

# **Legal Framework for Proof of Medical Negligence in Nigeria**

## **ABSTRACT**

Medical negligence remains a critical concern in Nigeria, reflecting the interplay of legal, ethical, and healthcare dynamics. This paper examined the legal framework governing the proof of medical negligence, focusing on key statutes, judicial precedents, and systemic challenges. The 1999 Constitution, the Evidence Act (2011), the National Health Act, and the Medical and Dental Practitioners Act form the core legislative instruments analyzed. Despite these legal provisions, significant barriers such as fragmented statutes, ambiguities in evidentiary standards, high litigation costs, and limited patient awareness hinder effective implementation. The research adopted a doctrinal research methodology, analyzing primary and secondary legal sources to identify gaps and propose reforms. It highlighted the role of alternative dispute resolution (ADR) mechanisms as a complementary approach to traditional litigation, offering cost-effective and timely solutions to medical negligence disputes. A comparative analysis with international best practices underscores the need for judicial capacity-building, public awareness campaigns, and harmonization of existing laws to enhance consistency and accessibility in the legal process. Key findings reveal that while statutes like the National Health Act and the Medical and Dental Practitioners Act provide a framework for addressing medical negligence, their full potential remains unrealized due to enforcement challenges. The paper recommended integrating ADR mechanisms, aligning statutory provisions, and empowering both the judiciary and the public to foster accountability and justice. Ultimately, this paper contributed to the discourse on healthcare reform, advocating for a robust and cohesive legal framework that ensures patient protection, professional accountability, and trust in Nigeria's healthcare system.

**Keywords: Legal, Framework, Proof, Medical Negligence**

## **1.0 INTRODUCTION**

Medical negligence, a subset of tort law, has increasingly become a critical issue in Nigeria's legal and healthcare system. The concept encompasses situations where healthcare providers fail to meet the standard of care required, leading to harm or injury to patients<sup>1</sup>. In a country grappling with significant challenges in its healthcare system, including inadequate infrastructure, underfunding, and limited access to essential services, the issue of medical negligence compounds these difficulties<sup>2</sup>. Inadequate regulatory oversight, coupled with limited patient awareness of their rights, often leads to cases of medical malpractice being unreported or unresolved.<sup>3</sup> The Nigerian legal framework - spanning the Constitution, statutory laws, and judicial precedents - plays a pivotal role in addressing this issue, determining the standard of proof required, and adjudicating claims of medical negligence<sup>4</sup>. This paper seeks to explore the existing legal framework for proving medical negligence in Nigeria, analyzing its effectiveness and proposing potential improvements.

The significance of examining the legal framework for proof of medical negligence in Nigeria cannot be overstated<sup>5</sup>. First, medical negligence has profound implications for both patient welfare and healthcare delivery. Patients who suffer due to negligent acts face not only physical and emotional trauma but also significant financial burdens. Second, an effective legal

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<sup>1</sup> A. O. Akinwunmi "Medical Negligence and the Impact of the National Health Insurance Scheme (NHIS) on Claims"2020; Journal of Nigerian Health and Law.

<sup>2</sup> M. Olaleye. Nigeria: Medical Negligence in Nigeria: Addressing the Public on Its Scope and the Resultant Legal Implications. 2018;  
<http://www.mondaq.com/Nigeria/x/754598/Healthcare/Medical+Negligence+In+Nigeria+Addressing+The+Public+On+Its+Scope+And+The+Resultant+Legal+Implications>

<sup>3</sup> Olofinlwa, T. (2015). Medical Negligence in Nigeria: When Hospitals Kill.  
<https://www.radianthealthmag.com/health-wellness/medical-negligence-in-nigeria>

<sup>4</sup> J. O. Lokulo-Sodiye. An Examination of the Legal Rights of Surgical Patients under the Nigerian Laws. J Law Conflict Resolut. 2009;4(1):79–87.

<sup>5</sup> C. Ikechi "Recent Trends in Medical Negligence and Healthcare Law in Nigeria" 2021; *International Journal of Health Law and Ethics*.

framework ensures accountability within the medical profession, fostering trust between patients and healthcare providers<sup>6</sup>. Third, this paper is critical for advancing the discourse on legal reforms that can enhance justice delivery, protect patients' rights, and uphold the integrity of the healthcare system. By shedding light on the current legal structures, this study aims to fill gaps in academic and policy-oriented discussions on medical negligence in Nigeria.

Despite the existence of a legal framework to address medical negligence in Nigeria, numerous challenges hinder its effective implementation<sup>7</sup>. A primary issue is the ambiguity surrounding the standard of proof required in negligence claims, which often makes it difficult for plaintiffs to establish liability<sup>8</sup>. Moreover, the regulatory framework, encompassing various legislative and policy instruments, is fragmented and lacks cohesion, leading to inconsistencies in adjudication. Limited awareness of legal rights among patients, coupled with systemic barriers such as high litigation costs and judicial delays, exacerbates the problem<sup>9</sup>. Additionally, the interplay between statutory laws and professional codes of conduct raises questions about their efficacy in safeguarding patient interests<sup>10</sup>. This paper seeks to address these issues by providing a comprehensive analysis of the legal framework for proving medical negligence in Nigeria, with a focus on identifying gaps and proposing actionable recommendations. The overarching aim of this paper is to critically analyze the legal framework for proving medical negligence in Nigeria, identifying its strengths, weaknesses, and areas for improvement. This paper adopted a doctrinal

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<sup>6</sup> F. O. Emiri. *Medical Law and Ethics in Nigeria* - 1st Edition, Nigeria. Malthouse Press Limited; 2012.

<sup>7</sup> T. Olaniran "Public Health, Medical Negligence, and the Law: A Comparative Study of Nigeria and the UK", 2021; *Health Law Journal*.

<sup>8</sup> S. S. Agarwal & S. S. Agarwal. Medical Negligence. Hospital's Responsibility. *J Indian Acad Forensic Med.* 2009; 31:164–170s.

<sup>9</sup> Obalum, D., & Fiberesima, F. (2012). Nigerian National Health Insurance Scheme (NHIS): An Overview. *The Nigerian Postgraduate Medical Journal*, 19, 167-174.

<sup>10</sup> Obafemi, K. A. R. (2017). *Medical Negligence Litigation in Nigeria: Identifying the Challenges and Proposing a Model Law Reform Act*. Thesis, The Trinity College, Dublin.

research methodology, relying on primary sources such as statutory laws, case law, and legal instruments, alongside secondary sources like academic literature, reports, and expert opinions. The research also integrated qualitative analyses of judicial decisions to identify trends and gaps in the adjudication of medical negligence claims in Nigeria.

## **1. LEGAL FRAMEWORK FOR PROOF OF MEDICAL NEGLIGENCE IN NIGERIA**

The legal framework in Nigeria plays a crucial role in defining the rights, duties, and liabilities of healthcare practitioners in cases of medical negligence<sup>11</sup>. Familiarity with pertinent statutes is crucial for both victims pursuing legal remedies and healthcare professionals safeguarding their conduct<sup>12</sup>. The legal system serves the collective welfare of society, with various regulatory agencies in Nigeria dedicated to safeguarding end users of medical products and upholding standards<sup>13</sup>. Achieving these objectives involves the formulation of rules and regulations pursuant to enabling legislation. These regulatory bodies also establish rules of professional ethics governing the practice and discipline of healthcare practitioners.

### **2.1 1999 Constitution of the Federal Republic of Nigeria (As Amended).**

The supreme law of Nigeria is the 1999 Constitution of the Federal Republic of Nigeria (As Amended), binding on all authorities and individuals.<sup>14</sup> It serves as the foundational legal document from which all other legislations derive, establishing fundamental rights for all citizens. Section 33 specifically guarantees the right to life, asserting that no person shall be intentionally deprived of life except as a court sentence for a criminal offense in Nigeria.<sup>15</sup>

Medical negligence, a significant concern in healthcare, involves a healthcare provider's failure to meet the standard of care expected from a reasonably prudent professional, resulting in harm

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<sup>11</sup> A. A. Igbalajobi "Legal Framework for Patient Protection in Nigeria: Medical Negligence in the Light of Recent Judicial Decisions"2022; *African Journal of Legal Studies*.

<sup>12</sup> *Ibid* 6

<sup>13</sup> *Ibid* 5

<sup>14</sup> The Constitution of Federal Republic of Nigeria 1999 (as amended), s 1.

<sup>15</sup> *Ibid*, s. 33 (1)

to the patient. Within this constitutional framework, we will examine the relevant provisions that pertain to establishing proof of medical negligence in Nigeria. The 1999 Constitution explicitly recognizes the right to health as a fundamental human right. In Chapter II, Section 17(3)(c)<sup>16</sup> states that "health, safety, and welfare of all persons in employment are safeguarded and not endangered or abused." Furthermore, Section 20<sup>17</sup> emphasizes the duty of the state to protect and improve the environment and safeguard the health of the people. These provisions establish a constitutional basis for the protection of citizens' health, creating a context in which medical negligence can be assessed. Another crucial aspect of the constitutional framework for medical negligence lies in the provisions regarding access to healthcare. Section 17(3)(d)<sup>18</sup> of the Constitution states that "the state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons." This provision implies that citizens have a constitutional right to access adequate medical facilities, and any negligence leading to the denial of this right may be challenged.

The right to dignity of the human person, as enshrined in Section 34<sup>19</sup> of the Constitution, is paramount in medical negligence cases. This section asserts that "every individual is entitled to respect for the dignity of his person." In the context of healthcare, the failure to provide an acceptable standard of care may be viewed as a violation of the patient's dignity. Proof of medical negligence can thus be anchored in the infringement of this constitutional right. The Constitution also provides for legal recourse and remedies in cases of rights violations. Section 36<sup>20</sup> guarantees the right to fair hearing, emphasizing that a person shall not be treated in a manner inconsistent with the constitutionally guaranteed right to a fair hearing in any civil or criminal proceedings. In medical negligence, this ensures that affected individuals have the right to present their case and seek redress through the legal system.

## **2.2 Evidence Act, 2011**

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<sup>16</sup> The Constitution of the Federal Republic of Nigeria (as Amended)s 17 (3)(c)

<sup>17</sup> The Constitution of the Federal Republic of Nigeria (as Amended)s 20

<sup>18</sup> The Constitution of the Federal Republic of Nigeria (as Amended) s 17(3)(d)

<sup>19</sup> The Constitution of the Federal Republic of Nigeria (as Amended) s 34

<sup>20</sup> The Constitution of the Federal Republic of Nigeria (as Amended)s 36

The Evidence Act, 2011 in Nigeria serves as a cornerstone in this regard, providing guidelines for the admissibility and evaluation of evidence in legal proceedings. In the context of medical negligence, where the complexities of healthcare meet the demands of justice, the Evidence Act, 2011 offers a structured approach to proving and establishing liability. We will explore the key provisions of the Evidence Act, 2011 and their relevance in the proof of medical negligence in Nigeria.

One of the critical aspects of medical negligence cases is the need for expert testimony to establish the standard of care and whether it has been breached. The Evidence Act, 2011, under Section 68<sup>21</sup>, addresses the admissibility of expert evidence. It allows witnesses recognized as experts in a particular field to testify on matters that require specialized knowledge, skill, or experience.

In cases of medical negligence, this provision is essential as it allows qualified medical professionals to serve as expert witnesses. These experts can provide insights into the recognized standards of care within the medical community, aiding the court in determining whether the healthcare provider in question adhered to or deviated from these standards.

Section 135<sup>22</sup> of the Evidence Act, 2011, addresses the standard of proof in civil cases, including those related to medical negligence. It states that the party who asserts a fact must prove it on the balance of probabilities. In medical negligence, the burden of proof rests on the claimant who alleges that the healthcare provider breached the standard of care, leading to harm. Medical records and documents are fundamental in proving medical negligence. The Evidence Act, 2011 addresses the admissibility of documents in legal proceedings under Section 83<sup>23</sup>. It stipulates that documents produced by a computer are admissible as evidence in court, provided certain conditions are met. In the realm of medical negligence, this provision is significant as medical records are often stored electronically.

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<sup>21</sup> The Nigerian Evidence Act. S 68

<sup>22</sup> The Nigerian Evidence Act. S 135 - 140

<sup>23</sup> The Nigerian Evidence Act. S 83(2)

Section 68(2)<sup>24</sup> of the Evidence Act, 2011, addresses the admissibility of expert reports. In medical negligence cases, expert reports are often crucial in providing an in-depth analysis of the facts and establishing whether there was a breach of the standard of care. This section allows for the admission of reports prepared by experts, subject to certain conditions.

This provision facilitates a more streamlined process for introducing expert opinions into evidence. It is particularly relevant in medical negligence cases where complex medical information needs to be presented in a comprehensible manner for the court.

The Evidence Act, 2011 in Nigeria provides a comprehensive legal framework for the proof of medical negligence. Its provisions on the admissibility of expert evidence, standard of proof, documentary evidence and expert reports contribute to a systematic approach in evaluating the complex nature of medical negligence cases.

### **2.3 National Health Insurance Scheme Act**

The National Health Insurance Scheme (NHIS) Act in Nigeria represents a significant legal framework aimed at providing accessible and affordable healthcare for all citizens. Beyond its primary objective, the NHIS Act plays a crucial role in medical negligence, offering a structured framework for proof, accountability, and compensation in cases where healthcare standards are breached. This part explored the key provisions of the NHIS Act and their relevance in establishing proof of medical negligence in Nigeria.

Enacted in 1999 and later amended in 2004, the NHIS Act establishes the National Health Insurance Scheme, a body tasked with the responsibility of ensuring that every Nigerian has access to good healthcare services. The Act outlined the legal framework for the operation of health insurance schemes in Nigeria, with the overarching goal of providing financial risk protection and reducing the financial barriers to healthcare.

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<sup>24</sup> The Nigeria Evidence Act. S 68(2)

One of the fundamental principles embedded in the NHIS Act is the provision of access to quality healthcare services for all Nigerians. Section 1(c)<sup>25</sup> of the Act outlines the functions of the Scheme, emphasizing the promotion and regulation of health insurance as a means of ensuring access to quality healthcare services. In the context of medical negligence, this provision serves as a foundational element, establishing the government's commitment to maintaining a standard of care within the healthcare system.

Section 1(e)<sup>26</sup> of the NHIS Act empowers the Scheme to ensure the quality of healthcare services provided under the scheme. This includes the establishment and maintenance of standards for healthcare delivery. In medical negligence, these standards become crucial benchmarks against which the conducts of healthcare providers are evaluated.

The NHIS Act's emphasis on quality assurance sets the stage for proving medical negligence by providing a legal basis for what constitutes acceptable standards of care within the Nigerian healthcare system. Breaches of these standards can be considered evidence of negligence, and claimants can leverage these provisions to establish the basis for their cases.

The NHIS Act establishes mechanisms for compensation and liability within the healthcare system. Section 17(1)<sup>27</sup> of the Act states that the Scheme may make payments in respect of the cost of health services provided or arranged for a contributor under the Scheme. This provision lays the groundwork for compensating individuals who have suffered harm due to medical negligence covered by the NHIS.

In cases of medical negligence, claimants can look to the NHIS Act to seek compensation for the harm suffered. The Act, by providing for payments in respect of health services, established a legal framework for addressing instances where the healthcare provider's actions or omissions result in harm to the patient

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<sup>25</sup> Section 1 (c). National Health Insurance Scheme Act 2004

<sup>26</sup> Section 1 (e) National Health Insurance Scheme Act 2004

<sup>27</sup> Section 17 (1) National Health Insurance Scheme Act 2004



The NHIS Act also confers regulatory powers on the Scheme to ensure compliance with the provisions of the Act. Section 6(1)(b)<sup>28</sup> gives the Scheme the authority to regulate the provision of health services and manage the health insurance scheme. This regulatory oversight includes monitoring the quality of healthcare services provided.

In cases of medical negligence, the NHIS Act has regulatory provisions that empowered the Scheme to investigate and take corrective actions where the healthcare providers fail to meet the required standards. This regulatory function can serve as a complementary tool in proving medical negligence, as the Scheme can play a role in assessing and addressing breaches of healthcare standards.

Section 7(1)<sup>29</sup> of the NHIS Act mandates healthcare providers participating in the scheme to maintain proper records of health services provided to contributors. This requirement ensures transparency and accountability in healthcare delivery. In medical negligence, these records can serve as valuable evidence. The availability of detailed records, as mandated by the NHIS Act, can significantly aid claimants in proving their cases. It provides a comprehensive trail of the healthcare provided, facilitating the identification of deviations from the standard of care and establishing a link between the healthcare provider's actions and the harm suffered by the patient.

Section 8(1)<sup>30</sup> of the NHIS Act encourages collaboration between the Scheme and other bodies for the resolution of disputes arising from the operation of the scheme. In medical negligence cases, this provision offered an alternative dispute resolution mechanism. Claimants can explore collaborative efforts with the NHIS to address issues related to breaches of healthcare standards and seek resolution without necessarily resorting to lengthy and adversarial legal proceedings. The National Health Insurance Scheme Act in Nigeria not only serves as a cornerstone for ensuring access to quality healthcare but also provides a robust legal framework for the proof of medical negligence. Its emphasis on quality assurance, compensation mechanisms, regulatory oversight, and record-keeping requirements creates a structured environment for addressing breaches of the standard of care within the healthcare system.

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<sup>28</sup> Section 6(1)(b) National Health Insurance Scheme Act 2004

<sup>29</sup> Section 7(1) National Health Insurance Scheme Act 2004

<sup>30</sup> Section 8 (1) National Health Insurance Scheme Act 2004

As Nigeria continues to grapple with the challenges of medical negligence, the NHIS Act stands as a crucial tool for claimants seeking justice and accountability. Leveraging the provisions of this Act can enhance the prospects of successfully proving medical negligence, ultimately contributing to the improvement of healthcare standards and patient outcomes in the country.

## **2.4 National HIV/AIDS Agency Act (2006)**

The National HIV/AIDS Agency Act of 2006 in Nigeria stands as a pivotal legal framework in the country's efforts to combat and manage the HIV/AIDS epidemic. Beyond its primary focus on addressing the specific challenges posed by HIV/AIDS, this legislation also plays a critical role in the broader context of healthcare and medical negligence. This part looks at the key provisions of the National HIV/AIDS Agency Act and examines its relevance as a legal framework for proving medical negligence in Nigeria.

Enacted in 2007, the National HIV/AIDS Agency Act established the National Agency for the Control of AIDS (NACA). NACA serves as the coordinating body for all HIV/AIDS-related activities in Nigeria. Its mandate includes formulating policies and guidelines for the prevention, treatment, care, and support of individuals affected by HIV/AIDS. While the Act primarily focuses on the unique challenges posed by the HIV/AIDS epidemic, its provisions can also be applied to cases involving medical negligence related to HIV/AIDS treatment and care.

Section 4(2)(h)<sup>31</sup> of the National HIV/AIDS Agency Act empowers NACA to develop and implement quality assurance standards for the prevention, treatment, and management of HIV/AIDS. This provision is significant in the realm of medical negligence, as it establishes a legal framework for assessing the standard of care in HIV/AIDS-related healthcare services. In cases where individuals allege medical negligence in the context of HIV/AIDS treatment, the standards set by NACA become crucial benchmarks. Deviations from these standards may serve as evidence of negligence, providing a basis for claimants to establish that healthcare providers failed to meet the required quality standards in HIV/AIDS care.

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<sup>31</sup> Section 4(2)(h) National HIV/AIDS Agency Act (2006)

Section 4(2)(a)<sup>32</sup> of the Act highlights NACA's responsibility to develop and implement policies for the protection of the rights of individuals affected by HIV/AIDS. This includes ensuring informed consent for HIV testing, treatment, and other healthcare services. In the realm of medical negligence, particularly concerning HIV/AIDS, issues related to patient rights and consent can be central to establishing negligence.

If a healthcare provider fails to obtain proper informed consent or violates the rights of individuals affected by HIV/AIDS, claimants may utilize the provisions of the National HIV/AIDS Agency Act to support their case. This aligns with the broader legal principles that govern patient rights and autonomy, establishing a legal basis for proving medical negligence in HIV/AIDS-related healthcare services. Sections 4(2)(b)<sup>33</sup> and 4(2)(c)<sup>34</sup> of the Act underscore NACA's role in developing policies to ensure confidentiality and non-discrimination in the provision of HIV/AIDS-related healthcare. Maintaining the confidentiality of HIV/AIDS-related information and preventing discrimination against individuals living with or affected by HIV/AIDS are critical components of comprehensive healthcare. In medical negligence cases, breaches of confidentiality or instances of discrimination related to HIV/AIDS care can be grounds for legal action. The National HIV/AIDS Agency Act provides a legal framework that reinforces the importance of maintaining confidentiality and preventing discrimination, allowing claimants to substantiate their cases when these principles are violated.

Section 4(2)(d)<sup>35</sup> of the Act mandates NACA to develop policies that promote access to affordable and available treatment for individuals affected by HIV/AIDS. This provision reflects the broader commitment to ensuring that individuals have access to necessary healthcare services, including antiretroviral treatment. In cases where medical negligence is alleged in relation to the availability or accessibility of HIV/AIDS treatment, claimants can reference the National HIV/AIDS Agency Act to support their case. The Act sets the stage for arguing that healthcare providers have a legal obligation to ensure that appropriate and timely treatment is accessible to individuals affected by HIV/AIDS.

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<sup>32</sup>Section 4(2)(a) National HIV/AIDS Agency Act (2006)

<sup>33</sup> Sections 4(2)(b) National HIV/AIDS Agency Act (2006)

<sup>34</sup> Section 4(2)(c) National HIV/AIDS Agency Act (2006)

<sup>35</sup> Section 4(2)(d) National HIV/AIDS Agency Act (2006)

Section 4(2)(e)<sup>36</sup> and Section 4(2)(f)<sup>37</sup> of the Act empower NACA to develop policies related to research on HIV/AIDS and the training of healthcare professionals. These provisions highlight the importance of advancing knowledge and skills in the field of HIV/AIDS care. In medical negligence, adherence to established research and training standards becomes crucial in ensuring that healthcare providers meet the required competencies. Claimants alleging medical negligence can draw on the National HIV/AIDS Agency Act to argue that healthcare providers must adhere to the research and training standards set by NACA. Any failure to meet these standards may be presented as evidence of negligence, emphasizing the importance of up-to-date knowledge and proficiency in the provision of HIV/AIDS-related healthcare services.

Beyond the statutory provisions, NACA routinely develop guidelines and protocols to guide healthcare providers in the provision of HIV/AIDS-related services. These guidelines can be instrumental in proving medical negligence. Claimants may use them to establish the accepted standards of care in HIV/AIDS treatment, making a compelling case when healthcare providers deviate from these established guidelines.

The National HIV/AIDS Agency Act of 2006, through the establishment of NACA, contributes significantly to the legal framework for proving medical negligence in the context of HIV/AIDS care in Nigeria. Its provisions on quality standards, patient rights, confidentiality, non-discrimination, treatment access, and research and training standards create a comprehensive framework for assessing the conduct of healthcare providers. Claimants seeking to establish medical negligence related to HIV/AIDS treatment can leverage the National HIV/AIDS Agency Act to demonstrate deviations from accepted standards. By doing so, this legal framework reinforces the commitment to providing quality healthcare services and upholding the rights of individuals affected by HIV/AIDS, ultimately contributing to the accountability and improvement of healthcare practices in Nigeria.

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<sup>36</sup> Section 4(2)(e) National HIV/AIDS Agency Act (2006)

<sup>37</sup> Section 4(2)(f) National HIV/AIDS Agency Act (2006)

## 2.5 The National Health Act (2014)

The National Health Act of 2014 represents a pivotal legal framework in Nigeria, aiming to provide a comprehensive and sustainable foundation for the healthcare system. Among its multifaceted objectives, the Act addresses the critical issue of medical negligence, establishing guidelines for the provision of healthcare services and offering a legal framework for individuals seeking redress for harm suffered due to substandard medical care. This part delves into the key provisions of the National Health Act and explores its significance in serving as a legal framework for proving medical negligence in Nigeria.

Enacted to provide a legal framework for the regulation, development, and management of a national health system, the National Health Act encapsulates several foundational principles that are integral to the establishment of proof in cases of medical negligence. These principles include accessibility, equity, quality, and accountability. Understanding these principles is crucial to appreciating the Act's role in medical negligence.

- a. **Accessibility:** Section 2(1)<sup>38</sup> of the National Health Act emphasizes the right of every Nigerian to access health services. This foundational principle establishes the expectation that healthcare services should be readily available to all citizens. In cases of medical negligence, accessibility becomes a critical component, and the Act provides a legal basis for arguing that the denial of accessible healthcare services may constitute a breach of its provisions.
- b. **Equity:** The Act, in Section 2(2)<sup>39</sup>, underscores the need for health services to be distributed in a manner that ensures equity and fairness. This principle aligns with the broader notion that all individuals, regardless of their socioeconomic status, should have equal access to healthcare. In the context of medical negligence, disparities in the delivery of healthcare services can be evaluated against the Act's principle of equity to substantiate claims of negligence.

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<sup>38</sup> Section 2 (1) The National Health Act of 2014

<sup>39</sup> Section 2 (2) The National Health Act of 2014

- c. **Quality:** Section 2(3)<sup>40</sup> of the Act highlights the importance of ensuring that health services meet the best possible standards of quality. This quality assurance principle is crucial in the context of medical negligence, as it establishes a legal framework for evaluating the standard of care expected from healthcare providers. Deviations from established quality standards can serve as evidence of negligence.
- d. **Accountability:** The Act, in Section 2(4)<sup>41</sup>, reinforces the concept of accountability, emphasizing that health providers are accountable to the community for the quality of health services delivered. This principle aligns with the broader legal notion that healthcare professionals are accountable for their actions. In cases of medical negligence, the Act provides a legal foundation for holding healthcare providers accountable for breaches of the standard of care.

### **Key Provisions of the National Health Act Relevant to Medical Negligence**

- a. **Standards for Health Services:** Section 5 of the National Health Act empowers the National Council on Health to set standards for health services. These standards include clinical protocols, guidelines, and procedures. In the context of medical negligence, adherence to these standards becomes a crucial benchmark for evaluating the conduct of healthcare providers. Failure to meet these established standards may serve as evidence of negligence.
- b. **Patient's Rights (Section 6):** Section 6 of the Act outlines the rights of patients, emphasizing the right to privacy, confidentiality, and informed consent. These rights are pivotal in medical negligence cases, where breaches of patient rights may constitute evidence of negligence. The Act provides a legal framework for asserting these rights and seeking redress in cases where they are violated.
- c. **Establishment of Healthcare Facilities (Section 44):** Section 44 of the Act outlines the requirements for the establishment of healthcare facilities. Compliance with these requirements is essential for healthcare providers. In cases of medical negligence, failure

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<sup>40</sup> Section 2 (3) The National Health Act of 2014

<sup>41</sup> Section 2 (4) The National Health Act of 2014

to adhere to these establishment requirements may be presented as evidence of negligence, as it reflects a disregard for the Act's provisions.

- d. **Duty of Care (Section 20):** Section 20 of the Act imposes a duty on healthcare providers to act in the best interest of the patient and to exercise a duty of care. This duty is fundamental to the concept of medical negligence. Claimants can draw on this provision to establish the legal obligation of healthcare providers and argue that a breach of this duty constitutes evidence of negligence.
- e. **Liability for Damages (Section 48):** Section 48<sup>42</sup> of the Act addresses the liability of healthcare providers for damages. This provision establishes a legal framework for seeking compensation in cases of medical negligence. Claimants can refer to this section to assert their right to compensation for harm suffered due to substandard medical care.
- f. **Professional Indemnity (Section 46):** Section 46 of the Act allows healthcare providers to obtain professional indemnity insurance coverage. This provision is significant in the context of medical negligence, as it acknowledges the potential for errors in healthcare delivery and establishes a mechanism for financial recourse. Claimants can refer to this provision to support their claims for compensation in cases of medical negligence.

### **Utilizing the National Health Act in Proving Medical Negligence**

The National Health Act provides a comprehensive legal framework for individuals seeking to establish medical negligence. To effectively utilize the Act in proving negligence, claimants and their legal representatives should consider the following steps:

- a. **Adherence to Standards:** Evaluate the healthcare provider's adherence to the standards set by the National Council on Health. This may include clinical protocols, guidelines, and procedures relevant to the specific healthcare services in question.
- b. **Patient's Rights Violation:** Assess whether the patient's rights, as outlined in Section 6 of the Act, have been violated. This includes privacy, confidentiality, and informed consent. Any breaches of these rights may constitute evidence of negligence.

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<sup>42</sup> Section 48, The National Health Act of 2014

- c. **Establishment Requirements:** Examine whether the healthcare facility meets the requirements outlined in Section 44<sup>43</sup> of the Act for its establishment. Non-compliance with these requirements can be presented as evidence of negligence.
- d. **Duty of Care:** Establish that healthcare providers owed a duty of care to the patient, as stipulated in Section 20<sup>44</sup> of the Act. Any breach of this duty can be used to support a claim of medical negligence.
- e. **Liability for Damages and Professional Indemnity:** Refer to Sections 48 and 46 of the Act when seeking compensation for damages. Highlight the healthcare provider's liability for harm suffered due to substandard medical care and explore whether professional indemnity insurance coverage is applicable.

The National Health Act of 2014 serves as a robust legal framework for proving medical negligence in Nigeria. Its foundational principles of accessibility, equity, quality, and accountability, coupled with specific provisions addressing standards, patient rights, establishment requirements, duty of care, liability for damages, and professional indemnity, create a comprehensive framework for evaluating healthcare providers' conduct.

By leveraging the National Health Act, claimants and their legal representatives can establish a clear legal basis for proving medical negligence.

## **2.6 Medical and Dental Practitioner Act**

The Medical and Dental Practitioners Act (MDPA) stands as a fundamental legal framework in Nigeria, governing the practice of medicine and dentistry in the country. Beyond its regulatory role, the MDPA plays a crucial role in providing a legal foundation for addressing medical negligence. This section explores the key provisions of the Medical and Dental Practitioners Act and examines its significance as a legal framework for proving medical negligence in Nigeria.

Enacted in 1988 and later amended in 2004, the Medical and Dental Practitioners Act established the Medical and Dental Council of Nigeria (MDCN) to regulate the practice of medicine and

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<sup>43</sup>Section 44, The National Health Act of 2014

<sup>44</sup> Section 20, The National Health Act of 2014



dentistry in Nigeria. The Act sets out the requirements for the registration, licensing, and discipline of medical and dental practitioners, emphasizing the standards of professional conduct expected from healthcare professionals.

### **Key Provisions Relevant to Medical Negligence**

- a. **Registration and Licensing (Sections 1-11):** The MDPA outlines the procedures for the registration and licensing of medical and dental practitioners in Nigeria. Section 1 establishes the MDCN, while Sections 2-11 detail the requirements for the registration and licensing of practitioners. This process ensures that only qualified individuals are authorized to practice medicine or dentistry. In medical negligence, compliance with the registration and licensing provisions becomes crucial. Claimants can assert that healthcare providers who fail to meet the requirements of the MDPA are not qualified to practice, potentially strengthening their case for proving negligence.
- b. **Standards of Professional Conduct (Section 12):** Section 12<sup>45</sup> of the MDPA outlines the standards of professional conduct expected from medical and dental practitioners. This section serves as a cornerstone for evaluating the conduct of healthcare professionals in cases of alleged medical negligence. Breaches of these standards can be presented as evidence of negligence, as practitioners are legally obligated to adhere to these ethical and professional norms.
- c. **Professional Misconduct (Sections 13-14)**<sup>46</sup>: Sections 13 and 14 of the MDPA detail various acts considered as professional misconduct. This includes actions such as negligence, incompetence, and malpractice. In the context of medical negligence, these provisions offer a clear legal framework for identifying and establishing professional misconduct on the part of healthcare providers. Claimants can leverage these sections to argue that the alleged negligence falls within the ambit of professional misconduct as defined by the MDPA, providing a basis for seeking disciplinary action against the healthcare practitioner.

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<sup>45</sup> Section 12, Medical and Dental Practitioner Act

<sup>46</sup> Section 13 – 14, Medical and Dental Practitioner Act

- d. **Disciplinary Proceedings (Sections 15-17)**<sup>47</sup>: The MDPA provides detailed procedures for disciplinary proceedings in Sections 15-17. These sections outline the processes by which complaints against medical and dental practitioners are investigated and adjudicated. In cases of medical negligence, individuals can initiate disciplinary proceedings against healthcare providers, seeking redress for alleged professional misconduct. The disciplinary proceedings outlined in the MDPA create a legal avenue for addressing medical negligence within the regulatory framework. Claimants can navigate these procedures to seek accountability and disciplinary action against healthcare practitioners found to be in violation of professional standards.
- e. **Penalties for Offenses (Sections 18-19)**<sup>48</sup>: Sections 18 and 19 of the MDPA stipulate the penalties for offenses committed by medical and dental practitioners. This includes fines, suspension, or removal from the register. In cases of proven medical negligence, these penalties provide a legal recourse for holding healthcare practitioners accountable for their actions. Claimants can refer to these sections to advocate for appropriate penalties when medical negligence is established, contributing to the overall accountability and integrity of the medical and dental profession in Nigeria.
- f. **Continuing Professional Development (CPD) (Section 19A)**: The MDPA, through Section 19A, introduces the concept of Continuing Professional Development (CPD) for medical and dental practitioners. This emphasizes the importance of practitioners staying abreast of advancements in their respective fields. Compliance with CPD requirements is crucial in the context of medical negligence, as it reinforces the expectation that healthcare providers maintain their knowledge and skills to a high standard. Claimants can use non-compliance with CPD requirements as evidence of negligence, arguing that healthcare practitioners who do not engage in continuous learning may be more prone to errors or outdated practices.
- g. **Civil Liability (Section 20)**: Section 20<sup>49</sup> of the MDPA addresses civil liability for practitioners. This section acknowledges that the Act does not affect the right of any person to take civil action against a medical or dental practitioner. In cases of medical

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<sup>47</sup> Section 15 – 17, Medical and Dental Practitioner Act

<sup>48</sup> Section 18 – 19, Medical and Dental Practitioner Act

<sup>49</sup> Section 20, Medical and Dental Practitioner Act

negligence, this provision is significant, affirming the right of individuals to seek redress through civil litigation for harm suffered due to substandard medical care. Claimants can invoke Section 20 to pursue legal action against healthcare practitioners, utilizing the MDPA as a basis for establishing professional misconduct and negligence.

### **Utilizing the Medical and Dental Practitioners Act in Proving Medical Negligence**

To effectively utilize the MDPA in proving medical negligence, claimants and their legal representatives should consider the following steps:

- a. **Review Compliance with Registration and Licensing Requirements:** Assess whether the healthcare practitioner in question has complied with the registration and licensing requirements outlined in the MDPA. Non-compliance can serve as evidence that the practitioner is not qualified to practice, strengthening the argument for negligence.
- b. **Evaluate Compliance with Standards of Professional Conduct:** Examine whether the healthcare provider adhered to the standards of professional conduct outlined in Section 12 of the MDPA. Any breaches of these standards may be presented as evidence of negligence, as practitioners are legally obligated to uphold these ethical and professional norms.
- c. **Identify Acts of Professional Misconduct:** Review Sections 13 and 14 of the MDPA to identify acts considered as professional misconduct, including negligence and malpractice. Align the alleged acts of medical negligence with these provisions, establishing a basis for claiming professional misconduct.
- d. **Initiate Disciplinary Proceedings:** If appropriate, initiate disciplinary proceedings against the healthcare practitioner in accordance with Sections 15-17 of the MDPA. Follow the outlined procedures to seek redress and accountability for alleged professional misconduct.
- e. **Refer to Penalties for Offenses:** In cases where medical negligence is proven, refer to Sections 18 and 19 of the MDPA to advocate for appropriate penalties. The Act provides a range of penalties, including fines, suspension, or removal from the register, depending on the severity of the offense.

- f. **Consider Continuing Professional Development (CPD) Compliance:** Evaluate whether the healthcare practitioner complies with CPD requirements outlined in Section 19A of the MDPA. Non-compliance may be presented as evidence that the practitioner has not maintained the necessary knowledge and skills, potentially contributing to the case for negligence.
- g. **Assert Civil Liability (Section 20):** Recognize the right to civil action affirmed in Section 20<sup>50</sup> of the MDPA. Utilize this provision as a basis for pursuing legal action against the healthcare practitioner for civil liability in cases of proven medical negligence.

The Medical and Dental Practitioners Act of 1988, as amended in 2004, serves as a comprehensive legal framework for proving medical negligence in Nigeria. Its provisions on registration, professional conduct, professional misconduct, disciplinary proceedings, penalties, Continuing Professional Development, and civil liability establish clear guidelines for evaluating the conduct of medical and dental practitioners. Claimants, seeking to establish medical negligence, can leverage the MDPA to navigate disciplinary proceedings, seek redress for professional misconduct.

## 2.7 Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) mechanisms offer viable legal frameworks for addressing proof of medical negligence in Nigeria, complementing traditional litigation processes<sup>51</sup>. ADR methods, such as mediation, arbitration, and conciliation, provide expedited, cost-effective, and less adversarial avenues for resolving disputes between patients and healthcare providers<sup>52</sup>.

One prominent ADR mechanism in Nigeria is mediation, where a neutral third party facilitates negotiations between the parties involved in a medical negligence dispute. Mediation encourages open communication, allowing both parties to express their concerns and interests in a confidential setting. By fostering dialogue and cooperation, mediation can lead to mutually

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<sup>50</sup> Section 20, Medical and Dental Practitioner Act

<sup>51</sup> A. A. Olanrewaju "The Role of Alternative Dispute Resolution (ADR) in Medical Negligence Cases in Nigeria" 2022; *Journal of Nigerian Law and Practice*.

<sup>52</sup> *Ibid*, 50

acceptable resolutions without the need for protracted litigation. The Lagos Multidoor Courthouse (LMDC) is a notable example of a mediation center in Nigeria that handles medical negligence cases efficiently.

Arbitration is another ADR method gaining traction in Nigeria's healthcare sector. In arbitration, an impartial arbitrator or panel of arbitrators hears arguments from both parties and renders a binding decision. Arbitration offers flexibility in procedure, allowing parties to select arbitrators with expertise in medical matters and to agree on rules governing the arbitration process. The Abuja Chamber of Commerce and Industry (ACCI) Arbitration Center is one of the institutions in Nigeria facilitating arbitration proceedings, including those related to medical malpractice.<sup>53</sup>

Conciliation, akin to mediation, involves a neutral third party assisting parties in reaching a settlement. However, conciliators may actively propose solutions and offer recommendations to resolve the dispute. This approach promotes compromise and reconciliation between patients and healthcare providers, fostering long-term relationships and preserving trust in the healthcare system.

While ADR mechanisms offer several advantages, they are not without limitations. Challenges may arise in ensuring the enforceability of ADR outcomes and in guaranteeing procedural fairness and neutrality of third-party facilitators. Moreover, unequal bargaining power between patients and healthcare institutions may affect the efficacy of ADR processes.<sup>54</sup> Alternative dispute resolution mechanisms serve as valuable legal frameworks for addressing proof of medical negligence in Nigeria. By offering flexibility, efficiency, and confidentiality, ADR methods contribute to resolving disputes in a manner that is less adversarial and more conducive to maintaining trust and cooperation within the healthcare sector. However, their effectiveness depends on factors such as enforceability, procedural fairness, and the willingness of parties to engage in good faith negotiations.

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<sup>53</sup> O. Ajigboye "The Concept of Multi-Door Courthouse in Nigeria: Rethinking Frank Sander's Concept" *Akungba Law Journal*, 2013; Vol. 2 No.1 pp. 332 – 351.

<sup>54</sup> [https://www.britishcouncil.org.ng/sites/default/files/multidoor\\_courthouse.pdf](https://www.britishcouncil.org.ng/sites/default/files/multidoor_courthouse.pdf)

## **CONCLUSION**

The legal framework for proving medical negligence in Nigeria represents a critical intersection of law, healthcare, and ethics. As the healthcare sector continues to evolve in response to societal needs and challenges, the importance of a robust, clear, and enforceable legal structure to address medical negligence cannot be overstated. This paper has critically examined the existing legal instruments, statutory provisions, and judicial practices and proposing actionable recommendations to strengthen the framework.

One of the primary observations is the fragmentation of the legal framework governing medical negligence in Nigeria. The relevant statutes, such as the 1999 Constitution, the Evidence Act, the National Health Act, and the Medical and Dental Practitioners Act, operate independently without sufficient integration. This lack of cohesion creates ambiguities in the interpretation and application of the law, particularly concerning the evidentiary standards required to establish negligence. Patients often face an uphill battle proving breach of duty, causation, and damage, given the complex and technical nature of medical negligence claims.

Moreover, systemic barriers such as high litigation costs, prolonged judicial processes, and limited awareness of legal rights among patients further exacerbate the challenges in seeking redress. These factors contribute to an environment where many victims of medical negligence choose to endure their suffering rather than pursue justice.

On the other hand, the study highlighted the potential of the National Health Act and the Medical and Dental Practitioners Act in addressing some of these issues. Provisions that emphasize patient rights, professional accountability, and mechanisms for redress provide a foundation for a

more effective legal response. However, the full potential of these instruments remains unrealized due to gaps in implementation and enforcement.

## **RECOMMENDATIONS**

To address the identified issues, the following recommendations emerge from this research paper.

- i. There is an urgent need to harmonize existing legal instruments. A unified framework that integrates the provisions of the Constitution, statutory laws, and professional codes of conduct will enhance consistency and clarity in the adjudication of medical negligence cases.
- ii. Public awareness campaigns are essential for empowering patients to understand their rights and the avenues available for redress. Educating the public about legal remedies and the importance of reporting medical negligence can foster greater accountability within the healthcare sector.
- iii. Alternative dispute resolution (ADR) mechanisms should be prioritized as a complement to litigation. Mediation and arbitration offer cost-effective and timely solutions for resolving medical negligence disputes, benefiting both patients and healthcare providers. Policymakers and stakeholders should develop guidelines for integrating ADR into the existing framework, ensuring its accessibility and reliability.
- iv. Judicial capacity-building initiatives are critical for equipping judges with the expertise to handle the technicalities of medical negligence cases. Training programs and access to expert

opinions can improve the quality of judicial decisions and enhance confidence in the legal system.

v. Finally, healthcare providers must adopt proactive measures to minimize the incidence of medical negligence. Continuous professional education, adherence to best practices, and institutional policies that prioritize patient safety are vital for preventing avoidable harm and fostering a culture of accountability.

Ethical Approval and Consent:

Ethical Approval:

As per international standards or university standards written ethical approval has been collected and preserved by the author(s).

Consent



As per international standards or university standards, patient(s) written consent has been collected and preserved by the author(s).

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