Medical Duty of Care: A Medico-Legal Analysis of Medical Negligence in Nigeria

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Abstract

It is established law that physicians owe a medical duty of care to their patients. This duty is sacrosanct and must be discharged with such degree of skill and competence the average practitioner of the profession under similar circumstances would use. Medical negligence arises where this degree of care is not observed. However it is not easily determinable when negligence is said to have arisen in view of certain extenuating circumstances as instanced in a scenario where a medical personnel decides not to attend to a dying man by the street. It becomes apposite to closely consider certain germane questions: what constitutes negligence? Can negligence be grounded in the case of a patient whose previous health condition predisposes him to certain unforeseen vulnerabilities? By what standard is the medical standard of care observed? This work situates these occasions in a vivid medico-legal analyses, while highlighting the defenses to medical negligence as availed by the law.

Keywords: Medical Negligence, Standard of Care, Duty of Care, Eggshell Skull Case.

Introduction

The idea of duty of care is founded on the assumption that in a civilized environment each individual is responsible to others not to cause any injury to them and that there should be liabilities for occasioned injuries, whether such liabilities are designed to primarily punish or deter wrongdoers or to generally compensate victims. A duty of care is an obligation on a party to take care not to allow injury to be suffered by another individual. In tort[i], 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 foreseeable occasion harm to another. Where an injury is suffered owing to a failure to observe the duty of care, there is said to be a breach. Injury could be physical, fiscal or emotional and they are remediable through various remedial alternatives as prescribed by law.

In the medical field, the job of health personnel is to offer professional care to sick persons. This is a sacrosanct job in view of the fact that such sick person submits himself to the medical person and place full reliance on the supposition that he would be provided all reasonable care and that the health officio will act in his best interest all along. However, this does not always turn out to be the case as experience has shown that patients sometimes do not receive such care as commensurate with the seriousness of their condition. As far back as 1937 there was already recognition of the fact that there was a loosening of the old-time relationship of mutual confidence between patient and doctor, upon which so much of the satisfactory practice of medicine in the past had depended.[ii] Some studies show cases ranging from medical staff's rudeness, negative attitude to patients, lack of care and compassion such as staff not doing enough to ensure patients are comfortable, inadequate response to requests,[iii] to wrong diagnoses, administering wrong treatment, surgical accidents like leaving surgical instruments in the body cavity, accidentally severing vital blood vessels or nerves, operating on the wrong part of the body or removal of healthy tissues or organs, and handling of patients by unqualified health personnel. There has been an increase in cases of unqualified medical personnel as noted by the Medical and Dental Council of Nigeria (MDCN)[iv] with quacks and unlicensed medical persons boldly operating in public and private hospitals unnoticed. Shocking illustration is the notorious case of one Martins Ugwu who confessed to having stolen a medical certificate, managed to get an employment with the Federal Civil Service and worked with the Federal Ministry of Health before he was finally caught.[v]There are also several cases of pharmacists, nurses, medical laboratory scientists and technicians as well as other health personnel parading as doctors and rendering medical services only doctors are licensed to render to unsuspecting members of the public thereby leading to considerable harm to the patient. The patient only gets to see the qualified doctor after the harm has been done.

The consequence of insufficiency or outright lack of adequate medical care could be catastrophic and such catastrophe is suffered by no other than the ordinary man who innocently placed his life in the hands of the medical personnel with the belief that he will be a better and healthier man afterward.

The World Health Organization (WHO) ranked Nigeria's government healthcare system 197th out of 200 in 2014. In 2015, another report noted that the medical personnel-to-patient ratio in the country fell far below WHO's recommendations of 1:600 for doctor-to-patient and 1:700 for nurse-to-patient ratios. Chiejina, throwing some more light on the issue, said that going by official statistics there is one doctor to every 64000 patients in Nigeria as against the WHO's standard of one doctor to 600 patients.[vi]These readings will likely not be better in 2018 if not worse. Owing to this paucity of some health personnel especially doctors, quacks are having a field day and the patient is the worse for it. This problem accentuates the need to amplify discourse on the issue of protection of patients. In advanced countries legislative steps as well as reliance on court action have been effective in ensuring that medical negligence is placed under serious check. Unfortunately same cannot be said for Nigeria as many cases of medical negligence are left unreported[vii] or unprosecuted owing to lack of fund, ignorance, illiteracy and lack of confidence in the institutions. Even the internal regulatory mechanisms within the medical field such as the Medical and Dental Council of Nigeria (MDCN) and Nigerian Medical Association (NMA) have been perceived as sleeping dogs. This is partly due to the fact that both MDCN and NMA only regulate doctors thereby allowing room for non doctors to commit all sorts of atrocities against patients without being punished. The patient only comes to the doctor for salvage after the harm has been done.

Overtime the circumstances under which duties of care were recognized moved further and further from the specific factual context of its origins.[viii]Case law has come to recognize many duty relationships like one highway user to another, employer to employee, manufacturer to those affected by his product, doctor to patient. This work seeks to focus on the medical duty of care from a medico-legal perspective with a view to determining the extent of liabilities.

Negligence and the Duty of Care

The age long principle of 'duty of care' was first articulated by Brett M. R. in 1883 in **Heaven v. Pender,**[ix]

"Whenever one person is placed by circumstances in such a position in regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger."

The broader and more comprehensive idea of duty of care was expressed in 1932 in the case of **Donoghue v. Stevenson** per Lord Atkin who found that there was a general duty to take reasonable care to avoid foreseeable injury to a 'neighbor'.[x] In the case, a lady had a drink of ginger beer from a bottle in which was a decomposing snail at the bottom owing to which she took ill. She sued the ginger beer manufacturer for negligence. The court held that the company owed a general duty of care to the woman even though the ginger beer was not directly purchased by the woman but by her friend. Lord Atkin established that there was a general duty of care owed to a 'neighbor'. A neighbor was defined as 'someone who may be reasonably contemplated as closely and directly affected by an act'. In this case it did not matter who purchased the ginger from the company since it was reasonable to expect that anyone who eventually drank the ginger beer would be affected and could therefore fall under the 'neighbor' principle.

In an increasingly litigious society, claims of breach of duty of care are mounting and sometimes spurious. The duty of care is not a blanket cheque to make all types of claims as there exists some legal control devices for determining when liability arises. An extreme example can be found in the English case of **Vellino v. Chief Constable Greater Manchester (2002).**[xi] The claimant who was well known to police had a history of trying to escape police arrest by jumping out through the window of his flat. On one of such occasions, he sustained serious bodily injuries which he claimed where due to the failure of the police to observe their duty of care by failing to prevent him jumping from the window. The Court of Appeal disagreed with him. The majority view preferred the argument that when a risk is known, a claimant has an obligation to take steps to avoid such risk and as such no duty of care existed on the part of the police. For the alleged breach of care to be actionable it must occur in the context of duty of care. Under the Common law there is no code or individual statute to which a judge can turn for the determination of the existence of the duty of care between the defendant and the claimant. When a case is instituted in court the judge will have to determine whether the defendant owed the claimant a duty to take reasonable care in the circumstances. Since the case of **Donoghue v. Stevenson *supra***, case law has established recognized principles or tests for the determination of the existence of the duty of care. The case established the "neighbor principle" as a yardstick for determining when a duty of care is owed. In his famous dictum, Lord Atkin said,

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

Lord Atkin's neighbor principle provides that as far as there exists foreseeability of harm, then failure to observe reasonable care translates into negligence.[xiii] Negligence in law ranges from inadvertence that is hardly more than accidental to sinful disregard of the safety of others.[xiv] According to Black's Law Dictionary[xv],

"Negligence is the failure to exercise the standard of care that a reasonably prudent person would have exercised in 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; the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances"

Alderson B. in **Blyth v. Birmingham Waterworks Co.**[xvi] defined negligence as
"t*he 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.*"

Also, Lord Wright in **Lochgelly Iron and Coal Co. v. M'Mullan**[xvii] said,
"*In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.*"

Where a man has failed to meet the standard of conduct required of a reasonable man under the same circumstances,[xviii] his conduct may be called negligent.[xix]

Elements of Negligence

Negligence is a question of fact, not law, so that each case has to be viewed and decided from its peculiar facts.[xx] However to recover damages for negligence it is necessary to establish the following elements[xxi]:

i. Duty
ii. Breach of duty
iii. Injury

Duty

Duty is the foundational element in negligence claim which establishes an obligation of one person to another. It serves as the thread that binds human to one another in community[xxii] thereby creating a legally recognized relationship between the claimant and defendant requiring the defendant to act in a certain way toward the claimant. Illustratively, if a defendant was hurling some logs unto a truck and a child nearby was struck with one of the logs, the first question that must be resolved is whether the defendant owed a duty to the child. If the loading dock was near a walkway and the child was passing by, then the court is likely to hold that there existed a duty to the child. But where the loading dock was a private property and the defendant didn't know that a child was trespassing the property at the time of the accident, the court will less likely find that the defendant owed a duty.

Most situations are more intricate than the case above. Would a legal host be said to owe a duty where he imprudently serves too much alcohol to a guest before the guest attempts to drive home? Should a passerby be held accountable for negligently omitting to help a needy stranger? Would a medical doctor passing by a street be said to owe a duty to an accident victim to render his services to him? These scenarios illustrate the kind of complexities that may be involved when courts deal with the issues surrounding duty. Harm in these cases is clearly foreseeable, yet courts may likely determine that defendants in such situations should be exempted. The medical doctor may only be said to owe a duty where he elects to offer treatment to the accident victim. Where he so elects he must exercise such reasonable care that is adequate for the victim's situation. But where he does not, then the element of duty will not be imputed in such circumstance.

i. Breach of duty

Breach refers to the misconduct itself. It is not enough for the claimant to show that the defendant owes him a duty but must prove that he has breached that duty to the claimant by failing to exercise such reasonable care required. The element of breach presumes the existence of a standard of proper behavior that will foist undue risks of harm to other persons and their property. The standard of care imposed on one person for the protection of the other depends on the level of relationship between them such as restaurant-keeper and his guest, lawyer-client, doctor-patient, etc.

ii. **Injury**

This is the harm or the damage that a defendant suffered from the breach alleged. A claimant must prove that he has suffered an injury which injury must flow directly from the action of the defendant. Proof of actual injury is the justification for a claim for damages in an action for negligence.

Medical Negligence

A registered medical practitioner is liable for professional negligence when he fails to exercise the skill or act with the degree of care expected of his experience and status in the process of attending to a patient.[24a] This can occur when he fails to attend promptly to a patient requiring emergency care when he was in a position to do so. When harm results from delay in management when such delays could have ordinarily been avoided, the practitioner is liable.

He is also deemed liable for medical negligence if he clearly manifests incompetence in the assessment of the patient such as making wrong diagnosis when the clinical features were so glaring that no reasonable skillful practitioner could have failed to notice them.

Medical errors such as prescribing the wrong medicines, prescribing the wrong doses of the medicines, amputation of the wrong limb, operating on the wrong side, or carelessness that results in the termination of a pregnancy all constitute negligence.

Also, failure to refer or transfer a patient in good time when such a referral or transfer was necessary, or failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient all constitute negligence. Failure to obtain informed consent of the patient before proceeding on any surgical procedure or course of treatment when such consent was necessary also constitute professional negligence.[xxiii] Thus Medical negligence is said to have occurred where a person in the medical profession is in breach of his duty of care to a patient which results in actual injury to the patient.[xxiv]It is an act or omission by a medical practitioner in the course of a patient's treatment that deviates from such accepted norms of medical practice in the medical community.[xxv]

Medical negligence does not always result in injury thereby grounding a negligence case. Where a healthcare professional deviates from the appropriate medical standard but the patient is not harmed, a negligence case will not succeed. It is necessary to show that the negligence resulted in injury against the patient.[xxvi]

A medical doctor cannot be concluded to be negligent simply because something goes wrong. To establish a case of medical negligence requires that these three criteria are met: firstly, there must be evidence that the doctor owed the complainant duty of care. Secondly, that this duty was breached by the doctor not providing the required standard of medical care and thirdly that this breach led to injury or death for which compensation is payable and which was both foreseeable and reasonably avoidable.[xxvii]He can only be found negligent when he falls short of the standard of reasonable skillful medical man. Lord Denning opined that a medical man should not be considered liable in medical negligence unless "he has done something of which his colleagues would say 'He really did make a mistake there. He ought not to have done it.'"[xxviii] In the case of **Ojo v. Gharoro&Ors.**,[xxix]a needle got broken in the abdomen of a patient during a surgery. In that case the appellant had fertility problems which made her approach the University of Benin Teaching Hospital (UBTH), Benin City. The 1st Respondent, a lecturer at the UBTH examined the appellant. The appellant was diagnosed of uterine fibroid, secondary infertility and menorrhagia. She was informed that she had a growth in her uterus and that she needed a surgical operation to enable her become pregnant to which she consented. After the operation the appellant felt pains and it was confirmed through x-ray that there was a broken needle in her abdomen. This necessitated a second operation which succeeded in removing the broken needle. The appellant sued claiming the sum of N2,000,000.00 as special and general damages for negligence. The court dismissed the appellant's claim on the ground that the respondents rebutted the presumption of negligence raised by the appellant. The Supreme Court agreed that the surgeons exercised their best surgical skills and as such not negligent.

A medical doctor is expected to act in compliance with the standard accepted by a responsible body of medical skilled men in the art of medicine.[xxx] Where the doctor complies with such standard he cannot be said to be negligent even if some harm is occasioned.[xxxi]In **Abi v Central Bank of Nigeria**[xxxii]the claimant became deaf due to the drugs administered on him by the third defendant, a medical doctor. The Court of Appeal found that the third defendant had conformed with an acceptable standard of practice. Nwobodo JCA said:

"The courts have long recognized that there is no negligence if adoctor exercises the ordinary skill of an ordinary competent manprofessing to have that special skill."

For a patient to succeed in an action for negligence against a medical personnel, he must prove that the doctor owes him a duty of reasonable care in treating him, that he failed, omitted or refused to exercise such reasonable care and thereby was in breach of the duty; and that the patient suffered injury as a result of the breach.

Once a doctor undertakes to treat a patient, a duty of care arises. It doesn't matter whether or not such care is rendered for a fee or ex gratia. He must conform to the reasonable standard of an ordinary doctor of his training and skill. Part of being diligent is the medico-legal duty of obtaining consent from the patient except in cases of emergencies. In obtaining that consent it must be clear what consent is being given for so that consent that is given for diagnosis and operative laparoscopy and "laparotomy if needed" does not amount to express consent for a total hysterectomy with bilateral salpingoophorectomy.[xxxiii] In the absence of emergency, such consent must not only be informed but must be given by the patient himself. A situation whereby someone else gives consent on behalf of a patient who is not a minor simply because he was unconscious will not likely be excused by court. Hence in **Samira Kohli*v.* Dr. PrabhaManchanda and Ors**.,[xxxiv] the Supreme Court of India held that the respondent should have waited for the appellant to regain consciousness since there was no emergency rather than rely on his mother's consent to remove his reproductive organs. The Court held further that performance of surgery without consent amounts to an unauthorized invasion and interference with the appellant's body, and it was immaterial whether the decision was correct or not. Cardozo CJ in **Schloendorff v. Society of the New York Hospitals**[xxxv]held that "*every human being of adult years and sound mind has a right to determine what shall be done with his own body*." This principle is derived from the long-standing common law position recognizing and protecting human autonomy and self-determination.[xxxvi] Some jurisdictions have made direct provisions for this in their constitutions. Section 12(2) of the South African Constitution of 1996 provides that every person has right to bodily and psychological integrity, including the right to "*not to be subjected to medical or scientific experiments without their informed consent.*" In the South African case of ***Esterhuizen v. Administrator, Transvaal***[xxxvii] it was held that a person of sound mind may refuse medical treatment irrespective of whether it would lead to his death or not.

In the Nigerian case of **Medical and Dental Practitioners Disciplinary Tribunal v. Dr. John E. N. Okonkwo**[xxxviii]the Supreme Court recognized the right of a patient to self-determination in the context of freedom of thought, religion and conscience. In that case a patient who belonged to the Jehovah's Witness faith refused blood transfusion as same was contrary to her religious faith. She died as a result of the refusal to accept blood transfusion. The respondent was charged before the Medical and Dental Practitioner Disciplinary Tribunal on two counts of negligence and acting contrary to his oath as a medical practitioner. On appeal at the Supreme Court, Ayoola JSC held:

"*The patient's constitutional right to object to medical treatment or, particularly, as in this case, to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 Constitution as follows: (i) right to privacy: section 34; (ii) right to freedom of thought, conscience and religious: section 35. All these are preserved in section 37 and 38 of the 1999 Constitution respectively. The right to privacy implies a right to protect one's thought conscience or religious belief and practice from coercive and unjustified intrusion; and, one's body from unauthorized invasion. The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's life, religious belief. The limits of these freedoms, as in all cases, are where they impinge on the rights of others or where they put the welfare of the society or public health in jeopardy. The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary…*"

Medical Negligence and the Rule in "Eggshell Skull" Case

In the 19th Century *locus classicus* case of ***Vosburg v. Putney***,[xxxix] the Wisconsin Supreme Court introduced a twist in the imposition of liabilities on negligent defendants to the full extent of damages caused to physically vulnerable claimants. In that case, an altercation ensued between two teens, 12-years old George Putney who kicked 14-years old Andrew Vosburg in his shin. Vosburg had injured his leg a month earlier in a sledding accident. The kick aggravated the previous injury and led to the Vosburg's permanent incapacitation. The court found Putney liable for all damages arising from the kick even though he did not know of Vosburg's condition or intend the harm. This principle later came to be referred to as the eggshell skull rule, connoting the fragility of the plaintiff as a result of a preexisting medical condition[xl] which though has been subsided due to treatment.

The rule prescribes that you must accept your patient the way they are rather than seek to excuse yourself by their vulnerabilities. This is an exception to the foreseeability rule established in *Donoghue's case.* In the usual case of negligence, award of damages is given according to the foreseeability of the harm caused; hence a person will not be guilty of negligence unless the harm that results was reasonably foreseeable. But the point of emphasis of the 'eggshell skull' rule is that a patient must not leave the doctor in a condition worse than when he met him. The doctor will bear liabilities whether they are such that are ordinarily probable or remote, unlikely and unforeseeable as long as they resulted from the negligence of the doctor.

An instance is where a man has a bone spur in his spinal cavity in the middle part of his neck. He came to be operated for a different condition, but in the cause of prepping him for the operation the surgical table collapsed and the man fell and broke his back bone rendering him permanently bedridden. It was not a serious fall and would normally not have resulted in an injury. It is probably not foreseeable that a man would be paralyzed by this apparently simple negligent act, but there was an act of negligence because a surgical table should not just collapse if it were in good shape and properly set. The 'eggshell skull' rule says that the doctor will be held liable in negligence as a negligent actor should be stuck with the victim as he finds him.[xli]

The relevance of this rule for medical practitioners especially doctors is that some patients may possess vulnerabilities of their own before coming for treatment. It is important for the medical personnel to obtain as much information as possible from the patient regarding his general health condition. As far as the eggshell skull principle is concerned, liabilities will not stop simply at the domain of foreseeable injuries but to the full extent of the exacerbation of patient's preexisting injuries.

The health personnel are not however required to show a higher duty of care to the 'eggshell skull' claimant. The duty of care is the same whether or not the claimant has a preexisting physical, mental or emotional condition.

An important exception to the rule in 'eggshell skull' case is intervening cause. This is the *actusreus* i.e. the causal relationship between conduct and result. Where it is shown by the defendant that an injury is not the immediate result of his negligence but of a *novusactusinterveniens*,[xlii] he will be exculpated. Also related to this exception is contributory negligence. Where a patient knowingly contributes to the severity of his injury, then the amount of compensation may be reduced to the comparative extent of his negligence.

Standard of Care

Although the term 'standard of care' is nuanced by the changing approaches to its meaning,[xliii] it can be defined medically and legally. Medically, standard of care is a diagnostic and treatment process that a clinician should follow for a certain type of patient, illness or clinical circumstance.[xliv] In law, standard of care can be defined as that degree of prudence expected of an ordinary reasonable individual who is under a duty of care. It is the degree of prudence required for the conduct of persons whose activities unavoidably impose risks of injury on other persons. It is submitted that the requirements of standard of care are dependent on circumstances. Generally what is required is what is 'reasonable' care for the safety of others. But standard of care is adjusted for special cases or relationships. Where a person holds himself out as possessing the skill of an ordinary medical doctor, then all that will be expected of him is what an average doctor under similar circumstances will do. But where he professes to have any special skill for example a cardiac surgeon, then he must display the special skill and facilities required during a cardiac surgery. In effect, the standard of care varies according to the proficiency required of the individual.

Of note is that standards change as new methods and technology change. New standards emerge as new evaluations are made with respect to new diagnostics and treatment that a clinician should follow, new approaches to administering certain type of treatments, etc. Professional bodies that provide oversight often develop these standards of practice in order to define the current best quality that should be provided.

Defenses to Medical Negligence

There are some possible defenses to medical negligence action as briefly discussed below. These can be gleaned from the foregoing discussion.

a. ***Novus actusinterveniens***

A *novusactusinterveniens* is a new intervening act which shifts liabilities from the defendant to a third party. Where the act of the care provider was negligent but some other set of event occurred to result in an injury to the patient, such event will serve as *novusactusinterveniens*to diminish or shift liabilities, depending on the fact of the situation.

b. **Contributory negligence**

Where claimant has through his own action or inaction contributed to the harm complained of, this is known as contributory negligence which serves as a defense in an action in tort for medical negligence. Where a patient was instructed to take some subsequent measures, treatments, precautions, observe some check-ups, etc. as a follow up to a negligently conducted surgical operation and he fails to, his failure will serve to reduce liabilities of the surgeon who may have been found negligent in the first place where such failures prove aggravating.

c. Where no damage occurs following the act of negligence

It is not enough to prove that the defendant has been negligent. Injury is an essential element that serves to make formidable an action against a tortfeasor which if not proved to have arisen from the negligent act, a suit in tort of medical negligence will not succeed.

d. **Where there was injury, though there was no negligence**

Courts have severally held that the mere fact that something goes wrong after a surgical operation does not ground an action in negligence so long as reasonable standard of care was observed during the surgery[xlv] even if death occurred.[xlvi]

e. **Voluntary assumption of risk**

This is where the defendant has expressly given his consent to relieve the claimant from liabilities and has decided to take his chances of injury from a disclosed risk. Scenario like this may arise where an experimental treatment is to be embarked on by a specialist who makes known the risks involved. He will be free from liabilities if the patient voluntarily assumes the risks as such action will serve as a waiver.

Conclusion

This paper has discussed professional negligence of medical practitioners in Nigeria under the general tort law of negligence and in the light of case law. A medical practitioner is expected to care for his patient in every professional relationship. Where he fails to exercise the skill or act with the degree of care expected of his experience and status, he is liable for professional negligence. He may not be duty bound to stop by the roadside and attend to a dying man, but if he does so he is duty bound to render his services at the highest professional standard. Negligence does not necessarily occasion simply because somebody did not survive an operation or something went wrong after a treatment. The law requires a direct nexus between the injury and the action/inaction of the medical doctor. Where it is shown that the doctor complied substantially with the established guidelines which are accepted as standard for treatment of the given disease, a case for negligence will likely fail. It is therefore vital for the doctor or medical personnel to observe such amount of professional care expected of his training. As an additional precaution medical professionals must diligently ascertain, through thorough clinical evaluation, the health state of their patients beyond the illnesses presented before them to avoid the risks involved in eggshell skull case. Essentially, a patient must be taken how he is. His undisclosed fragilities will not excuse the medical personnel from liabilities, hence the need for the medical personnel to be systematic, in-depth and thorough while carrying out his medical investigations in order to reduce chances of tortious liabilities.

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[i] Tort is a specie of civil injury or wrong. Although a tort is a civil injury, not all civil injuries are torts except where the appropriate remedy for it is an action for damages. Such an action is an essential characteristic of every true tort. See R. F. V. Heuston, *Salmond on the Law of Torts*, 14th ed.(London: Sweet & Maxwell, 1965), p. 9.

[ii] E. Pierce Gould, "The Defence of Medical Negligence"*Medico-Legal and Criminological Review*5/2 (1937): 191.

[iii] D. Campbell, "Hospital Patients Complain of Rude Staff, Lack of Compassion and Long Waits,"*The Guardian*(February 23, 2011).Available athttps://www.theguardian.com/society/2011/feb/23/hospital-patients-rude-staff-long-waits.

[iv]P.Ugbodaga, "Quacks and Medical Practice in Nigeria"*The Sun*(April 27, 2017).Availableathttp://sunnewsonline.com/quacks-and-medical-practice-in-nigeria/.

[v] I.Duru,"At the Mercy of Fake Doctors"*The Nation*(November 1st, 2015).Available athttp://thenationonlineng.net/at-the-mercy-of-fake-doctors/.

[vi] A.Chiejina, "Official! One doctor to 6400 patients in Nigeria"*Nigeria Intel*(May 3, 2013).

[vii]Komolafe in his PhD thesis on medical negligence observed his main challenge as relative inaccessibility of case law as the coverage of medical law cases in law reports is quite limited. See K. A. R.Obafemi, "Medical Negligence Litigation in Nigeria: Identifying the Challenges and Proposing a Model Reform Act", 2017 available athttp://www.tara.tcd.ie/handle/2262/81835.

[viii] The 1932 landmark case of Donoghue v. Stevenson[1932] UKHL 100 is often referred to as the origin of the idea of care. However other earlier cases have muted the idea in narrower perspectives.

[ix] 11 Q.B.D. 503, 509 (1883)

[x]L. Donaldson, "Making amends: a consultation paper setting out proposals for reforming the approach to clinical negligence in the NHS"(June 2003 London Department of Health).

[xi][2001] EWCA Civ 1249. 2001 June 20, 21

[xii][1932] AC 562, 580.

[xiii] While many objected that such a duty test, based on foreseeability alone, cast the duty net too wide, others had a more fundamental objection: that such an understanding of duty rendered the enquiry completely unnecessary. According to Winnfield, for example, the duty concept, on this understanding, was 'superfluous', 'unnecessary', and 'in theory … might well be eliminated from the tort of negligence'. Similarly, Buckland famously described the duty of care as 'an unnecessary fifth wheel on the coach, incapable of sound analysis and possibly productive of injustice'. The basis of these criticisms was, essentially, that the function of the duty of care, which the critics saw as being to prevent liability in negligence extending to those who were not foreseeably affected by the defendant's conduct, was able to be satisfactorily performed at other stages of the negligence enquiry. See generally J. Plunkett, *The Duty of Care in Negligence* (Oregon: Oxford and Portland, 2018):at 80.

[xiv] P. Devlin, *The Enforcement of Morals*(London: Cambridge University Press, 1968), p.36.

[xv] B. A. Garner, ed.,*Black's Law Diction*(10thed.)(USA: West Group, 1996), p.1196.

[xvi](1856) 11 Ex. 781, at 784.

[xvii] (1934) A. C. 1, at 25

[xviii]Odinaka v. Moghalu (1992) 4 NWLR (Pt. 233) 1; (2008) 13 NWLR (Pt. 1104) page 307; Diamond Bank Ltd. v. P.I.C. Ltd. (2009) 18 NWLR (Pt.1172) 67.A reasonable man is a person who acts sensibly, does things diligently and takes proper, but not excessive, precautions. See UITH V. Dr. Abegunde (2013) LPELR-21375(CA)per Ogbuinya, J.C.A. ,P. 39, paras. A-B.
[xix] F. James Jr. 'Scope of Duty in Negligence Cases'
[xx]F.A.A.N v. W.E.S (Nig.) Ltd. (2011) 8 NWLR (Pt. 1249) 219.
[xxi] These three ingredients have since been judicially recognized and adapted as part of Nigerian jurisprudence on negligence. See Agbonmagbe Bank Ltd. v. CFAO Ltd. (1967) NWLR 173 ;Abubakar v Joseph (2008) 13 NWLR (Pt.1104) 307.
[xxii] D. G. Owen "The Five Elements of Negligence"*Hofstra Law Review* 35 (2007), 1674.
[xxiii]MDCN "Code of Medical Ethics in Nigeria" 2008.Available at www.mdcnigeria.org/Downloads/CODE%20OF%20CONDUCTS.pdf.
[xxiv] I. P. Enemo"Medical Negligence: Liability of Health Care Providers and Hospitals"*The Nigerian Juridical Review*10(2011 - 2012), p. 112.
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[xxvi]D.Goguen,"Medical Negligence".Available athttp://www.alllaw.com/articles/nolo/medical-malpractice/negligence.html.
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[xxviii] M. R. Denning, *The Discipline of Law* (London: Oxford University Press, 2013),pp. 237, 242 - 243.
[xxix]Ojo v. Gharoro, UBTH Board, Dr. S. A. Ejide (2006) 10 NWLR (Pt. 987) 173.
[xxx]Abi v. CBN &Ors.(2011) LPELR-4192(CA) Per Nwodo, J.C.A. (P.39, Paras. A-F)
[xxxi] A.Esan,"When is a Medical Doctor Said to be Guilty of Negligence in Nigeria"(February21st, 2016).Available athttps://akintundeesan.blogspot.com.ng/2016/02/when-is-medical-doctor-guilty-of.html.
[xxxii] [2012] 3 NWLR 1
[xxxiii]Samira Kohli*vs*. Dr. PrabhaManchanda and Ors. I (2008) CPJ 56 (SC)
[xxxiv] ibid
[xxxv]211 NY 125, 105 N.E. 29, 1914.
[xxxvi] J. O. Lokulo-Sodipe, "An Examination of the Legal Rights of Surgical Patients under the Nigerian Law"*Journal of Law and Conflict Resolution*,1/4 (2009), p. 83.
[xxxvii]1957 (3) SA 710 (T)
[xxxviii](2001) 2 MJSC 67.
[xxxix]50 N.W. 403 (Wis. 1891). This *locus classicus* has occasionedmuch discusses and analyses in law reviews. See for instance James A. Henderson, Jr., *Why* Vosburg*Comes First*, 1992 WIS. L. REV. 853, 853; Robert L. Rabin, Vosburg v. Putney *in Three-Part Disharmony*, 1992 WIS. L. REV. 863, 863; Elizabeth M. Jaffe, *Cyberbullies Beware: Reconsidering* Vosburg v. Putney *in the Internet Age*, 5 CHARLESTON L. REV. 379, 379 (2011), etc.
[xl] The name "eggshell skull" came about from a scenario well instanced by Kennedy J. in *Dulieu v. White* [1901]2 K.B. 669, 679. According to him, "If a man is negligently run over or otherwise negligently injured in his body, it is no answer to the sufferer's claim for damages, that he would have suffered less injury, or no injury at all, if he had not had an unusually thin skull or an unusually weak heart".
[xli] D. Sethi "The 'Eggshell Rule' in Negligence Actions".Available at https://www.azinjurylaw.com/Personal-Injury-Blog/2010/March/The-Eggshell-Rule-In-Negligence-Actions.aspx.
[xlii] This is Latin for a "new intervening act".
[xliii] P.Moffet and G. Moore,"The Standard of Care: Legal History and Definition: the Bad and Good News"*Western Journal of Emergency Medicine*12/1 (2011), p. 1.
[xliv] Michelle Heller,*Clinical Medical Assisting: A Professional, Field Smart Approach to the Workplace*(2nded.) (Boston, Massachusetts: *Centage Learning*, 2016), p. 24.
[xlv]Ojo v. Gharoro, UBTH Board, Dr. S. A. Ejide (2006) 10 NWLR (Pt. 987) 173;Abi v. CBN &Ors.(2011) LPELR-4192(CA) Per Nwodo, J.C.A. (P.39, Paras. A-F).
[xlvi]Dr. Ganesh Prasad and Anr.v. LalJanamajayNathShahdeo, I (2006) CPJ 117 (NC).

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