THE RIGHT TO HEALTH AND VIOLATION OF PATIENTS' RIGHTS IN NIGERIA - A desk review of Health Related Laws in Nigeria

THE RIGHT TO HEALTH AND VIOLATION OF PATIENTS' RIGHTS IN NIGERIA:

A DESK REVIEW OF HEALTH RELATED LAWS IN NIGERIA

CENTRE FOR THE RIGHT TO HEALTH (CRH)

Edited by: ***Dr Stella Iwuagwu***

legal force only upon enactment by the National Assembly. In other words, domestication of an International Treaty is a necessary condition for the application of the treaty in the country. Thus, although the Constitution denies legal recognition to the right to health as well as other social and economic (socio-economic) rights, the domestication of the African Charter in 1983 has introduced monumental changes to the legal status of these rights in the country. No longer may constitutional denial of legal recognition to these rights be relied upon to shield the government or its agencies from obligations regarding the right. More specifically, article 16 of the Charter guarantees the right to health[17]

6. The 1999 Constitution of the Federal Republic of Nigeria (As amended)

The basic rights of an individual entrenched in the constitution which guarantees the right to life, right not to be discriminated against for any reason, be it disease gender and status are not respected.

Section 42 of the 1999 Constitution of the Federal Republic of Nigeria (As amended) provides that:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject or

b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative

Centre for the Right to Health (CRH) is a non-profit organization with a mission for research, training, advocacy and service delivery towards the realization of the right to health especially for vulnerable and marginalized groups in Nigeria. CRH works with and seeks to mobilize the efforts of a wide range of stakeholders to research issues bearing on the right to health, design effective policy options for dealing with such issues and utilize appropriate strategies for enforcing the rights of Nigerians to health.

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Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent; it emerged under the aegis of the Organization of African Unity (since replaced by the African Union). It is enforced by the African Court on Human and Peoples' Rights which has the duty to ensure protection of human and peoples' rights in Africa. It complements and reinforces the functions of the African Commission on Human and Peoples' Rights also established by the African Charter[15]

The fundamental right of Nigerians to health is guaranteed by **Article 16** of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004 which provides as follows:

. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick[16]

Article 5 of the African Charter states:
Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

At the regional level, Nigeria is a party to the African Charter on Human and Peoples' Rights (African Charter), the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

With the exception of the African Charter, which has been incorporated into domestic legal order, no other treaty bearing on the right to health has direct application in Nigeria.

Like most common law countries, Nigeria adopts a dualist approach in receiving international law meaning that notwithstanding ratification, treaties acquire

The General Comment makes the direct clarification that "the *right to health* is not to be understood as a *right to be healthy.* Instead, the right to health is articulated as a set of both freedoms and entitlements which accommodate the individual's biological and social conditions as well as the State's available resources, both of which may preclude a *right to be healthy* for reasons beyond the influence or control of the State. Article 12 tasks the State with recognizing that each individual holds an inherent right to the best feasible standard of health, and itemizes (at least in part) the 'freedoms from' and 'entitlements to' that accompany such a right.

4. Convention on the Elimination of All Forms of Discrimination against Women

Article 2 of the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women outlines women's protection from gender discrimination when receiving health services and women's entitlement to specific gender-related health care provisions. The full text of Article 12 states:

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation[14]

In addition, the country is a party to several Conventions of the International Labour Organization, some of which contain provisions on the health of worker. Nigeria is also a party to the Geneva Conventions and Additional Protocols that prescribe rules for conduct of warfare, including health- related obligations.

The African Charter

The A**frican Charter on Human and Peoples' Rights**(also known as the **Banjul**

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FOREWORD

The ordeal, humiliation and dehumanizing treatments that patients go through in the hands of caregivers, particularly Doctors and Nurses in our hospitals are unethical, unlawful and unacceptable. Health/Patients' Rights Violations, Medical Negligence and Medical Malpractices are cankerworms that have eaten into the fabrics of our healthcare service delivery system, resulting in avoidable deaths or irreversible damage to some vital organs in the patient's body. Yet, this menace continues on incremental scale due to lack of information and acute ignorance of the patients and the society in general regarding their health rights.

This Desk Review of Health Related Laws in Nigeria is a timely lifeline that will thoroughly equip and sensitize every Nigerian about his or her health rights and the steps to take to enforce them or to seek redress when these rights are abused or infringed. It presents an overview of indigenous laws and international instruments that secure and protect the right to health as “human right” to which citizens are entitled. The book is a handy and resourceful document for researchers and anyone interested in health rights advocacy in Nigeria.

Politicians, Healthcare Practitioners, Lawyers, Students, Policy Makers, Legislators, Judges, Law Enforcement Agents, the NGO Community, Clergymen, Market Women and the general public will benefit immensely from this book as we would all become potential victims of health rights violations and abuse if the ugly trend is not arrested and reversed immediately through adequate knowledge of the patients' and health rights therein, coupled with seeking redress where and when these rights are violated.

I sincerely commend Centre for the Right to Health (CRH) for blazing a trail in this knotty and challenging aspect of our healthcare service delivery, by taking the initiative to empower Nigerians with this informative and

The Universal Declaration of Human Rights provides: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing and medical care.”

However, there remains some international variation in the interpretation and application of the right to health due to considerations such as how health is defined, what minimum entitlements are encompassed in a right to health, and which institutions are responsible for ensuring a right to health[13].

3. International Covenant on Economic, Social and Cultural Rights
The United Nations further defines the right to health in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights, which states:

“The States party to the present Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Party to the present Covenant to achieve the full realization of this right shall include those necessary for:

- The reduction of the stillbirth-rate and of infant mortality and for the healthy development of the hild
- The improvement of all aspects of environmental and industrial hygiene
- The prevention, treatment and control of epidemic, endemic, occupational and other diseases
- The creation of conditions which would assure to all medical service and medical attention in the event of sickness

General Comment No. 14
In 2000, the United Nations' Committee on Economic, Social and Cultural Rights issued General Comment No. 14, which addresses "substantive issues rising in the implementation of the International Covenant on Economic, Social and Cultural Rights" with respect to Article 12 and "the right to the highest attainable standard of health." The General Comment provides more explicit, operational language on the freedoms and entitlements included under a right to health.

physician's dedication to the humanitarian goals of medicine, a declaration that was especially important in view of the medical crimes which had just been committed in Nazi Germany. The Declaration of Geneva was intended as a revision of the Hippocratic Oath to a formulation of that oath's moral truths that could be comprehended and acknowledged in a modern way.

The Declaration of Geneva states as follows:
I solemnly pledge to consecrate my life to the service of humanity;

I will give to my teachers the respect and gratitude that is their due;

I will practice my profession with conscience and dignity;

The health of my patient will be my first consideration;
I will respect the secrets that are confided in me, even after the patient has died;
I will maintain by all the means in my power, the honour and the noble traditions of the medical profession;
My colleagues will be my sisters and brothers;
I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient;
I will maintain the utmost respect for human life;
I will not use my medical knowledge to violate human rights and civil liberties, even under threat;
I make these promises solemnly, freely and upon my honour[12].

The **right to health** is the economic, social and cultural right to a universal minimum standard of health to which all individuals are entitled. The concept of a right to health has been enumerated in international agreements which include the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities.

educative handbook at this crucial point in time when there are echoes of change across the length and breadth of our dear nation; I hope this compendium of laws that guarantee and protect the health rights of the citizenry will usher in the much desired attitudinal change in our healthcare professionals and make them render their services to patients in accordance with the legal and ethical standards of their profession which will in turn reduce cases of patients' rights violations as well as the attendant mortalities in our healthcare facilities.

By this work, CRH has once again demonstrated that the Centre is indeed a bastion of Health Rights Advocacy in Nigeria. Congratulations!

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Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.
Everyone has the right to recognition everywhere as a person before the law[11].

2. The Declaration of Geneva (Physician's Oath)

The **Declaration of Geneva** was adopted by the General Assembly of the World Medical Association at Geneva in 1948, amended in 1968, 1983, 1994 and editorially revised in 2005 and 2006. It is a declaration of a

Chapter 3

Laws Protecting the Rights of Patients in Nigeria

Medical law is essentially '... a sub-set of human rights law.' The fundamental nature of the relationship between medical practitioners and patients amply proves this point. At stake, within the realm of medical law, is our right to make our own decisions about how we live our lives and how we die. Our interests in privacy and in family life, in having or not having children, are central to our dealings with health professionals[9].

1. **The Universal Declaration of Human Rights:** The Universal Declaration of Human Rights has been instrumental in enshrining the notion of human dignity in international law, providing a legal and moral grounding for improved standard of care on the basis of our basic responsibilities towards each other as members of the "human family", and giving important guidance on critical social, legal and ethical issues [10].

The Universal Declaration of Human Rights states:

Therefore THE GENERAL ASSEMBLY proclaims
THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Chapter 1

What are Patients' Rights?

WHO IS A PATIENT?
A patient is a person who is under medical care or treatment [1]. A patient is a person who is ill or is undergoing treatment for disease.

WHAT ARE PATIENTS' RIGHTS?
Patients' rights are those rights attributed to a person seeking healthcare. In general, the rights of a patient are concerned with the patient being fully informed about his or her illness, the diagnostic and therapeutic measures anticipated, and the written records of the care received. Patient rights in healthcare delivery include: the right to privacy, information, life and quality care, as well as freedom from discrimination, torture and cruel, inhumane, or degrading treatment. The patient has the right to considerate and respectful care, delivered in response to a request for services and in a manner that provides continuity of care. In regard to payment for services, the patient has the right to examine and receive an explanation of the bill regardless of source of payment[2].
In Nigeria, a patient has rights which are expected to be respected by physicians and other healthcare providers that attend to him. Some of these rights are the following:

1. **Right to information:**He has to be well-informed about his illness, the nature of treatments, likely outcomes and side-effects, if any.

2. **The right to informed consent:** His consent should be duly obtained before a surgical operation is carried out or any other special treatment is to be given to him. If he does not give his consent to a treatment, his decision must be respected. He may even reject blood transfusion. However, his

care-giver has a duty to ensure that the patient is making an informed decision by explaining the likely consequence of his rejection of a prescribed treatment on his health.

3. **The right to confidentiality**: His medical records and other sensitive personal information should be kept confidential, though they may be disclosed to a third party with his consent.

4. **The right to considerate and respectful care:** The patient has to be given quality services, subject to available medical facilities. He has to be treated with care, professionalism and undivided attention. This means that a physician or any care-giver must not be negligent in attending to him. Treatment should be based on accurate diagnosis[3].

Patients' Rights

Patients' rights were formalized in 1948. The Universal Declaration of Human Rights recognizes “the inherent dignity” and the “equal and unalienable rights of all members of the human family”, and it is on the basis of this concept of the person, and the fundamental dignity and equality of all human beings, that the notion of patient rights was developed. In other words, what is owed to the patient as a human being, by physicians and by the state, took shape in large part; thanks to this understanding of the basic rights of the person.

Patients' rights vary in different countries and in different jurisdictions, often depending upon prevailing cultural and social norms. Different models of the patient-physician relationship which can also represent the citizen-state relationship have been developed, and these have informed the particular rights to which patients are entitled. In North America and Europe, for instance, there are at least four models which depict this relationship: the paternalistic model, the informative model, the interpretive model, and the deliberative model.

Each of these suggests different professional obligations of the physician toward the patient. For instance, in the paternalistic model, the best interests of the patient as judged by the clinical expert are valued above the provision of comprehensive medical information and decision-making power to the patient. The informative model, by contrast, sees the patient as a consumer who is in the

money and the National Health Insurance Scheme is fundamental to empowering the average Nigerian to pay for their healthcare and improve services that are available in the event of an emergency or long term illness.

One of the main deficiencies of the scheme is that in its implementation, rural dwellers are not covered, whereas these are the people most affected in terms of lack of money to pay for quality healthcare service.

Medical and Dental Practitioners Act Cap 221 LFN 1990 Decree No23 of 1998
The Medical and Dental Practitioners Act creates a tribunal which is charged with the duty of considering and determining any case which engages the attention of the Tribunal or is referred to the Tribunal by another body, called the Medical and Dental Practitioners Investigating Panel.

Code of Medical Ethics in Nigeria and Rules of Professional Conduct for Medical Laboratory Scientists, Medical Laboratory Technicians & Medical Laboratory Assistants 2011- MLSCN Rules

These codes of conduct outline the duties of a physician to his patient, his colleagues, Medical Laboratory Scientists and their patients as well.

National Health Insurance Scheme (NHIS) Decree No. 35 1999 LFN
Section 5 of NHIS Decree states thus:

The objectives of the Scheme shall be to -

(a) ensure that every Nigerian has access to good health care services;

(b) protect families from the financial hardship of huge medical bills;

(c) limit the rise in the cost of health care services;

(d) ensure equitable distribution of health care costs among different income groups;

(e) maintain high standard of health care delivery services within the Scheme;.

(f) ensure efficiency in health care services;[7]

Despite the provisions of the above quoted NHIS Decree, access to quality and cost effective healthcare delivery service is still a challenge in Nigeria. The inability to pay for health care expenses, which forces people to reduce spending on food or other basic needs, and the lack of access to quality care are unfortunately common realities seen by many poor and underprivileged. Falling ill can have devastating and long-lasting consequences especially for poor households, both through income loss and high medical expenditures. Nigeria has among the highest out-of-pocket health spending and poorest health indicators in the world[8]. It is difficult to access medical care when there is no

best position to judge what is in his/her own interest, and thus views the medical practitioner as chiefly a provider of information.

In the Interpretative Model, the physician acts like a counsellor whose role is to elucidate and interpret the patient's values, and then to assist him in determining the medical interventions which would best realize the specified values.

In the Deliberative Model, the physician takes a much more active role in the collaborative dynamic. He presumes that the patient's values are open to development and revision through moral discussion. He articulates and persuades the patient of the most admirable values. Like a teacher he explains what course of action in his judgment is not only “medically indicated” (Informative Model) but also most noble. Thus, the physician presents his medical and moral judgment up front in the discussion and uses his skills of persuasion based on clinical experience and firm opinion, yet ultimately he leaves the final decision to the patient.

There continues to be enormous debate about how best to conceive this relationship, but there is also growing international consensus that all patients have a fundamental right to privacy, to the confidentiality of their medical information, to consent to or to refuse treatment, and to be informed about relevant risk to them of medical procedures[4].

It seems that none of the models apply in all clinical circumstances. In an emergency, clearly the Paternalistic Model would apply since there is no time for discussion about values and preferences. It may also apply in some agrarian, third world cultures where the patient traditionally places all decisions in the hands of the physician and defers to his family all discussion with the physician. But in our modern pluralistic society, it would be foolish to presume physician and patient would espouse similar values and views of what constitutes a benefit, thus this paternalistic model would rarely apply now.

The Informative Model would be operative when medical facts are all that is needed, e.g. when a specialist is consulted for a second opinion to confirm a diagnosis. But it erodes the virtue of caring so integral to the medical profession by reducing the role of a physician to a medical technician, disengaged from any

meaningful relationship with his patient. Both physician and society bear responsibility for the rising influence of this model. Medical practitioners may be reluctant to make firm recommendations for fear of litigation if their opinion leads to a bad patient outcome. And in a consumer society, medical goods are like other commodities that can be bought and sold at the marketplace. Medical practitioners need to be more courageous and society needs to regain its moral bearings.

The deliberative model, which requires alignment of medical decisions with the patient's value system and, at the same time, engages the physician more directly and integrally in the process of working out the best decision, is a promising model. It encourages the physician to state frankly and directly his specific treatment recommendation and to explain how the decision is consistent with the patient's most noble values. It seems to me this depth of deliberation is rarely possible in one visit, but rather requires a history of on-going relationship. A primary care physician who sees a patient over a long period of time is in a perfect position to use the deliberative dynamic without much difficulty. And in the context of intensive care, a General Practitioner who sees patient and family at least daily can use the deliberative dynamic more easily than with a specialist who sees the patient only once or twice[5].

Chapter 2

Sources of Health Related Laws in Nigeria

Declaration of Geneva: The Hippocratic Oath

The Declaration of Geneva (Physician's Oath) was adopted by the General Assembly of the World Medical Association at Geneva in 1948. It is a declaration of a physician's dedication to the humanitarian goals of medicine.

Declaration of Helsinki

The **Declaration of Helsinki** (DoH) is a set of ethical principles regarding human experimentation developed for the medical community by the World Medical Association (WMA). It is widely regarded as the cornerstone document on human research ethics. Even though it is not a legally binding instrument under the international law, it instead draws its authority from the degree to which it has been codified in or influenced national or regional legislation and regulations[6].

The African Charter

The **African Charter on Human and Peoples' Rights** (also known as the **Banjul Charter**) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. In Article 5, it states that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

is standard and safe procedure, which thus results in injury or even death to the patient.

Medical negligence can lead to a medical malpractice claim if the event of malpractice is proven to be involved in four areas with intent: a duty was owed and was never followed through, a professional responsibility was breached and the care was not standard, the breach caused an injury or death; and the patient was negatively affected in some form by the damage. In shorter terms, medical malpractice occurs when any medical professional does not provide the standard legal care to their patient in regards to their profession. The element of damage refers to any damages that affected the client in any way, including monetary, physically, or emotionally. The time frame required from the incident to the case filing varies between locations and type of medical malpractice.

The Difference between Negligence and Medical Malpractice

At first glance, negligence and medical malpractice look as if they should be included in a single category however on a closer look, they are actually very different. Medical malpractice is a subcategory of negligence. These two terms are often used interchangeable, but are two legal concepts that, though they are related, have different meanings. The two terms are connected by a third-negligence, which is a category in between medical malpractice and medical negligence. The key word in all three of these categories is intent. That word alone defines the three aforementioned catories in vastly different ways. Medical negligence is the lack of action by a medical professional, often without intent negligence can be done either with or without intent and medical malpractice is done with intent to harm.

In all cases, proof must be provided in terms of the specific duty to the patient or individual, the breach of that specified duty, the causation in the aftermath of the breach, and the damages. The order of this proof is as follows: since a professional has a duty to his or her patient, it must be determined which exact duty had been breached, as well as how it had been breached. The causation must then be proven. The final element is the damages, or the value of the negative causation that affected the client. It is because of the elements and the similar nature between the three aforementioned categories that the terms are used interchangeably, even though they are separated by intent.

> *action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.*

The import of the above quoted provision is that a patient should not be discriminated against on the basis of sex, religion, ethnicity, political opinion, disability, disease etc. It is therefore wrong and unacceptable practice for a medical practitioner or healthcare provider to refuse or deny a patient treatment because of the nature of the disease.

There is discourtesy, rudeness and physical violence meted out against women in maternity without any regard for their dignity as human beings. This is contrary to the provision of **Section 34(a)** of the 1999 Constitution (As amended) which states:

Every individual is entitled to respect for the dignity of his person, and accordingly -

a) No person shall be subject to torture or to inhuman or degrading treatment[18]

The patients who are in need of medical care in a hospital or medical facility must know the rights guaranteed by law to enable them insist on their right. The campaign for the right to health starts from dissemination of this information to those in need of medical care.

The Right to Health and Respectful Maternity Care

It is clear that women in maternity have their rights violated constantly, Sometimes shockingly degrading treatment is given to women in maternity, and sadly, with no set boundaries; this trend is growing in clear violation of **Section 34(a)** of the constitution.

7. The National Health Act 2014

The noble aims of the Act are to establish a framework for the Regulation, Development and Management of a National Health System, to set standards for rendering health services in the Federation and other matters concerned. It provides for the provision of healthcare at the grass root level to prevent medical

tourism ensuring free medical care for pregnant women and the elderly.

Nigeria's National Health Bill was signed into law by the former President of Nigeria, Goodluck Ebele Jonathan on December 9, 2014. The Nigerian Senate passed the National Health Bill into law following its 3rd reading at the National Assembly.

The Act is set to achieve the Universal Health Coverage and meet the Millennium Development Goal (MDGs – Now S*ustainable Development Goals* target. The Act also provides for the purging of quacks from the profession as well as basic health funds needed by Nigerians.

The Act was also enacted for the purpose of providing healthcare insurance to certain class of people who are actually deprived.

The Medical and Dental Council of Nigeria (MDCN), in its Code of Ethics, states it clearly that fees are to be paid only for actual services rendered; denial of healthcare, notably the inability of the patient to pay for healthcare at the point of admission in an emergency is a violation of the patient' right to access treatment. The practice whereby hospitals refuse to treat a patient if he/she has not paid an initial deposit is prevalent in violation of the provisions of the Act.

Where an emergency Caesarean-section, which when done in a timely fashion and for the right reason, can save the lives of mother and child, is denied or delayed because the initial deposit for the surgery is unavailable, it is a violation of the National Health Act 2014. In an emergency, the priority is life, nothing less[19]
The rights guaranteed by the National Health Act 2014 under **art III** are:

1. The Right to Emergency Treatment
Section20 (1)of the **National Health Act 2014** States: "A health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason whatsoever[20] any reason whatsoever" covers all the common excuses for delayed care, from type of disease, mandatory up-front payment [the 'Deposit'] to police reports for gunshot wounds.

All patients, regardless of their means or health challenges, shall have the right to be treated in an emergency without discrimination. A violation of this right is

reasonable care and skill in treating the patient it is immaterial that the medical practitioner is rendering such service ex gratia. A doctor or medical practitioner in the hospital owes a duty of care to patients in the ward in which the medical practitioner is employed to work, a private physician who has contracted to provide medical services for the employees owe a duty of care to such employees who are on the clinic's list.

Medical centres and hospital authorities also owe the same duty of care to patients accepted for treatment in their facilities, whereby they must provide proper medical services for them. Having said this, it must be stated that if a doctor or medical practitioner holds out to a patient as possessing special skills and knowledge in a particular field of medicine or surgery, the medical practitioner must exercise the same degree of care and skill as a medical practitioner who generally practices in that field. This is particularly relevant in the case of a medical practitioner, being, for example an obstetrician, undertakes a complicated cardiac surgery, that obstetrician must conform to the standard of a cardiac surgeon. If the obstetrician does not possess the special skills and facilities required for cardiac surgery, then it is negligence on his part to undertake the treatment at all knowing that as an obstetrician he does not possess the social skills and facilities required for a cardiac surgery. But in an emergency, an obstetrician who comes to assist a cardiac patient by performing a simple procedure to ease pain would not be held liable for failing to achieve results that one would expert from a cardiac surgeon. This standard of care varies according to the skill expected of the individual medical practitioner. A house officer is not expected to show the same standard of skill and care as a consultant working in a special area. A medical practitioner, except in emergency cannot excuse himself on the grounds that he was unwell or he had a long spell of duty and was therefore very tired, the law would hold that a medical practitioner has no business to undertake the care of patient unless he is fit to do so[40]

Medical Malpractice
Medical malpractice is the illegal event in which the bond of trust between medical professional and client has in some form been breached with intention. It is under the umbrella of negligence, as it is the occurrence in which the malign negligence is committed by a health care provider. Health care providers refer to most professionals in the medical field, such as physicians, doctors, dentists, nurses, and therapists. The malpractice exists when treatment is not provided as

Specific elements are involved in a case of negligence: duty, breach, causation, and damages. Sometimes, the first two aspects are shortened to the single element of conduct. Every element must be able to be proven for a negligence case to continue. Negligence is an umbrella term that is categorized based on the specific details of the individual case, which can include neglect, criminal negligence, medical negligence, and medical malpractice[39]

Medical Negligence

This means the failure, on the part of a medical practitioner to exercise reasonable degree of skill and care in the treatment of a patient. If a medical practitioner administers medical treatment to a patient in a negligent manner and causes him harm, the patient can bring an action of negligence against the medical practitioner claiming damages for the harm suffered. A plaintiff must prove the following three conditions in order to succeed in an action of negligence against a medical practitioner:

a) That the doctor or medical practitioner owed the patient a duty to use reasonable care in treating him or her.

b) That the medical practitioner failed to exercise such care, that is, he was in breach of that duty.

c) That the patient suffered damage(s) as a result of the breach.

It is very important to note that proof of harm or damage is key to establishing damage from the medical practitioner's actions be it negligence, medical negligence or medical malpractice.

In other words, the key factors involve showing or proving that:

1. Medical practitioner or another medical professional in a medical facility where you are receiving treatment has made a mistake, and
2. You were harmed by that mistake.

Once a medical practitioner undertakes to treat a patient, whether or not there is an agreement, a duty of care arises. The medical practitioner must exercise

punishable by a fine of N100, 000.00 or imprisonment for up to six (6)months - **Section 20(2)**

ii. The Right to Confidentiality of Your Medical Records

With the exception of the medical staff in the facility where the patient is receiving medical treatment, only the patient and his guardian, in case of a minor, have the right to the patient's medical records.

The section outlines who else, besides the patient, may obtain a patient's records, and for what purposes. Patients are often surprised about who has these rights. Access may be denied to people you might think would have access. Improper access has consequence; information regarding the health status of a person shall not be disclosed to anyone except the next of kin/family member nor can it be published online through social media, blogs or regular media. The exceptions to this rule are:

a) The patient's consents in writing to the disclosure
b) A court order requires the disclosure
c) In the case of a minor with the consent of parent or guardian
d) Where the person is unable to consent due to incapacitation, the guardian or representative must consent
e) Where non-disclosure represents a serious threat to public health.

If the records are not controlled and information is leaked to unauthorized persons, such a person whose duty it is to control access to the records and the person found to be in possession of such unauthorized records shall be liable to a fine of N250,000.00 or imprisonment for two years.

How much information is a prospective employer entitled to know about his prospective employee's health status? The HIV/AIDS Anti-Discrimination Act 2014 makes it illegal to discriminate against people based on their HIV status. It also prohibits any employer, individual or organization from requiring a person to take an HIV test as a precondition for employment or access to services. The common practice of testing domestic help of HIV and Hepatitis A, B & C is illegal[21]

There is no law prohibiting an employer or a supervisor from asking you for a doctor's note if the employer needs the information for administrative purposes

such as sick leave or workers' compensation. However, your employer cannot obtain information about you from your health care provider directly without your authorization, unless other laws require them to disclose it[22]

iii. The Right to Obtain Your Medical Records

The **National Health Act 2014** provides patients in Nigeria a right to obtain their medical records, including medical practitioners' notes, medical test results and other documentation related to their care. **Section 23[1]** of the Act provides thus:

(1) Every health care provider shall give user relevant information pertaining to his state of health and necessary treatment relating thereto including:-

a) The user's health status except in circumstances where there is substantial evidence that the disclosure of the users health status would be contrary to the best interests of the user

b) The range of diagnostic procedures and treatment options generally available to the user

c) The benefits, risks, costs and consequences generally associated with each option and

d) The user's right to refuse health services and explain the implications, risks, obligations of such refusal.

2) The health care provider concerned shall, where possible, inform the user in a language that the user understands and in a manner which takes into account the user's level of literacy.

The right to information which includes medical record is further provided for under the Freedom of Information Act, 2011, thus:

1 S.1 (1) Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.

(2) An applicant under this Act needs not demonstrate any specific interest in the information being applied for.

him, in particular the drug gentamycin. The appellant failed to prove that the 2nd and 3rd respondents failed to do what a reasonable medical man skilled in that particular art will do.

Negligence/ Medical Negligence/ Medical Malpractice
Aspects of the Law of Negligence

Negligence as a tort is a breach of legal duty to take care of one's patients, which results in damages undesired by the defendant to the plaintiff. Thus its ingredients are:

a) A legal duty on the part of A toward B to exercise care in such conduct of
A as falls within the scope of the duty
b) Breach of that duty
c) Consequential damages to B.

The necessary objective attitude of the court to this tort is made clear as Alderson B., said in **Blyth v. Birmingham Waterworks.** 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 wold not do. It is not for every careless act that a man may be held liable in law. It is important to examine what a plaintiff who alleges negligence would have to prove. [38]

Negligence occurs when an individual ignores basic civil responsibilities and the lack of action thus causes another individual or group of individuals to be hurt. When a professional is negligent, their clients can be hurt. In these cases, a hurt individual would be someone who is affected in a negative way based on the former individuals behaviour. The negative causality includes an individual being hurt in a financial, physical, or emotional manner.

Every action, whether good, bad, or neutral, has consequences. Not all consequences are good, but not all consequences are bad. In the event of negligence, the action creates consequences that hurt an individual or group. Negligence involves the lack of action out of inaction or ignorance, rather than the accompaniment of intent to harm. Any civilian could act in a negligent manner, avoiding negligence includes upholding civic duties as an individual.

medical practice is in issue, the standard of reasonable view will presuppose that the relative risks and benefits have been weighed by the experts in forming their opinion. The evidence of the Defence Witness 2, who is an ear, nose and throat specialist was acceptable to the trial court. I appreciate the fact that the appellant may not have had easy access to calling a specialist in Ear, to testify on the effect of gentamicin or other drugs prescribed and administered on him, but the nature of his claim on medical negligence placed a burden on him to call an expert opinion to give evidence of the probable effect of the treatment given to him.

The need is more paramount in the light of the evidence adduced that appellant had been hypertensive and diabetic before the treatment with gentamicin and that any of such illness can cause loss of hearing. This failure to call an expert opinion is fatal to the appellant's case. The assessment of whether the 3rd respondent acted in accordance with responsible body of medical men skilled in that particular act can only be effectively weighed and determined by the evidence adduced by such reasonable men in the medical field. Notwithstanding the 3rd respondent has not been described as a specialist in Ear, Nose and throat, his decision to treat with the drugs administered on the appellant would have been assessed on the basis of whether he acted in accordance with the practice of competent respected professional opinion.

Witness for the defence was emphatic that gentamycin and other drugs given to appellant are appropriate drugs which have good effects but could possibly cause deafness. They went further to state that the drug has side effect and one weighs the advantages against the disadvantage. Nevertheless the absence of an expert witness in support of the appellant's case is a great omission. It would seem unrealistic in any medical negligence case to confine the expert medical evidence to an explanation of primary medical factors involved and to deny the court the benefit of evidence of medical opinion and practice on particular issue, as in this case, whether the treatment with gentamycin for meningitis alone can cause his deafness by an independent expert. From the totality of evidence adduced, I hold that the appellant failed to discharge the onus on him on a balance of probability by establishing that the 2nd and 3rd respondents breached their duty of care to him by the nature of treatment administered on

> *(3) Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this Act.*

However, it is important to note that the Freedom of Information Act is only applicable to public agencies, in this case, government hospitals.

iv. The Right to Be Treated with Respect:

All patients, regardless of their means or health challenges, should expect to be treated respectfully and without discrimination by their providers, practitioners and payers. This right is guaranteed by the combined effect of Section's **34(a)**and **42** of the 1999 Constitution of the Federal Republic of Nigeria (As amended).

v. The Right to Make a Treatment Choice

As long as a patient is considered to be of sound mind, it is both his right and responsibility to know about the options available for treatment of his medical condition and then make the choice he feels is right for him. This right is closely associated with the Right to Informed Consent found in **Section 21** of the Medical Code of Ethics.

vi. The Right to Informed Consent

No reputable practitioner or facility that performs tests, procedures or treatments will do so without asking the patient or his guardian to sign a form giving consent.
This right is called *informed consent*" because the practitioner is expected to provide clear explanations of the risks and benefits prior to the patient's participation, although that does not always happen as thoroughly as it should.

Section 21 of the Medical Code of Ethics provides:

> *Practitioners involved in procedures requiring the consent of the patient, his relation or appropriate public authority must ensure that the appropriate written and signed consent is obtained before such procedures, either for surgery or diagnostic purposes are done, be they invasive or non-invasive. Consent forms should be in printed or written*

form either as a part of the case notes or in separate sheets with the institution' name boldly indicated

Informed Consent

This is important, because it comes into a lot of cases. Many years ago the U.S. Supreme Court said that: every human being of adult years and sound mind has a right to determine what shall be done wit his own body? Today, that rule applies more than ever. Unless you are unconscious or mentally incompetent, or a child, a doctor must obtain your consent to anything he proposes to do to you. And, for anything important, it has to be written consent.

But a consent form is no good, if you do not understand what it is all about. If you are going to determine what shall be done with your own body in the words of the Supreme Court, you have to know what the doctor proposes to do with your own body. So, before doing anything to you, the doctor or the hospital has to obtain from the patient what is called Informed Consent Form signed by the patient. He has to give you full and understandable information about:

1. What treatment choices has he chosen to take care of your ailment?
2. The ordinary risks and complications, no matter how slight.
3. The unusual risks and complications, if they are dangerous.
4. What alternative treatments are available?

Strange as it may seem, a lot of doctors do not bother to obtain signed informed consent form for even the most dangerous or complicated treatments. At most, a hospital admitting clerk with no medical background will have the patient sign a blank consent form to be filled in later by a doctor or a nurse. Even if he took the trouble to sit down with you for an hour and explained it all, the consent was invalid, because it stated falsely that you had been fully informed at the time you signed it.

Or, your relative does not speak or read English, and the night before surgery, a nurse comes into her room and has her sign a consent form. It is not valid, not unless the nurse can prove she is fluent in the patient's language, and the consent form is printed in that language[23]

This raises the question, why is consent required from the husband and not the patient in labour when there is need for an emergency caesarean section? It is

When a Medical Practitioner could be Found Guilty of Negligence

In **Unilorin Teaching Hospital V. Abegunde** the court of appeal said "...in the case of Ojo v. Gharoro (2006) 10 NWLR (Pt. 987) 173. Therein, a needle got broken in the abdomen of the appellant during surgical operation. It was held that the respondents exercised their best medical skills and so not negligent. To fortify the decision, the apex court borrowed the illuminating and incisive words of the great jurist, Lord Denning, in his book, The Discipline of Law, pages 237, 242 and 243 wherein he opined:

A medical man, for instance, should not be found guilty of 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'...but in a hospital, when a person who is ill goes in for treatment, there is always some risk, no matter what care is used. Every surgical operation involves risks. It would be wrong, and indeed, bad law, to say that simply a misadventure or mishap occurred, the hospital and the doctors are thereby liable. It would be disastrous to the community, if it were so. It would mean that a doctor examining a patient, or a surgeon operating at a table, instead of getting on with his work, would be forever looking over his shoulder to see if someone was coming up with a dagger, for an action for negligence against a doctor is for him like unto a dagger. His professional reputation is as dear to him as his body, perhaps more so, and an action for negligence can wound his reputation as severely as a dagger can his body. You must not therefore, find him negligent simply because something happens to go wrong.... you should only find him guilty of negligence when he falls short of the standard of a reasonably skilful medical man, in short, when he is deserving of censure." Per OGBUINYA, J.C.A. (Pp. 37-39, paras F-A)[37]

In **ABI v. CBN & ORS,** Mr. George Abi's claim is that he went to the CBN hospital for treatment and came out deaf. The appellant did not call an expert witness to show as a skilled witness that the prescription of gentamycin and its administration on him resulted in his deafness. The evidence of such an expert witness was paramount in the circumstance. Witness for the defendant in evidence stated that one of the side effects of gentamycin is deafness or loss of hearing. Another witness also said it causes hearing problem. Where the questions of assessment of relative risks and benefits of adopting a particular

relationship, it is applied as a general principle beyond the initial context in which it was propounded. This text has proved the foundation upon which countless cases of alleged negligence have been tried and still continue to be judged.

If a duty of care exists then the next inquiry is whether the defendant's conduct was in breach of such duty. The mere occurrence of some misfortune does not as a rule make someone automatically liable. The judge must look at the evidence and decide whether or not the defendant did something he ought not to have do or failed to do that which he ought to have done. How then is the judge to decide whether a defendant is liable? What test can the judge then apply? In Hazel v. British Transport Commission Pearce J said:
"The basic rule is that negligence consists in doing something which a reasonable man would not have done in that situation or omitting to do something which a reasonable man would have done in that situation. After it is established that the defendant owed a duty of care, which he has breached of which such damage could be a physical one, for instance a broken leg. The first thing to do is to determine as a matter of fact whether indeed the defendant's breach of duty led to the damage and this is referred to as causation of the facts .The second stage is to determine as a matter of law whether the injury was not remote. This is referred to as remoteness of damage in law".

In **ABI v. CBN & Others** the Court of Appeal elaborated on the issue of negligence of a doctor and when a doctor can or cannot be held liable for negligence. "The courts have long recognized that there is no negligence if a doctor exercises the ordinary skill of an ordinary competent man professing to have that special skill". The locus classicus of the test for the standard of care required of a doctor or any other person professing some skill is the direction to the jury given by Mcnair J in **Bolam v. Friern Hospital Management Committee**(1957) 2 All England Reports 118 at page 122.

"A doctor is not guilty of negligence if he has acted i accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. I do not think there is much difference in sense. It is just a different way of expressing the same thought. Putting it the other way round a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view"[36]

appropriate in a case where a woman in labour is unconscious consent should be taken from the husband, partner or next of kin. In the absence of these conditions, consent must be sought from the patient herself.

Who gives consent in accident cases where the victim of an accident is rushed to a medical facility unconscious? The doctor may take over completely and make a judgment call in a life and death situation as seen in the paternalistic model of care.

In the case of Tega Esabunor & Another vs. Dr. Tunde Faweya & 4 Others[24] It was held that the code of ethics of the medical profession otherwise known as published code of ethics enjoins a Doctor not to allow anything including negligence or religion to intervene or interfere between him and his patient and that he must always take measures that lead to the preservation of life. This code of ethics places a great burden on medical practitioners in such a way that they cannot accede to the wish of citizen who will allow a child to die on account of religious belief.

Furthermore, some religious sects provide cards to be carried on the body of patient, such a card implies lack of consent for certain treatment measures like a blood transfusion, if such is found it is still at the doctor's discretion to restrain from giving a transfusion as the code of medical ethics enjoins a Doctor not to allow anything including negligence or religion to intervene or interfere between him and his patient and that he must always take measures that lead to the preservation of life.[25]

To work on a patient without anybody's consent, a doctor must comply with four requirements:

1. The patient is in dire danger
2. The patient is unable to consent
3. If the patient is a child, a parent or guardian is not readily available
4. It can reasonably be assumed that the patient would consent if able.

This situation usually arises in medical emergencies, such as cardiac arrest in a hospital or unconscious patients brought to the emergency room by ambulance. The important thing to remember is that a relative cannot legally consent on your behalf if you are unconscious, unless the family member is a spouse, the

legal guardian, or has health care power of attorney. The surgeon must make the decision to render a certain treatment or extend the scope of a surgical operation himself. However, most doctors will attempt to obtain consent from the nearest relative, just to make it more palatable, and that does carry some weight with a judge even though, technically, it is not legally binding.

The **Good Samaritan** laws create a special situation. Some years ago, in the United States, doctors driving by in their cars were afraid to stop and help accident victims. The doctors could not do a good job, because they usually did not have medical equipment with them. Ungrateful people took advantage of that to sue for substandard care. So, doctors would just drive past the scene of an accident and leave it to the ambulance crew that was properly equipped. Needless to say, some of the victims died.

Today, most states in the United States and other advanced nations have Good Samaritan laws that protect a doctor from being sued, if he tries to help an accident victim. In some states, a doctor is required by law to stop and offer assistance, if he arrives at the scene of an accident. So, no matter how bad the results, you cannot sue a doctor for a Good Samaritan treatment unless you can show that he was grossly negligent.

Sadly in Nigeria that is not the case as good Samaritans and doctors don't have the same privilege or protection of the law, as the Code of Medical Ethics states, "at the scene of an accident a passing doctor is under no obligation to stop and render professional services to the victims but if he decides to stop and do so, he is bound by the ethics to exercise a degree of reasonable care and do everything that a competent and registered practitioner would do in that circumstance".[26] Victimizing first responders to accidents by the Nigerian Police has made it a perilous course of action for well-meaning Nigerians, though the passage of the National Health Act, 2014 has reduced this occurrence to a great extent.

Barriers to informed consent

Language /Disability/ Deafness Barriers

A visitor to Atlantic City, in the United States was taken to a hospital with a serious leg injury, and the doctors decided that it would be best to amputate. The surgical resident explained the operation in detail and got what he thought was

13. Act quickly to protect patients from risk if you have a good reason to believe that you or your colleagues may not be fit to practice.
14. Avoid abusing your position as a medical practitioner.
15. Work with colleagues in the way that best serves the patient's interest. Collaborate with persons or other professionals in the health team in rendering care, but ensure that:

a. The professionals are competent in their fields.
b. They are recognized by their professional bodies.
c. You do not delegate to anyone procedures that are the exclusive responsibility of medically qualified clinicians.
d. You retain the absolute authority and take full responsibility for whatever happens to the patient[34]

Standard of Care on the Medical Practitioner
he Duty of Care

The most accepted expression of the duty principle is the one made by Lord Atkins in the leading case of Donoghue v Stevenson.[35] The question for the House of Lords to decide was: if a company produced a drink and sold it to a distributor, was it under any legal duty to the ultimate purchaser or consumer to ensure reasonable care that the article was free from defect likely to cause injury to health? Lord Atkins stated:

The English Law, upon which our legal system is based, states that there must be and is, some general conception of relations giving rise to a duty of which the particular cause found in the books are but instances. He went on to lay down the basis of the present law in the "neighbour principle" in this much quoted passage: The rule that you are to "love your neighbour" and the lawyer's question saying 'who is my neighbour' receives a restricted reply. You must take 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? The answer seems to be a person who is so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I was directing my mind to the acts or omission which are called in question. This statement suggests the existence of a general duty of care towards anyone who is likely to suffer injury through the defendant's careless conduct. Even though the rule was propounded in the context of a manufacturer/consumer

professional. When the rhetoric is stripped away, it is the tort of negligence that provides the bottom line minimum standard of professional conduct. In practice medical negligence is failure to live up to proper medical standards and those standards are set, not by lawyers, but by medical practitioners[33]

Principles of Good Practice (Ethics)

The principles of good practice constitute an unwritten contract between clinicians and their patients, and form the basis on which the MDCN expects all registered medical practitioners and dentist to practice. They are summarized as follows:

1. Make the care of your patient your first concern.
2. Treat every patient politely and considerably. While the medical practitioner retains the right to choose his patients **except in emergencies;** all treatment must be conducted without discrimination .
3. Respect patients' dignity and privacy, and do not force treatment on an unwilling conscious patient.
4. Listen to the patients and respect their views.
5. Give patients information in the way they can understand.
6. If you get involved in biomedical research on human beings:

a. The patient's informed consent is essential.
b. It must not involve with holding effective treatment.
c. Your research protocol must be approved by an Ethical Committee.

7. Respect the rights of patients to be fully involved in decisions about their care.
8. Use only scientifically sound methods, keeping your professional knowledge and skills up to date. Expose unsound practice and practitioners.
9. Recognize the limits of your professional competence; consult and/or refer to others when necessary.
10. Be honest and trustworthy, never certify what you have not verified, or assist other people by dishonest opinions and prescriptions.
11. Respect and protect the confidential information of patients. The widespread practice of sending entire case notes to the pharmacy for drugs or the pathology laboratory for blood investigations unnecessarily exposes the confidential information in the case notes. Appropriate forms exist for these.
12. Make sure that your personal beliefs do not prejudice your patient's care.

an informed consent from the patient. The patient later sued, because he had not consented. The resident testified he had explained the need for amputation and the possible alternatives and consequences in great detail. But, the legless patient was able to show he only understood German, and the resident admitted he spoke only English. The resident could have explained the operation until he was blue in the face, and it would not have done any good, because the patient did not understand English.[27]

vii. The right to Refuse Treatment

In most cases, a patient may refuse treatment as long as he is considered to be capable of making sound decisions, or he made that choice when he was of sound mind through written expression. See **Section 23[1]d** National Health Acts,2014.

viii. The Right to Make Decisions about End-of-Life Care

The National Health Act 2014 does not take into consideration how patients may make and legally record the decisions they make about how their lives will end, but makes some provision regarding donation of organs for therapeutic purposes in a living person or training of medical students, health research, production of a therapeutic, diagnostic or prophylactic substance and advancement of health services. [28]

ix. The Right to Lay a Complaint

The **National Health Act 2014** provides patients in Nigeria a right to lay a complaint about the manner in which they were treated at a hospital or other healthcare facility and have that complaint investigated. The first step in seeking redress is to report the violation to the Chief Medical Director of the hospital in which the violation occurred.

It must be noted that the Medical and Dental Practitioners Council is charged with the responsibility of imposing sanctions on erring medical practitioners and other health practitioners including laboratory physicians and if a complaint is not properly addressed at the hospital then a complaint about the manner of treatment at that medical establishment should be reported to the Medical and Dental Practitioners Council. However, where the violation of a patient's rights amounts to criminal offence under the criminal code, only the courts have the jurisdiction to hear and punish the erring medical practitioner or health

practitioner the courts also have the power to award damages in civil cases where appropriate to a patient whose rights have been violated[29]

8. The HIV/AIDS (Anti-Discrimination) Act 2014

Against the backdrop of the discrimination of people living with HIV and AIDs the former President of Nigeria, Goodluck Ebele Jonathan, signed a new anti-discrimination bill into law that protects the rights and dignity of people living with HIV.

The HIV/AIDS (Anti-Discrimination) Act 2014 makes it illegal to discriminate against people based on their HIV status. It also prohibits any employer, individual or organization from requiring a person to take an HIV test as a precondition for employment or access to services.

It is hoped that the new law will create a more supportive environment, allowing people living with HIV to carry on their lives as normally as possible. More than three million people are living with HIV in Nigeria.[30]

Discrimination against these patients and refusal to treat or admit them is a violation of their right to health[31]

9. Code of Ethics in The Medical Profession

The Code of Medical Ethics in Nigeria allows a practitioner to choose whom to serve or render his medical services to, this right is limited in an emergency, wherever the life of a person brought under the care of a physician is in jeopardy, the medical practitioner must have only one goal in mind to save the life of that person. All other considerations come after the person has been revived[32]

This however must be balanced against the capacity of the hospital and against the backdrop of an inadequate health insurance framework or structure. In light of the Ebola and Lassa fever epidemic, the capacity of the hospital or medical facility to quarantine the affected patient is important and wherever such cases exist a quick referral once diagnosis is made and provision of a safe mode to transport the patient to a more suitable medical facility is necessary to protect the other patients of the hospital and the public in general.

What are Ethics?

Ethics are that science of knowledge, which deals with the nature, and grounds of moral obligations, distinguishing what is right from what is wrong.

Medical ethics is a form of applied ethics that is concerned with moral values and judgments as it applies to medicine. It dates back to ancient civilization as exemplified by the Hippocratic Oath or its adaptations which is still very relevant and is sworn by new medical practitioners in many countries of the world today, Nigeria inclusive.

The Medical and Dental Council of Nigeria (MDCN) exists for the protection of the interest of the patient and for guiding the medical practitioner to provide skilled, safe, appropriate and friendly health care for members of the public that need it. Although, the health care team consists of a variety of important professionals giving investigative, dispensary, curative and her ancillary services for patient care the medical practitioner alone has the moral and legal liability and is often sued when any part of that health care goes seriously wrong. Although this may seem unfair, it is absolutely as it should be. People needing medical attention go to a particular health institution in order to see a particular medical practitioner, perhaps because of his reputation. There always exists an unwritten contract between the medical practitioner and his patient, and this contract is justifiable. It is up to the medical practitioner to ensure that he has a good team of associate professionals working with him because he is legally liable for their errors. As the public has become more and more enlightened, the medical practitioner's involvement with the law has gone beyond the expert witness. The medical practitioner is now being increasingly subjected to public accountability for all aspects of the practice. Complaints often arise, and if they are not carefully managed, may go beyond the health institution to the law courts, or to the Medical and Dental Tribunal, or to both.

"If the MDCN were not there, the charge of professional misconduct would not be appreciated, and the mishaps resulting from them would be the offence for which the medical practitioner would be charged. For example, if a patient died as a result of the mistakes of the medical practitioner, he would have to face a charge of murder or manslaughter. Medicine would become a dangerous profession to practice. By creating the MDCN, it is now possible for medical practitioners themselves to determine whether a particular colleague exercised sufficient skill and care that would be expected of a competent and caring

40. Martindale-Hubbell Review. Do I Have a Medical Malpractice Case?
41. http://www.bassettlawoffices.com/blog/bid/102399/Medical-Malpractice-VS-Negligence-Whats-The-Difference
42. Rules of Professional Conduct for Medical and Dental Practitioners. MDCN. 1995.
43. Martindale-Hubbell Review. Do I Have a Medical Malpractice Case?
44. Medical and Dental Practitioners Act Cap 221 LFN 1990 Decree No23 of 1998
45. Malpractice and Medico-Legal Issues -Dr Shima K Gyoh. Chairman, Medical and Dental Council of Nigeria(MDCN) Oyo State Branch of the Nigerian Medical Association (NMA) Continuing Medical Education (CME) series held on Tuesday, May 31, 2005 and hosted by the Association of Resident Doctors, University College Hospital, Ibadan, Nigeria
46. http://www.nursingworldnigeria.com/2012/10/Nursing-and-Midwifery-Council-Code-of-Professional-Conduct.
47. http://www.naijanurses.com/nsmcn.php.
48. http://www.nursingworldnigeria.com/2012/10/Nursing-and-Midwifery-Council-Code-of-Professional-Conduct.
49. http://www.naijanurses.com/nsmcn.php.
50. http://www.nursingworldnigeria.com/2012/10/Nursing-and-Midwifery-Council-Code-of-Professional-Conduct.
51. http://www.naijanurses.com/nsmcn.php.
52. https://en.wikipedia.org/wiki/Media_in_Nigeria; https://www.hrw.org/print/world-report-2010-abusing-patient.
53. Adapted from https://www.opensocietyfoundations.org/voices/making-laws-work-patients

To exemplify the difference between negligence and medical malpractice, it is beneficial to exemplify the category of medical negligence as well, as negligence is the central aspect of the spectrum between the two respective sides. To differentiate either, an understanding in an example of negligence is given.

An example of negligence would be in te case of a surgeon who is distracted during a surgery fails to read the chart of the patient. Because the surgeon is distracted, he did not read the chart, cuts off a leg instead of a surgical extraction of inflamed tonsils and the patient's healthy limbs cut off. A second example is the lack of maintenance to the hospital tools, facility and medical tools. If the theatre or backup power supply is in disrepair and maintenance were past overdue, and an event was caused making the hospital virtually incapacitated, the doctor or other medical practitioner and/or CMD would be found at fault. In both cases, negligent inattention to the surgery charts of the patient and the faulty hospital facility causing the negligent event, thus the surgeon became a danger to others. Their negligence and lack of attention would be proven as the cause.

While negligence may or may not be attached to intent, medical negligence is negligence in the medical field without intent. Common examples are a failure of diagnostic revision, failure to warn patients of the risk of treatment, failure to treat a patient, and a wrongful diagnosis.

With the mistakes of medical negligence in mind, medical malpractice includes the opposite of mistake; intent. The "mal" in "malpractice" is a negative prefix derived from Latin meaning "bad", which is a good way to remember the inclusion of intent. Another way to remember is the fact that while the doctor simply fails to do something that should have been done in medical negligence, doctors who commit malpractice perform their job in a way that is not the accepted standard of care which leads to serious injury or death. Examples of medical malpractice are those in which the doctor does not perform their duties to the legal medical standards, which include wrongful death, mistake during childbirth, error in anaesthesia, and surgical errors.

Negligence is the connector between medical negligence and medical malpractice, but while the three are thus connected, they are vastly different in regards to intent. Medical negligence lacks intent, medical malpractice includes

the aspect of intent, and negligence may or may not have intent based on the situation. While every case is different, the inclusion of intent often provides a clue in determining the type of case. Negligence applies to any case involving a civic duty, while the other two categories involve the professional and medical fields. To avoid being affected by negligence and malpractice, medical or otherwise, choose reputable professionals whom you trust, and remember that you as a patient have the right to the legal standard of services to your specific medical provider.[41]

Medical and Dental Council of Nigeria (**MDCN)** pamphlet on Rules of Professional Conduct states thus: Malpractice is **failure** of the practice of medicine or dentistry, **to exercise the skill, decorum and standards** adjudged **appropriate** and **acceptable to the generality of the registered members of the profession and recognized by the MDCN.**[42]

Medical malpractice is when a doctor or another medical professional - like a nurse or technician - does something or omits to do something and that causes an injury or some harm to you, the patient. The medical professional's act or failure to act (called an "omission") is called "**medical negligence".** As you can see from this definition, a medical malpractice case involves a mistake or error by a medical professional that damages or harms a patient.

The mistake or omission can happen at any time during medical treatment. For example, your medical practitioner may make a mistake diagnosing your illness, or she may not give you the proper treatment or medication for that illness. The key here is the **standard of care** This is the generally accepted method or methods used by other medical professionals in the area to treat or care for patients under the same or similar circumstances.

If you can prove your doctor or medical practitioner didn't follow or "breached" the standard of care for your particular medical problem, you've made a big first step in taking a good medical malpractice claim.

Injury or Damage

It is not enough that your doctor or medical practitioner made some sort of mistake. Before you can file a lawsuit, you have to be able to show that the mistake caused you damage or further harm. The amputation of the wrong limb,

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brain damage after an operation, a medical condition or disease got worse after treatment, or even death are good examples of injuries or damage. In short, unless you've been harmed, there's no medical malpractice case.

You also have to prove that the injury is connected to the negligence. This is called "causation," meaning your damage or harm was caused by the medical practitioner's mistake. This may be the most difficult - and expensive - part of any medical malpractice case. As a general rule, you'll need at least one expert witness to explain how the mistake caused your injury. These expert witnesses are always other Doctors or medical professionals. Usually, any malpractice case is a long and complicated legal matter because it's not always fast or easy to prove those two things. One of the key challenges in proving medical negligence is getting expert witness. This expert witness must be a Doctor, and Doctors close ranks around each other and find it extremely difficult to tender evidence that might implicate a fellow medical practitioner. Experts are also used to help you show the standard of care that applies to your case and how your medical practitioner breached that standard of care[43]

Proof of Negligence

It is up to the plaintiff to prove generally those acts or omissions that he claims amount to negligence. What the plaintiff has to prove before a court to hold the defendant liable may in many cases not be available, that is direct evidence. There is also another way in which the plaintiff' task is made easier. This is the doctrine of *res ipsa loquitur* (the thing speaks for itself). The rule can be invoked when the following conditions are met. The injury must be such as does not occur in the ordinary cause of event involving the absence of negligence, the facts proved must point to the defendant as being the negligent party, and there must be absence of explanation.

Contractual Negligence

It is possible for a duty of care to arise from an undertaking created as a result of contract. If the patient was treated privately, that is, if the patient entered into a contractual relationship with his medical practitioner the question may arise as to whether his chances of success are higher in tort or contract. In theory this chances may be higher in contract if the contract was a most unusual one. In such case the medical practitioner guaranteed that the treatment would succeed. But medical practitioners seldom, if ever, make such guarantee and the court would be highly averse to imply any such term to that effect.

1. You have a case against the medical practitioner or hospital for negligence if your right to be well-informed about your illness, the nature of treatments, likely outcomes and side-effects before the surgery is violated and some damage is done as a result of this oversight.

2. Your medical practitioner is negligent if the requisite consent was not duly obtained before a surgical operation is carried out or any other special treatment is to be given to you. If you do not give your consent to a treatment, your decision must be respected. You have the right to refuse blood transfusion; this though is at your own risk. However, your care-giver has a duty to ensure that you are making an informed decision by explaining the likely consequence of your rejection of a prescribed treatment on your health.

3. Your medical practitioner is negligent if your medical records and other sensitive personal information are not kept confidential, though they may be disclosed to a third party with your consent.

4. You have a case in negligence against your medical practitioner if you are not given quality services, subject to available medical facilities [when those services are available].

5. Your medical practitioner is negligent if you are not treated with care, professionalism and undivided attention. This means that a physician or any care-giver must not be negligent in attending to you. Treatment should be based on accurate diagnosis. For example, if you have a gunshot wound on your extremities, apart from setting possible fractures, a scan must be carried out to detect possible injuries to surrounding tissues, nerves and blood vessels.

6. If your right, to be treated at any medical facility in an emergency like accident, gunshot wound, cardiac arrest, bleeding, or any life threatening condition is violated, the National Health Act prohibits denial of medical care in an emergency for any reason.

and protecting the citizens' right to health. This role of the federal executive could be replicated at the state level by the state executive.

4. **The Police Force**
The police should corporate with citizens by investigating cases of health/patient right abuses. They should assist the citizens in bringing to book the perpetrators of such health right violations no matter their position in the society.

Recommendations/Steps to Take Towards Redress

The following are administrative steps to be taken in seeking redress on medical negligence:

- Report the erring medical practitioner to the Chief Medical Director of the hospital.
- Report to the Medical and Dental Council of Nigeria. Your petition should be in form of an affidavit.
- Write a complaint/petition to The Ministry of Health and Commissioner for Health.
- Request for the patient-victim's case file.
- In the event of questionable death, request an autopsy to be conducted on the deceased body.
- Contact your lawyer; who can help you determine if your case is actionable in court.

You may also contact any of the following for assistance:

- Centre for the Right to Health **(CRH)**
- Human Rights Protection Agencies
- International Federation of Women Lawyers
- National Human Rights Commission
- Legal Aid Council of Nigeria
- Ministry of Health.[53]

6. **International and Donor Organizations**

International and Donor Organizations should support projects that prevent and redress Patient's rights abuses. Funding should increase in these areas, which could be tagged “hard to fund project”. Patient rights redress funding is going to improve the health care practices which will ultimately reduce mortality rate resulting from medical negligence or malpractice.

GROUP F

1. **Media**

Historically, Nigeria has boosted the most free and outspoken press of any African country. The media still remains a viable tool in shaping people's mind set towards a particular subject; they can help in sensitizing the public on their health rights and indicators of an abuse and how to seek redress.

2. **Federal Legislature**

The federal legislature should make policies that protect the rights of the patient while receiving healthcare from healthcare providers/ facility. The National Health Act, 2014 is a classic example of such law at the federal level. Furthermore, the legislature should ensure the implementation of the Basic Healthcare Provision Fund, as stipulated in **section 11** of the National Health Act, 2014. Although the disbursement of the funds lies with the executive, the legislature could still play a role to ensure the implementation. This role of the federal legislature could be re-enacted at the state level by the state legislature.

3. **Federal Executive**

On its part, the federal executive should develop the will power to implement policies that guarantee the protection of the health and patients' rights of the citizenry. A case in point is the provision of **section 11(3a)** of the National Health Act, 2014, which is to the effect that the Federal Government shall make an annual grant of not less than **one per cent (1%)** of the Consolidated Revenue Fund for the purpose of providing basic minimum package of health services to the citizens. The implementation of this provision will go a long way to strengthen our health institutions as well as increase access to health, thereby promoting

Disciplinary Measures in Medical Practice

Section 15(1)of the Medical and Dental Practitioners Act provides:

> *“ There shall be established a tribunal to be known as the Medical and Dental Practitioners Disciplinary Tribunal (in this Act referred to as the Disciplinary Tribunal”, which shall be charged with the duty of considering and determining any case referred to it by the Panel established under subsection (3) of this section and any other case of which the Disciplinary Tribunal has cognizance under the following provisions of this Act.*

It flows from the above provisions that the responsibility of the panel is to conduct preliminary investigations into allegations of professional misconduct against any medical or dental practitioner. The Medical and Dental Practitioners Act has therefore in **Section 16(2)** of the Act stipulated the penalties for any Medical and Dental practitioner found guilty by the Tribunal as follows:

> *The Disciplinary Tribunal may give a direction under subsection (1) of this section-*
>
> *a) Ordering the Registrar to strike the person’s name off the relevant Register or registers or*
>
> *b) suspending the person from practice by ordering him not to engage in practice as medical practitioner or dental surgeon, as the case may be, for such period not exceeding six months as may be specified in the direction or*
>
> *c) Admonishing that person*[44]

“If the MDCN were not there to regulate the medical profession, the mishaps resulting from the mistakes of practitioner would be the offence for which the doctor would be charged. For example, if a patient died as a result of the mistakes of the doctor, he would have to face a charge of murder or manslaughter. Medicine would become a dangerous profession to practice. By creating the MDCN, it is now possible for doctors themselves to determine whether a particular colleague exercised sufficient skill and care that would be expected of a competent and caring professional”

The MDCN has authority only over registered practitioners i.e. doctors and dentists. The offences committed by non-registered practitioners have to be sued in ordinary courts since it is a Criminal offence to practice orthodox

medicine without being qualified and registered practitioners[45] It must be noted that the MDCN only regulates medical doctors not hospitals. Therefore any complaint of medical malpractice lies only with respect to the malpractice of a medical practitioner or other practitioners within its jurisdiction. Sanctions to erring members of the MDCN include suspension of license to practice and striking off the name of the practitioner from its register of licensed practitioners.

10. Challenges Faced by the MDCN in Regulation of Medical Practitioners.

The MDCN has a tribunal and an investigative panel through which it exercises its powers of sanctioning erring members. The tribunal hears and tries cases that are referred to it by th investigative panel, this panel is instituted by the council and each time a new government regime is sworn into power the council is dissolved. Only the council has the power to constitute an investigative panel, therefore when a council is dissolved the panel it instituted is also dissolved. This in turn affects the cases investigated by the panel as a case might pass through several constituted panels before a conclusive determination of the case.

11. Professional Conduct for Laboratory Scientists

Parts B and C of the Rules of Professional Conduct for Medical Laboratory Scientists, Medical Laboratory Technicians and Medical Laboratory Assistants, 2014 provide for professional conduct of Medical Laboratory Scientists and what constitutes Malpractice respectively. The relevant sections of the Rules of Professional Conduct are reproduced verbatim hereunder to aid the health care seeker or health consumer in understanding and appreciating the professional obligations of the Medical Laboratory Scientist to him as a patient. These professional obligations are geared towards protecting the health rights of the patient.

Part B - Professional Conduct

Section 11

Every practitioner in his professional practice is expected to conduct and comport himself in his relationships with the public, patient and colleagues in a manner that will promote the sound ethical practice failing which he shall be guilty of infamous conduct in a professional respect.

Section 12

GROUP E

1. **Advocacy Groups**
   Health care providers are naturally caught between their obligations to their patient and restrictive laws and policies that restrict their acts. Advocacy groups help accelerate the recognition of rights alongside abuses; then balance the rights of the patient and healthcare providers. Good knowledge of the rights is the first step, which is what points to the fact that there are abuses after all.

2. **Traditional Rulers**
   Traditional Rulers are key actors in dissemination of information, they are highly respected and most times they bridge the gap between Service Providers and the people. In rural communities, they influence people greatly, hence, they should be informed accordingly.

3. **Spiritual Leaders**
   A greater percentage of the Nigerian citizens belong to a particular faith; this has influenced a great number of spiritual leaders that have large number of followers under their influence, and look up to them for guidance. These spiritual leaders are greatly respected; as such, everything they say is believed to a large extent to come from God; such avenues could be turned into advocacy ground for patient's right when the spiritual leaders lend their voices.

4. **Citizen Groups**
   Citizen groups are key stakeholders that will foster the protection of the rights. No one can better advocate for their right to health other than the citizens themselves, they should stand up for their rights using the various citizens groups as platforms. They should not wait for the abuses to occur, they could stop the abuses by empowering people with the right information.

5. **Civil Society Organizations**
   Civil Society Organizations are key actors to monitor the implementation of policies that protects the patient rights.

mobilizing stakeholders to address them.

- Encourage NGOs to integrate health and patients' rights advocacy in their work.
- Support fresh law graduates to work at the intersection of health rights and human rights.
- Advocate for the establishment of special courts and tribunals to adjudicate over health/patients' rights violation cases.
- Continuing education for lawyers and medical practitioners on health/patients' rights issues.
- Encourage Alternative Dispute Resolution for speedy settlement of patients' rights violation cases.

GROUP C

Human Rights Protection Agencies and Organizations

1. Legal Aid Council
2. Non-Governmental Organizations
3. Consumer Protection Agency

The responsibility of this group of stake holders is to provide a framework for contributions to channel reports to international human rights bodies, highlighting health/patients' rights as well as human rights concerns.

GROUP D

National Health Insurance Scheme (NHIS)

The NHIS needs to provide a framework and implement the following:

i. Community based insurance schemes that take the self-employed and unemployed into consideration.
ii. Programs that make it easy for poor rural people in our largely agrarian communities to benefit from low-cost insurance that ensure basic healthcare.
iii. Monitoring of medical insurance providers to ensure efficient settlement of claims.
iv. Introduce subsidies for people who live below the poverty line, the elderly, disabled and people living with terminal diseases and reimburse expenses that exceed a certain number of days for chronic illnesses and attendant cost due to the length of stay at a medical facility.[52]

1) Every practitioner shall be dedicated to serving the health needs of the public by:
a) Contributing his share of professional competence to the general wellbeing of the community.
b) Complying with relevant laws and regulations pertaining to the practice of Medical Laboratory Science and actively seek, within the dictates of their conscience, to change those which do not meet with the high standards of care and practice to which the profession is committed.
c) Maintaining a respectful relationship with members of the public to facilitate awareness and understanding of the profession of Medical Laboratory Science.

Section 13

1) Every practitioner shall be held accountable for the quality and integrity of the laboratory services he provides to the patient/client and this includes but not limited to:
a) Maintaining individual competence in judgment and performance and striving to safeguard the patient from incompetent or illegal practice by others.
b) Exercise sound judgment in establishing, performing and evaluating laboratory testing.
c) Maintain strict confidentiality of patient information and test results.
d) Respect the dignity, privacy and independence of patients at all times.

Section 14

1) Every practitioner is expected to uphold the tenets of the profession and have respect for his colleagues and shall in doing so:
a) Uphold and maintain the dignity and respect of the profession and strive to maintain a reputation of honesty, integrity and reliability.
b) Actively strive to establish cooperative and respectful working relationship with other healthcare professionals with the primary objective of ensuring a high standard of care for the patients he serves.
c) Take responsibility for his professional acts.
d) Endeavour to maintain and improve his skills and knowledge and keep up to date with current scientific advances.
e) Uphold academic integrity in all matters of professional certification and Continuing Education.

f) Promote the image and status of the profession by maintaining high standards in his professional practice and through active support of the Council.
g) Share his knowledge with colleagues and promote learning.
h) Collaborate with other health care professionals in the care of patients and the functioning and improvement of health services.
i) Practice safe work procedures at all times to ensure the safety of patients and Co-workers and the protection of the environment.

Section 15

A practitioner who fails to exercise the degree of care and skill expected of his experience and status in or about matters of principle or details pertaining to Medical Laboratory Science procedure or the processing of data in the process of attending to a patient is liable for professional negligence.

Section 16

(1) The following among others constitute professional negligence
a) Falsification of laboratory or patient record documentation;
b) Tampering with, destruction or theft of equipment, specimens or teaching materials;
c) Exhibition of verbally abusive, physically threatening or harmful behaviour;
d) Gross impairment (physical or cognitive) by illicit use or prescription of drugs;
e) Inappropriate or unauthorized use of laboratory equipment, supplies, reagents, data, and laboratory information systems or communication systems;
f) Unauthorized clinical practice or unauthorized presence in a laboratory facility;
g) Non-compliance with the work rules, policies or procedures of the laboratory;
h) Failing to do scheduled laboratory equipment maintenance;
i) Creating unnecessary risk of exposure to or harm from fire, environmental, chemical or biohazards;
j) Carrying out a test and producing a result falling short of a reasonable man's expectation of the status of the Medical Laboratory Scientist(s).

ethical standards and to protect the people of this Nation against malpractice by medical and dental practitioners.
4. To maintain a Register of medical and dental practitioners, this should be published regularly

The MDCN should integrate human rights and patient care issues into medical and public health courses.

GROUP B

The Judicial System in Nigeria

The Judicial system plays a major role in redressing health rights violations; as such the capacity of the various arms of the judiciary should be built to discharge this duty.

1. The Nigerian Bar Association
2. The Court
3. The Council of Legal Education

The responsibility of the judicial system in ensuring access to and protecting the right to health are as follows:

- Support lawyers in bringing health/ patients' rights violations cases to court.
- Increase accountability for the right to health accessibility in our facilities health/institutions.
- Equip public defenders to take on more cases related to patients' rights violations.
- Challenge health care providers to raise concerns with administrative bodies on issues of patients' rights violation with a view to addressing same.
- Encourage socially marginalized patients, such as people living with HIV/AIDS or Hepatitis C, to press or demand for their health/ patients' rights from healthcare providers and health institutions.
- Integrate legal support into programs for people living with HIV/AIDS, maternity care and other minority groups
- Drive reform by highlighting gaps in National legislation and

Chapter 5

The Stakeholders and their Responsibilities

The task of enforcing the right to health in Nigeria requires a multi-pronged approach. The factors that have made the poor health care system what it is today are wide and varied; ranging from poor infrastructure, low budget expenditure, lack of continuing education in ethics for medical practitioners, a fatalistic view by patients and their family of death/injury due to medical negligence, to poverty and many more.

The Federal Government is the regulator and also a common denominator in most of the factors outlined above and its task is enormous if it does not find a way to reduce this burden by inviting collaboration with the private sector. The organizations that have a direct impact on the enforcement of the right of Nigerians to respectful care are explored below. This list is not exhaustive and only seeks to highlight the major stakeholders and organizations that have impact on the accessibility of the right to health.

GROUP A
Medical and Dental Council of Nigeria and Health Professional Associations

The Medical and Dental Council of Nigeria has four major functions;

1. To ensure that medical and dental training in the country meets international standards and drive medical reform through continuous education and innovation in the healthcare sector.
2. To ensure that practicing medical and dental professionals provide health care of international standard.
3. To ensure that medical and dental practitioners maintain the highest

2) Notwithstanding the provisions of sub rule (1) above, the Board still reserves the right to make rules as to acts which constitute professional negligence.
3) Any practitioner who is involved in professional negligence shall appear before the Investigating Panel of the Council for investigation of the allegation against him.
4) The Investigating Panel of the Council shall, based upon the outcome of its investigation, decide whether the case shall be referred to the Medical Laboratory Science Council of Nigeria Disciplinary Committee.

Part C - Malpractice

Section 17
A practitioner who undertakes to carry out any form of ill-defined procedures including non-existent or unnecessary investigations or tests for the sole purpose of increasing his earnings from the patient shall be in breach of the Code of Ethics and shall be guilty of malpractice.

Section 18
1) No practitioner is by these rules allowed to permit the use of his name or professional services in the aiding of or to make possible the unauthorized practice of Medical Laboratory Science.

2) Where a Medical Laboratory is not registered and a practitioner carries out his professional service in such a place, such a practitioner is guilty of professional malpractice and the Council upon proper investigation reserves the sole right to close down and seal the Medical Laboratory pending when the practitioner registers and shows proof of such registration to the Council.

Section 19
1) Any registered and licensed practitioner who by his presence, advice or cooperation knowingly enables a person not registered as a practitioner to practice Medical laboratory science in Nigeria or perform any procedure that requires discretion or skill breaches this code of ethics and is liable to disciplinary proceedings.

2) This shall also include those who employ or aid unregistered practitioners be they Citizens or expatriates to practice in Nigeria.

2. Nursing and Midwifery Council Code of Professional Conduct

A Nurse is a person who has received authorized education, acquired specialized knowledge, skills and attitudes, and is registered and licensed with the Nursing and Midwifery Council to provide promotive, preventive, supportive and restorative care to individuals, families and communities, independently, and in collaboration with other members of the health team. The Nurse must provide care in such a manner as to enhance the integrity of the profession, safeguard the health of the individual client/patient and protect the interest of the society.[46]

he Nursing and Midwifery Council of Nigeria is a parastatal of the Federal Government of Nigeria established by Decree 89 of 1979 of the Federal Republic of Nigeria and amended by Decrees No. 54 of 1988, No. 18 of 1989 and No. 83 of 1992. The Council is the only regulatory body for all cadres of Nurses and Midwives in Nigeria.

It is the only legal, administrative, corporate and statutory body charged with the performance of specific functions for Nurses and Midwives on behalf of the Federal Government of Nigeria in order to ensure the delivery of safe and effective Nursing and Midwifery care to the public through quality Education and best practices. The Council is mandated by Law to regulate the standards of Nursing and Midwifery Education and Practice in Nigeria and to review such Standards from time to time to meet the changing needs of the society. [47]

The Nursing and Midwifery Council of Nigeria subscribes to the fact that Nursing is an inalienable right of citizens and as such the professional Nurse has the responsibilities of assisting them to attain the optimal level of health. The Code of Professional Conduct is intended to empower the Professional Nurse Practitioner to provide effective care to individuals, families and communities. The Code of Professional Conduct places the client/patient at the center of nursing activities.[48]

ii. Criminal Litigation

Where death or disability has occurred as a result of the actions of a medical practitioner, a report may be made to the police; and where the Director of Public Prosecution has determined that there is a prima facie case against the medical practitioner and the hospital by the principle of Vicarious liability, where the employer is joined in suit for the act of his employee, who is seen as acting as his agent, a criminal case may be instituted against the medical practitioner for criminal breach of trust in the case of a civil servant, criminal negligence, manslaughter or murder. Note that investigations by the police must be carried out to determine whether a prima facie case against the medical practitioner exists.

Challenges to seeking Redress

The following are challenges faced by victims of medical negligence/ malpractice in seeking redress for the violation of their health rights:

i. Lack of awareness of their health rights.
ii. Why they should seek redress for the violation of their health right.
iii. Where to seek redress for the violation of their health right.
iv. Cost of redress
v. Access to records
vi. Illiteracy
vii. Emotional re-traumatization
viii. Improper Evidence gathering
ix. Evidence tampering
x. Time lapse
xi. Culture and religion
xii. Threats to life (in some cases)
xiii. Stigma and discrimination
xiv. Uncharted steps for Expedited action in court
xv. Lack of Capacity building and, resources
xvi. Lapses in judicial procedure/undue delay in getting justice.

Chapter 4

Redress for Patients' Rights Violation

The victim of medical malpractice has three (3) avenues to lay a complaint:

a. Administrative Redress

The victim may report any form of malpractice to the office of the Chief Medical Director of the hospital involved in the malpractice or follow the procedure set out by the Commissioner of Health, Hospital Services Board or Minister of Health.[Section 30 of the National Health Act 2014].

b. Professional Redress

This is where recourse can be made directly to the MDCN reporting in the form of an affidavit the complaint against the medical practitioner to the Registrar or other designated official of the Council. If a person whose name is found in the register of MDCN is found guilty of manslaughter as a result of the loss of life in medical negligence, the punishment for such an offence is up to seven (7) years imprisonment.

c. Legal Redress

I. Civil Litigation

A victim may sue in the regular courts in Nigeria which have jurisdiction over such matters for negligence in a civil case depending on the facts of the case. Where the court determines that there is a substantial case against the medical practitioner, damages may be awarded according to the degree of harm perceived by the court

The purposes of the Code of Professional Conduct are to:

- Inform Professional Nurses of the Standards of Professional Conduct required of them in the exercise of their professional accountability and practice.
- Inform the public, other professions and employers, of the standard of Professional Conduct that they can expect of a Registered Practitioner.

Nursing in Nigeria operates within the ambit of the code of professional conduct for Nurses and Midwives as put together by the Nursing and Midwifery Council of Nigeria. The code of conduct operates seven (7) principal elements that outline the standard of ethical conduct viz.

- The professional Nurse
- The professional Nurse and the Health Care consumer
- The professional Nurse and the Nursing profession
- The professional Nurse and Nursing practice
- The professional Nurse and Professional colleagues
- The professional Nurse and the Public
- The professional Nurse and the global health organization.[49]

For the purpose of this work, we shall reproduce only the principal elements of the code that deals with the Professional Nurse and the Health care consumer, i.e, the patient.

The Professional Nurse and the Health Care Consumer

The Nurse must:

1. Provide care to all members of the public without prejudice to their age, religion, ethnicity, race, nationality, gender, political inclination, health or social economic status.

2. Uphold the health consumer's human rights as provided in the constitution.

3. Ensure that the client/patient of legal age of 18 years and above gives informed consent for nursing intervention. In case the health consumer

is under aged, the next of kin or the parents can give the informed consent on his behalf.

4. Keep information and records of the client confidential except in consultation with other members of the health team to come up with suitable intervention strategies or in compliance with a court ruling or for protecting the consumer and the public from danger.

5. Avoid negligence, malpractice and assault while providing care to the client/patient.

6. Relate with a consumer in a professional manner only.

7. Not take bribe or gifts that can influence you to give preferential treatment.

8. Consider the views, culture and Beliefs of the client/patient and his family in the design and implementation of his care/treatment regimen.

9. Know that all clients/patients have a right to receive information about their condition.

10. Be sensitive to the needs of clients/patients and respect the wishes of those who refuse or are unable to receive information about their condition.

11. Provide information that is accurate, truthful and presented in such a way as to make it easily understood.

12. Respect clients and patients' autonomy, their right to decide whether or not to undergo any health care intervention even where a refusal may result in harm or death to themselves or a foetus, unless a court of law orders to the contrary.

13. Presume that every patient and client is legally competent unless otherwise assessed by a suitably qualified practitioner. A patient or client who is legally competent can understand and retain treatment information and can use it to make an informed choice.

14. Know that the principles of obtaining consent apply equally to those people who have a mental illness.

15. Ensure that when clients and patients are detained under statutory powers (e.g. Mental Health Act), you know the circumstances and safeguards needed for providing treatment and care without consent.

16. Provide care in emergencies where treatment is necessary to preserve life without clients/patients consent, if they are unable to give it, provided that you can demonstrate that you are acting in their best interests.[50]

Nurses, according to the ICN Code of Ethics as reviewed in 2005, have four fundamental responsibilities: to promote health, to prevent illness, to restore health and to alleviate suffering. The need for nursing is universal. Inherent in nursing is respect for human rights, including cultural rights, the right to life and choice, to dignity and to be treated with respect.

Nursing care is respectful of and unrestricted by considerations of age, colour, creed, culture, disability or illness, gender, sexual orientation, nationality, politics, race or social status.

Nurses render health services to the individual, the family and the community and coordinate their services with those of related groups.

Before 1981, nursing was adjudged a vocation in Nigeria, but by virtue of the Industrial Arbitration Panel (IAP) award of 1981, nursing got the recognition of a full-fledged profession.

Arising from that pronouncement, the association has been working with the N&MCN to take nursing to the highest pedestal of professionalism, and one of the ways is through nursing education reforms. [51]