



The Criminalization of Medical Negligence in Edo South Senatorial District, Nigeria

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Abstract

Though grossly underreported, medical negligence in Nigeria appears to be on the increase, going by the media reports. Unfortunately, any negligent act of a healthcare provider or hospital usually leads to injury and in some cases, death of the patients which is often unreported in the Nigeria police force' crime diary. The study, therefore, seeks to examine 'the criminalization of medical negligence in Edo South Senatorial District, Nigeria'. The study adopted the descriptive survey method where one thousand, four hundred respondents were purposively sampled. The data generated from the study were analyzed with the aid of frequency distribution tables and chi-square statistics. The findings of the study reveal that medical negligence not only exists in Edo South Senatorial District, Nigeria but also the public is unaware that it is a criminal act which the law frowns at. It is also revealed that religious beliefs and socio-economic status of patients usually impinge on their ability to seek legal redress in the event of medical negligence. The study, therefore, suggested that the government, non-governmental organizations and the mass media should embark on a vigorous campaign against the rising waves of medical negligence and create legal awareness in the patients on their rights in the event of occurrence of any negligence.

Keywords: Criminal Act, Healthcare Provider, Medical Negligence, Victims

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Introduction

The media recently is agog with news bothering on mistakes made by medical doctors in Nigeria. There is an upsurge in this contemporary socio-medical phenomenon that has severe implications on the public and yet, there is little or no report on it (Peters, 2017). Medical negligence which refers to an act or omission by a person in the medical profession, to a patient, which results in damage to the patient has not received the deserved attention by the appropriate authorities in Nigeria. That is not to say that there have been no instances of medical negligence that were handled by the relevant authorities. In fact, in *Olowo v. The Nigeria Navy* (2011) and *Olaya v. Chairman Medical and Mental Practitioner Investigating Panel and others* (1992), the decision reached in the above cases was that the doctors were negligent and their conduct, most embarrassing. Besides, some aggrieved patients have had cause to drag medical practitioners

before the medical council on issues bothering on medical negligence. In the cases of *Denloye v. Medical Council Disciplinary Tribunal (1968)* and *Alakija v. Medical Council Disciplinary Committee (1959)*, the medical practitioners were found guilty of medical negligence and their names were struck off the Medical and Dental Council Register, although this decision was, however, later overturned by the court upon appeals before it.

Despite these cited cases, the reality appears to be that many victims of medical negligence and their relations are not willing or prepared to press charges against the healthcare providers or the hospitals. Research reveals that the religious beliefs and or the socio-economic status of a patient play a significant role in whether legal redress would be sought (Donald, 2014). In his view, Usman (2018) believes that one of the reasons why hospitals remain careless with their work is the fact that the religious beliefs of Muslims tend to make them ignore litigation once death occurs. Devout Muslims must be buried within hours and most times, the devout Muslim believes that "God gives, and God takes". The implication of this is that nothing happens to a negligent doctor or hospital. The case is not even investigated let alone charged to court. In the absence of sanction, according to Usman (2018), medical mistakes will continue to go unabated.

It must be stated clearly that there are relevant statutes that regulate the conduct of doctors in Nigeria. Some of these include the Medical Practitioners Act, 1963 and the Rules of Professional Conduct for Medical and Dental Practitioners (RPC). Other provisions of the law against medical negligence can be gleaned from the Criminal Code (2014) and the Penal Code (2004) which means that criminal law also applies to healthcare providers and hospitals. If a doctor, due to any act or omission, make a patient suffer any injury, such a doctor can be prosecuted in a law court. Section 303 of the Criminal Code (2004) requires that when surgical or medical treatment is done by a medical person, such a person must use a reasonable skill. This implies that for criminal liability to exist, the healthcare provider must have been grossly negligent and not just merely negligent. This was the position of the court in *Kim v. The State (1992)*. The law of tort can equally be resorted to on medical negligence issues. The question that often agitates the minds of concerned persons remain, are the citizens of Nigeria aware of the existence of these statutory provisions? Some scholars believe that the public is not aware of these laws and even their legal rights in relation to medical negligence (Ushie, Salami, Jegede and Oyetunde, 1959, Bugal and Obalum, 2018 and Owoseye, 2016). The paper, thus, examined issues bothering on medical negligence and criminal nature thereof.

Objectives of the Study

This research investigates the criminalization of medical negligence in Edo South Senatorial District, Nigeria. Its specific objectives include:

1. ascertain if medical negligence exists in Edo South Senatorial District, Nigeria.
2. find out if medical negligence is a criminal act in Edo South Senatorial District, Nigeria.
3. identify the relationship between the religious beliefs of patients-victims and their relations and instituting legal action against a medically negligent healthcare provider and hospital in Edo South Senatorial District, Nigeria.
4. discuss the relationship between the socio-economic status of patient-victims and their relations and instituting legal action against a medically negligent healthcare provider and hospital in Edo South Senatorial District, Nigeria.
5. find out if ignorance of the laws against medical negligence exists amongst the people of Edo South Senatorial District, Nigeria.

Hypotheses

1. Medical negligence does not exist in Edo South Senatorial District, Nigeria.
2. Medical negligence is not a criminal act in Edo South Senatorial District, Nigeria.
3. There is a correlation between the religious belief of patients-victims and their relations and instituting legal action against medically negligent healthcare providers and hospitals in Edo South Senatorial District Nigeria.
4. There is an association between the socio-economic status of victims and their relations and instituting legal action against medically negligent healthcare providers and hospitals in Edo South Senatorial District Nigeria.
5. Ignorance of the law against medical negligence does not exist in Edo South Senatorial District.

Review of Related Literature

The Nigeria healthcare system has, lately, come under severe criticism due to unsatisfactory performance in quality delivery especially everyone cannot access medical services with ease. Those who belong to the low-income class often cannot access quality healthcare delivery and when they even access medical services, they receive substandard care due to the negligence of one healthcare provider or another. At other times, the expensive nature of medical services, force the low-income persons usually resort to quacks who though may provide cheap services, often cause greater harm/damage to the patients (Ememo, 2012).

Closely related to the above is the fact that, as Osaghae (2019) notes, in certain parts of Nigeria, the citizens have been pauperized by bad governance and economic policies. The result of this is that many people who originally know what to do or know their rights tend to forgo taking any action due to the unavailability of money or slim resources to pay to hire the services of a lawyer. He further observed that the ordinary man would prefer to leave the issues of medical negligence in the hands of God rather than use his or her meager salary to pursue a case against a well-established hospital.

The truth of the matter as can be gleaned from literature is that there is an upsurge of medical negligence and most pathetic is the fact that about 80% of its occurrences involve death or grievous bodily harm to the victims, the family and the society at large (Donald, 2014). Studies reveal that many patients-victims are not aware of their rights to seek legal redress against medical negligence or that medical negligence is a criminal act (Ushie, Salami, Jegede and Oyetunde, 2013). Unfortunately, many people do not know the law or the fact that they have rights adequately taken care of by a healthcare provider who has commenced diagnosis and treatment. This lack of knowledge of their rights as Ememo (2012) puts it, is responsible for patients not taking out lawsuits against negligent healthcare providers which could have further enhanced the quality of healthcare in Nigeria, as it would ensure that the best medical standards are maintained. Olaleye (2018) has argued that many educated Nigerians have very little or no knowledge of their rights to sue when medical mistakes are made against them or their relations. In many parts of Nigeria today, some persons simply accept medical mishap as the will of God and so do not see the need to press charges against the medical practitioner whose negligence led to the death of their relatives.

By way of conceptual clarification, the concept of medical negligence refers to the dereliction of duty by someone in the medical field, to a patient, which leads to his or her injury (Pandit and

Pandit, 2009). The healthcare providers relate to those who are not just qualified but appropriately registered or licensed to carry out or practice any of the health-related professions within the medical field and this includes medical doctors, dentists, pharmacists, physiotherapists, nurses, laboratory scientists, to mention but a few. The society not only holds them in high esteem but also believes in their skill and knowledge while they on their part, have held themselves out to serve patients. It is needful here to emphasize that the term is more commonly used when talking about doctors, other healthcare providers listed above can be liable for medical negligence. Any of the following grounds can lead to medical negligence: Not attending promptly to the patient, incorrect diagnosis, making a mistake in treatment, not referring a patient in good time, as well as not obtaining the consent of a patient before carrying out any surgical procedure. These are outlawed by the RPC for doctors as well as the Hippocratic oath which all medical practitioners globally take, promising to take care of mankind irrespective of race, religion, political lining etc. without disclosing.

Despite taking the Hippocratic oath, the Uganda Law Reform Commission (2017) has seen that negligence by doctors in the course of performing their duties is still a common occurrence and advised that victims and their relatives should sue for recovery and damages. The Commission with statistics has shown that the incidence of wrongful death, wrong diagnosis and surgery often go unreported.

Whenever a case of medical negligence occurs, the patient has the right to either bring a civil or criminal action against the healthcare provider and or the hospital. More often than not, it is the case that when a breach of medical ethics occurs, the patients who are a little informed usually resort first, to a criminal action by lodging a formal complaint about the matter at the nearest police station, but whether they will press charges against the healthcare provider is usually dependent on other variables such as financial and religious backgrounds, knowledge of their right, cooperation of family members and even the efficiency of the police. This implies that the existence of medical negligence has become notoriety even though there is a dearth of reported cases on them (Peters, 2017 and Garon-Sayegh, 2019)

Methods and Materials

The study which lasted from November 2018 to February 2019 was conducted in Edo South Senatorial District which has seven local government areas viz: Oredo, Orhionmwon, Ovia North-East, Ovia South-West, Egor, Uhumwode, and Ikpoba-Okha. The descriptive survey method was used for the study. The population of the study was made up of all medical personnel and all patients-victims of medical negligence and their relatives in Edo South Senatorial District. The medical personnel were purposively sampled while the snowballing sampling method was used to elicit information from victims (patients) of medical negligence and relations. A total of 1414 questionnaire (202 per local government area in the senatorial district) were administered out of which 1400 were retrieved and used for the analysis of data for the study. Data was collected with the aid of a semi-structured and validated questionnaire with a reliability identification of 0.89.

Descriptive statistics of frequencies were used to describe the demographic data while the inferential statistics of chi-square were employed to test the hypothesis. All ethical considerations were adhered to. There are sixty hospitals and a hundred primary healthcare centers in Edo South Senatorial District as depicted in Tables A and B below:

Table A: Distribution of Hospitals in Edo South Senatorial District

S/N	L.G.A	Estimated Population	Area (Km ²)	No. Of Hospital	Population Per Hospital	Area Served By One Hospital	No. Of Beds	Bed
1.	Egor	321, 043	88.8	12	26, 754	7.4	596	539
2.	Oredo	503, 161	317.8	24	20, 965	13.2	510	987
3.	Ikpoba- Okha	296, 285	814.5	7	42, 326	116.4	142	2087
4.	Uhumwode	137, 987	2062.4	1	137, 987	2062.4	20	6899
5.	Orhionmwon	26, 291	2330.99	12	17, 191	199.2	228	905
6.	Ovia North-East	168, 592	2351.2	2	84, 296	1175.6	78	2161
7.	Ovia South-West	114, 404	2839.3	2	57, 202	1419.7	86	1330
	Total	1747, 763	10863.99	60	29, 129	181	1,670	1047

Source: Balogun and Alaegor (2018)

Table B: Distribution of Hospitals in Edo South Senatorial District

S/N	L.G.A	Estimated Population	Area (Km ²)	No. Of Primary Health Care Centres	Population Per Hospital	Area Served By Hospital
1.	Egor	321, 043	88.8	4	80, 261	22.2
2.	Oredo	503, 161	317.8	6	83, 860	53.0
3.	Ikpoba- Okha	296, 285	814.5	7	42, 326	116.4
4.	Uhumwode	137, 987	2062.4	24	5,749	85.9
5.	Orhionmwon	26, 291	2330.99	25	8,252	95.6
6.	Ovia North-East	168, 592	2351.2	24	7, 025	98.0
7.	Ovia South-West	114, 404	2839.3	10	11, 440	283.9
	Total	1747, 763	10863.99	100	17, 478	109

Source: Balogun, T.F. and Alaegor, A.G. (2018)

Results and Discussions

Table 1 reveals the results of the socio-economic features of participants. Out of the 1400 respondents who took part in the study, 60% (840/1400) of them were male while 40% (156/1400) were female. 7% (100/1400) were in the 21-30 years age range, 39% (550/1400) were between 31-40 years while 25% (350/1400) were between 41-50 years and 29% (400/1400) were between 51-60 years. For religion, 96% (1250/1400) of the respondents were Christians, 1% (15/1400) were Muslims and other religions had 3% (15). As for educational level, 1% (14/1400) of the respondents had a primary school certificate, 17% (236/1400) had secondary school certificates while 82% (1150/1400) had university degrees. On marital status, 75% (1050/1400) of the respondents were married while 25% (350) were single. For occupation, 46% (650/1400) were medical personnel, 11% (150/1400) and 11% (150/1400) were legal personnel and police respectively while 32% (450/1400) were civil servants.

Table 1: Demographic Characteristics of Respondents

	Frequency	Percentage (%)
Sex	840	60
Male	560	40
Female		
Total	1400	100
Age		
21-30	100	7
31-40	550	39
41-50	350	25
51-60	400	29
Total	1400	100
Religion		
Christianity	1250	96
Islam	15	1
Others	35	3
Total	1400	100
Educational level		
Primary	14	1
Secondary	236	17
Tertiary	1150	82
Total	1400	100
Marital status		
Married	1050	75
Single	350	25
Total	1400	100
Occupation		
Medical personnel	650	46
Legal personnel	150	11
Police	150	11
Civil servants	450	32
Total	1400	100

Source: Field survey, November 2018- February 2019

Hypothesis One

Null Hypothesis: Medical negligence does not exist in Edo South Senatorial District, Nigeria.

Alternative Hypothesis: Medical negligence exists in Edo South Senatorial District, Nigeria.

Table 2: Medical Negligence and its Existence

Frequency O	Percentage (%) E	O-E	(O-E) ²	(O-E) ² /E
1100	700	400	160,000	228.6
300	700	400	160,000	228.6
1400				457.2

Source: Field survey November 2018- February 2019

The result of the chi-square calculated 457.2 is greater than the study critical value of 3.53. The table above further reveals that 1100 respondents were of the view that medical negligence exists in Edo South Senatorial District of Nigeria while 300 respondents were of a contrary view. Thus, the alternative hypothesis is accepted. The finding of this study is in tandem with Peters (2017) where he said that there is an upsurge in medical negligence even though it is underreported.

Hypothesis Two

Null Hypothesis: Medical negligence is not a criminal act in Edo South Senatorial District, Nigeria.

Alternative Hypothesis: Medical negligence is a criminal act in Edo South Senatorial District, Nigeria.

Table 3: Medical Negligence and Criminality

Frequency O	Percentage (%) E	O-E	(O-E) ²	(O-E) ² /E
950	700	250	62,500	89.29
450	700	250	62,500	89.29
1400				178.6

Source: Field survey November 2018- February 2019

The result of the chi-square calculated 178.56 is greater than the study critical value of 3.53. Table 3 above further reveals that 950 respondents were of the view that there is a link between medical negligence and criminality in Edo South Senatorial District of Nigeria while 450 respondents were of a contrary view. Consequently, the alternative hypothesis is accepted. The study validates the work of Owoseye (2016) when he noted that people are not aware of their rights, let alone knowing that medical negligence is a criminal act. Even the Criminal Code (2004) is very explicit as it criminalizes medical negligence, particularly in Sections 319 and 325.

Hypothesis Three

Null Hypothesis: There is no correlation between the religious belief of patients-victims and their relations and instituting legal action against medically negligent healthcare providers and hospitals in Edo South Senatorial District Nigeria.

Alternative Hypothesis: There is a correlation between the religious belief of patients-victims and their relations and instituting legal action against medically negligent healthcare providers and hospitals in Edo South Senatorial District Nigeria.

Table 4: Religious Beliefs and Legal Redress

Frequency O	Percentage (%) E	O-E	(O-E) ²	(O-E) ² /E
860	700	160	25,600	36.57
540	700	160	25,600	36.57
1400				73.16

Source: Field survey November 2018- February 2019

The result of the chi-square calculated 73.16 is greater than the study critical value of 3.53. Table 4 above further reveals that 860 respondents were of the view that there is an association between religious beliefs and the quest to seek legal redress in cases of medical negligence in Edo

South Senatorial District of Nigeria while 540 respondents were of a contrary view. Therefore, the alternative hypothesis is accepted. The study corroborates the earlier work of Peters (2017) when he noted that the religious inclination of a patient usually determines his willingness to press charges when there is medical negligence.

Hypothesis Four

Null Hypothesis: There is no association between the socio-economic status of victims and their relations and instituting legal action against medically negligent healthcare providers and hospitals in Edo South Senatorial District Nigeria.

Alternative Hypothesis: There is an association between the socio-economic status of victims and their relations and instituting legal action against medically negligent healthcare providers and hospitals in Edo South Senatorial District Nigeria.

Table 5: Socio-economic Status and Legal Redress

Frequency O	Percentage (%) E	O-E	(O-E) ²	(O-E) ² /E
1200	700	500	250,000	357.1
200	700	500	250,000	357.1
1400	100			714.2

Source: Field survey November 2018- February 2019

The result of the chi-square calculated 714.2 is greater than the study critical value of 3.53. Table 5 further reveals that 1200 respondents were of the view that there is an association between socio economic status and the quest to seek legal redress in cases of medical negligence exists in Edo South Senatorial District of Nigeria while 200 respondents were of a contrary view. Therefore, the alternative hypothesis is accepted. The study is further given credence to by the work of Donald (2014), where he observed that poverty, ignorance and, illiteracy which are part of the socio-economic background of a person tends to affect the desire to seek legal redress in cases of medical negligence.

Hypothesis Five

Null Hypothesis: Ignorance of the law against medical negligence does not exist in Edo South Senatorial District.

Alternative Hypothesis: Ignorance of the law against medical negligence exists in Edo South Senatorial District.

Table 6: Ignorance and the Law against Medical Negligence

Frequency O	Percentage (%) E	O-E	(O-E) ²	(O-E) ² /E
950	700	250	62,500	89.3
450	700	250	62,500	89.3
1400	100			178.6

Source: Field survey November 2018- February 2019

The result of the chi-square calculated 178.6 is greater than the study critical value of 3.53. Table 6 further reveals that 950 respondents were of the view that ignorance of the law affects

medical negligence in Edo South Senatorial District of Nigeria while 450 respondents were of a contrary view. We therefore accept the alternative hypothesis. This study collaborates the work of Ememo (2017) where he noted that people generally do not know the law and lack the knowledge of their rights and this greatly affects the quest for legal redress

Conclusion and Recommendations

This study has revealed that medical negligence is a reality in Nigeria, although underreported, due to the lack of knowledge by victims (patients) and other determinants. The incidence of medical negligence, if not tackled headlong, will continue to increase, leading to loss of lives and bringing untold hardship to the families left behind. It is needful, therefore, to embark on a campaign on the awareness of patients on their rights. Cases and proceedings in the High Courts and Medical and Dental Disciplinary Tribunal should be reported in the various law reports and the media should give them adequate publicity to serve as deterrents to other healthcare providers and hospitals. The Legal Aid Council can also help the less privileged victims of medical negligence by taking up their cases either at the criminal or civil courts pro bono.

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