁴ This may happen when he fails to provide prompt attention and care to a patient requiring emergency care, when he was in a position to do so. When harm results from the delay in attending to a patient (when such delays could have been avoided) then the medical practitioner is liable for medical negligence.

⁵ Michael A. Jones. (1996). *Medical Negligence* (London: Sweet & Maxwell), p. 29.

⁶ (1951) 2KB 343.

⁷ *Ibid.*

practitioner owes a duty of care has over the years been regarded as a matter of law to be determined by the courts. In terms of medical negligence, the term 'duty of care' is synonymous to the concept of an 'undertaking' towards a patient. In the case of *Cassidy v. Ministry of Health*¹, Lord Denning stated that "In my opinion, authorities who run a hospital, be they local authorities, government boards, or any other corporation, are in law under the self-same duty as the humblest doctor. Whenever they accept a patient for treatment, they must use reasonable care and skill to cure him of the ailment..."

The duty of care within this context involves: (a) a duty to possess special skill and knowledge (b) a duty to exercise caution in treatment/diagnosis (c) a duty to exercise due diligence, care, knowledge and skill and (d) a duty to provide prompt responses to emergencies.² In other words, the moment a physician assumes responsibility towards a patient, the duty of care is established.

As earlier mentioned, in order to prove medical negligence or medical malpractice, four important elements must be established: firstly, a professional duty must be owed to the patient; second, there must be a breach of such duty; thirdly, injury must have been caused by the breach; and fourthly, the breach of professional duty must result in damages.

In the 2014 South African case of *Lushaba v. MEC for Health, Gauteng*³ the courts were able to prove all these elements. Similarly, these elements were proven in the Ugandan case of *Kimosho v. Wakapita & 2 Others*⁴ where Wakapita unlawfully and negligently prescribed a drug to the plaintiff which eventually put her life and the life of her unborn child at risk. She subsequently suffered a miscarriage. The court in this case found that all the elements for medical negligence had been satisfied and held that Wakapita as a medical personnel acted negligently and that his employer was vicariously liable for his professional negligence. In awarding damages, the court held that

Wakapita and his employer were jointly and severally liable for compensation to the plaintiff. The judgment thus held both the medical institution and the medical professional liable jointly and severally for medical negligence. The reasoning of the court in delivering such a judgment was that it will ensure due diligence by medical professionals in carrying out their duties.

2. National Legal Frameworks for the Protection of the Right to Health in Cameroon

Several legal measures have been adopted at the Cameroon national level to protect and promote the right to health. These legal measures are discussed in this subsection.

2.1 Law No. 96/6 of 18th January 1996 as Amended and Supplemented by Law No. 2008/001 of 14 April 2008 on the Cameroon Constitution

The constitution of the Republic of Cameroon is the highest law of the land and makes valuable strides towards the protection of human rights including the right to health. The constitution plays a crucial role in safeguarding the fundamental right to health for its citizens. This right is enshrined in the preamble which is a replica of the Universal Declaration of Human Rights.

Firstly, the preamble of the Cameroon constitution in an attempt to guarantee all fundamental human rights including the right to health of all Cameroonians states that:

"We, the people of Cameroon, Declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights;

Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto..."⁵

A perusal of the aforementioned provision reveals that the constitution strives to protect all fundamental human rights recognized under international law instruments such as the UDHR, the African Charter and other human rights instruments, including the right to health.

Furthermore, the preamble inadvertently

¹ (1951) 2KB 343.

² Guptha Jaiprakash. (2002). *Ethics and Law Controlling Medical Practitioners*. Available online at: <https://www.aironline.in/legal-articles/Ethics%20and%20Law%20Controlling%20Medical%20Practitioners>. Accessed on January 17th, 2024.

³ (2014) ZAGPJHC 407.

⁴ (2018) UGHCCD 71.

⁵ Paragraph 4 & 5 of the Preamble, Law No. 96/6 of 18 January 1996 as amended and supplemented by Law No. 2008/001 of 14 April 2008 on the Cameroon Constitution.

protects the right to health by stating that:

“every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment.”¹

2.2 Law No. 90/036 of 10th August 1990 Relating to the Practice of Medicine in Cameroon

The 1990 Law relating to the Practice of Medicine in Cameroon is a key piece of legislation that plays a crucial role in safeguarding the right to health for the people of Cameroon. This law, enacted over three decades ago, has remained a cornerstone of the country’s healthcare system, establishing a comprehensive regulatory framework to ensure the quality, accessibility and accountability of medical services.

One of the primary ways in which this law safeguards the right to health is by setting stringent standards for the practice of medicine in Cameroon.

In a bid to protect and safeguard the right to health of Cameroonians, some strict conditions have been imposed to govern the practice of medicine. Section 2 of the 1990 law imposes the following conditions:

“(1) Persons engaged in the practice of medicine in Cameroon shall be subject to registration with the Medical Association.

(2) However, physicians of foreign nationality who fulfil the following additional conditions may engage in the practice of medicine in Cameroon;

- Nationals of a country with a reciprocity agreement with Cameroon;
- Physicians who have not been struck off the roll in their countries of origin or in any other country where they had practiced medicine;
- Physicians recruited on contract or under a co-operation agreement exclusively for the Administration, a religious body or benevolent Non-Governmental Organization (NGO).
- Physicians serving in an approved private undertaking.”²

¹ Preamble, paragraph 17 of the Preamble, Law No. 96/6 of 18 January 1996 as amended and supplemented by Law No. 2008/001 of 14 April 2008 on the Cameroon Constitution.

² Section 2, Law No. 90/036 of 10 August 1990 Relating to the Practice of Medicine in Cameroon.

Furthermore, in a bid to strictly govern the practice of medicine by private individuals, special conditions have been imposed by the 1990 law. Section 5 of the law states that:

“(1) The practice of medicine on a private basis shall be subject to an authorization issued by the Council of the Association under the terms and conditions laid down in this law.

(2) The Council of the Association shall also rule on applications for change of professional domicile or place of activity and resumption of activity after interruption following a disciplinary measure under conditions laid down by regulation.

(3) Authorizations granted by the Council of the Association must comply with the health map established by regulation.

Authorizations granted in violation of the health map shall be null and void.”

Furthermore, in a bid to safeguard the right to health and ensure that patients are in safe hands, section 6 of the 1990 law stipulates that:

“Persons engaged in the practice of medicine on a private basis shall be subject to the following conditions:

- be of Cameroonian nationality and enjoy their civic rights;
- be registered with the Medical Association;
- must have completed five years of effective practice in a public service or a private body within the national territory or abroad;
- produce a letter of discharge where they are gainfully employed or assist a colleague who is practicing on a private basis;
- be of good conduct;
- produce an insurance policy covering occupational hazards;
- must have paid all their contributions to the Association.”³

More so, in a bid to protect the right to health, certain conducts have been designated as unlawful within the context of medical practice. Section 16 of Law No. 90/036 of 10th August 1990 relating to the Practice of Medicine in Cameroon makes provision for what amounts to the unlawful practice of medicine. Section 16 states that:

³ Section 5, Law No. 90/036 of 10 August 1990 Relating to the Practice of Medicine in Cameroon.

“The following shall be guilty of unlawful practice of medicine:

- (1) any physician who practices under an assumed physician name or who grants consultations in business premises where some of the apparatus he prescribes or uses are sold;
- (2) any unauthorized person who, even in the presence of a physician, habitually or under supervision, provides diagnosis or treatment for diseases on a personal basis by consultation or by any other procedure;
- (3) any physician who exercises his profession in violation of the provisions under section 1 above or who offers his assistance to persons who are not authorized to practise;
- (4) any physician who exercises his profession while on temporary or permanent suspension.”¹

Finally, in a bid to protect the right to health of all Cameroonians, sanctions have been provided for persons who engage in unlawful medical practice. Section 17 states that:

- “(1) Without prejudice to the application of more severe administrative, disciplinary or penal sanctions, any person found guilty of unlawful practice of medicine shall be punished with imprisonment of from 6 (six) days to 6 (six) months or with fine of from 200 000 (two hundred thousand) to 2 000 000 (two million) francs or with both such imprisonment and fine.
- (2) The court may, where applicable rule that the equipment used in the commission of the offence be confiscated and the establishment be closed.
- (3) Any person who violates the provisions of this law shall cease his activity with immediate effect. Furthermore, the closure of his surgery establishment or clinic may be ordered by the Council of the Association, irrespective of any court judgment.”²

2.3 Law No. 95/08 of 30th January 1995 Relating to Radio Protection

The 1995 Law serves as a crucial legal mechanism for safeguarding the right to health in Cameroon, particularly in the context of radiation-related activities and exposure. This law establishes comprehensive regulations and guidelines to minimize the risks associated with

ionizing radiation and ensures the well-being of the Cameroonian populace.

One of the primary objectives of this law is to protect the public, workers and the environment from the harmful effects of ionizing radiation. It does so by setting strict standards and requirements for the use, storage, transportation and disposal of radioactive materials and sources.

Article 1 of the 1995 law stipulates that:

“(1) The purpose of this law shall be to ensure the protection of man and his environment against the hazards that may result from the use of one or several sources of ionizing radiation, the use of a radioactive substance or the exercise of an activity that involves exposure to radioactivity.

(2) It shall govern the use of radioactive substances and energy for peaceful purposes, in the general interest.”³

Furthermore, article 3 of the 1995 law enumerates the activities subject to the regulation of the law. Article 3 states that:

“(1) The activities targeted by this law shall be all those relative to the cycle of nuclear fuel and, particularly, the exploration and extraction of uranium ore and thorium, the acquisition, handling, production, transfer, processing, use, stocking, conveyance, importation of radioactive substances and radioactive sources as well as the installation of nuclear devices and equipment.

(2) These activities shall be subject to a prior authorization issued in accordance with terms and conditions laid down by statutory instruments, when a net positive benefit in the public interest can be derived from them, pursuant to the provisions of Section 2 above.”⁴

In a bid to protect Cameroonians’ right to health, sanctions have been imposed on whoever without authorization carries out radiation activities which tend to affect human health. Article 7, 8 & 9 clearly state that:

“Article 7: Whoever causes the exposure to ionizing radiation or a nuclear accident through imprudence or negligence, shall be punished with imprisonment for from five (5) to twenty (20) years and with a fine of from two hundred

¹ Section 16, Law No. 90/036 of 10 August 1990 Relating to the Practice of Medicine in Cameroon.

² Section 17, Law No. 90/036 of 10 August 1990 Relating to the Practice of Medicine in Cameroon.

³ Article 1, Law No. 95/08 of 30 January 1995 Relating to RadioProtection.

⁴ Article 3, Law No. 95/08 of 30 January 1995 Relating to RadioProtection.

thousand (200,000) to twenty million (20,000,000) francs CFA.

Article 8: Any person carrying out one of the activities referred to in Section 3 without prior authorization, shall be punished with imprisonment for from five (5) to ten (10) years and with a fine of from two hundred thousand (200,000) to twenty million (20,000,000) francs CFA.

Article 9: Whoever wilfully destroys all or part of a radioactive source or nuclear installation shall be liable to a death sentence.”¹

2.4 Law No. 2003/2006 of December 22, 2003 Governing Blood Transfusion

This legislation establishes a comprehensive regulatory framework to ensure the safety, quality, and availability of blood and blood products nationwide.

According to the aforementioned legislation, blood transfusion is to be prescribed by the doctor after taking into consideration the benefits to the patient and also the health risk involved. This is provided for by Article 7. This is to say, in a bid to ensure that the right to health is protected, the medical personnel needs to exercise due care to know the benefits and health risk involved in a blood transfusion to a patient before doing so, without which it will amount to medical negligence (breach of duty) if the patient is affected by that act.

“Article 8(1) of the said law goes further to say that: every blood transfusion act must be carried out with a clear consent, be it oral or written by the receiver or his or her legal representative, without which such act is a breach of duty. In case where the patient is unable to express his consent, the doctor will take a decision in the interest of the latter.

(2) When the patient is not able to express his or her consent, the doctor will take a decision in the patient’s interest.”²

Pursuant to article 9, the blood to be transfused must be submitted to all necessary screening and verification to confer to him (the patient) all the necessary characteristics and maximum security.³

¹ Article 7, 8 & 9, Law No. 95/08 of 30 January 1995 Relating to Radioprotection.

² Article 8(1) & (2), Law No. 2003/2006 of December 22, 2003 Governing Blood Transfusion in Cameroon.

³ Article 9, Law No. 2003/2006 of December 22, 2003 Governing Blood Transfusion in Cameroon.

Article 13 of the same law states that “anyone who takes blood samples out of a specialized and recognized structure or anyone who is not a doctor or assisted by a doctor, possess the act prescribed by the present law, shall be liable to an prison term of from 6 months to 2 years and with a fine of from one hundred thousand (100.000) to five hundred thousand (500.000) francs or one of these two penalties only. Same applies to any one being competent and exercising or practicing in a recognized structure.”⁴

In a bid to protect the right to health, the 2003 law imposes sanctions on persons who violate the rules governing blood transfusions in Cameroon. Article 15(1)-(3) stipulates that:

“(1) Any person who, having authority and working in an approved structure, collects blood without the consent of the donor is liable to the penalties of article 280 of the penal code.

(2) Any person who knowingly, in the course of taking blood, causes the donor injury, illness or incapacity to work, is punishable with the penalties as provided under Articles 277 and 279 of the Penal Code.

(3) In the event of death of the victim following the blunders and acts referred to in paragraph (2) above, the penalties applied to their perpetrator are those of article 278 of the penal code.”⁵

Furthermore, pursuant to article 16 of the 2003 Law, any person who, by carrying out a blood transfusion, causes harm to others through clumsiness, inattention, imprudence or non-compliance with work is liable to the sanctions as provided for in articles 277 and 280 of the penal code.⁶

2.5 Law No. 2016/007 of July 12th, 2016 on the Penal Code

The penal code plays a crucial role in the protection of the right to health in Cameroon through several of its provisions. Firstly, Section 289 of the penal code stipulates that:

“(1) Whoever by lack of due skill, carelessness, rashness or disregard of regulation causes another’s death or such harm, sickness or

⁴ Article 13, Law No. 2003/2006 of December 22, 2003 Governing Blood Transfusion in Cameroon.

⁵ Article 15(1)-(3), Law No. 2003/2006 of December 22, 2003 Governing Blood Transfusion in Cameroon.

⁶ Article 16, Law No. 2003/2006 of December 22, 2003 Governing Blood Transfusion in Cameroon.

incapacity as is described in section 277 or 280 shall be punished with imprisonment for from three (3) months to five (5) years or with fine of from ten thousand (10.000) to five hundred thousand (500.000) FCFA or with both such imprisonment and fine.

(2) Where such harm, sickness or incapacity as is described in Sections 277 or 280 is caused by an offence against section 227 or 228 (2) (a) or (b), the imprisonment shall be from 6 six(6) to twenty (20) years.”¹

Furthermore, Section 286 stipulates that:

“Sections 277 to 281 inclusive shall not apply to the professional services of any person duly authorized to render them, where performed with the consent either of the patient or of such person as may have custody of him:

Provided that where the patient is incapable of consent, his spouse may consent on his behalf, and where communication with the said spouse or person having custody is impossible, and without risk to the patient, consent shall not be necessary.”²

The aforementioned provision safeguards the right to health in that it authorizes a medical personnel to carry out medical treatment without consent where the patient or his/her spouse is incapable of giving consent. This is in order to ensure that the health of patients is prioritized and not jeopardized.

2.6 Decree No. 83/166 of April 12th 1983 Establishing the Code of Medical Ethics in Cameroon

This decree was enacted in response to the need to regulate the medical profession and ensure that healthcare services are provided in an ethical and responsible manner. The code outlines the duties and obligations of medical practitioners, including the requirement to prioritize the well-being and interests of their patients. This is particularly important in the context of the right to health, as it helps to ensure that patients receive high-quality, comprehensive and non-discriminatory healthcare services.

The Code of medical ethics enumerates a multiplicity of ethical rules aimed at protecting the right to health, to which medical practitioners must conform. Some of these

ethical principles include:

Section 1: which states that: Respect for life constitutes in every instance the primary duty of a doctor.³

Section 2 further stipulates that:

“(1) The doctor must treat all sick persons with the same diligence, whatever their status, nationality, religion, reputation and the feelings he may have concerning them.

(2) In no case shall the doctor exercise his profession under conditions pre-judicial to the quality of medical care and attention.”⁴

Section 3 on its part provides that:

“(1) Whatever his official duties or special field may be, every doctor must, except in the case of force majeure, give help urgently to a sick person in immediate danger, unless he has ensured that other medical care likely to ward off the danger has been given to him.

(2) He may not leave his patients in the event of public danger, except upon an order issued in writing by the competent authority.”⁵

Section 7 further stipulates that:

“The medical profession shall not be exercised like a trade. For this reason:

(a) Any form, direct or indirect, of publicity or advertisement, and any spectacular occasion concerning medical matters but not having exclusively a scientific or educational purpose shall be forbidden.

(b) The only observations which a doctor is authorized to enter on his prescriptions or in a year book are:

- those which facilitate his relations with his patients;
- such titles, duties, qualifications that are officially recognized and are related to the profession;
- scientific honours related to the profession.

(c) The only information that a doctor is authorized to put up on the door of his consulting room are the surname, names, titles, qualifications, the days, times for consultation and the floor, where applicable. Such information must be displayed with due

¹ Section 289, Law No. 2016/007 of July 12, 2016 on the Penal Code.

² Section 286, Law No. 2016/007 of July 12, 2016 on the Penal Code.

³ Section 1, Decree No. 83/166 of April 12 1983 Establishing the Code of Medical Ethics in Cameroon.

⁴ Ibid Section 2.

⁵ Ibid Section 3.

restraint according to the custom of the liberal professions. The plate on which they are to be inscribed must not be larger than 25 cm by 30 cm. In the event of possible confusion, the medical association may require that first name(s) be mentioned.”¹

In addition, in a bid to protect the right to health, article 22 stipulates that:

“A doctor, from the moment he is called to give attention to a patient and agrees to do this, shall be bound: to give the patient all the necessary medical care within his power, either personally or with the help of qualified third parties; to always act correctly and courteously towards the patient and to show himself sympathetic towards him.”²

Section 23 on its part states that:

“(1) A doctor must always formulate his diagnosis with the greatest care, regardless of the time that this work may cost him.

(2) After having made his diagnosis and prescribed treatment, the doctor must endeavour to ensure that this treatment is carried out, especially if the patient’s life is in danger.”³

Section 24 proceeds to stipulate that:

“(1) A doctor must always prescribe treatment within the limits imposed by the conditions of the patients. He must in good faith not prescribe very costly treatment for a patient until the patient or his family have been informed of the sacrifices which this would entail and the benefit which they may derive from it.

(2) A doctor must never give treatment to a patient with a view to profiting therefrom.”⁴

A perusal of all the aforementioned provisions of the 1983 decree establishing the code of medical ethics reveals that the decree contains a multiplicity of obligations bestowed upon medical practitioners, to ensure that they exercise their profession with dignity and professionalism, an outcome which will be liable to protecting the right to health in Cameroon.

3. The Role Played by State Courts in

¹ Section 7, Decree No. 83/166 of April 12 1983 Establishing the Code of Medical Ethics in Cameroon.

² Section 22, Decree No. 83/166 of April 12 1983 Establishing the Code of Medical Ethics in Cameroon.

³ Section 23, Decree No. 83/166 of April 12 1983 Establishing the Code of Medical Ethics in Cameroon.

⁴ Section 24, Decree No. 83/166 of April 12 1983 Establishing the Code of Medical Ethics in Cameroon.

Combating Medical Negligence in Cameroon: A Review of Selected Case Laws

Cameroonian courts have been a vital instrument utilized by the State in the fulfilment of this goal, through the prosecution of some medical negligence-related cases in order to deter medical professionals from further engaging in acts of negligence which have devastating effects on the right to health. Some of these cases are analyzed in the subsequent paragraphs.

Nsame Emmanuel v. the People⁵

This case involved medical negligence resulting in severe injury to a five-day old baby. In this case, the leg of a five-day old baby was amputated as a result of the negligent act of a medical doctor at the Saint John Baptist Health Center in Ndop. While at the hospital, the said medical doctor discovered that the leg of the baby had suddenly become swollen as a result of unknown causes. In an attempt to solve the problem, the baby was facing, the medical doctor bandaged an ice block to the leg of the baby overnight. At 3am, the child started crying uncontrollably, which prompted the defendant to check on the condition of the baby, upon which he realized that the ice block had melted. The defendant upon realizing that the ice block had melted collected more ice blocks and further bandaged them to the leg of the child. The following morning, it was discovered that the state of the child’s leg had worsened and had become even more swollen than it was the previous day. At the Ndop district hospital, it was determined that the child’s leg had been severely damaged and had to be amputated. The defendant was found liable for medical negligence by the North West Court of Appeal and convicted accordingly.

Agborock Lydienne v. Dr. Nwaobi Romanus & St. John of God Hospital Nguti⁶

In this case, a medical doctor at St. John of God Hospital Nguti, named Nwaobi Romanus was found guilty of medical negligence as he failed to exercise the ordinary skill of an ordinary competent man exercising the duty of a medical doctor. The medical doctor in this case conducted an operation (surgery) and negligently left a swab inside the body of the patient. In fact, as a result of the operation,

⁵ Suit No. CANWR/ICC/5C/2011 (Unreported).

⁶ Suit No. HCK/14/2001-2002 (Unreported).

severe bleeding occurred, prompting the surgeon to make use of swabs to control the bleeding, which he eventually left in the body of the patient. The negligent act of the medical doctor resulted in severe consequences on the patient, which began to manifest a few hours after the surgery was over. The court in this case held that the medical doctor had been negligent and that had the accused exercised the care and skill reasonably expected of a surgeon, he would not have injured the patient. The court's judgment finding the accused guilty and punishing him accordingly, is vital in that it serves as a vital tool for deterring medical doctors/surgeons from such negligent behavior, thereby encouraging them to exercise due skill and due diligence in the course of their profession.

The People & 2 Ors v. Ndeumeni Noubevan Charles Dechateau and Ministry of Public Health¹

In this case, the issue before the Littoral Court of Appeal was that of medical negligence manifested in the form of misdiagnosis resulting in substandard treatment of a patient. The patient in this case visited a hospital in Douala, revealing to the doctor how she felt. The medical doctor on his part, as a result of negligence, failed to make accurate and appropriate diagnosis of the patient's condition which resulted in inadequate treatment. Based on the fact that misdiagnosis is one of the most serious forms of medical negligence in contemporary societies, the Court of Appeal of the Littoral Region held the defendant liable for misdiagnosis of the patient's condition, resulting in substandard treatment of the said patient. Just like the decisions in the preceding cases, the decision of the Littoral Court of Appeal is relevant in that it served as a vital tool for deterring medical doctors from negligent behaviors, thereby encouraging them to exercise due skill in the course of their profession.

The People of Cameroon v. Dr. Eban Kingsley Barueta²

In this case which concerns medical malpractice, the Fako High Court convicted and sentenced Dr. Eban Kingsley Barueta to 18 years imprisonment and to pay cost of 522.280Fcf for rape under section 298(a)(b) as read with section

131 of the penal code. In fact, Dr. Eban Kingsley was at the time of the offence, the Director of the Muyuka District Hospital while the victim, Fon Blessed Yencheck, was a volunteer nurse at the said hospital. In this case it is alleged that in the morning of Friday 21st May 2021, the victim of the offence, Fon Blessed Yencheck, a volunteer nurse at the Muyuka Distric Hospital, arrived the hospital in the morning to carry out her duties as volunteer worker. The accused, Dr. Eban Kingsley Barueta who was the Director of the said hospital, sent one doctor to invite her to attend the rounds of interned patients piloted by the accused. The victim assisted at the rounds as requested. The victim was taken aback by the accused's harsh attitude towards the patients, which attitude instilled fear of the accused in the victim. After the rounds, the accused invited the victim into his office, offered her a seat and informed her that he wanted to teach her something. The accused then instructed the victim to lie on the bed, an order she immediately obeyed because of fear. At this juncture the accused inserted his finger into the victim's vagina. Thereafter the accused suddenly asked the victim to leave his office, with firm instructions that she should return in ten minutes with a book. Upon her return, the accused instructed the victim to remove her pant, asking her not to be afraid as this was his routine procedure with all new internes, which instructions the victim obeyed out of fear of the accused. The victim lay on the bed face upwards and descended her body as instructed by the accused. The victim was gripped by fear to the extent that she could barely look at the accused's face. Then suddenly the victim felt the accused's penis inside her vagina. The penetration caused the victim severe pains which made her push the accused off her body as she scrambled off the bed. The accused gave the victim some tissue to clean her vagina, which exercise left blood stains on the tissue. The accused asked the victim to throw the tissue inside a trash can in the accused's office, and then pushed her out of his office with firm warning not to inform anyone of the act. Upon a complaint lodged against him, the accused was investigated, tried, convicted and sentenced as mentioned above.

The People of Cameroon v. Dr. Chuisseu John Ngongang³

In this case, the deceased, one Tabot Getrude

¹ Arret No. 35/CRIM of 15th June 2011 (Unreported).

² *Suit No. HCF/149CF/2021*

³ CFIB/200F/2024

Achale, a woman aged 31 and midwife at C.M.A., a health facility at Mutengene, got pregnant sometime in March 2023. Her antenatal consultation at the C.M.A. Hospital Mutengene where she was working, showed that she had multiple fibroids, making her pregnancy a delicate and risky one. As a result of the C.M.A. Hospital's inadequate medical facility to handle surgeries of that magnitude, the deceased was referred to the Buea Regional Hospital which had the facility and specialists competent to carry out such delicate cesarian sessions to remove the baby and do the necessary myomectomy to remove the fibroids in the deceased's womb in order to save her life and that of her baby.

Shortly after the referral, the deceased later contacted the Accused, a General Practitioner working with the Sub Divisional Hospital Muea, who was not a specialist in that field, as he was neither a surgeon nor a gynaecologist, but who went ahead to programme her for a cesarian session on the 18th day of November, 2023.

Before the surgery, the accused had no proper antenatal and gynaecological history of the deceased, as he relied on the ultra sound test conducted on the latter two months before the surgery, to carry out the operation. Thus, no operative test was conducted on the deceased at the Muea Hospital prior to the surgery. The accused had no knowledge of the exact number and sizes of the fibroids in the womb of the deceased before the operation. There was no blood for transfusion in case of need before or after the surgery. The accused carried out the operation without any specialist nor any other doctor in that hospital. Both the cesarian session and the myomectomy were carried out on the same day against medical advice. Even though the accused succeeded, five minutes into the cesarian session, to bring out the baby, he proceeded immediately to the myomectomy by tying the base of the womb in a bid to reduce bleeding so as to extract the fibroids individually, a process which took five hours. In that light, the accused who had not done a proper diagnosis, was surprised of the number and sizes of the fibroids in the womb of the deceased after she was opened up. The up shoot of that discovery was that the sutures provided for that operation were insufficient thus prompting the accused to send for more via PW1 while the deceased was still under surgery in the theatre room. Since the operation took a

longer time than expected, the spinal anesthesia that was administered on the deceased at 7.30 a.m. got expired at 12.00 noon and the deceased started crying of pain while the myomectomy was ongoing. Even though a light anesthesia was administered on her to calm her pains, the deceased started bleeding and shortly after, her vital signs became abnormal. In reaction the accused opted for blood transfusion but because there was no blood bank, he immediately ordered for blood, which came some minutes after the deceased had bled almost to death. When the blood finally came, the deceased passed away in the process of transfusion.

At the end of a trial conducted by the Court of First Instance Buea after a complaint and an investigation, the accused was held liable for incompetence and medical negligence, found guilty and convicted for unintentional killing under section 289(1) of the Cameroon Penal Code. He was sentenced to three (03) months imprisonment and to pay a fine of three hundred thousand (300.000) Fcfa and also to pay cost of one hundred and thirty-eight thousand, two hundred and sixty (138.260) FCFA.

The Case of Sergeant Mouyakan A Mougol Willy¹

One of the outstanding cases of medical negligence which has been taken to the Military Court is that of Sergeant Mouyakan A. Mougol Willy who passed away on April 14th 2022. The Rapid Intervention Battalion (BIR) soldier was transferred from the Man O War Bay hospital Limbe to the Douala General hospital before being taken to IDIMED Clinic in Douala for neurosurgery. There, he was administered a double dosage (overdose) of anesthesia during the surgery and he never woke up. The anesthetist allegedly failed to take proper medical history leading to the fatal overdose, and left the patient unattended in the ICU after surgery. The family took the matter to the Douala Military Court against IDIMED clinic, and the anesthetist.

Even though not all of the medical negligence and malpractices cases have been taken to court, they have however been reported. The following are examples of such.

Ilyana Tresor's²

A 5-year-old girl died at the Polyclinique

¹ Cameroon Concord News (2022)

² Journal du Cameroun (2020)

Archange in Douala due to an inadequate dose of anesthesia. The anesthetist mistakenly assumed she was 10 years old, highlighting the need for accurate patient assessment.

Dr. Jerry Esua's Case¹

A doctor in Kumba was arrested and detained following the death of a premature baby. The doctor claimed he was assaulted by the father of the deceased and was only detained after calling the police.

Martina Nfor's Case²

A woman died after undergoing a cesarean section at the Buea Regional Hospital. The family alleged that the hospital staff was negligent, leading to the mother's death.

Ngum Victor's Case³

A man lost his leg due to alleged medical negligence at the Douala General Hospital. The hospital allegedly failed to provide timely and adequate care, resulting in amputation.

Nformi Emmanuel's Case⁴

A patient died after being administered the wrong medication at the Bamenda Regional Hospital. The incident highlights the need for proper medication management and patient safety protocols.

Atanga Henrietta's Case⁵

A woman suffered complications after a botched surgery at a private clinic in Yaoundé. The clinic allegedly lacked proper equipment and expertise, leading to the patient's suffering.

Tchouatchouang Yves' Case⁶

A patient died due to alleged medical negligence during surgery at the Yaoundé University Teaching Hospital. The family claimed that the hospital staff was incompetent and negligent.

Manka Elsie's Case⁷

A woman suffered burns during a medical procedure at a hospital in Douala. The incident highlights the need for proper equipment maintenance and staff training.

Foncha Andrew's Case⁸

A patient died after being discharged prematurely from the Bamenda Regional Hospital. The family alleged that the hospital staff failed to provide adequate care and monitoring.

Nkwenti's Case⁹

A patient suffered permanent disability due to a delayed cesarean section at a hospital in Yaoundé. The delay allegedly resulted from hospital staff negligence.

Ebenezer's Case¹⁰

A child died due to alleged medical negligence during a surgical procedure at a hospital in Douala. The family claimed that the hospital staff was incompetent.

Nforneh's Case¹¹

A woman suffered complications after a botched abortion at a private clinic in Bamenda. The clinic allegedly lacked proper equipment and expertise.

Tanyi's Case¹²

A patient died due to alleged medical negligence during treatment at a hospital in Kumba. The family claimed that the hospital staff was negligent and incompetent.

Mbuh's Case¹³

A patient suffered permanent disability due to a medical procedure at a hospital in Yaoundé. The incident highlights the need for proper patient care and monitoring.

Njoh's Case¹⁴

A patient died due to alleged medical negligence during surgery at a hospital in Douala. The family claimed that the hospital staff was negligent.

Nkfusai's Case¹⁵

A woman suffered complications after a cesarean section at a hospital in Bamenda. The incident highlights the need for proper postpartum care.

¹ Case The Guardian Post (2020)

² Cameroon Tribune (2018)

³ Le Messenger (2019)

⁴ The Post Newslines (2020)

⁵ Cameroon Info (2019)

⁶ La Nouvelle Expression (2020)

⁷ The Guardian Post (2020)

⁸ The Post Newslines (2020)

⁹ Cameroon Tribune (2019)

¹⁰ The Guardian Post (2021)

¹¹ The Guardian Post (2020)

¹² Cameroon Info (2020)

¹³ The Post Newslines (2020)

¹⁴ The Post Newslines (2020)

¹⁵ The Herald Newspaper (2021)

Fopa's Case¹

A patient died due to alleged medical negligence during treatment at a hospital in Yaoundé. The family claimed that the hospital staff was incompetent.

Tamen's Case²

A patient suffered permanent disability due to a delayed diagnosis at a hospital in Douala. The delay allegedly resulted from hospital staff negligence.

Keme's Case³

A woman suffered complications after a botched surgery at a private clinic in Yaoundé. The clinic allegedly lacked proper equipment and expertise.

These cases demonstrate the need for improved healthcare standards, accountability, and patient safety protocols in Cameroon.

Although the work is restricted to Cameroon, inspiration is also drawn from other jurisdictions to support the arguments in this write-up. We shall therefore cite some foreign cases on medical negligence/malpractice to buttress Cameroon cases.

Gerber v. Pines⁴

In this case, in giving treatment by injection, a needle was broken and left in the patient's body and the patient was not informed and this resulted in the patient suffering pain and injury as an operation had to be carried out to remove the broken needle. The doctor was found guilty of medical negligence.

The Death of Michael Jackson

The death of popular musical Icon Michael Jackson in 2009 brought worldwide attention to the issue of medical negligence. Michael Jackson's personal physician, Dr. Conrad Murray was found guilty of involuntary manslaughter for negligently administering a lethal dose of the anesthetic propofol on Michael Jackson which caused his death. Dr. Murray, a cardiologist based in Houston, received a monthly payment of \$150,000 for his role as Michael Jackson's personal doctor during the rehearsals in Los Angeles for the *This Is It* concert series. During the criminal trial, it was

revealed that Dr. Murray spent at least six nights a week with Jackson and was frequently implored by the singer, who suffered from chronic insomnia, to administer sleep-inducing medication. Jackson specifically sought only propofol, a potent surgical anesthetic, which he preferred over other strong sedatives. Evidence presented in court suggested that it was propofol, combined with other unrequired medications which the doctor administered in Jackson's system that was primarily responsible for his death on June 25th, 2009. Surviving members of Michael Jackson's family filed a civil death lawsuit against concert promoter AEG Live. They alleged that AEG Live was negligent in hiring Dr. Murray and should be responsible for Jackson's death. The family argued that AEG Live pressured Dr. Murray to prioritize Jackson's ability to perform over his health and wellbeing. The trial which took place in 2013, lasted for several months and included extensive testimonies and evidence. Ultimately, the jury found that while AEG Live did hire Dr. Murray, he was not unfit or incompetent for the work for which he was hired, absolving the company of liability in Jackson's death, as it was Dr. Murray's personal medical negligence that caused Michael Jackson's death.

The Plight of Julie Andrews

A world renowned actress, Julie Andrews, perhaps best known for her roles in *Mary Poppins* and *The Sound of Music*, underwent surgery in 1997 at Mt. Sinai Hospital to remove noncancerous nodules from her throat. Tragically, the surgery led to permanent damage to her vocal cords, effectively ending her singing career. Julie Andrews cried out saying "Singing has been a cherished gift and my inability to sing has been a devastating blow to me." Julie filed a medical malpractice lawsuit against the Doctors involved, alleging that the operation was botched, leaving her with hoarseness, permanent vocal damage and other complications. The lawsuit was settled for an undisclosed amount in 2000.

The Death of Stella Abebe Obasanjo

Another pathetic situation of medical negligence is the death of Stella Abebe Obasanjo, the wife of one time President of Nigeria, Olusegun Obasanjo. She died on 23rd October, 2005 at the age of 59, from surgical complications, that is, complications of cosmetic surgery at a private health clinic in Puerto Banus, Marbella, Spain,

¹ Cameroon Info (2021)

² The Times Newspaper (2022)

³ The herald (2021)

⁴ (1933) 79 SJ 13

caused by the negligence of the doctor. The physician had misplaced a tube designed for a liposuction procedure into Stella Obasanjo's abdominal cavity. As a result, she sustained a punctured colon and lacerated liver during the surgery and died two days after the surgery. In a law suit that President Obasanjo ordered, the doctor was held liable for medical negligence and made to pay damages and his licence withdrawn for time.

4. Conclusion

Medical negligence has in contemporary times dominated discourses on human rights, specifically the right to health at the international, regional and domestic scenes. The increased zeal of the international community to address this cankerworm has led to the adoption of diverse measures which have over the years contributed to addressing the issue to a notable positive extent.

Even though the existing legal and institutional regimes in Cameroon have continuously provided sanctions for perpetrators in an attempt to combat and eradicate medical negligence in Cameroon, the attainment of a society absolutely void of instances of medical negligence hitherto remains an expectation. This has been manifested in several instances highlighting the voluntary and involuntary violation of legislation governing the practice of medicine, which contributes to further instances of medical negligence in Cameroon. This study has revealed that some of the reasons for the persistence of medical negligence include: the existence of weak Cameroon despite the existence of a legal and institutional framework regulatory mechanisms; the inefficient enforcement of existing laws; difficult access to judicial redress; Cameroon's limited technological capacity, amongst others.

Nevertheless, considering the increased efforts made towards the fight against medical negligence, which is manifest in the increase in interests to curb the rate of violation of medical protocol resulting in damage to patients, and the increase in the prosecution and punishment of perpetrators of acts or omissions qualified as medical negligence, it would not be wrong to say that the future holds an even more safe and healthy Cameroonian society, where health and medical safety protocol will be upheld by medical personnel, characterised by the latter actively engaging in the fight against medical

negligence through the exercise of due diligence in their course of the exercise of their profession.

5. Recommendations

In view of the challenges faced in the fight against medical negligence in a bid to promote the right to health in Cameroon, a number of measures are worth proposing to strengthen the fight against medical negligence and facilitate the realization and protection of the right to health. The researcher therefore advances the following recommendations: The Strengthening of Regulatory Bodies/Mechanisms especially the courts in Cameroon.

The Strengthening of Regulatory Bodies/Mechanisms

The existence of weak regulatory mechanisms has been identified as a major challenge faced in the fight against medical negligence in Cameroon. In a bid to address this hurdle, the researcher recommends that existing regulatory bodies such as the Cameroon Medical Council and MINSANTE should be strengthened and empowered with the requisite funding and technological resources necessary for effectively monitoring medical practice in Cameroon. For example, the Cameroon Medical Association should be empowered to oversee the process of licensing of medical professionals and carry out independent investigations to ensure that only qualified and licensed individuals are engaged in the practice of medicine in Cameroonian.

Also, considering that the members of the Cameroon Medical Association are doctors/medical personnel, there is often a tendency for them to protect their colleagues when complaints are made against them. In a bid to prevent this situation and safeguard the right to health in Cameroon, the researcher recommends that an independent department, to be made up of not only the medical personnel, be created in the Ministry of Public Health to monitor and supervise the activities of the Cameroon Medical Association vis-à-vis the complaints they receive, to ensure that no bias exists when handling complaints against medical personnel. The researcher recommends that the said department be empowered with the authority to sanction and suspend members of the Cameroon Medical Association who fail to discharge their obligations with integrity and dignity. Such a step will be vital in that it will promote transparency and accountability not only within the Cameroon Medical Association,

but within medical practice as a whole- an outcome which will be liable to strengthening the protection of patients thereby facilitating the realisation of the right to health in Cameroon.

Preamble, paragraph 17 of the Preamble, Law No. 96/6 of 18 January 1996 as amended and supplemented by Law No. 2008/001 of 14 April 2008 on the Cameroon Constitution.

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