AN INSIGHT INTO MEDICAL MALPRACTICE AND LITIGATION

C.O.Aimakhu

Department of Obstetrics and Gynaecology, College of Medicine, University of Ibadan and University College Hospital, Ibadan, Nigeria.

ABSTRACT
Most, if not all physicians are ill prepared when it comes to facing a medical litigation. The current climate of medical litigation in many countries of the world has sparked extensive discussions regarding its influence on patient care. Nigeria is the most populous country in Africa and most patients still keep quiet about issues regarding malpractice and suits are rare. Medical malpractice otherwise known as a breach of professional obligation and negligence of duty by medical practitioners has been identified as the major cause of emerging medical litigation in Nigeria. Medical personnel must be aware in their practice that patients are becoming more aware of their rights. The public becomes unforgiving when there is perceived harm to patients as a result of medical negligence. Medical professionals all have to be litigious conscious and therefore have a basic knowledge on avoidance of malpractice and litigations.

Keywords: Medical ethics, medical negligence, professional obligation and litigation consciousness

INTRODUCTION

We live in a litigious society, and the medical community is now feeling the impact of this reality. The impact is acute among medical service providers, who pay increasing high Medical Malpractice Premiums. Most, if not all physicians are ill prepared when it comes to facing medical litigation. The current climate of medical litigation in many countries of the world has sparked extensive discussions regarding its influence on patient care. Most physicians are therefore aware that they can be sued for malpractice and know they have to be detailed and careful about patient care.

In the US, medical negligence is the third leading cause of death – right behind heart disease and cancer. In 2012, over 3 billion dollars was spent in medical malpractice payouts, averaging one payment in every 43 minutes.

Nigeria is the most populous country in Africa and most patients still keep quiet about issues regarding malpractice and suits are rare. Medical malpractice otherwise known as a breach of professional obligation and negligence of duty by medical practitioners has been identified as the major cause of emerging medical litigation in Nigeria. Negligence in law ordinarily implies a failure to do some act, which a reasonable man in the circumstance will do.

Medical malpractice has been raised as an important problem in daily practice, while the media and public remain unforgiving to those perceived to have harmed their patients. Over the past three decades there has been an increase in

Correspondence: Dr. C.O.Aimakhu
Department of Obstetrics and Gynaecology,
University College Hospital,
Ibadan, Nigeria.
E-mail: chrisaimakhu@yahoo.com
A professional who injures a client by providing care that is below the standard for that profession commits the tort of malpractice. A physician who is not able to cure a patient has not committed malpractice. However, a physician who removes the wrong lung or ovary during a surgery has committed malpractice. Most cases of medical malpractice proceed under the rules of common law, the body of legal judicial opinion derived from precedent cases rather than statutory or legislative rules. Alleged acts of medical malpractice are almost always tried as torts, governed by the rules of common law.

F. **Tort:** Wrongful act that causes injury to a person or property and for which the law allows a claim by the injured party to recover damages (usually money). **Torts, in the context of medical malpractice, can be intentional, unintentional (or negligent).**

i) **Intentional torts:** Most intentional torts in the context of medical practice are claims of **battery.** However, even these are rare in the physician-patient context. **Battery** is broadly defined as unwanted, harmful, or offensive bodily contact that occurs without consent.

ii) **Unintentional torts (Torts based on negligence):** Most malpractice claims in the medical context are filed as **unintentional torts (negligence).** These claims are based on allegations that damages resulted from the violation of one or more standards of care.

In such negligence torts, legal responsibility is established by proving **4 elements:**
- Duty,
- Breach of duty,
4. Paediatricians and Psychiatrists are least likely to be sued.
5. More malpractice payouts are made to female patients.
6. Patients aged 40-59 years account for the highest number of malpractice payouts.
7. Physicians often win malpractice lawsuits.
8. Malpractice payouts are costing less.
9. Most payouts are due to settlements, not judgments.
10. Five states in the USA continue to have the highest payouts rates. These are Florida, New Jersey, California, Pennsylvania and New York.

A study done in Saudi Arabia revealed that, Obstetrics leads the way in being the most litigation prone medical specialty. Surgery was second followed by Internal Medicine and Paediatrics being the fourth in order of frequency. The other specialties are somewhere in between. The least number of malpractice lawsuits was filed against the dental professions.

WHAT MUST BE SHOWN TO PREVAIL IN A MEDICAL PRACTICE CASE?°

While there are various types of medical malpractice claims, generally speaking, a claimant most usually show the following:

- the health care providers owed a duty to the patient;
- the healthcare provider breached that duty;
- the patient suffered an injury; and
- the patient's injury was a proximate cause of the health care provider's breach.

A physician owes a duty to a patient once a “doctor-patient” relationship has been formed. Such a relationship is usually formed when the physician agrees to care for the patient. Nonetheless, even if it is established that a duty existed and the health care
provider breached that duty (e.g., failed to meet the requisite standard of care), a claimant may not recover unless the claimant suffered injuries that were a direct result of the breach. If the breach resulted in no harm to the patient a claimant generally has no right to recovery.

WHO CAN BE HELD ACCOUNTABLE FOR MEDICAL MALPRACTICE?  
Generally speaking, a medical malpractice claim may be pursued against those who provide medical or health care to a patient, including, physician, registered nurses, hospitals, dentists, nursing homes, and pharmacists. Medical malpractice claims may be brought about against individuals, partnership, professional associations and corporations.

FACTS AND STATISTICS  
The number of iatrogenic deaths (those that are caused by misdiagnosis, manner or treatment of a physician) is about 225,000 a year in the United States of America and ranks this as the third leading cause of death in America, behind only heart disease and cancer. This number includes:

- 12,000 deaths each year due to unnecessary surgical procedures
- 7,000 deaths each year caused by medication errors in hospitals
- 20,000 deaths each year from other hospital errors
- 80,000 deaths each year from infections contacted in hospitals
- 106,000 deaths each year from adverse side effects of or reactions to medications

This is a large number of deaths due to inadequate care by physicians in America. Doctors do have a very difficult job and it should be realized that they are humans and prone to mistakes, but far too many times are these deaths due to carelessness and negligence. We have to be aware that this is an issue and that health care providers must be held to a standard of care that is above negligent mistakes.

FREQUENCY AND COST OF MEDICAL ERRORS
Statistics show that approximately 195,000 people are killed every year by medical errors in the US. The study notes that 1.14 million patient-safety incidents occurred among the 37 million hospitalizations in the Medicare population over the years 2000-2002. Hospital costs associated with such medical errors were estimated at $324 million in October 2008 alone. Between 15,000 and 19,000 malpractice suites are brought against doctors each year.

In Nigeria physicians should be litigious conscious as many patients are becoming more aware of presumed negligence and are willing to sue. In a study amongst pregnant women in Ibadan, Nigeria, 67.6% of the women were aware of their rights to sue in case of presumed negligence and 58.1% of them were willing to sue in the event of malpractice.

In conclusion, medical personnel must be aware in their practice that patients are becoming more aware of their rights. The public is unforgiving whenever there is perceived harm to patients as a result of medical negligence. Physicians all have to be litigious conscious and therefore have a basic knowledge of avoidance of malpractice and litigations.

REFERENCES


