

MEDICAL NEGLIGENCE, ETHICS AND PRACTICES OF NURSING IN NIGERIA

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ABSTRACT

*Nursing profession and job transcends the mere dishing out drugs at the bed side of the patients, prescribed by the medical doctors and other Para-Medics. It is encompassing to taking care of the patients/clients in many areas of health and in the life of the client. The Nurse must consider and evaluate the environment of the patient to be well ventilated, clean, and quiet. This would lead and assist the patient in his/her recovery. These are essential pre-requisites for quick recovery of a **patient**. Nursing is caring, is an act, it is a science, nursing is client centered, it is holistic and adaptive. Nursing is concerned with health promotion, health maintenance; health restoration and nursing is a helping **profession**. Nursing as a profession encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well and in all setting. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people and even helps a dying patient/client to a peaceful death. **Ethics** as is known, studies moral principles that controls or influences of a person's behaviour. Ethics is the philosophy that deals with moral principles or code of conduct. Ethics deals and relates to rights and wrong conduct and morality. It is equally the standard that governs the conflict of persons, especially members of a given profession. Negligence is a tort actionable at the suit of a person suffering damage to the consequences of the defendant's breaches of duty to take care to refrain from injuring him. Negligence is the omission to do something which a reasonable man guided upon those considerations that ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. This journal article tries to point out the negligence, mal – practice and injuries perpetrated by nurses in this field of medical care of the patients/clients. Nursing being essential personnel in the field of medical care of patients, therefore nurses must be careful in all her duties of care to her clients.*

KEY WORDS: NURSING, ETHICS, MEDICAL NEGLIGENCE, NIGERIA

Introduction

Nursing is a profession that requires extensive education, special knowledge, learning, skill, training and preparation. A profession that is generally distinguished from other kinds of occupations by:-

- (a) Its requirement of prolonged specialised training to acquire a body of knowledge pertinent to the role to be performed,
- (b) An orientation of the individual toward service, either to a community or to an organisation for the following purposes;
 - (i) for an going research;
 - (ii) a code of ethics;
 - (iii) autonomy and
 - (iv) or professional organisation

The terms **Professionalism** and **Professionalization** shall herein be considered and distinguished for better and clearer knowledge especially within Nigerian contest and particularly to the world all over.

Professionalism refers to professional character, spirit or methods. It is a set of attributes, a way of life that implies responsibility and commitment. Nursing Profession owes much to the influence of **Florence Nightingale**.

Professionalisation refers to or a process of becoming professional, that is, of acquiring characteristics considered to be performed¹. All these are achievable in the specialised education as in Nursing Services in the Colleges and Universities.

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Florence Nightingale defined Nursing as an act of utilizing the environment of the patient, to assist him in his recovery. She considered a clean, well ventilated and quiet environment as an essential pre-requisite for recovery of a **patient**². Whereas Virginia Henderson defined Nursing as a unique way to assist the individual that is sick or well in the performance of those activities contributing to the health or its recovery, or to a peaceful death; that he would perform those activities un - aided, if he has necessary strength, skill or knowledge to do so in such a way as to help him gain independence as rapidly as **possible**³. One thing is common in many definitions; Nursing is caring, Nursing is an act, it is a science, it is client centered, Nursing is holistic and adaptive.

Nursing is concerned with health promotion, health maintenance; health restoration and Nursing is a helping **profession**⁴. Nursing as a profession, encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well and in all setting. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people. It encourages and promotes safe environment, research, participation in shaping health policies, in clients and health systems, management and education are also key nursing roles. Nursing is the protection and optimization of health and the abilities, prevention of illness and injury, alleviation of suffering through diagnosis and treatment of human responses; and advocacy in health care for individual families, communities and **population**⁵. The uses of clinical judgment in the provision of care to enable people to improve, maintain, recover or cope with health problems, and to achieve the best possible quality of life, whatever is the disease or disability, until death⁶. A Nurse is a person who cares for the sick, wounded, or enfeebled, especially one who makes a profession of it⁷.

Distinction between a Nurse and a Midwife: Who is a Nurse and who is a Midwife and/or their differences

A nurse is professionally trained to assist a patient/client to do those things he/she would have done if he/she had necessary knowledge or skill or even to guide a patient to a peaceful death. A nurse is a person whose job is to take care of a sick or injured person usually in the hospital. Nursing is distinct in learning, with various specialties, like **Psychiatric Nursing, Cardio - Thoracic Nursing, ENT Nursing**, etc, they are nurses in these areas of the body healthcare and of sub – specialties, that have nothing to do with midwifery, while a Midwife is a person who is trained to help women give birth to **babies**⁸. A **Midwife** is professionally trained for antenatal procedures, also to guide a pregnant woman during delivery of the baby, in negotiating the birth canal to avoid unnecessary damages to the reproductive organs and surrounding tissues and organs to avoid cervical tear/anal tear thereby preventing incontinence to the mother. The Nursing and Midwifery Profession is currently regulated by **Nursing and Midwifery Council (Registration etc) Act of Nigeria, Laws of Federation of Nigeria, 2004, Cap 143**⁹ unlike before, for easy checks and balances in Nigeria as a body corporate, having a common seal to sue and be sued.

¹ . Berman and Snyder, 'Fundamentals of Nursing: Concepts, Process and Practice, (Pearson 9th edn 10 and 17)

². Kossier and Erb's, 'Fundamental of Nursing Concept, Process and Practice,'(New York, U.S.A: Pearson Publishers, 9th edn 2008) 13

³ Ibid. 13 cited as Henderson 1966 .3.

⁴ Ibid 3

⁵. ANA considering Nursing, American Nurses Association, Retrieved July, 2009

⁶ . Royal College of Nursing , 2003, retrieved 22/12/2014

⁷. The New International Webster Comprehensive Dictionary of English language, Encyclopedic Edition trident Press International (Florida, USA Florida, USA.) 9069

⁸. Okojie Ayemere Eric, 'Medical Practice and the Law of Negligence in Nigeria', (Benin Edo: Ambik Press, State, Nigeria) 2013 86-88

⁹. Nursing and Midwifery Council (Registration etc) Act of Nigeria, Laws of Federation of Nigeria (LFN) Cap 143

Ethics is defined by an **Oxford Advanced Learners Dictionary**¹⁰ as moral principles that controls or influences a person's behaviour. Ethics is further defined as a branch of philosophy that deals with moral principles or code of conduct by the same dictionary. Also **English Dictionary**¹¹ defined ethics as the study of principles relating to right and wrong conduct and morality. It is equally stated, that ethics is the standard that governs the conflict of persons, especially members of a given profession. The word "ethics" is from Greek language/word "ethos" meaning "customs and habits" of the people, their moral, obligation and habits. Ethics is further connoted as the science of knowledge, which deals with the nature and grounds of moral obligations, distinguishing what is right from what is wrong.

Hippocrates recognised the need for a code of conduct for the health practitioners of the act of healing and laid down a statement or code of medical ethics. And in 1948, the General Assembly of the World Medical Association effected some modifications to the code of conduct as follows:-

"At the time of being a member of the medical profession, I solemnly pledge myself to consecrate my life to the service of humanity. I will give to my teachers the respect of gratitude, which is their due. I will practice my profession with conscience and dignity; the health of my patient will be my consideration. I will respect the secrets that are confided in me even when the patient has died. I will maintain by all means in my power, the honour and noble tradition of the medical profession, my colleagues will be my brothers, I will not; permit consideration of religion, nationality, race, party politics or social standing to intervene between my duty and my patient, I will maintain the utmost respect for human life from the time of conception, even under threat. I will not use my medical knowledge contrary to the laws of humanity. I make these promises solemnly, free and upon my honor".

Nurses Oath of Allegiance from American Nurses Association

I solemnly pledge myself before God and in the presence of this assembly, to pass my life in purity and to practice my profession from whatever is deleterious and mischievous, and will not take or knowingly administer any harmful drug. I will do all in my power to maintain and elevate from the standard of my profession, and will hold in confidence all personal matters committed to my keeping and all family affairs coming to my knowledge in the practice of my calling. With loyalty, will endeavour to aid the physician in his work, and devote myself to the welfare of those committed to my care¹².

Two most important points in the above pledge

- (i) I will not take or knowingly Administer any harmful drug,
(They were careful enough not to use the word "PRESCRIBE")
- (ii) With loyalty will I endeavour to aid the physician in his work?

NIGERIAN NURSES OATH OF ALLEGIENCE - FROM NIGERIAN MIDWIFRY AND NURSES COUNCIL OF NIGERIA

I solemnly swear to serve humanity and will endeavour to practice my profession with conscience and with dignity. I will maintain, by all the means in my power, the honour and noble tradition of my profession. The total health of my patients will be my consideration. I will hold in confidence all personal matter relating to my knowledge. I will not permit consideration of religion, race or social standing to intervene between my duty and my patient. I will maintain the utmost respect for human life and I make this oath solemnly, freely and upon my honour.¹³

Further upon these Oaths Nurses Anthem, which goes like this:-

We are called to serve humanity. Endowed with the Act and Service of caring. We are built on integrity and discipline. That transcend through every generation immaculate and amicable. We

¹⁰. Oxford Advanced Learners Dictionary, (New International Student 8th edn) 500

¹¹ wicktionry - <http://wiktionary.org>

¹² American Nurses Association. Hippocratic Oath Nightingale, <http://www.nairaland.com/1809870/nurse-version-hippocratic-pledge-24834780> accessed on 22/03/2022

¹³ Obiageli Madu, Lecturer Nursing Sciences, University of Nigeria, Enugu Campus.

are the source of HOPE to ailing ones and the foundation for building a healthy World. Together we shall stand.

Chorus:

“Nurses are great, Nurses are caring, an epitome of humility to service. We are specifically ordained for this profession. Yes am proud to be a Nurse.”

From near far we have gathered with one goal to uphold the good name of our profession.

N - For Neatness and Splendor
U - For Understanding
R - For Responsiveness
S - For Selfless Service
I - Innovative and Initiative
N - For Nobility
G - Gentleness and Love

As a Registered and Licensed Nurse, who had successfully gone through the sections 8 and 9 of the Nurses and Midwifery Council of Nigeria, Cap 143, Laws of Federation of Nigeria¹⁴, they are enjoined to register and renew their registration, also that any applicant must be committed to uphold the standards therein contained in the said Act. This commitment to professional standards and etiquette as required, by the law for every registered and licensed Nurse is a mandatory requirement, meaning that an action would be taken against the Registered and Licensed Nurse, if he or she fails to uphold the ethics of the profession or thereby commit any wrong or crime most unprofessional in such a manner or conduct to be described as an **infamous conduct, is a serious offence that could lead to striking out the name of the offender from the register.**

Penalties for an Unprofessional Conduct Section 18 (1) - provides that where -

- (a) a person registered under the Act is convicted by any Court in Nigeria or elsewhere having power to award imprisonment for an offence which in the opinion of the Tribunals is incompatible with the status of a nurse; or
- (b) a registered person is judged by the Tribunal to be guilty of infamous conduct in a professional respect or
- (c) the Tribunal is satisfied that any person has been fraudulently registered, the Tribunal may, if it thinks fit, give a direction - reprimanding that person; or ordering the registrar to strike his/her name off the relevant part of the register; or suspending him from practice by ordering him/her not to engage in practice as a nurse for such period not exceeding six months as the case may be specified in the direction; and any such direction may, where appropriate, include provision requiring refund of monies paid or the handing over of documents or any other thing in the circumstances, as the case may require. As a registered and licensed nurse, one would be professionally and legally accountable for his/her actions and omissions, irrespective of whether he/she is following the instructions of another or using his or her initiative. Medical Health Care litigation is growing and patients are increasingly growing to assert their rights. A thorough and critical appreciation of the legal, ethical and professional issues affecting nursing practice is essential, in order to develop the professional awareness necessary to escape the hazards of the profession, also its demand are on the student nurses, practicing nurses to practice in accordance to the ethical and legal framework that ensures the privacy of the patients and their interest. Respect for People's Right to Privacy and Confidentiality.

NEGLIGENCE

Negligence is a tort actionable at the suit of a person suffering damage to the consequences of the defendant's breaches of duty to take care to refrain from injuring him¹⁵. Negligence is the omission to do something which a reasonable man guided upon those considerations that ordinarily regulate the conduct of human

¹⁴ Sections 8 and 9 of the Nurses and Midwifery Council of Nigeria, Cap 143, Laws of Federation of Nigeria

¹⁵ Rogers Bird, Osborn's Concise Law Dictionary, (London :Sweet and Maxwell 1963) 7th edn 229

affairs, would do, or doing something which a prudent and reasonable man would not do, this was the statement of **Alderson B** in the case of *Blyth v Birmingham Waterworks & Co*¹⁶

Negligence simply, is a neglect of some care which we are bound to exercise towards somebody per **Bowen L. J, in Thomas v. Quartermaine**¹⁷. you must take reasonable care to avoid acts or omissions which you can reasonably foresee that would be likely to injure your neighbour. Who is your neighbor in law? The answer seems to be persons who are so closely and directly affected by your act, that you ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question," per **Lord Atkin in Donoghue v. Stevenson**¹⁸ - The degree of care which the law requires is that which a reasonable man in that circumstance of the particular case. The standard is the foresight and caution of the ordinary or average prudent man, i.e. the man in the street, or on the taxi or a bus.

(1) **Skill** - a person who holds himself out as having a certain skill either in relation to the public generally as a car driver or in relation to person for whom he is performing a service as a medical doctor/nurse, will be expected to show an average amount of competence normally possessed by persons, doing that kind of work, and he will be liable in negligence if he falls short of such standard. For example, a surgeon performing an operation is expected to display the amount of care and skill usually expected of a normal, competent member of his profession, also lawyers should exhibit same level of care on their clients. However, the standard is higher where persons professing special skills are medical practitioners/doctors and nurses, legal practitioners/lawyers, etc. They must use such skill as it is usual with the persons professing such skill. However, in law the duty to prove negligence is on the plaintiff' who alleges it and there must be a reasonable evidence of negligence before the court could validly ground judgment on negligence. The Court held in *Re Polemis*¹⁹ - that a person guilty of negligence is liable in damages for all direct consequences of such negligence, even though such consequences could not reasonably have been foreseen. In *Overseas Tarkship (U.K) Ltd v. Mori's Dock & Engineering Co. Ltd (No.1) The Wagon Mound*²⁰ - The Judicial Committee of the Privy Council refused to follow *Re Polemis, supra* and held that damage must be reasonably foreseeable for there to be liability in negligence but not necessarily the precise sequence of events. Negligence would extensively be explained as a breach of a legal duty to take care which results in damages, undesired by the defendant, to the plaintiff.

Also Negligence is a civil wrong consisting of three essential components as to the issue of

- (a) Duty of care owed the plaintiff by the defendant.
- (b) Defendant's breach of the duty and
- (c) Damages/injury emanating from the said breach.

Nursing Negligence

Nursing negligence occurs when a nurse, whether employed at a doctor's office, hospital or Home Health - Care facility fails to adequately uphold the standard of care he or she owes to the patient and causes him harm. All medical professionals/officers are held to a standard of acting in a way that another professional/officer of a similar training and experience would, under similar circumstances. Therefore, if a Nurse failed to verify a patient's name and allergic reaction and gave him a medication that would cause him an allergic reaction. The court would determine whether or not a nurse of the same training and experience would have done the same thing under those circumstances. Hence verifying patient's information is such an important part of being a nurse, they would more than likely be held responsible for medical malpractice since it's not something another nurse would have likely done.

¹⁶ [1856] LR 11 EX (761) 784

¹⁷ [1887] 18 QBD (665) 694

¹⁸ [1932] AC (562) 594

¹⁹ [1927] 3 KB 560

²⁰ [1961] AC 338

Nursing malpractice also occurs when a nurse fails to competently perform his or her medical duties and that the failure harms the patient. This is done by a nurse, when administering the wrong drug by failing to notify a medical doctor when something is wrong.

Nursing Malpractice includes:-

- (i) Failing to properly monitor a patient and missing a change in their vital signs.
- (ii) Failing to respond to a patient in a timely manner.
- (iii) Failing to call a physician for assistance, when needed.
- (iv) Failing to update a patient's chart with any changes in his or her progress.
- (v) Using incorrect abbreviations on a patient's condition in their chart.
- (vi) Failing to accurately record a patient's condition in their chart.
- (vii) Failing to feed a patient.
- (viii) Failing to ensure that the medical equipment is working properly.
- (ix) Purposely making an error during routine care such as when drawing blood or taking a patient's blood pressure²¹.

Nursing malpractice goes further when a nurse fails to do or say nothing when action is required. If a patient has a sudden emergency, a nurse may be liable if he or she doesn't take appropriate immediate steps. This may involve actions like administering a medication or calling for help.

A Nurse will be liable for malpractice if he or she injures patient with a piece of medical equipment. This happens when the nurse negligently knocks something heavy onto the patient, burning the patient, or leaving a sponge inside the patient after surgery.

Furthermore, a nurse will be held liable for medical malpractice when he or she improperly administers drug that was not according to the medical doctor's orders, like injecting a medication into the muscles instead of a vein or injecting the wrong patient, thereby the patient is injured²².

Duty of care emanates where in a particular situation, the alleged wrong doer and the person who suffered damage, whether there is a sufficient relationship of proximity or neighborhood such that, in the reasonable contemplation of the former, a prima facie duty arises. Where the answer to the above is affirmative, it is necessary to consider whether there are any considerations which ought to negative or to reduce or limit the scope of duty or the class of person to whom it is owed or the damages to which a breach of it may give rise'. The next question is to determine whether the defendant is in breach of the said duty. The court would consider whether a reasonable man placed in the defendant's position, would have acted as the defendant did, as negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Where the plaintiff is establishing that the defendant owed him/her a duty, the plaintiff has to prove that he has suffered damage for which the defendant is liable in law. The court has to resolve whether the defendant's breach of duty in fact caused damages, where the answer to this causation in fact is affirmative, that the defendant may be liable to the **plaintiff**²³". Where the damage was ensued by the breach: - In the case *Burnett v. Chelsea and Kensington Management Committee*²⁴" -The plaintiffs husband drank ten bottles of beer, with two other men and they had persistent vomiting for three hours. The plaintiff's husband was taken to hospital later that night at the casualty department of the defendant's hospital where a nurse contacted the casualty officer on phone, telling him of the man's symptoms. Dr. Bennett, who was himself tired and unwell, sent a message to the men through the nurse to the effect that they should go home to bed and consult their own doctor, the following morning. Some hours later the plaintiff's husband died of arsenical poisoning and the coroner's verdict was one of murder by a person or persons unknown. In subsequent action of negligence brought by the plaintiff against the hospital authority as employers of Dr. Bennett, it was held that, in failing to examine the deceased. Dr. Bennett was guilty of a breach of his duty

²¹ <http://www.Bergerlagnese.com/blog/what-are-the-common-acts-negligence-by-nurse> accessed on 22/03/2022

²² <http://www.nolo.com/legal-encyclopedia/nursing-malpractice-30076.html> accessed on 22/03/2022

²³ Sanayolu v. Faimba [1978] L.R.N. 327.

²⁴ [1966] 1 All E.R. 1068

of care, but this breach could not be said to have been a cause of the death because, even if the deceased had been examined and treated with proper care, he would in all probability have died anyway.

(2) The remoteness of damage is one that sets the limits to the extent of the person's liability for the consequences of the negligence, and the basic rule is that a defendant will be liable only for those consequences of his negligent act which are not too remote in law. This was the decision by the Privy Council in the case of *Overseas Tankship (UK) Ltd v. Morts Dock & Engineering Co. Ltd (The Wagon Mound) No.1*²⁵ - The defendant negligently discharged oil from their ship into the Sydney Harbour, where the plaintiffs were carrying out welding operations. Molten metal from the welding operations set fire to some cotton waste floating on the oil beneath the wharf. This waste in turn set fire to the oil and in the ensuing conflagration, the wharf was severally damaged. The oil also found its way onto the plaintiff's shipways adjoining the wharf and interfered with the plaintiff's use of them. The court held that since on the evidence, the defendants neither knew nor ought to have known that the oil was capable of catching fire when spread on water, they could not have reasonably foreseen that their act of discharging the oil would have resulted in the plaintiff's wharf being damaged. The damage was thus too remote, and they were not liable for it. But they were liable for fouling of the ship ways, since that was foreseeable consequence of the discharge of the oil - which is a tort of nuisance. *In Re Polemis*²⁶ supra - It laid the principle of foreseeability - that where some damage is foreseeable, the defendant is liable for all the direct consequence of his act, whether those consequences are foreseeable or not. Hence in the like of medical practitioners carrying out a procedure, they owe duty of care to their patients/clients and damages are foreseeable, such that the defendant is liable for all the consequences of all his acts and omissions, whether the consequences are foreseeable or not.

(3) Medical Mal-Practice - It is a failure for a medical officer not to exercise reasonable degree of skill and care. It is the failure, of standard of care that, a reasonable man should exercise in a given circumstance. For a doctor/nurse, it is the failure to exercise a reasonable degree of skill and care expected of an average medical officer. A doctor/nurse who is negligent exposes himself to disciplinary action from the Nigerian Medical and Dental Council and/or Nursing and Midwifery Council of Nigeria, also actions or suits in civil court. Medical mal-practice, also concerns medical errors or negligence from which disputes and litigations emanate and sometimes germinates from emotions. Negligence involves some analysis of a medical doctor's diagnosis, advice and/or treatment by the reasonable standard of his professional colleagues; this may lead to some more incompetence or moral blameworthiness.

4 Misdiagnosis - mistake in diagnosis should not be regarded as negligence. Where a medical doctor/nurse fails to take a proper skill and care as an ordinary doctor/nurse, he would not be held liable where the procedure/treatment was not positive and there results a breach of duty of care on the patient. It is advocated that doctors/nurse should not be made to work/treat patients with some elements of fear in their medical practice and he should not be made to see anyone as coming against him with dagger on hand. That any act or omission be not seen as an act of negligence, a good example of misdiagnosis is where a client had **abdominal tuberculosis** but was diagnosed as having **cirrhosis of the liver or liver cirrhosis**, through abdominal ultra sound that was carried out by a renowned radiologist, who made an impression of the diagnosis as to the liver cirrhosis. The patient was managed in that respect, was deteriorating, until he was taken to another doctor, who carried out laparotomy on the patient and found out that it was abdominal tuberculosis that had formed membranous tissues covering the whole abdominal organs, which blocked the view of the radiologist. In another example, a woman with twin pregnancy was diagnosed as a singleton, this resulted to administering I.M. Ergometrine (ergot) – a drug used in medicine to facilitate delivery of the placenta and prevent bleeding after childbirth. The administration of I.M. ergometrine (ergot) helps the contraction of the uterus and causes the placenta to separate from the wall of the uterus. This misdiagnosis caused damages/injury on the patient as the second twin died in the uterus.

5. Standard of Care: It is well established that negligence is the failure to act the way a reasonable man in the circumstances of the defendant will act, or doing some act which a reasonable man in the circumstances

²⁵ [1951] AC 388.

²⁶ Re Polemis [1932] 3 KB 660 - It laid the principle of foreseeability - that where some damage is foreseeable, the defendant is liable for all the direct consequence of his act, whether those consequences are foreseeable or not.

would not do. Therefore standard of care is judged by the action of the man in the "street, i.e., an ordinary man. In the medical parlance much is expected, as negligence is judged by the standard of a reasonable doctor/nurse in the position of the defendant²⁷.

An Indian case of *Saroj Chandhoke v. Ganga Ram Hospital*²⁸ - it was observed that motive is not an ingredient for finding out whether there was deficiency in service. Motive may be relevant in case of an offence punishable either under the Indian Penal Code or under the provisions of any other Act. It has no bearing with regard to loss or injury caused due to deficiency in service. If there is a motive to do something wrong and if it is done, it may amount to an offence. In Medical negligence cases, the motive was not to be seen, because what has to be decided is whether there was deficiency in service.

Malpractice operates on two bases:-

(i) the patient that consents to treatment and
(ii) treatment undertaken without proper care and skill where the patient does not consent to the treatment, it becomes assault and battery to treat him and where the doctor/nurse fails to exercise proper care and skill in his treatment, he could be liable to compensate the patient for any harm resulting by an action in negligence²⁹. The liability of a typical British Medical Doctors/Nurses in the cause of medical mal - practice remains in negligence and the claims lies in laws of tort and contract. "Lord Denning in the case of **Hiske v. Cole**³⁰" - reiterated that to find a doctor/nurse liable for negligence, his conduct should be one deserving of censure or be inexcusable in the circumstances. Therefore, it implies that the courts must be wary to find or rarely should find negligence against a medical doctor. This is of course, a tradition, in the pattern of **Tindal C J.**, who reiterated in his charge to the jury in **1838:- "Every person who enters into a learned profession undertakes to bring to the exercise of it, a reasonable degree of care and skill.** He does not undertake, if he is an attorney that at all events he shall not gain/win your case, nor does a surgeon undertake that he will not perform a cure, nor does he undertake to use the highest possible degree of skill. There may be persons, who have higher education and greater advantages than he has, but he undertakes to bring a fair, reasonable and competent degree of skill, and you will say whether in this case, injury was occasioned by the want of such skill in the deficiency". With respect, this traditional view is being followed by Nigerian Judges in fixing doctor's/nurses' liabilities. But in the case of **Okonkwo v. MDPRT the Nigerian Apex Court explicitly recognised the patient's right of self determination and autonomy.** This decision of the Apex court of Nigeria was acknowledged and was suggested for use in the treatment of patients. The section contains an approved **proforma consent form**, an informed consent is to be extracted/ signed by the patient and/or a relation, with a witness before any procedure or treatment is carried on the patient. This section further state, that the majority age for consent purposes is **18 years**, this is **Rule 19 of the said Medical and Dental Practitioners Rule of Laws of Nigeria., 2004**³¹. **Informed Consent** - It is this informed consent to treatment that constitutes authority for treatment to be administered on a patient/client. These are six basic concepts in medical health - care /experiment to be observed as follows:-

- (a) a fair explanation of the procedure to be followed, and its purposes including identification of any procedure which are experiential;
- (b) a description of any attendant discomfort and risk reasonably to be expected.
- (c) a description of any benefits reasonably to be expected.
- (d) a disclosure of any appropriate alternative procedure that might be disadvantageous for the subject.
- (e) an offer to answer any inquires concerning the procedures.

²⁷ Festus Emiri, Medical Law and Ethics in Nigeria, (Lagos: Malthouse Press Ltd, 2002) 267

²⁸ [2007] 3 CPJ 189 (NC) 294.

²⁹ Okonkwo v. MDPRT [1999] 8 NWLR (786) 4

³⁰ [1966] 112 SJ p.483 also see Okonkwo v. MDPRT [1999] 8 NWLR (786) p. 4 supra, see Festus Emiri, Medical Law and Ethics in Nigeria, (Lagos: Malthouse Press Ltd, 2002) 269

³¹ Rule 19 of the said Medical and Dental Practitioners Rule of Laws of Nigeria., 2004

(f) an instrument that the person is free to withdraw his consent and to discontinue participation in the process of the activity at any time without prejudice to the subject³²

Nursing Practice should portray a professional image in a positive sense in their moral, ethical and legal impact in their nursing practice and profession devoid of negligence and mal - practice. The workplace is the hospital and/or hospital related base. The hospital is an organisation that mobilizes and uses experts of a number of widely varied groups of professionals, semi-professionals and non-professionals to provide highly personalised care to patients³³. Therefore, hospital requires effective performance by many professionals and semi-professional personnel with highly specialised knowledge and skills that should ultimately serve to promote patients care and satisfaction of family members and health care providers, again, devoid of negligence and mal-practice to a greater degree, failure which would attract penalties and damages to the extent of striking ones name or the name of the officer or personnel from the role/register.

The functions and duties of Health Care workers within hospital health care sector, however, these duties are not performed in isolation; it is understandable that they are potential source of conflict between the various professionals in the hospital. To achieve a reasonable set goal in the health care sector there must be an effective and efficient management of all resources, including the maintenance of an enabling environment for constructive interaction among the workforce of the organization. It is obvious that there are occurrence and effects of conflicts in the workplace. The conflict over decision making and the lack of role definition for nurses contribute significantly to stress and subsequent burnout (suffering) amongst healthcare professionals in the hospital³⁴. This work tries to elucidate and express nursing profession and practice vi-a-vis some of her morals, legal, ethical duties and her inclusiveness into medical field cum the benefits and otherwise of their patients/clients relationship.

Some of the decided cases are used to illustrate these points and gaps between legality, morality and ethical duties of these dramatis persona and other related professionals in the Medical Health Care in Nigeria, there is a code of conduct and rules that control the practice of nursing, as a profession. The check and balances in the Medical Health Care in Nigeria and all the practicing professionals are enjoined to practice strictly under the legal regime in Nigeria, viz, Nursing and Midwifery (Registration etc) Act³⁵ and Medical and Dental Practitioners Act³⁶.

Nursing and Midwifery (Registration etc) Act - Section 1 (1) - provides that there is hereby established a body to be known as the Nursing and Midwifery Council of Nigeria (in this Act referred to as the 'the Council' which shall be a Body Corporate with perpetual succession and a common seal and may sue and/or be sued by the name aforesaid."Section 2 of the same Act - provides that the Council shall be charged with the general duty of -

- (a) determining what standard of knowledge and skill are to be attained by persons seeking to become members of the profession of Nursing and Midwifery (in this Act referred to as "the profession") and reviewing these standards from time to time as circumstances may require;
- (b) securing in accordance with the provisions of this Act the established and maintenance of the register of persons entitled to practice the profession and publication from time to time of the list of persons;
- (c) regulating and controlling the practice of the profession in all within the profession;
- (d) maintaining in accordance with this Act of discipline within the profession; and
- (e) performing the other functions conferred upon the Council by this Act.

Section 3 - Subject to subsection (4) of this section and to any direction of the Minister under this Act, they shall have power to do anything which in its opinion is calculated to facilitate the carrying on its activities.

³²Festus Emiri, *Medical Law and Ethics in Nigeria*, (Lagos: Malthouse Press Ltd, 2002) 299, DHEW Rule & Regulation 1975

³³ Kazimoto P., 'Analysis of Conflict Management and leadership for Organizational Change. *British Journal of Medicine Research*, ' 1-12,. Article No.BJMMR 158839. www.sciencedomain.org accessed 08/03/2018.

³⁴.Ashbury J, YU VYH, 'Determinants of stress for staff in a Neonatal Intensive Care Unit'. www.sciencedomain.org accessed 08/03/2022

³⁵ 1979 No.89 and 1992 No.83 Cap 143 Law of Federal Republic of Nigeria (LFN)

³⁶ Medical and Dental Practitioners Act, Cap. 22 rule 6 and section 34 of 1999 constitution of LFN.

Section 4 - The Council shall not have power to borrow money or to dispose any of the property except with the prior consent of the Minister and shall not have power to pay remuneration (including pensions) allowances or other expenses to any member or employee of the Council or to any other person except in accordance with the scales approved after consultation with the Federal Civil Service Commission. Nigerian Nurses and Midwives must act in line with the Law or the Act creating their profession with other related Medical Health Care personnel/officers in providing health care to individuals, groups and communities; also bring to bear on Nursing and Midwifery practice in other roles, such as leadership, education and/or researches. Registration of Nurses Under section 18 (1) of this Act- Section 1-provides that subject to any restriction upon registration otherwise imposed by this Act, the holder of:

- (a) any qualification of a general nature specified in part A of the second schedule to this part;
- (b) any qualification of a specialized nature specified in Part B of the second schedule to this Act, shall be entitled to registration as a nurse in the appropriate part of the general register maintained pursuant to section 6(2) of this Act. Section 2 - A registered nurse may apply for registration as a nurse tutor upon the ground that she has undergone requisite practical training in an institution where student nurses are trained and has completed a course for nurse tutors in an institution or university recognized for that purpose by the Council, and if the Council is satisfied as to his qualification, the Council may direct registration accordingly,

As a registered and licensed nurse, who had successfully gone through the sections 8 and 9 of the Nurses and Midwifery Council of Nigeria, Cap 143, Laws of Federation of Nigeria, they are enjoined to register and renew their registration, also that any applicant must be committed to uphold the standards therein contained in the said Act. This commitment to professional standards and etiquette as required by the law for every registered and licensed nurse is a mandatory requirement, meaning that an action would be taken against the registered and licensed nurse, if he or she fails to uphold the ethics of the profession or thereby commit any wrong or crime most unprofessional in such a manner or conduct to be described as an **infamous conduct, is a serious offence that could lead to striking out the name of the offender from the register. Penalties for an Unprofessional Conduct Section 18 (1)** - provides that where -

- (a) a person registered under the Act is convicted by any Court in Nigeria or elsewhere having power to award imprisonment for an offence which in the opinion of the Tribunals is incompatible with the status of a nurse; or
- (b) a registered person is judged by the a Tribunal to be guilty of infamous conduct in a Professional respect or
- (c) the Tribunal is satisfied that any person has been fraudulently registered, the Tribunal may, if it thinks fit, give a direction - reprimanding that person; or ordering the registrar to strike his/her name off the relevant part of the register; or suspending him from practice by ordering him/her not to engage in practice as a nurse for such period not exceeding six months as the case may be specified in the direction; and any such direction may, where appropriate, include provision requiring refund of monies paid or the handing over of documents or any other thing in the circumstances, as the case may require. As a registered and licensed nurse, one would be professionally and legally accountable for his/her actions and omissions, irrespective of whether he/she is following the instructions of another or using his or her initiative. Medical Health Care litigation is growing and patients are increasingly growing to assert their rights. A thorough and critical appreciation of the legal, ethical and professional issues affecting nursing is essential, in order to develop the professional awareness necessary to escape the hazards of the profession, also its demand are on the student nurses, practicing nurses to practice in accordance to the ethical and legal framework that ensures the privacy of the patients and their interest. Respect for People's Right to Privacy and Confidentiality.

A good nurse, owe a duty of confidentiality to all her clients by making sure that the patient/client is informed about the care. The information about him or her is shared appropriately. Also make sure you get properly informed consent in a written document before carrying out any action.

The legal framework that form the nursing practice include the provisions within registration statutes and code of conduct and some advice from registering authorities, also other requirements in our Civil Law, Statute Law, Criminal Law and/or sanctions.

(ii) The moral and ethical framework is seen in the professional code of ethics and other normative and sociological development such as ethics of obedience³⁷. Are Nurses Autonomous Professionals or Handmaidens of Doctors? The idea of the nurse being an autonomous professional began with **Ethel Bedford Fenwick in 1908** and it was repeated or cited by **Dock and Stewart**³⁸. The features of the storey were that, it originally addressed the pursuit of professional equality through sameness model³⁹ in establishing autonomy of the profession and in the setting of standards⁴⁰. Nevertheless the model was pursued without redress to the power imbalances in the way in which health care system is structured. This has not been addressed and to some extent has perpetuated the cultural problems, such as institutionalized powerlessness⁴¹, nor has it met the need to foster confidence and promote innovation within the profession. It has been predominantly on nursing rather than health⁴². Note, that the image described here are still present in both recent time, in case law and workplace practice to some extent, especially in Nigeria.

(b) Nurses are required to deliver quality care to their patients and/or clients, upon which they ought to be valued or respected. The question is whether the nurses were allowed to deliver this quality care, valued and thereat respected? The answer to the above question is hinged upon some factors:-

(i) a multi disciplinary team approach to patient care delivery; this is embedded in the safety and quality agenda;

(ii) the quality to provide care which satisfies nursing and patients expectation;

(iii) a formula to ensure reasonable workloads (which ought only to be a short term solution);

(iv) and a work environment which fosters nursing autonomy and control over practice in order to provide safe patients care⁴³. The power imbalances must be attended to institutionally also by the way of legislation and by applying the provisions of the law, for example - stamping out quackery in the nursing profession and those that support infamous conduct. Such defaulters should be prosecuted and punished under sections 17 and 18, 20, and 21 of Nursing and Midwifery Council Act, Cap 143 of Laws of Federation of Nigeria and section 16 of Medical and Dental Practitioners Act Cap 22, Laws of Federation of Nigeria.

Meaning that, Section 18 (1) (v) - Ordering the Registrar to strike his/her name off the relevant part of the register, could be invoked by the panel.

Recommendation and Conclusion

Power imbalance in the work place is needed to be addressed, from both medical doctors and the nursing perspectives⁴⁴. See these cases to appreciate this orchestrated imbalance. Note that the only strategy nurses still possess to influence patient care in situation of concern is to bring a problem to the attention of the medical doctors. They cannot force the doctors to act. See the case of *MacDonald v. York County Hospital*⁴⁵. The case focused on the legal question of causation that the persons action or in action directly caused the harm to the patient, only to serve to highlight the nurses' dilemmas'. The patient in the above case lost his leg and the nurses were found not to be negligent on the grounds of causation. Also in the case of *Bolitho v.*

³⁷ Chiarella M, 'The Legal and professional Status of nurses', Churchill Livingstone, (Edinburgh, Scotland: 2002)

³⁸ Dock, L. and Stewart, I. 'A short storey of nursing' (New York, U.S.A: WB Saunders Co., reprinted in 1989 4th edn 254

³⁹ Mackinnon C, 'Feminism unmodified discourses on Life and Law', (Cambridge Massachusetts, U.S.A.:Harvard University Press) 33

⁴⁰ Ibid

⁴¹ Ibid

⁴² Chiarella M, 'The next generation, The keynote address in proceedings of the NSWNA Nursing and Midwifery Leadership forum', 2007 41 http://www.nswnurses.org.au/attachment/9926/DocumentName/Report_for_members accessed on 22/03/2022

⁴³ Duffield, C, Roche, M, O'Brien – Pallas, 'Gluing it together: nurses, their work environment and patient's safety'. Report for NSW Health' (Sydney, Australia: University of Technology) 2007

⁴⁴ Matsuda M, 'Pragmatism Modified and false consciousness problem', (Southern California: Law Review, 1990) 1765

⁴⁵[1973] 41 D.L.R. (3d) .321

*City and Hackney H.A*⁴⁶ - the child suffered catastrophic brain damage. In this case, the doctor did not respond to the nurses concerns and their failure to attend was found to be breach of duty, though they were found not to be negligent because the doctors gave evidence that they would not have altered their treatment even if they had seen the patient. The Judges did not comment on the distress and difficulties the nurses might have experienced both in trying to contact the doctors and were powerless to reverse the course of events.

In the case of *Anderson v. Medical Practitioners*⁴⁷ here the doctors failed to take action on the expressed concern of the nursing staff, the patient died. In the case of *Johnson v. The Medical Practitioners Council*⁴⁸ - the doctor failed to answer to the nursing staff on duty for the concern of the patient, the patient equally died. In all the cited cases the nurses expressed their professional and clinical opinions to the doctor on the patient's conditions, which were not followed or attended to by these doctors on the excuse that they would not have changed the treatment, if they had heeded to the nurses concerns. These doctors ignored the nurses concerns which led to some detriment and/or the death of the patient. However, power imbalances impact on the patient's safety as nurses' powers were not defined as to their rights and responsibilities, such that they cannot compel the doctors to act leading to unnecessary conflicts between nurses and doctors to the detriment of their patient the end users of these personnel. Conflict is an inevitable phenomenon in our social, economical and physiological spheres of live and endeavors. The strongest division that affects the Health Care System in Nigeria, most especially is the conflict between the nurses and the medical doctors, this conflict could be resolved through dialogue and legislation.

Finally, Nursing as a profession has gone far in the field of medical health care system. They should be empowered in law to work without fear and intimidation from medical officers. Nurses had acquired training, learning, knowledge and experience within many years in the medical field, to save lives. When there is an emergency and distress that the nurses should carry out emergency intervention to save life without waiting for a called medical officer, who inordinately and/or negligently refused to come within a probable time. For example, when an asthmatic patient/client is rushed into the hospital in a respiratory distress, the nurse shall immediately administer bronchial dilators, for example intravenous aminophylline injection 250 mg slowly over 10 minutes or when a patient/client with hypotension (low blood pressure) is equally rushed into the hospital, the nurse on duty will immediately set up an intravenous infusion of 0.9 % normal saline to bring the patient/client blood pressure to prevent imminent death.

⁴⁶ [1998] AC 232

⁴⁷ [1936-1964] 85 W.N. (pt. 1 (NSW) cited as Re Anderson

⁴⁸ [1936-1964] 85W.N. 9 (pt. 1 (NSW) cited as Re Johnson

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