

**AN EXAMINATION OF THE IMPACT OF MEDICAL MALPRACTICE LITIGATION ON THE
PERFORMANCE OF HEALTH WORKERS IN UGANDA**

PAUL RICHARD KABANDA

EKS20B11/616

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW, IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE AWARD OF A DEGREE OF BACHELOR OF LAWS OF
UGANDA CHRISTIAN UNIVERSITY**

May, 2024



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DECLARATION

I, **Kabanda Paul Richard**, hereby declare that the information presented in this dissertation is a result of my own initiative. This dissertation has never been presented to any other institution for an academic award.

SIGNATURE.....

DATE.....

KABANDA PAUL RICHARD

REG.NO. EKS20B11/616

APPROVAL

This Dissertation has been prepared under my supervision as the University supervisor.

SIGNATURE:

DATE.....

DR. SUSAN NAKANWAGI

DEDICATION

To God Be the Glory.

I dedicate this research report to my Family whose time I have encroached on during my study. My Mother thank you for always encouraging me. My wife Carol, thank you for being a strong pillar in my journey, my prayer partner and always bearing my weaknesses. My children Laurina Joy, Laurian Suubi and Ariana Gracie thank you for being patient with Dad. My mentee Phillip thank you for walking this academic journey with me. May God reward you all abundantly.

ACKNOWLEDGEMENT

I thank God for the gift of life He provided to me that enabled me manage to carry out such an exercise to accomplish my academic career.

Special thanks go to my supervisor Dr Susan Nakanwagi for your guidance as I conducted this research. The entire academic team at UCU, thank you for shaping me. Mr. Wilberforce Bwambale you demystified the Law. My wife who has supported all this by sacrificing a lot to see that I finish my studies.

My employers and supervisors who allowed me be off duty whenever I was having a school program.

I further acknowledge the grateful work done by fellow class mates of Uganda Christian University, thank you for equipping me further with human relational skills.

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ACRONYMS/ABBREVIATIONS

| | | |
|--------|---|--|
| AHP | : | Allied Health Professional |
| AHPC | : | Allied Health Professionals Council |
| APC | : | Allied Professionals Council |
| ICESCR | : | International Covenant on Economic, Social and Cultural Rights |
| KCCA | : | Kampala Capital City Authority |
| MML | : | Medical Malpractice Litigation |
| NHS | : | National Health Services |
| NMC | : | Nurses and Midwives Council |
| PFP | : | Private for Profit |
| PNFP | : | Private Not for Profit |
| PSU | : | Pharmaceutical Society of Uganda |
| UHRC | : | Uganda Human Rights Commission |
| UMDPC | : | Uganda Medical and Dental Practitioners Council |
| UMDPC | : | Uganda Medical and Dental Practitioner's Council |
| UN's | : | United Nations |
| WHO | : | World Health Organisation |

ABSTRACT

Medical malpractice litigation is a growing trend in most developing countries and many countries are seeking ways to cope with the problem. Practicing safe behavior regarding patients is an essential part of a health worker's ethical and professional standards. Despite this, health workers practice behaviors that run counter to patient safety, including practicing defensive medicine, hesitating to disclose incidents of malpractice to patients and failing to report these incidents of malpractice to the hospital administrations. Health worker's risk of malpractice litigation seems to be a relevant factor affecting these behaviors. The objective of this study was to examine the impact of medical malpractice litigation on the performance of health workers. The study sought discuss the legal framework surrounding medical malpractice in Uganda, analyzed the state of medical malpractice litigation in Uganda, and analyzed the adequacy of the existing legal frameworks in addressing the medical malpractice.

It has been established that there is a need for a common definition of medical malpractice, a common legislation that will save the situation of referring to multiple laws when adjudicating on medical negligence suits. The health workers have suffered from psychological distress when facing medical litigation. Such distress has led to underperformance of health workers. The costs associated with medical malpractice and the ensuing litigation have been considerable and trigger different responses from the health worker. The environment is characterized with several factors combined to create worker resentment and unhappiness about their professions and the regulatory systems within which they operate.

CHAPTER ONE

INTRODUCTION

1.1 Background to the study

The concept that every person who enters a learned profession undertakes to bring to the exercise of a reasonable degree of care and skill dates back to the laws of ancient Rome and England.¹ Under Roman law, medical malpractice was a recognized wrong.² Around 1200 AD, Roman law was expanded and introduced to continental Europe.³ After the Norman Conquest of 1066, English common law was developed, and during the reign of Richard at the close of the 12th Century, records were kept in the Court of Common law and plea rolls and it is these records that provide an unbroken line of medical malpractice decisions, all the way to modern times.⁴ The current medical malpractice law has its origins in the 19th Century English Common law.⁵

Medical malpractice is simply defined as any act or omission by a physician during treatment of a patient which deviates from accepted norms of practice in the medical community and causes injury to the patient.⁶ It is a specific area under the law of tort that deals with professional negligence. Medical negligence (also known as malpractice, medical errors) is an increasing public health concern among health care providers worldwide and it occurs when a health care professional selects the wrong method or procedure or improperly executes an appropriate method to treat or diagnose the patient.⁷ All clinical practitioners and health care providers (e.g. physicians, nurses, medical technicians, paramedics, and other health care professionals) are responsible for any mistakes that could lead to medical negligence.⁸ There are several areas where medical negligence can arise, such as technical errors during surgical procedures, misdiagnose of the disease, or prescribing the wrong medicine or incorrect dose thereby posing a significant risk of

¹ Bal BS. An introduction to medical malpractice in the United States. *Clin Orthop Relat Res.* 2009 Feb;467(2):339-47. doi: 10.1007/s11999-008-0636-2. Epub 2008 Nov 26. PMID: 19034593; PMCID: PMC2628513.

² *ibid*

³ *ibid*

⁴ *ibid*

⁵ *ibid*

⁶ *ibid*

⁷ Dahlawi S, Menezes RG, Khan MA *et al.* Medical negligence in healthcare organizations and its impact on patient safety and public health: a bibliometric study [version 1; peer review: 2 approved]. *F1000Research* 2021, **10**:174 (<https://doi.org/10.12688/f1000research.37448.1>)

⁸ *ibid*

patient injury, disease, disability, or death and subsequently giving rise to criminal and financial liabilities on hospitals and health care institutions.⁹

The success of medical litigation in fault based legal systems is based upon the plaintiff/patient proving the duty of care, breach of duty, causation and the injury/ damage suffered.¹⁰ The plaintiff has to establish that the practitioner owed him/her a duty of care. The plaintiff should have suffered injury. It should be established that the care offered fell below the established standard of care, given the providers' training and experience. It should further be established that the reported failure to uphold standards was due to negligence. Finally, it should be established that the reported negligence of duty caused or materially contributed to the injury suffered. Medical peers were given the right to determine fellow practitioners' alleged negligence basing on professional standards.¹¹

1.2 Problem statement

Medical malpractice claims are increasing and National Medical Associations worldwide are seeking ways of coping with the problem.¹² The World Health Organisation (WHO) estimates that there is a 1 in 300 chance of health care induced injury that equates to thousands of premature deaths daily and that statistics in developed countries shows that as many as 1 in 10 patients are harmed while receiving hospital care. In the United States, medical malpractice is the third leading cause of death just behind heart diseases and cancer¹³ and about 85,000 lawsuits are filed against medical professionals in the United States every year.¹⁴ In the United Kingdom, in 2021/22 the National Health Services (NHS) received 15,078 new claims arising out of medical malpractice and due to this phenomenon, 7% of the NHS annual budget covers the cost of clinical negligence. For the 2021/22 period, areas of which it received the most claims in medical malpractice were,

⁹ ibid

¹⁰ Kadimba, Eva & Katongole, Simon & Maniple, Everd. (2015). Medical Litigation in Hospitals in Kampala, Uganda. 3. 204-208.

https://www.researchgate.net/publication/280082839_Medical_Litigation_in_Hospitals_in_Kampala_Uganda

¹¹ Bolam v Friern Hosp. Mgt. Committee [1957] 2 ALL ER 118

¹² <https://www.wma.net/policies-post/world-medical-association-statement-on-medical-malpractice/> (accessed February 12, 2023)

¹³ <https://www.rosenfeldinjurylawyers.com/medical-malpractice-statistics.html> (accessed February 12, 2023)

¹⁴ Ben Gobel ; Medical Malpractice Stastics , 2022 .<https://yourpghlawyer.com/medical-malpractice-statistics-2022/#:~:text=There%20are%20an%20estimated%20250%2C000,across%20the%20country%20every%20year>. (last accessed March 10, 2024)

emergency medicine, orthopaedic surgery, obstetrics, general surgery and gynaecology.¹⁵ Whereas in the African region, the probability of being harmed in a hospital is higher and the risk of acquiring a health-care associated infection is as much as 20 times higher.¹⁶

In Uganda, Dr Mary Anne Apok the regulatory officer at the Uganda Medical and Dental Practitioners Council (UMDPC) told the independent, that there are no specific statistics of medical negligence cases in Uganda, although the UMDPC averagely records over 50 complaints against medical practitioners annually.¹⁷

However the trend of medical malpractice litigation in Kampala shows a gradual rise. A study done in 2016 showed that 2/10 hospital managers had cases in court, 5/10 were handling cases with professional councils(especially the Uganda Medical and Dental Practitioners Council) and only 1/10 had no disciplinary or medical-legal experience. From court records, medical-legal cases were still a very small fraction of cases and it was established that medical malpractice suits had contributed to improving clinical practice as the health workers become attentive to the quality of care offered.¹⁸ However, it was also established that the law suits brought emotional stress and demotivation to managers and health workers. The other effects of medical malpractice litigation suffered by health workers were loss of time due to the lengthy court processes; revoking of the operating license, withdrawal from practice either as a result of the urge to retire voluntarily or by law, suspension from practice; dented image or career, and failure to get employment elsewhere largely as a result of dented image, besides the huge financial effects suffered by the health workers due to the fines and compensations paid out which at times, compelled the victims to sell their property to raise the money.

This study intends to expand the existing body of knowledge by examining the; legal frameworks surrounding medical malpractice in Uganda, the state of medical malpractice in health facilities in Kampala, and the impact of the increasing medical malpractice litigation on the performance of

¹⁵ [https://blackwaterlaw.co.uk/7-stats-latest-nhs-resolution-figures/#:-:text=What%20percentage%20of%20medical%20negligence,successful%20in%20reaching%20a%20settlement.\(accessed February 12, 2023\)](https://blackwaterlaw.co.uk/7-stats-latest-nhs-resolution-figures/#:-:text=What%20percentage%20of%20medical%20negligence,successful%20in%20reaching%20a%20settlement.(accessed%20February%2012,%202023))

¹⁶ WHO Africa, Health topics, Patient safety; available at <https://www.afro.who.int/health-topics/patient-safety> (accessed February 13, 2023)

¹⁷ Patricia Akankwatsa , Health : Medical Negligence ; Available at <https://www.independent.co.ug/health-medical-negligence/> (accessed March 20,2024)

¹⁸ Kadimba, Eva & Katongole, Simon & Maniple, Everd. (2015). Medical Litigation in Hospitals in Kampala, Uganda. 3. 204-208.

health workers towards finding an amicable solution to the impact of medical malpractice litigation on the medical professionals in order to improve the quality of health care services by making the health workers risk tolerant rather than risk averse when either making a choice to study medicine or to continue with their practice in medicine.

1.3 Objectives of the study

The study is guided by a general objective and special objectives

1.3.1 General objective

To examine the impact of medical malpractice litigation on health workers' performance in Uganda.

1.3.2 Specific objectives

- i. To examine the legal frameworks surrounding medical malpractice in Uganda
- ii. To analyze the state of medical malpractice litigation in Uganda.
- iii. To analyze the adequacy of the existing legal frameworks in addressing the medical malpractices.

1.4 Research Questions

- i. What is the legal framework surrounding medical malpractice in Uganda?
- ii. What is the state of medical malpractice litigation in Uganda?
- iii. To what extent has the existing legal frameworks been adequate in addressing medical malpractice?

1.5 Hypothesis

The following hypothesis guides the study;

When health workers are subjected to medical malpractice litigation, their performance is adversely impacted leading to decreased efficiency, stress and potential errors in patient care.

1.6 Significance of the study

The study is intended to enable the researcher fulfil the requirements for the award of a Bachelor's Degree in law of Uganda Christian University.

The findings of the study may serve as a guide to medical facilities in means of minimizing medical malpractice and as a reference for enabling medical workers in Kampala medical facilities appraise their performance in efforts of mitigating medical negligence/malpractices.

The study findings will also help funding agencies to align their funding priorities in improving health care services in Uganda and beyond.

The study will also be a guide to National Health regulators on how to mitigate the impacts caused by medical malpractice litigation on Health workers performance thus improving on the quality of health care delivery.

The study will serve as a reference document to other legal researchers on medical negligence/malpractices litigation.

1.7 Justification of the study

The aim of this research is to examine the impact of medical malpractice litigation on health workers performance so as to generate the necessary information that shall be used by the authorities to reduce medical malpractice litigation that exists where there is low emphasis on health workers performance. Several factors are identified as the impact of medical malpractice litigation and these included; the patient awareness of their medical rights, high socioeconomic class patients, poor communication and poor attitudes of workers. The study also investigates the contributory factors to litigation such as medical challenges, poor ethical conduct and prevalent medical malpractices which are common at work places. Suing of doctors and other health workers has negative effects on communication and code of health care but improves access, quality care, equity and record keeping.

1.7.1 Scope of the study

1.7.1.1 Time scope

The study covers the period of 10 years from 2013 to date. This enables the researcher to examine the impact of medical malpractice litigation on the performance of health workers.

1.7.1.2 Geographical scope

The study focuses mainly on Health facilities under the Level of Hospital and Health centre IV and III both under KCCA and Private Not for Profit (PNFP) within Kampala District.

1.8 Literature Review

This section presents the literature and studies related to the examination of the impact of medical malpractice litigation on the performance of health workers.

In recent years, the control of medical malpractice litigation has taken a central place in the policy debate on the performance of the health sector. One main reason is that the size of settlements in malpractice suits has increased rapidly in the last quarter of the 20th century. This is reflected both in the increase in the amount of jury awards and out-of-court settlements, and in the average cost of paid claims. The impact of malpractice on the organizational performance of health facilities and health systems sets the context for this literature review, initially motivated by a study of registering and processing of complaints and medical errors in Uganda. In that study, it was concluded that the channelling of information from patients to health workers through the complaints handling process could result in the correction of detected adverse events and facilitate learning and innovation.¹⁹

The legal framework that encompasses medical malpractice litigation is premised on the notion of compensation of the injured patient as the medical profession treats the patients' interests as being paramount. In order for the patient to receive this award, he or she must demonstrate that the medical professional owes the patient a duty and that the duty was breached and that the breach caused or materially contributed to the injury or damage that was suffered. There have been many cases of medical malpractice in Uganda however, there is no statistical data showing the number of cases that end up in courts in Uganda as a result of medical malpractice. Surgeons and obstetricians/gynaecologists are at the most at risk of medical litigation.²⁰

The malpractice, is much wider in the area of health litigation. Aside from the common area of medicine, other health professionals such as nurses, midwives, orderlies, pharmacists, paramedics, and others have this same problem. A mandate for discipline and other jurisdictions managed by the health services, such as the consistency of some procedures with standards and standards, must be within a certain acceptable range in order to avoid elements of medical negligence. The problem

¹⁹ D. Haiti, M. Ananta, A. L. Apriana, "Application of Restorative Justice Values in the Settlement of Medical Malpractice Cases," *PalArch's Journal of ...*, 2021. palarch.nl

²⁰ Kadimba, Eva & Katongole, Simon & Maniple, Everd. (2015). *Medical Litigation in Hospitals in Kampala, Uganda*. 3. 204-208. Available at https://www.researchgate.net/publication/280082839_Medical_Litigation_in_Hospitals_in_Kampala_Uganda

of payment of personal compensation for the harm suffered implies obligations to the people who committed the malpractice or otherwise violated the principle of the 'lex artis' and resulted in the violation of a fundamental right such as the right to life and health.²¹

In the US, malpractice litigation has been the most common form of dispute resolution for aggrieved people who believe that they have suffered actual physical harm from the malpractice of involved health workers. These proceedings are lodged either in courts of general jurisdiction or by administrative claims. In developing countries, the situation is not different since the formal legal processing brought by a tort or civil action is necessary for the aggrieved people in the public sector who believe that they have suffered from the medical bad outcomes in order to access compensation rights. These people consider the prospects for justice as the main cause of increased clinical negligence and health workers in order to obtain fair remuneration from their victims. The malpractice litigation was developed in order to help the patients who felt unfairly that their access to compensation was being denied, while the negligent health workers feared increased liability, similar to that of developed countries.²²

In the case of **Watsemwa & Anor v Attorney General**,²³ the midwives at Mulago hospital were held liable for professional negligence as a result of failing to meet the standards required when conducting a labour induction on a woman who was going to give birth. The negligent acts of the midwife included; failure to explain to the plaintiff why she was being put on labour induction, piercing the plaintiff's membrane when the cervix was at 6cm and not fully dilated at 9 cm, shouting at her to push hard after piercing the membrane inspite of the danger of the cord prolapsed, piercing her membrane without explaining to her the procedure, failure by the nurses to advise her to go on her knees and elbows after noticing that her cord prolapsed and leaving her lie on her back, delay of about 40 or 50 minutes for the doctor to attend to the plaintiff after the midwives had noticed the cord prolapsed. The acts of the midwives culminated in the cord prolapse

²¹ F. Wafula, T. Kiefer, C. Nakidde, A. Museiga, D. Ogira, "Strengthening Health Professional Regulation in Kenya and Uganda: Research Findings Policy Brief," chasei.org. chasei.org accessed on 21st May 2024

²² C. W. Hyeon, W. Lee, S. Y. Kim, J. Y. Park, "Prevention of medical malpractice and disputes through analysis of lawsuits related to coronary angiography and intervention," The Korean Journal of Internal Medicine, 2020. nih.gov accessed on 21st May 2024

²³ (Civil suit 675 of 2006) [2005] UGHCCD 16

of the new born which caused permanent damage to his brain thereby leading to the court's decision holding the midwives liable for professional negligence.

In respect of the above, I examine the extent to which malpractice litigation has impacted on health workers' performance. According to a study, medical litigation in health facilities in Kampala,²⁴ it was revealed that medical litigation in Kampala was still minimal but steadily increasing. The study found that significant factors responsible for the increase in medical litigation trends were heavy workloads, increased exposure to medical information, and increased awareness on patient's rights. It also found that medical litigation has led to improvement in the quality of health care, huge financial burden to the health care providers, and suspension or outright withdrawal of health workers from medical practice. The study's findings indicate that the efforts to reduce litigation included continuous professional development, better staff recruitment practices and strict enforcement of standard operating procedures. The researcher intends to rely on this research to assist them on ascertaining the state of malpractice litigation in health facilities in Kampala.

The medical profession regards patient's safety as being paramount. However, the malpractice litigation risk affects health worker's behaviour's run counter to patient safety as a result of the threat of medical malpractice litigation. A study done on the conditions that influence the impacts of malpractice litigation risk on physicians' behaviour regarding patient safety²⁵ found that behaviours that run counter to patient safety included practicing defensive medicine, failing to report incidents, and hesitating to disclose to patients. Defensive medicine includes performing unnecessary medical procedures and tests, deviating from guideline practices and avoiding high risk patients, therefore, malpractice litigation risk influences physician's behaviour that runs counter to patient safety. I use the above research to explain the impact of malpractice litigation on the health worker's performance.

²⁴ Kadimba, Eva & Katongole, Simon & Maniple, Everd. (2015). Medical Litigation in Hospitals in Kampala, Uganda. 3. 204-208. accessed at

https://www.researchgate.net/publication/280082839_Medical_Litigation_in_Hospitals_in_Kampala_Uganda

²⁵ Renkema, E., Broekhuis, M. & Ahaus, K. Conditions that influence the impact of malpractice litigation risk on physicians' behavior regarding patient safety. *BMC Health Serv Res* **14**, 38 (2014). <https://doi.org/10.1186/1472-6963-14-38> accessed at [https://bmchealthservres.biomedcentral.com/articles/10.1186/1472-6963-14-38#accessed on March 20, 2024](https://bmchealthservres.biomedcentral.com/articles/10.1186/1472-6963-14-38#accessed_on_March_20_2024)

In conclusion, the researcher's literature review revealed a myriad of very many studies in the developed and developing countries but virtually none in Uganda that had examined the impact of malpractice litigation on the performance of health workers. No study was found that examined the impact of malpractice litigation on the health provider's performance in Uganda. These results gave the justification of conducting this study in Uganda. Since most of the studies are of the hospital setting, therefore the research intends to add value to the little literature on impact of malpractice litigation on the health work that already exists for the health sector. The researcher also believes that these results will inform the policy debate in health.

1.9 Methodology

The researcher applied a desk research methodology. The researcher formulated research objectives, requested for information from different resource centres , reviewed Law reports database and a secondary search, decided on the reliability of the obtained materials, made a list of potential active references and obtained copies, as well as reading resources selected , read and recorded the key findings, and finally wrote the results of the desk research.

Desk research, among the various tools of research, occupies a critical position in the whole process of envisioning, designing, and submitting a research document. However, the power, significance, and efficacy of utilizing secondary data have been seriously undermined. The necessity of the inclusion of desk research in a dissertation is that it provides a comprehensive overview of the research report or issue under study, no matter how sophisticated the systems are or may turn out to be. Furthermore, to check the list of supporting references in the methodology section, the researcher evaluated the available references, especially the last 10 years.

The Findings of this research have been facilitated by an intensive desk literature reviews and readings of different legislations and publications. There has been wide consultations with online libraries, Published books, policies of health, Medical malpractice, decided cases, magazines, journals, and Health institutions websites.

The Desk literature review has been informative in respect to general principles on medical malpractice as a whole. The theories and recommendations of various authors profoundly informed and directed the research data review.

1.10. Outline of Chapters

The research is organized and presented in four chapters;

Chapter one is the introduction of the study, background to the study, hypothesis research problem, objectives, significance, justification, literature review and methodology to be used in the study.

Chapter two is on the legal framework surrounding medical malpractice in Uganda. It will cover the different legal frameworks starting from the International Legal regime, Regional Frameworks, National Frameworks including institutional frameworks in Uganda.

The objective of chapter three is to analyse the status of Medical Malpractice Litigation in Uganda, types of cases, role of health care providers, reasons that led patients to file suits, case law and conclusion.

Chapter four will analyse the adequacy of the existing legal frameworks in addressing medical malpractice litigation

Chapter five will be the presentation of findings, recommendations and conclusions from the study.

The references and then the appendices section concludes the study structure.

CHAPTER TWO

LEGAL FRAMEWORK SURROUNDING MEDICAL MALPRACTICE IN UGANDA

2.1. Introduction

This Chapter presents the legal framework on medical malpractice in Uganda. It provides insight in the international legal regimes, the regional framework, national frameworks including the institutional framework in Uganda. Extracts of the different mandates of the various bodies and councils regulating the healthcare profession have been made.

A person aggrieved by the conduct of a health care professional may decide either to lodge a complaint with the relevant disciplinary body or go to court.

Malpractice litigation serves a number of purposes, its an avenue through which health care professionals may be held accountable for their actions in court. Litigation may act as an incentive to the professionals to ensure that they maintain a high standard of care since they may fear paying out money once successfully sued for the poor practice. Thirdly the patient may want the professional punished for the injury caused.²⁶ Litigation may act as retribution against the professional who may have caused the injury to the complainant.

²⁶ Fundamentals of Health Law ; Ben Kiromba Twinomugisha. Pretoria University Law Press 2015.

2.2 International Legal regime on medical malpractice.

Uganda has ratified various international treaties, conventions and declarations relating to health. These agreements contribute to the shaping of the legal framework of medical malpractice.

The United Nations commitment to health extends beyond peace keeping, emphasizing preventive measures to reduce errors, uphold patient safety and promoting access to quality medical care. UN's overarching goal is to safeguard human health and wellbeing.²⁷

2.2.1 The United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)

This emphasizes the right to health and underscores the importance of patient autonomy. It was adopted by the UN General Assembly in 1966 and it recognises the right of everyone to the highest attainable standard of physical and mental health.

ICESCR, establishes a framework for ensuring access to healthcare services, preventive measures and medical treatment. Art 12 of the ICESCR, emphasizes the right to health, including the right to medical care and necessary social services. The covenant encourages states to take steps to prevent, treat and control disease , promote health life styles and ensure equitable access to health care resources.

2.2.2 World Health Organization.

The WHO is part of the United Nations system. Its governance and objective is to encourage international law cooperation on global health issues and its impugning of international treaties and legislation affect health on a global scope, and may affect a medical practitioner working in a particular member state.

2.2.3. The Convention on the Rights of the Child (CRC), Article 24 (1) provides that state parties recognize the right of the Child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

²⁷<https://www.wma.net/policies-post/world-medical-association-statement-on-medical-malpractice/> (accessed on 25th april 2024

2.2.4. The Convention on the rights of person with disability (CRPD), Article 25 of the Convention provides for the rights of person with disabilities to health, including access to gender sensitive health services.

2.2.5. The Convention on the elimination of all forms of Discrimination against women (CEDAW), Article 12 of the convention provides that state parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services.

2.3. Regional Framework

Uganda is part of the East African region, which includes neighbouring countries like Democratic Republic of Congo, Republic of Southern Sudan, Republic of Kenya, United Republic of Tanzania, Republic of Rwanda, Republic of Burundi and the Federal Republic of Somalia.

While there is no specific regional treaty solely focused on medical malpractice, the legal principles and standards set by the regional bodies influence how Uganda addresses medical negligence.²⁸

Article 118(b) of the **East African Community Treaty** enjoins partner states to cooperate in the area of health, management health systems, drug policies, harmonisation of National health policies and exchange of information and promotion of research.

African Charter on Human and peoples' rights (ACHPR) , Article 16 (1) and (2) provides for the enjoyment of the best attainable state of physical and mental health and puts an obligation and duty on state parties to the charter to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

2.4 National Framework

2.4.1. In Uganda, the legal framework for medical Malpractice involves a combination of national legislation, common law principles and institutional oversight. These have linkages in a number of international treaties, conventions and agreements as ratified by laws made by Parliament according to **Articles 123 and 287 of the Constitution of the Republic of Uganda**. The

²⁸https://www.academia.edu/53281873/REVIEW_OF_LAW_PRACTICE_AND_MAJOR_DECISIONS_ON_MEDICAL_NEGLEGENGE_BY_THE_COURTS_IN_EAST_AFRICA_BY_MULALIRA_FAISAL_UMAR_1 (accessed on 25th April 2024)

Constitution contains a number of human rights and freedoms, which are critical for the protection of the right to health.²⁹

Uganda's legal system is based on the English Common Law system. The Common Law relating to medical malpractice is a developed body of law. The law is largely judge-made case law. It provides for patients' causes of action in negligence and battery and duties and standard of care expected of medical practitioners and the available defenses to practitioners. This body of law is well developed in Uganda. The decisions of superior courts are binding precedent.³⁰ It is also said to be applicable as customary law under Section 3 of the Act and where no Ugandan law is applicable, the common law of England shall apply as doctrine of Reception of English Law.³¹ This body of law is part of Ugandan law and an understanding of it is essential to medical practitioners.

2.4.2. Penal Code Act, Cap 120

Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the Penalty for it is prescribed by law.³² **The Penal code Act is therefore an Act that establishes a code of criminal law. Section 224 of the Penal Code Act,** provides that a person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his or her benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

2.4.3. Medical and Dental Practitioners Act cap 272.

This legislation outlines the professional standards and ethical conduct expected from health care providers. It also provides a basis for addressing medical malpractice.³³ The Act provides for the establishment of the Medical and Dental Practitioners Council.³⁴

²⁹ The Law on Professional Malpractice in Uganda ; Lubogo Isaac

³⁰ Judicature Act , section 7

³¹ Ibid , section 9

³² The Constitution of the Republic of Uganda , 1995 Art 28 (12)

³³ <https://lawzana.com/medical-malpractice-lawyers/uganda> (accessed on 21st April 2024)

³⁴ Medical and Dental Practitioners Act

2.4.4. The Pharmacy and Drugs Act cap 280.

The Act provides for the regulation of the profession of Pharmacy and also establishes the pharmaceutical society of Uganda.

2.4.5. The Allied Health Professional Act Cap 268.

The Allied Health professionals are governed by this Act. They include; dental technologists; medical Clinical officers; Ophthalmic clinical officers and psychiatric officers; laboratory technologist and laboratory technicians, dispensers, orthopedic clinical officers and technicians. Physiotherapists and occupational therapists, health inspectors, health assistants and field officers for entomology and radiographers.³⁵

The Allied Health Professional Act provides for the registration, regulation, supervision and control of the allied health professionals.

2.4.6. The Nurses and Midwives Act cap 274

The Act provides for the training, registration, enrolment and discipline of nurses and midwives of all categories and establishes the Nurses and Midwives Council.

2.4.7. The Civil Procedure Rules

These rules govern proceedings in Uganda including Medical Malpractice Cases.

2.4.8. Common law principles

Uganda's legal system relies on common law principles, which include the duty of care owed by healthcare professionals to their patients. To prove Medical malpractice, a plaintiff must demonstrate that the health care provider breached their duty of care directly causing harm to the patient.³⁶

2.5 Institutional Framework

2.5.1. The Uganda Medical and Dental Practitioners Council

The Council is a body corporate with perpetual succession, and has a common seal and may sue or be sued in its corporate name. It oversees the enforcement of ethical standards within the medical profession. It plays a crucial role in ensuring accountability and patient safety. The

³⁵ Allied Professional Act

³⁶ *ibid*

Council is mandated to conduct inquiry into alleged acts of professional misconduct against a medical and dental practitioner.³⁷

2.5.2. Nurses and Midwives Council

The Council is a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name. The council regulates the standards on nursing and midwifery in the country. It regulates the conduct of nurses and midwives and to exercise disciplinary control over them.

The Council may cause the removal of a nurse or midwife from the register when he or she is convicted by a court of law of a criminal offence, involving moral turpitude; is found guilty of professional misconduct by the council or suspended from the practice.³⁸

2.5.3. The Allied Professionals Council

The council is established under the allied Health professionals Act, and is a body corporate with perpetual succession, can sue and be sued in its corporate name. The council regulates the standards of the Allied Health professionals in the country. It also regulates the conduct of Allied Health professionals and exercise disciplinary control over them.³⁹

The council handles allegations against the allied health professional which if proved would constitute professional misconduct. These allegations may be referred to the disciplinary committee to hold inquiries into the conduct of the professional.

The committee of inquiry has powers of the high court to summon witnesses and order production of all relevant documents.⁴⁰ After the inquiry the committee may recommend to the council the removal of the name of the professional off the register or order his or her suspension for a period it may deem fit.⁴¹

2.5.4. The Pharmaceutical Society of Uganda

The society is established by the Pharmacy and Drug Act, cap 280, as a corporate body, having perpetual succession and a common seal and may sue or be sued in its corporate name. The core

³⁷ Cap 272, Sect 55 of the Act.

³⁸ Nurses & Midwives Act , Cap 274 sections 28 (1) (a – c)

³⁹ Allied Health Professional Act , Cap 268 section 4.

⁴⁰ Ibid , section 39(1)

⁴¹ Ibid , section 41

functions of the council is to enforce standards of pharmacy, regulate the conduct and discipline of all pharmacists, maintain a register of registered pharmacists ; ensure that pharmacy training institutions conform to set stanadards; approve all pharmacy practice outlets and conduct continuing pharmacy education.

2.5.5. The Uganda Human Rights Commission

It monitors and protects people's rights to health. Their annual reports provide insights into the state of medical negligence in the country.⁴²

2.6 Conclusion

It should be noted that the developments have not been based on the creation of specific laws targeting medical malpractice but rather through the application of general litigation laws to medical malpractice situations in the courts, advocating for patient rights, and using medical malpractice scenarios as case studies to highlight weaknesses within healthcare. Through the judicial process, there have been several decisions which have created precedence and contributed to the understanding of the legal framework applicable to medical malpractice. This has been very fundamental in situations where the legal remedies available were not the actual injury but rather the contribution to negligence in causing diseases or aggravation of pre-existing injuries.

Despite the fact that medical malpractice has been prevalent in Uganda for decades, the knowledge about the legal aspect regarding its redress has not been fully explored by the victims. This is mainly attributed to the fact that the laws regarding medical malpractice have been overshadowed by those of general litigation and tort, which has led to a cross-cutting confusion regarding the legal remedies available for medical malpractice as opposed to other tort or criminal liability. However, despite the existing situation, some recent significant developments have occurred. This is mainly in the areas of legal awareness through judicial decisions, patient rights, and public policy advocacy for safer health care.

⁴² http://www.ulrc.go.ug/sites/default/files/ulrc_resources/medical-negligence-uganda.pdf (Accessed on 21st April 2024)

CHAPTER THREE

STATUS OF MEDICAL MALPRACTICE LITIGATION IN UGANDA

3.1 Introduction

The objective of this chapter is to analyse the status of Medical Malpractice Litigation in Uganda, types of cases, role of health care providers, reasons that led patients to file suits, case law and conclusion.

Conduct that results in a preventable adverse patient harm, whether an action or a failure to act, can be identified as medical error. Often times, error occurs as a violation of standard established protocols in the practice of medicine. Such an occurrence provides a clear case of deviation from the standard of care and may be considered negligent practice. Error and deviated standard of care are strong indicators of malpractice and must be distinguished from unavoidable complications in the course of treatment.

Medical negligence has been defined by case law⁴³ as “the omission to do something which a reasonable man would do or doing something which a reasonable man would not do”. Black’s Law Dictionary⁴⁴ defines medical neglect as the failure to provide medical, dental, or psychiatric care that is necessary to prevent or to treat serious physical or emotional injury or illness.

Despite differences in medical malpractice laws across countries, both developed and developing jurisdictions often attribute the high occurrence of medical malpractice in developing countries to factors such as shortages of healthcare workers, limited resources, and the potential risks associated with new treatments and technologies. The inability to provide adequate healthcare may result in unintended consequences such as decreased productivity, deteriorating health conditions, widening health disparities, and hindered economic and social progress. Consequently, comprehending health-related matters is crucial in handling the existing healthcare crisis in developing nations.⁴⁵

⁴³ Blyth v Birmingham water works Co. 11 EX 784

⁴⁴ Bryan A. Garner, English Edition, Thomson West, 2004, page 1061

⁴⁵ Rodziewicz, T. L., & Hipskind, J. E. (2020). Medical error prevention. StatPearls. Treasure Island (FL): StatPearls Publishing. [saludinfantil.org](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7111111/) accessed on 6th May 2024

The Uganda Medical and Dental Practitioner's Council (UMDPC) has been given the responsibility of regulating medical practice within the country. They are charged with the responsibility of licencing Medical officers and also truck their distribution across the county. Medical facilities still grapple with the challenge of having adequate number of doctors in healthcare facilities, especially considering that Uganda is currently facing a severe shortage of healthcare professionals. This shortage, particularly within developing countries, has resulted in numerous unmet health needs for millions of people, ultimately compromising the quality of healthcare and patient satisfaction. As a consequence, patients may file medical malpractice complaints against doctors due to their dissatisfaction.⁴⁶

Health care professionals are given the responsibility of preserving life and reducing human suffering to a minimum. As a result, whenever a medical error infringes on the rights of patients and establishments, an unavoidable level of conflict is bound to emerge. Hence, medical errors trigger many disputes and form the basis for medical professionals' expenditure on liability insurance against the risk of damage claims made by the disgruntled patients. Medical malpractice, therefore, is a controversial ethical-economic-legal construct in health care. Medical malpractice litigation has attracted mounting attention because of malpractice ambivalence. It places medical professionals at fault but can represent an instrument for escaping the negative outcome of hospital negligence. Governments, particularly in the developing nations, are concerned about the potential impact of litigation on the national health care system.⁴⁷

3.2. Overview of Medical Malpractice

Medical malpractice is commonly defined as professional negligence by a healthcare provider in which the treatment provided falls below the accepted standard of practice in the medical community and causes injury or death to the patient. Most cases are due to errors in diagnosis, treatment, aftercare, or health management. These errors have been associated with injurious

⁴⁶ Peiffer, C., Armytage, R., Marquette, H., & Gumisiriza, P. (2021). Lessons from reducing bribery in Uganda's health services. *Development Policy Review*, 39(5). [\[HTML\] accessed on 6th May 2024](#)

⁴⁷ E. Fero, "The Impact Of Corporate Social Responsibility On Financial Performance Before And After The Pandemic," 2023. [neu.edu.tr accessed on 6th May 2024](#)

effects to the patient, including physical and emotional pain, increased cost of care, and some cases requiring long-term or permanent care.

Healthcare facilities in Uganda are currently faced with complex issues of medical malpractice and poor healthcare delivery. These are as a result of the poor working conditions and low salary affect the quality of care received by patients to the extent that the majority of health workers admit to sometimes practicing below their level of competence. This in itself constitutes an act of negligence, malpractice, and a breach in the ethics oath that has been taken by the healthcare practitioners. In most cases, patients are not fully aware that the care they have received is substandard. With low health literacy or education levels in Uganda, most patients will be unable to recognize symptoms of their ailment. This contributes to the vicious cycle of disease and poverty, with many patients seeking treatment from the same healthcare providers.

Uganda's doctors are overworked and underpaid and often begin private practice or leave the country for better pay and working conditions. This 'brain drain' has left the public health sector in the hands of low-skilled healthcare workers, often with unqualified doctors assuming the role of general practitioners in rural areas.

Due to the gaps in service provision of medical services, the issue of malpractice litigation in Uganda has become a concern. Medical malpractice litigation is beneficial to the affected party, as it enables to mitigate some losses encountered.

Medical malpractice litigation is an important issue that is being discussed around the country. Lawyers believe that most Ugandans do not like to report medical malpractices for no good reason. When the public is not ready to come out and report, there is little or nothing that can be done to solve this problem. Therefore securing compensation for patients who have suffered from medical malpractices is crucial. The public can be encouraged to report when they realize that they will receive compensation. Nonetheless, individuals who have suffered injuries are afraid to take action because they are not sure that it would lead to compensation.

3.3 Type of Cases

Medical malpractice is diverse and needs to be properly differentiated from “medical error.” Rosenberg classified medical errors into seven types: surgical, therapeutic, diagnosis, preventive, other, medication, and obstetric. Most medical errors have no or minimal clinical consequences.

On the other hand, medical malpractice arises when a medical error occurs and causes personal injury. It is the inevitable consequence of a medical error associated with adverse effects on the patient. In the legal system, there are the so-called “hard cases” and the “easy cases.” The “hard cases” are those that fall outside the Consensus Standard of Practice and therefore are in the gray areas of medical judgement. They require the use of an expert to clarify the limits of the acceptable, technically correct medical judgement. The “easy” cases fall well outside this label and therefore are defined by unaccepted outcomes which give an easily recognizable clinical disaster. Medical malpractice depends on four components, namely duty, breach, damage, and causation.⁴⁸

3.3.1 Misdiagnosis

Failure of a doctor to collect enough information from a patient that is essential in diagnosing the ailment is professionally irresponsible. In a bid to rectify that situation, the doctor diagnoses the patient basing on the symptoms without necessary rationalization to justify the cause. This is particularly true with parasitic and infectious diseases. Such practices are accused of resulting in unnecessary suffering or even death. There are guidelines to medical practice that dictate the collection of sufficient and accurate information from patients upon their first visit. They mandate doctors to capture symptoms and history of the patient hence creating a base for the disease diagnosis and further examination. Uganda is criticized for flouting these fundamental procedures as doctors often overlook such formalities. The practice of medicine, practitioners are updated by a network of regulations especially when sharing crucial information with the patient. These regulations ensure that the practitioner adheres to practical methods or their duty of care to the patient. In essence, the doctor should ensure that the patient is given the correct information regarding their diagnosis and its treatment in a proper and professional manner. This is because patient understanding is crucial because it boosts their confidence and compliance with the treatment.⁴⁹

⁴⁸ J M. T. Trockel, N. K. Menon, S. G. Rowe, M. T. Stewart, et al., "Assessment of physician sleep and wellness, burnout, and clinically significant medical errors," JAMA network, 2020. jamanetwork.com accessed on 10th May 2024

⁴⁹ E. K. Kagoya, K. Van Royen, P. Waako, "Experiences and views of healthcare professionals on the prescription of antibiotics in Eastern Uganda: A qualitative study," Journal of Global, Elsevier, 2021. [sciencedirect.com](https://www.sciencedirect.com) accessed on 6th May 2024

3.3.2. Surgical Errors

Surgical errors are among the most common grounds for malpractice claims brought against surgeons and can have significant long-term effects for the patients. The most common surgical error is unintended retention of foreign body after surgical operation. Also many of the instituted Malpractice suits involve incidences where equipment had malfunctioned or was not provided. Many lives of the patients involved could be saved or prolonged if surgical errors were not existent. Surgeons, therefore, need to redesign the complexities of all surgical processes and not only to achieve technical skills, but also improve the intraoperative decision-making, judgment, communication among all surgical team personnel and awareness of human factor and ergonomics principles.⁵⁰

3.3.3. Medication Mistakes

Medication errors can be caused by many different types of actions, including providing incorrect drug or dosage, flawed prescribing, manufacturing and packaging errors, erroneous communication, unsuitable labelling and storage or defective administration. These errors can be caused by numerous factors such as poor handwriting or verbal communication. Infectious diseases can spread easily in the absence of effective management and control. When these errors occur, they call for critical attention on the part of the health care provider, since the patient's life or health is at risk. When a person is injured by a medication error resulting from the misadministration of a medication by a healthcare provider, litigation may ensue.⁵¹

Medication is an essential component of any clinical intervention. Medication errors are the most frequently reported medical errors. In hospital settings all health care providers including nurses, physicians and pharmacists are responsible for the safe delivery of drug therapy. The most frequently reported errors that lead to litigation include prescribing errors, monitoring errors, dispensing errors, administration errors and adverse pharmaceutical events. When they occur,

⁵⁰] I. Komakech, D. Okello, A. Kavuma, J. Orem, and S. N. A. Tagoe, "Errors in manual radiotherapy treatment procedures and their evolution in a low resource setting: Uganda's experience," *Physica Medica*, Elsevier, 2024. [\[HTML\] accessed on 6th May 2024](#)

⁵¹ A. Dorothy, T. M. Yadesa, E. Atukunda, "Prevalence of medication errors and the associated factors: a prospective observational study among cancer patients at Mbarara regional referral hospital," *Cancer Management and Research*, Taylor & Francis, 2021. [tandfonline.com accessed on 6th May 2024](#)

these errors present critical challenges to the health care provider, since the patient's life or health may be on the line.

3.4 Role of Healthcare Providers

Physicians who admit fault and offer a conciliatory bedside manner are less likely to be sued for medical malpractice. They should be supported and mentored when they are faced with legal implications resulting from their actions.⁵² New doctors are supported by senior physicians during residency when they take a more independent role in patient care.

3.4.1 Duty of Care

All health professionals in Uganda are expected to carry out their duties in observance of the Constitutional provisions, laws and regulations. Basically, the intention of the laws regarding medical malpractice is to create a balance between providing compensation for the injured party and ensuring the professional retains goodwill and continues to provide the same service satisfactorily to the public. The laws establish norms of conduct and quality of service expected of the health professional and the facility in which the service is provided. Failure to observe these could end in litigation for medical malpractice.⁵³

Medical malpractice litigation, affects directly or indirectly health service delivery as well as professionals and institutions directly involved. Nowadays, patients are more aware of their rights as compared to the past, have become knowledgeable about their conditions through internet search and try to have a say in the treatment or intervention. These and other rights of patients are well elaborated in the Uganda National Health Patient Charter which among other things defines the extent of services that the patient must receive. Under the Charter, every patient has the right to life, to adequate and accessible medical service in the country.⁵⁴

3.4.2. Standard of Care

The standard to be expected of medical skills and knowledge that can safely be recommended in a medical emergency is known as the standard of a reasonable general practitioner. In the whole

⁵² G. Mauti and M. Githae, "Medical error reporting among physicians and nurses in Uganda," 2019. [ncbi.nlm.nih.gov](https://pubmed.ncbi.nlm.nih.gov/) accessed on 10th may 2024

⁵³ J. Mugisha, J. Ssebunnya, and F. N. Kigozi, "Towards understanding governance issues in integration of mental health into primary health care in Uganda," 2016. [ncbi.nlm.nih.gov](https://pubmed.ncbi.nlm.nih.gov/) accessed on 10th May 2024

⁵⁴] A. Kwizera, C. Sendagire, Y. Kamuntu, M. Rutayisire et al., "Building Critical Care Capacity in a Low-Income Country," 2022. [ncbi.nlm.nih.gov](https://pubmed.ncbi.nlm.nih.gov/) accessed on 10th May 2024

range of decisions there is a complex of objective considerations which are not the exclusive prerogative of the specialist, so it is not always the best specialist who has exercised all the required skill, diligence and informed judgment.⁵⁵

‘In the treatment of disease of which they assume cure, they are not liable for an error of judgment merely, but for a want of skill and care. It is the duty of each practitioner to possess that reasonable degree of knowledge and skill which is ordinarily possessed by those engaged in the profession. It is not that degree of knowledge which may be possessed by some and not by others but that which is usually possessed by the profession generally.’ The law apparently expects a doctor to be more skilful, more trained, more careful than the ordinary man on the street.⁵⁶

A doctor owes a duty to the patient to adhere to the high standards that apply at the time of treating the patient. The standard of care expected of the doctor is higher than that of an ordinary person.

3.5 Case Law

Case law is one of the sources of law in Uganda. Therefore, the decisions of the judicial officers can be used as legal authority, or an added persuasive value to issue guidance in the similar or same cause of action. The well-known adage "*stare decisis et non quieta movere*" literary understood to mean that “to stand by things decided”, cannot be ignored in providing guidance to those who attempt to appreciate the levels of court's decisions and how or why they have reached those particular stages of their deliberations.

Case law establishes a standard of care under judgment for the practice of medicine, nursing, administration, clinical supervision, and all other roles for which a health professional may be considered negligent. To establish medical negligence, a plaintiff must prove a standard of care.⁵⁷ The standard of care is the threshold of minimal competence and skill to which a given class of professionals will be held accountable and varies by role. Standard care is influenced by medical

⁵⁵ K. He, R. Mao, Q. Lin, Y. Ruan et al., "A Survey of Large Language Models for Healthcare: from Data, Technology, and Applications to Accountability and Ethics," 2023. [\[PDF\]accessed on 6th may 2024](#)

⁵⁶ D. Nakanjako and F. Omaswa, "Editorial: A century of health professions' education, training, academic research and service at Makerere University, Kampala, Uganda," 2022. [ncbi.nlm.nih.gov accessed on 10th May 2024](#)

⁵⁷ P. Moffett and G. Moore, "The Standard of Care: Legal History and Definitions: the Bad and Good News," 2011. [ncbi.nlm.nih.gov accessed on 2st May 2024](#)

science, technology, and resources available at the time of the alleged negligent act.⁵⁸ Although ‘standard of care’ has been recognized in health administration guidelines as playing a part in determining injury, common law and legal expertise determine the exact conduct that qualifies as standard of care.

The legal duty of negligence was established between a patient and a doctor by the leading judgement of Mcnair J in the case of **Bolam v Friern Hospital Management Committee**.⁵⁹ The Bolam case was the first case in which the court recognized that the doctor owes a legal duty of care to the patient. It was held that a medical professional is not guilty of negligence if he has acted in accordance of a practice accepted as proper by a reasonable body or a reasonable member of the profession. This rule is referred to as the Bolam principle, typically applied in cases where the alleged negligence is a failure to advise the patient of particular risks relevant to treatment.

There are several cases of medical malpractice which are resolved in the Courts of law and even the complaints that are resolved administratively. An example is the **case of Atukunda. In this case, Atukunda sued Dr. Kwendwa** (defendant) for negligence alleging that he negligently advised an operation which was wrong to remove a normal appendix which caused her to suffer from wound septic and incisional hernia for 12 years. In defense, the Dr. and Mengo Hospital took full responsibility for the appendectomy performed on the patient but claimed that it was normal and did not warrant any particular attention.

In the case of **Damian Saaleb and Esther Achado v. Chetros and Nsambya Hospital**. The deceased was taken to Nsambya Hospital on the 14th day of November 2016 and put under the care of the 2nd Defendant, the Consultant Physician/Cardiologist on the 16th day of November. On the 21st day of November 2016, at 2:44 PM, there was a decision to discharge her from the hospital; but while she was seated in a motor vehicle that was waiting to transport her home, she developed respiratory distress, became unconscious, and could not be moved to the motor vehicle thus prompting the 2nd Defendant to intervene by having her transferred back to the hospital; ultimately, she was ferried back into her hospital room in a wheelchair and at 3:15 PM she was pronounced dead. All this happened while the 2nd Defendant and the 3rd Defendant, who was

⁵⁸ D. Morgan, Y. Hashem, V. J. Straub, and J. Bright, "'Team-in-the-loop' organisational oversight of high-stakes AI," 2023. [\[PDF\] accessed on 21st May 2024](#)

⁵⁹ Bolam Vs Friern Hospital Management Committee (1957) 2 ALL ER 118

introduced as an anesthetist, were inside the waiting room just opposite the Hospital room where the deceased had been taken back. This was a case of medical malpractice of doctors and hospital staff at Nsambya hospital, against whom an action for negligence was brought by the surviving family members. General damages and loss of dependency were claimed.

In **Hellen Kimosho v Wakapita & 2ors**⁶⁰ where a dermatologist who failed to consult specialist service and he did not carry out all procedures under the clinical guidelines before making his prescriptions to the plaintiff was found professionally liable for the miscarriage that the plaintiff suffered as a result of the medical advice she had received from the dermatologist that subsequently put her life and that of her unborn child at risk.

In another case of **Watsemwa & Anor v Attorney General**,⁶¹ the midwives at Mulago hospital were held liable for professional negligence as a result of failing to meet the standards required when conducting a labour induction on a woman who was going to give birth. The negligent acts of the mid wife included; failure to explain to the plaintiff why she was being put on labour induction, piercing the plaintiff's membrane when the cervix was at 6cm and not fully dilated at 9 cm, shouting at her to push hard after piercing the membrane inspite of the danger of the cord prolapsed, piercing her membrane without explaining to her the procedure, failure by the nurses to advise her to go on her knees and elbows after noticing that her cord prolapsed and leaving her lie on her back, delay of about 40 or 50 minutes for the doctor to attend to the plaintiff after the midwives had noticed the cord prolapsed. The acts of the midwives culminated in the cord prolapse of the new born which caused permanent damage to his brain thereby leading to the court's decision holding the mid wives liable for professional negligence.

In the case of **Milburga Atcero Vs Women's Hospital International and Fertility Centre Ltd**⁶² the plaintiff filed a suit on behalf of the late **Mercy Ayiru**, who died during a laparoscopic surgery at the first defendant hospital. The surgery involved fibroid removal. The postmortem report revealed that the fourth defendant negligently inserted the endotracheal tube into the esophagus

⁶⁰ (Civil suit 385 of 2014) [2018] UGHCCD 71

⁶¹ (Civil suit 675 of 2006) [2005] UGHCCD 16

⁶² (Civil Suit No. 298 of 2012):

instead of the trachea, leading to cardiac arrest and the patient's death. The court considered issues related to negligence, premises safety, and statutory registration of medical practitioners.

In the case of **Kanyamugule and Anor V Attorney General**⁶³ On February 10th, 2011, the second plaintiff (Namakula Kate) was admitted to Mulago Hospital in Uganda for delivery. She was recommended to undergo an emergency caesarean section. The attending doctors were the third, fourth, and fifth defendants (Dr. Nsubuga, Dr. Magumba, and Dr. Mbulangina Peace Mary). Unfortunately, before the surgery could be performed, the second plaintiff experienced a stillbirth. The plaintiffs (husband and wife) brought this suit against the defendants, alleging medical and professional negligence. The plaintiffs sought special damages, general damages, and punitive damages.

The defendants denied negligence on their part. They contended that Mulago Hospital's medical personnel were ready to perform the surgery, but the operating theatre had limited anesthetic equipment due to the high number of critical cases that day.

Issues for determination were;

1. Whether the stillbirth and injuries suffered by the second plaintiff were caused by the negligence of the second, third, and fourth defendants.
2. Whether the first defendant (Attorney General) is vicariously liable for the negligence of the second, third, and fourth defendants.

The court held that the defendants owed a duty of care to the second plaintiff and her unborn child from the moment she was admitted to the hospital.

The defendants failed in their duty to exercise due caution and skill to ensure the safety of both the mother and the unborn child.

The court found the defendants liable for the stillbirth and injuries suffered by the second plaintiff.

3.6 Impact of Medical Malpractice litigation

The impact of medical malpractice litigation is boundless. First, Medical negligence has always been one of the major worries of the medical profession. The spectre and reality of medical

⁶³ (Civil suit No. 255 of 2011)

malpractice litigation polarize the medical profession, the legal profession, the legislators, and the public at large. The doctors blame the situation on an aggressive and profit-motivated legal profession and irresponsible or unrealistic patients, while the legal fraternity claims that the medical profession is a profession which does not carry out its duties as expected by the public. Medical malpractice litigation is costly. Second, medical malpractice litigation is also destroying health care profession's reputations. This is true irrespective of whether the qualified health care professional has a legitimate claim. Ultimately, legitimate cases of negligence that really exist between the patient and the defendant health care provider are hurt by illegitimate claims. Furthermore, medical malpractice litigation is time-consuming. Procedures and safeguards are mandated before any suit can commence. The flow of the legal process is also extended by continued investigation. Typically, similar malpractice lawsuits can take several years for the litigation process. A third drawback of medical malpractice litigation is expert explanation. During the trial, much of the data presented is foreign to the ordinary person. The fourth disadvantage: medical malpractice litigation jeopardizes the existence of a health care professional.

Medical malpractice litigation has some benefits in that it fosters compensation for the wrongs resulting from malpractice. Additionally, it fosters justice to patients who are victims of medical malpractice. Patients suffering from adverse results from malpractice should be compensated for their injuries. The compensation set through litigation represents recognition of the harm suffered. The last benefit of litigation is that it serves as a form of self-regulation. Lawsuits keep medical professionals cognizant of their conduct and aware of the legal duties and responsibilities they have towards patients. Through litigation, health care professionals may also keep abreast of new trends in health care and enhance the quality of care for all patients. Medical malpractice litigation is extremely important because it encourages victims of malpractice to be compensated for their injuries and it promotes justice in health care.

3.7 Conclusion

Health professionals who have been identified to possess a lack of competence should be retrained and not allowed to continue to a role that may be detrimental to patients. This may require the amendment of regulatory acts and possibly the enforcement of new ones. My most profound recommendation is the encouragement of health policymakers to make feasible and longstanding commitments to patient safety in all health facilities irrespective of their level.

Patient safety is a serious global public health issue. I suggest that the preventive and strategic measures will contribute to a direct reduction of adverse events and their consequences in Uganda.

A combination of public health and clinical practices will be needed to measure improvements and engage in quality-enhancing activities. Measures to reduce the human factor include wider education in patient safety, more system research and evaluation, allocating resources for safety, and involving all healthcare and health promotion sectors in safety programs.

CHAPTER FOUR

ADEQUACY OF EXISTING LEGAL FRAMEWORKS IN ADDRESSING MEDICAL MALPRACTICES

4.1 Introduction

Uganda has established regulations for the medical profession through the Public Health Act and the Allied Health Professionals Council Act. The Public Health Act deals with a wide range of medical practices, such as the functioning of both private and public hospitals, the appointment of licensing officers, and the expected conduct of private hospital owners and managers. Offenses against this Act are subject to penalties. On the other hand, the Allied Health Professionals Act specifically focuses on regulating the practices of professionals mentioned in the legislation. This chapter aims to analyse the adequacy of the existing legal frameworks in addressing the medical malpractices. Uganda has several regulatory bodies, including the Uganda Medical and Dental Practitioners Council (UMDPC), the Allied Health Professionals Council (AHPC), and the Ministry of Health, which work together to oversee the medical sector.

Medical malpractice, in a more comprehensive sense, refers to errors made by professionals in the field of medicine due to various factors such as human error, lack of knowledge and skills, negligence by others, and deficiencies in equipment or technology. These mistakes undermine the process of promoting healing and maintaining the overall well-being of individuals, both physically and psychologically. The primary approach to addressing medical malpractice cases is through compensation, although in certain instances, doctors may also face imprisonment if a patient dies as a result. However, it is important to note that even highly skilled doctors who have the best interests of their patients at heart may still be convicted of malpractice in certain situations that involve unforeseeable and exceptional circumstances. Thus, any recent advancements in protecting doctors found guilty of malpractice should be analyzed in light of these unique circumstances.⁶⁴

The advancements in the medical field have made it necessary to review the existing laws that govern the relationships between doctors and patients. This is because patients are now more aware of their rights and are filing complaints against doctors for various types of damage caused by

⁶⁴] P. Garon-Sayegh, "Medicine at the Bar: Medical Experts, Lawyers, and the Making of Malpractice in the Courtroom," 2022. utoronto.ca accessed on 13th May 2024

medical negligence. While some cases result in monetary compensation for the victims, many trials end without a conviction after years of litigation, leaving doctors physically, mentally, and financially drained. Therefore, there is a growing need for states to offer special protection to doctors who play crucial roles in society. By addressing these complaints in court and granting protection to convicted doctors, states can build trust in healthcare services and provide assurance to patients against potential malpractice.⁶⁵

The patient's experience of receiving negligent medical care results in the missed opportunity to prevent avoidable harm caused by incorrect diagnoses, improper drug choices, equipment application, or surgical procedures. The healthcare provider should have been aware of these potential risks at the level of treatment. Various countries have developed different legal doctrines in response to medical malpractice, including *res ipsa loquitur*, judge-made negligence principles, and patient consent requirements. In Uganda, these principles are based on common law. Therefore, individuals must adhere to the established common law principles when filing a claim or lawsuit against a healthcare provider. In doing so, the defence relies on standard common law defences, with the healthcare provider demonstrating the use of necessary standards and acting in good faith while providing their services.⁶⁶

The progress made in healthcare systems has been primarily motivated by the goal of enhancing the overall standard of living for all individuals. This encompasses advancements in technology that contribute to modernization and urban development. The improvements in medical technology have emerged from the necessity to minimize disabilities, prevent ailments, and enhance life expectancy. It is evident that governments worldwide have taken a leading role in healthcare systems, recognizing its crucial role in repairing and sustaining the human workforce. In order to realize this vision, governments have undertaken significant reforms in healthcare-related legislation to adapt to the evolving healthcare systems. Like any other jurisdiction, Uganda has

⁶⁵ S. B. Johnson and F. Butcher, "Doctors during the COVID-19 pandemic: what are their duties and what is owed to them?," *Journal of Medical Ethics*, 2021. [bmj.com](https://www.bmj.com) accessed on 13th May 2024

⁶⁶Z. Nampewo, J. H. Mike, and J. Wolff, "Respecting, protecting and fulfilling the human right to health," *International Journal for Equity in Health*, 2022. [springer.com](https://www.springer.com) accessed on 13th May 2024

had to establish legal frameworks to ensure the provision of high-quality medical care and uphold professionalism among healthcare practitioners.⁶⁷

4.2 Overview of Medical Malpractice in Uganda

In Uganda, there is a level of uncertainty regarding the precise percentage of individuals who are unable to access healthcare services during times of illness, as well as the specific ratio of those who have died due to inadequate healthcare management. Attempting to estimate the number of deaths and the frequency at which they occur as a result of a particular health clinic will only yield conclusive results if solid evidence is presented to challenge such estimates. Alternatively, the assessment provided by the country's health services based on their professional judgment may present a completely different perspective. Despite clear indications of professional incompetence, health units will continue to operate. This is particularly concerning considering that many health centres are the sole healthcare providers in the country. Moreover, patients have limited knowledge about the official procedures available to lodge complaints against instances of professional malpractice.⁶⁸

Medical malpractice involves doctors or nurses providing improper care to their patients, which can include incorrect diagnosis, treatment, or mistakes in treatment. This can result in harm, disability, or even death for the patient. When it comes to medical care, two common issues that people frequently mention are unregulated private medical practice and insufficient efforts to address medical malpractice. Even today, many underdeveloped countries like Uganda have yet to establish effective measures to support private practice in the healthcare field and effectively address medical malpractice. While it may be reasonable to establish a set of expected behaviours for doctors in a particular context based on public knowledge of medical practice, it should not be seen as the sole measure of the adequacy of existing measures.⁶⁹

⁶⁷ M. Ndomondo-Sigonda, J. Miot, S. Naidoo, N. E. Masota et al., "Harmonization of medical products regulation: a key factor for improving regulatory capacity in the East African Community," *BMC Public Health*, vol. 2021, Springer, 2021. [springer.com](https://www.springer.com) accessed on 13th May 2024

⁶⁸ D. Bell, K.S. Hansen, A.N. Kiragga, et al., "Predicting the impact of COVID-19 and the potential impact of the public health response on disease burden in Uganda," *The American Journal*, 2020. [nih.gov](https://www.nih.gov) accessed on 13th May 2024

⁶⁹G. McGivern, G. Seruwagi, F. Wafula, T. Kiefer, C. Nakidde, et al., "Strengthening health professional regulation in Kenya and Uganda: research findings policy brief," 2021. [Online]. Available: wrap.warwick.ac.uk. [warwick.ac.uk](https://wrap.warwick.ac.uk) accessed on 13th May 2024

4.3 Evaluation of the Existing Malpractice Legal Framework

An examination of the existing legal framework could assist in evaluating the effectiveness or inefficiency of the legal system in addressing instances of medical malpractice in Uganda. In Uganda, medical malpractice is predominantly governed by the moral principles and professional ethics of the medical field, as well as the common law principles. The Constitution, Penal Code Act, Medical and Dental Practitioners Act, the Pharmacy and Drugs Act, the Allied Health professional Act, The Nurses and Midwives Act, The Children's Act, the Civil procedure Rules all contain certain provisions pertaining to medical malpractice.

Health care organizations, hospitals, and professionals are obligated to follow specific legal frameworks outlined in statutes, and regulations that govern torts and contracts in health care laws. If they fail to provide necessary health care services, they can be held liable. These liabilities are regulated under contract and tort law. These laws are implemented in Uganda to provide legal protection and accountability for health service consumers, including hospitals, medical practitioners, and specialists who use health care facilities. The objective of these laws is to encourage competition, promote best practices, ensure transparency, and reduce information gaps among health consumers.

Medical malpractice, also known as medical liability, is a branch of tort law that focuses on determining blame for harm caused to a patient by a healthcare professional's failure to adhere to established standards of care. It can be simplified as the incorrect actions taken by doctors during the diagnosis, treatment, management, or referral process, which may have resulted in unnecessary harm to the patient. The legal requirements for holding healthcare professionals responsible are quite stringent, as not every negative patient outcome can be attributed to mismanagement.

There is need to build healthcare systems in the country that have comprehensive insurance programs in place that protect doctors and ensure compensation for victims, covering medical expenses, lost wages, and funeral costs . Also there is need of a system that can indemnify the estate of the deceased by compensating the affected and also have in place reconciliation strategies as they help restore trust in a medical system that may have been undermined.

According to common law, negligence is considered a tort, which means that if a healthcare professional commits a negligent act, they can be sued under tort law. The Health Workers laws additionally outline the licensing and regulation of healthcare workers in Uganda. The Children

Act of 1999 establishes the responsibilities of healthcare workers towards patients in general, with regards to reporting child abuse and ensuring the overall physical, social, and mental well-being of child patients, among other matters.⁷⁰

4.4. Challenges in implementing the Malpractice Legal frameworks

It is quite unfortunate that persons trying to claim compensation against medical malpractices fall victim to some institutional challenges. Existing legal frameworks in addressing medical malpractices involve legal approaches and outcomes evolved over centuries.⁷¹ However, certain flaws have appeared in legal structures addressing medical malpractices across the globe.⁷² Due to these grey areas enlisted here under, affected patients are found struggling to initiate legal procedures against health professionals.

4.4.1. Burden of Proof

A victim of medical negligence who turns to the court faces a number of problems. The onus is on the plaintiff. He is the one who has to prove before the court that the medical professional has been negligent. He has to arrange for evidence to support his allegation. This is not an easy task. More often than not, these records are under the control of the medical professionals, or the hospital authorities. The plaintiff does not have access to this data. In the absence of relevant evidence, the court would not be able to determine that the medical professional has been guilty of negligence. Under the law as it stands today, the victim cannot hope to get adequate compensation.

4.4.2. Lack of Awareness

In order to prevent alleged malpractice penalties healthcare professionals need to have knowledge of ethical standards and modern-day medical laws. For more effective implementation of Medical Laws, health care professionals may form combinations with legal professionals and hospital administration. The legal curriculum shall have focused subjects about Medical Law. The hospitals/healthcare departments shall focus on developing ethical policy programs to teach health care professionals on Medical Law & Ethics. I believe by increasing educational activities of Medical Law & Ethics and promoting their knowledge may prevent malpractices and related

⁷⁰ I. Lubogo, "The law on professional malpractice in Uganda," 2021. juju.ac.ug accessed on 13th May 2024

⁷¹ D. J Carter, "Criminal Legal Challenges to the Uptake of Effective HIV Transmission Prevention Technologies and the Role of Medical Advice," 2021. osf.io accessed on 13th May 2024

⁷² A. Sheikh, S. Ali, S. Ejaz, M. Farooqi et al., "Malpractice awareness among surgeons at a teaching hospital in Pakistan," 2012. ncbi.nlm.nih.gov accessed on 13th May 2024

penalties while reciprocally dignifying the health care professionals manifested in the decreased abandoned practice and brain drain.

4.4.3. Inadequate Laws

The current laws dealing with medical malpractice litigation are inadequate due to a number of challenges. These challenges include high legal costs associated with pursuing these cases, and the complex process that patients must go through to prove medical harm as a result of negligence. Many patients face financial difficulties when trying to pursue litigation as a result of malpractice, leading them to abandon the process. As a result, the affected patients suffer because they lack the necessary expertise and resources to navigate the court's process to enable them seek justice for the injury occasioned as result of the Malpractice.⁷³

4.4.4. Complexities in Establishing Causation

Some of the legal concepts remain a complex, contested area and might evolve over time in tort litigation is reasonable foresee ability. Whether the particular event was a reasonably foreseeable consequence is a legal question to decide in the case of tort of negligence. Specifically, in medical negligence legal theorist have contended that a fact that goods manufacturer were not aware of any kind of defect and the defect brings injury to the third party till that time manufacturer cannot be held liable.

4.4.5. Inadequate Compensation

In the event of non-availability of relevant evidence, the court would not be able to award any compensation to the victim. In a situation like this, the victim does not get justice. The absence of relevant evidence may be a result of two situations. It may be that the evidence does not exist or it exists and has been removed deliberately. The removal of evidence is a criminal offence. Most victims do not have the means, to pursue a criminal case for this against the guilty. As a result, they cannot do anything to secure the relevant evidence. The absence of evidence in such a case could legally be said to be due to the conduct of the hospital authorities.

4.5. Conclusion

In order to effectively address medical malpractice in Uganda, it is recommended that there should be a legal definition of this issue. This would establish a cause of action and a standard of care that

⁷³J. Murgel, "Medical negligence and liability of health professionals in the European Court of Human Rights case law," *Medicine*, . [um.si](https://www.um.si) accessed on 13th May 2024

medical practitioners must meet. Currently, the legal system in Uganda does not provide a suitable basis for filing complaints against medical practitioners, which is why it is difficult to address cases of medical malpractice. The only option for legal complaints is through the tort of negligence, which requires fulfilling all the necessary elements for a cause of action. This is why most complaints are lodged against practitioners in private health facilities, as it is not possible to sue the government under the existing legal framework. Once a cause of action is clearly defined and a standard of care is established, it is crucial to have a well-defined legal system to determine the liability of medical service providers who have acted negligently. It is only through the law that the amount of compensation, along with interest and legal costs, can be determined. Additionally, any actions taken by the injured party, outside of the specified procedures, should be handled administratively, such as through the involvement of the medical council for mediation, instead of resorting to court proceedings. The high costs associated with legal actions are one of the reasons why aggrieved individuals choose to engage in arguments with medical practitioners just to have their complaints addressed.⁷⁴

⁷⁴ S. Edmon, "The Potency of Alternative Dispute Resolution in Resolving Ugandan Civil Disputes: A Comprehensive Examination and Recommendations," researchgate.net, [researchgate.net](https://www.researchgate.net) accessed on 13th May 2024

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The research has been carried out under the study of three objectives. The researcher has examined the legal framework surrounding medical malpractice in Uganda, analysed the state of medical malpractice litigation in Uganda and also conducted an intense analysis on the adequacy of the existing legal frameworks in addressing the medical malpractices.

The observations made under this research are based entirely on the analysis of the intensive literature reviewed as entailed in the legislations, Journals, Case law and News Articles.

5.2 Summary of Findings

The Study under objective one sought to examine the legal framework surrounding medical malpractice in Uganda. The fact that there are different laws that have provisions related to medical malpractice, and some of which do not explicitly provide for the time the affected party is supposed to sue, leaves a vacation capable of being exploited.

The complex and disorganized compilation of laws creates confusion among those who must adhere to and rely upon them. This is evident in the limited understanding and knowledge concerning the laws pertaining to medical malpractice. The researcher has discovered that few individuals possess minimal awareness of the Medical Tribunal, a number of patients are not aware about the laws that specifically address medical malpractice in Uganda. Even among those who are aware of these laws, there is a lack of information regarding relevant procedures and the requirements for classifying an incident as medical malpractice.

The second objective aims at analysing the state of medical malpractice litigation in Uganda. The section presents the findings from the analysis of medical malpractice lawsuits in Uganda. It starts by discussing the types of cases, role of health workers, case law and the impact of medical malpractice litigation. The study analysed the basic features of the cases that have been identified. All medical malpractice lawsuits identified are genuine and call for redress. The researcher discovered that information on injurious outcomes is relatively common in all the cases identified, with the overwhelming majority of the cases involving claims for damages due to an adverse medical defect giving rise to medical malpractice suits that often end up in a court of law.

The entire trial has been characterised by being long-lasting, sometimes regardless of the final verdict. Thus, safety, prevention, and increased awareness of typical medical malpractice issues are the key factors in order to secure patients' rights in terms of healthcare, fair treatment, and access to compensation.

Objective three of this study was to analyse the adequacy of the existing legal frameworks in addressing the medical malpractices. It aimed to ascertain the effectiveness and deficiencies of the existing laws. Uganda has eight key laws in place that pertain to medical malpractice: the Patients' Charter, Penal Code Act, Medical and Dental Practitioners Act, the Pharmacy and Drugs Act, the Allied Health professional Act, The Nurses and Midwives Professional Act , The Civil Procedure rules and Human Rights Enforcement Act. The Patients' Charter and health policy together establish a legal framework that lacks particular remedies for individuals affected by medical malpractice. It has been established that the current legal system in Uganda does not provide a suitable basis for filing complaints against medical practitioners, which is why it is difficult to address cases of medical malpractice. It is only through the law that the amount of compensation, along with interest and legal costs, can be determined.

Therefore the researcher's findings on the impact of malpractice litigation on the performance of health workers, health facilities, and the health care system Includes the immediate consequence of the medical malpractice litigation is that the health worker focuses increasingly on the legal risks associated with practicing medicine. Such heightened sensitivity has been found to distort the behavior of the health workers. The health workers have adopted self-protective behavior and engaged in defensive medicine. Such defensive medicine has had various manifestations. On one extreme, the health worker has practiced what was known as positive defensive medicine. The health workers have prescribed or ordered unnecessary diagnostic tests or unnecessary consultations, have made unnecessary referrals, or avoided the use of specific treatments or techniques. In consequence, defensive medical practices have contributed to cost inflation in medical services resulting from the unnecessary use of medical services and excessive cost.

5.3. Conclusions

The development of the medical Malpractice framework has not been based on the creation of specific laws targeting medical malpractice but rather through the application of general litigation laws to medical malpractice situations in the courts, advocating for patient rights, and using

medical malpractice scenarios as case studies to highlight weaknesses within healthcare. Through the judicial process, there has been several decisions which have created precedence and contributed to the understanding of the legal framework applicable to medical malpractice.

Knowledge about the legal aspect regarding medical malpractice has not been fully explored by the victims. This is mainly attributed to the fact that the laws regarding medical malpractice have been overshadowed by those of general litigation and tort, which has led to a cross-cutting confusion regarding the legal remedies available for medical malpractice as opposed to other tort or criminal liability. Therefore this study has revealed that a significant portion of medical malpractice cases are not acknowledged due to institutional problems like inadequate reporting. Moreover, there is a lack of knowledge and awareness within the healthcare system regarding treatment and compensation for medical malpractice. It is crucial to provide training for both patients and healthcare workers that emphasizes equal recognition of medical malpractice.

5.4 Recommendations

a. Where the current legal and regulatory systems are inadequate. Medical lawsuits face a number of obstacles, such as lengthy claim determination processes, expensive court fees, emotional distress, and limited successful outcomes. Consequently, only a small portion of patients who have been wronged pursue justice, largely due to uncertainty and doubt about the final result, despite the existence of mechanisms within the medical profession's regulatory bodies. The researcher recommends for an establishment of an independent body that handles compensation of affected parties without having a need to first explore the lengthy litigation processes.

b. There is need to establish a no fault medical malpractice compensation scheme. This will be used to compensate medical injury claims. The current approach has been cited as having adverse effects on the medical practitioner as well as the entire health care system since it discourages efforts to improve on quality of care through patient safety initiatives that require implementing of error reporting systems in order to investigate causes of errors in the health care organization that provides health care services. A no fault compensation scheme is recommended as the best alternative to the current tort approach for dealing with medical injuries and providing compensation to injured patients. This model eliminates the requirement of proving negligence on the part of the clinical practitioner and focuses more on proving causation and avoidability of the

injury where it has to be established that whether a medical injury could have been prevented by good medical practice.

c. It is necessary to ensure that the educational standards relating to professional and academic skills are in compliance with realistic educational programs and academic studies. An inadequate curriculum and its implementation would lead to professionals who are unprepared for duty, which is likely to result in a significant number of medical errors, including medical malpractice. The education and training of a health professional are critical, not only to minimize the number of medical errors and to respond to medical accidents and developmental milestones but also to equip the practitioner to minimize damage and provide a timely quality response once the appeal is launched.

d. The researcher recommends to integrate medical technologies into the Modern medical practice. Whereas several laws on medical malpractice exist, the penal code was enacted in the 1950s and does not take medical technology as it is now into account. The Uganda Medical and Dental Practitioners Council (UMDPC) Act, enacted in 1964 with vast amendments, also does not reflect medical practice as it is now. The Courts of Judicature Act, The Consumer Protection Act, The Law Reform Act, and several other laws have certain aspects covering medical malpractice.

e. There is no need to reinvent the wheel. The issue of a patient-centred approach to care already exists in other jurisdictions and is well captured in the law. It is in our best interest to domesticate the same, especially as our judicial system increasingly turn to international best practices and case law from other jurisdictions in light of their persuasive force. The best practices challenge the use of traditional paternalistic and the anatomy systems that still exist in Uganda through, for example, the judges' use of their medical knowledge to base their decisions at the total exclusion of the patient's perspective and the autonomous treatment decision. Failure to domesticate and inculcate patient-centred care principles in litigated malpractice cases and in the conduct of healthcare providers is bound to result in law and medicine being at dissonance, a state that continues to limit the cooperative and supportive relationship between legal and medical communities to the disadvantage of the patient.

f. In order to effectively address medical malpractice in Uganda, it is recommended that there should be a legal definition of this issue. This would establish a cause of action and a standard of care that medical practitioners must meet. Currently, the legal system in Uganda does not provide

a suitable basis for filing complaints against medical practitioners, which is why it is difficult to address cases of medical malpractice. The only option for legal complaints is through the tort of negligence, which requires fulfilling all the necessary elements for a cause of action. This is why most complaints are lodged against practitioners in private health facilities, as it is not possible to sue the government under the existing legal framework. Once a cause of action is clearly defined and a standard of care is established, it is crucial to have a well-defined legal system to determine the liability of medical service providers who have acted negligently. It is only through the law that the amount of compensation, along with interest and legal costs, can be determined. Additionally, any actions taken by the injured party, outside of the specified procedures, should be handled administratively, such as through the involvement of the medical council for mediation, instead of resorting to court proceedings. The high costs associated with legal actions are one of the reasons why aggrieved individuals choose to engage in arguments with medical practitioners just to have their complaints addressed.

BIBLIOGRAPHY

International Instruments.

The United Nations International Covenant on Economic, Social and Cultural Rights

The Convention on the Rights of the Child (CRC)

The Convention on the rights of person with disability (CRPD)

The Convention on the elimination of all forms of Discrimination against women (CEDAW)

Regional Framework

African Charter on Human and peoples' rights (ACHPR)

East African Community Treaty

List of Legislation

1. The Allied Health Professionals Act Cap 268
2. The Civil Procedures Rules (Statutory instrument 71 -1)
3. The Constitution of the Republic of Uganda 1995 as amended
4. The Medical and Dental Practitioners Act 272
5. The Nurses and Midwives Act Cap 274
6. The Patients Charter
7. The Penal Code Act Cap 120
8. The Pharmacy and Drug Act cap 280

Text Books:

Ben Kiromba Twinomugisha ; Fundamentals of Health Law. Pretoria University Law Press 2015.

List of Cases:

Blyth v Birmingham Waterworks Co. 11 Ex.784

Bolam v Friern Hosp. Mgt. Committee [1957] 2 ALL ER 118

Kanyamugule &Anor V A.G & 3Ors (Civil Suit No. 285 of 2011)

Kimosho v Wakapita & 2 Ors (Civil suit 385 of 2014) [2018] UGHCCD 71

Milburga Atcero Vs Women's Hospital International and Fertility Centre Ltd (Civil Suit No. 298 of 2012

Watsemwa & Anor v Attorney General (Civil Suit 675 of 2007) [2015] UGHCCD 16

Journals and Articles

- A. Al Aghbari and Z. Al Maskari, "Case study Vanderbilt University Medical Center Data Chaos," 2023. [PDF]
- A. Beinebyabo, "Innovative health service delivery in government hospitals in Uganda: a case of Kabale and Kambuga hospitals in Kigezi sub-region," 2020. nwu.ac.za
- A. Dorothy, T. M. Yadesa, E. Atukunda, "Prevalence of medication errors and the associated factors: a prospective observational study among cancer patients at Mbarara regional referral hospital," *Cancer Management and Research*, Taylor & Francis, 2021. tandfonline.com
- A. Kuyini Mohammed, "An evaluation of the quality of democracy of Ghana," *Democracy and Security*, 2023. [HTML]
- A. Kwizera, C. Sendagire, Y. Kamuntu, M. Rutayisire et al., "Building Critical Care Capacity in a Low-Income Country," 2022. ncbi.nlm.nih.gov
- Bal BS. An introduction to medical malpractice in the United States. *Clin Orthop Relat Res*. 2009 Feb;467(2):339-47. doi: 10.1007/s11999-008-0636-2. Epub 2008 Nov 26. PMID: 19034593; PMCID: PMC2628513.
- Ben Gobel ; Medical Malpractice Stastics , 2022 .[https://yourpghlawyer.com/medical-malpractice-statistics-2022/#:~:text=There%20are%20an%20estimated%20250%2C000,across%20the%20country%20every%20year.\(last%20accessed%20March%2010,%202024\)](https://yourpghlawyer.com/medical-malpractice-statistics-2022/#:~:text=There%20are%20an%20estimated%20250%2C000,across%20the%20country%20every%20year.(last%20accessed%20March%2010,%202024))
- C. I R Chandler, J. Kizito, L. Taaka, C. Nabirye et al., "Aspirations for quality health care in Uganda: How do we get there?," 2013. ncbi.nlm.nih.gov
- D. Nakanjako and F. Omaswa, "Editorial: A century of health professions' education, training, academic research and service at Makerere University, Kampala, Uganda," 2022. ncbi.nlm.nih.gov
- Dahlawi S, Menezes RG, Khan MA *et al*. Medical negligence in healthcare organizations and its impact on patient safety and public health: a bibliometric study [version 1; peer review: 2

- approved]. *F1000Research* 2021, **10**:174
(<https://doi.org/10.12688/f1000research.37448.1>)
- E. Fero, "The Impact of Corporate Social Responsibility on Financial Performance before and After the Pandemic," 2023. neu.edu.tr
- E. K. Butler, T. M. Tran, A. T. Fuller, A. Brammell et al., "Quantifying the pediatric surgical need in Uganda: results of a nationwide cross-sectional, household survey," 2016. ncbi.nlm.nih.gov
- E. K. Kagoya, K. Van Royen, P. Waako, "Experiences and views of healthcare professionals on the prescription of antibiotics in Eastern Uganda: A qualitative study," *Journal of Global Elsevier*, 2021. sciencedirect.com
- E. Okurut, "The'but for'Test in Proving Causation in Insurance Claims in Uganda," *Strathmore LJ*, 2023. strathmore.edu
- F. Oyebo, "Clinical Errors and Medical Negligence," 2013. ncbi.nlm.nih.gov
- G. Mauti and M. Githae, "Medical error reporting among physicians and nurses in Uganda," 2019. ncbi.nlm.nih.gov
- H. Rachel Kagoya, D. Kibuule, H. Mitonga-Kabwe, E. Ekirapa-Kiracho et al., "Awareness of, responsiveness to and practice of patients' rights at Uganda's national referral hospital," 2013. ncbi.nlm.nih.gov
- I. Kasiko, "The role of courts in commercial arbitration in Uganda," 2023. kiu.ac.ug
- I. Komakech, D. Okello, A. Kavuma, J. Orem, and S. N. A. Tagoe, "Errors in manual radiotherapy treatment procedures and their evolution in a low resource setting: Uganda's experience," *Physica Medica*, Elsevier, 2024. [HTML]
- I. Lubogo, "The law on professional malpractice in Uganda," 2021. iuiu.ac.ug
- I. R. Freckelton, "Internet disruptions in the doctor–patient relationship," *Medical Law Review*, 2020. [HTML]

- J. Amandua, V. Masembe, J. Amone, P. Mukasa-Kivunike et al., "The profile and causes of death among medical doctors and dental surgeons in Uganda: 1986 to 2016," 2022. ncbi.nlm.nih.gov
- J. F. Namatovu, A. G. Mubuuke, W. Buwembo, J. Nakigudde, et al., "Stakeholder views on continuing professional development for doctors working in public primary care facilities in central Uganda: a qualitative study," panafrican-med-journal.com. panafrican-med-journal.com
- J. Mugisha, J. Ssebunnya, and F. N. Kigozi, "Towards understanding governance issues in integration of mental health into primary health care in Uganda," 2016. ncbi.nlm.nih.gov
- J. Nabyonga Orem and C. Muheki Zikusooka, "Health financing reform in Uganda: How equitable is the proposed National Health Insurance scheme?," 2010. ncbi.nlm.nih.gov
- K. He, R. Mao, Q. Lin, Y. Ruan et al., "A Survey of Large Language Models for Healthcare: from Data, Technology, and Applications to Accountability and Ethics," 2023. [PDF]
- Kadimba, Eva & Katongole, Simon & Maniple, Everd. (2015). Medical Litigation in Hospitals in Kampala, Uganda. 3. 204-208
- M. T. Trockel, N. K. Menon, S. G. Rowe, M. T. Stewart, et al., "Assessment of physician sleep and wellness, burnout, and clinically significant medical errors," JAMA network, 2020. jamanetwork.com
- N. D. P. Sarkar, A. Bardaji, F. K. Baingana, "Intra-household variation in pathways to care for epilepsy and mental disorders in Eastern Uganda," *Frontiers in Public Health*, 2021. frontiersin.org
- N. Ngwenya and N. L. Nyathela, "Reducing The Risk Of Medical Malpractice In The Nursing Profession," website: <http://www.theatrenurse.co.za>, . [theatrenurse.co.za](http://www.theatrenurse.co.za)
- P. K Attaluri, P. J Wirth, S. P Moura, E. C Shaffrey et al., "The Anatomy of a Malpractice Lawsuit," 2023. ncbi.nlm.nih.gov
- Q. Sserwanja, D. Mukunya, M. W. Musaba, J. Kawuki et al., "Factors associated with health facility utilization during childbirth among 15 to 49-year-old women in Uganda: evidence from the Uganda demographic health survey 2016," 2021. ncbi.nlm.nih.gov

- R. Ishimwe, "Assessment of The Status Of Medical Negligence And Malpractice In Musanze District, Rwanda," 2021. academia.edu
- S. Lubega, "Best medical care practices in sport: investigating the barriers to the implementation in the developing countries. Uganda as a case study," 2020. uct.ac.za
- S. P. Katongole, P. Akweongo, R. Anguyo, D. E. Kasozi, "Prevalence and classification of misdiagnosis among hospitalised patients in five general hospitals of Central Uganda," *Clinical ...*, vol. 2022. Taylor & Francis. tandfonline.com
- S. V. Joga Rao, "Medical negligence liability under the consumer protection act: A review of judicial perspective," 2009. ncbi.nlm.nih.gov
- T. Naome, M. James, A. Christine, and T. I. Mugisha, "... and motivating factors to medical-incident reporting: a cross-section survey of health care providers at Mbarara regional referral hospital, southwestern Uganda," *BMC Health Services*, 2020, Springer. springer.com
- W. Health Organization, "Global patient safety action plan 2021-2030: towards eliminating avoidable harm in health care," 2021. google.com
- WHO Africa, Health topics, Patient safety; available at <https://www.afro.who.int/health-topics/patient-safety> (accessed February 13, 2023)