

**EXAMINING THE LEGAL IMPLICATIONS OF MEDICAL NEGLIGENCE AMONG PATIENTS IN
UGANDA**

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AUTHORS DECLARATION

I NAMPIJJA VANESSA LYNETTE, do hereby declare that this dissertation was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Program's and that it has not been submitted for any other academic award. Other words cited and referred to are accordingly acknowledged.

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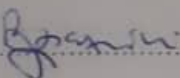
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APPROVAL

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Signed 

Date: 18/7/2028

BAKO JANE PATRICIA

DEDICATION

I would like dedicate my dissertation work to my family. A special thank you to my loving parents especially my mum, Mrs. Nanyonjo Viddah Julian and dad Mr. SSempijja Babu. My siblings Kalunda Vallerian Moses, Namata Basia and Nakate Brietta

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ABSTRACT

Medical negligence is an act committed by a health professional in which the treatment provided was below the standard that is expected. Medical negligence can be defined as breach of the duty of care by healthcare professional resulting into harm to patients which has significant legal and non-legal consequences. The incidences of medical negligence mostly go without any legal action leading to frustrating situation where public trust is completely lost on medical service providers. The study therefore examines the legal implications of medical negligence on patients within the Ugandan healthcare system. its explorers the extent to which patients are affected by negligent medical practices and analyses the adequacy of existing legal framework in addressing such issues. The research analyses landmark court cases, statutory provisions, which evaluate the role of informed consent and standard of care in legal proceedings. By assessing the intersection of law and medical ethics, the study highlights the importance of legal redress mechanisms for affected patients and the need for systematic reforms to minimize negligence and enhance patient safety. The findings reveal that while Uganda has legal provisions intended to protect patient's, enforcement remains limited. It further emphasizes the dual responsibility of the legal and medical systems in ensuring justice and promoting trust in healthcare delivery. There are also forms of medical negligence that were indicated in the findings. The study concludes with recommendations aimed at resolving or reducing the cases of medical negligence in health centers.

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CHAPTER ONE

1.0 INTRODUCTION

Medical negligence casts a shadow over the integrity of the healthcare system. The medical profession has been respected for its commitment to saving lives and alleviating suffering. Medical negligence is “a situation in which a medical professional such as a doctor fails to act according to the proper standard of care towards a patient when providing medical care and, treatment hence injuring the patient causing injury and violating their right to health”.¹ The first step in determining professional misconduct is proving the existence of a right, right was violated, and the defendant violated and this is indicated in the case of *Montgomery Vs Lanarkshire*²; “it is a known principle of law that states”, where there is a right, there is a remedy³. Medical negligence is an increasing public health concern amongst health care providers worldwide as it affects patient safety. “The most productive period of medical negligence research was 2011- 2020”.⁴ The World Health Organization (WHO) “was the first international instrument to recognized right to health and the constitution affirms the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, politics, economic or social condition”.⁵

Health care is not immune to mistakes and medical errors and can have devastating consequences, including permanent disability, loss of life, death and heavy healthcare costs⁶. In addition, the courts are seeing a surge in medical negligence cases, and the patients demand greater

¹ Isaac Christopher Lubogo, “the law on Professional Malpractice in Uganda, an appraisal on when and how to sue your medical practitioner, advocate, engineer and religious leader. First edition 2021, page 322.

² *Montgomery Vs Lanarkshire health Board* (2015) UKSC 11

³ *Montgomery Vs Lanarkshire Health Board* (2015) UKSC 11

⁴ Preamble of the World Health Organization Constitution

⁵ Preamble of the World Health Organization Constitution

⁶ An article of potential negative consequences of non-consented switch of inhaled medications and devices in asthma patients, Bjornsdottir, U.S, Gizurarson, S, Sabale, vol 67 of 2013.

accountability from hospitals for their failure to care for them. The case of Bolam V Friern hospital management committee⁷ developed the test for medical negligence by stating that a medical professional cannot be in breach of their duty of care if they acted in a manner that was in accordance with practices accepted as proper professionals with expertise in that particular area if this is established then it would not matter that there are others with expertise who disagreed with the practice.

Blyth V Birmingham⁸ defines medical negligence as an omission to do something that a reasonable man would do, doing something that a reasonable man would not do. The Black's Law Dictionary⁹ also defines medical negligence as the failure to exercise the standard of care that a reasonably prudent person would have exercised in similar situation. The Uganda Medical and Dental Practitioner's Council handles the cases of medical negligence. Some of the cases decided by the council include Ssentongo v Uganda Medical Dental Practitioners Council.¹⁰ The court held that the decision to ignore the report of NIC that cleared the applicant and demand that the applicant avail further proof of completion of the internship amounts to unfair treatment by an administrative body charged with a public duty. Another case decided is the CEHURD Vs Uganda National Health research organization¹¹, which indicated that courts have a role in addressing alleged rights violations related to health services and right to life.

The Uganda Medical and Dental Practitioner's Council was established in 1913, and the laws governing its mandate and functions have been revised from time to time the practice of medicine

⁷ Bolam Vs Friern Hospital Management Committee [1957] 1WLR583

⁸ Blyth Vs. Birmingham Water Works Co. (1856)11 Ex 781;156 ER 1047

⁹ Black's Law Dictionary, Bryan A.G Garner, 10th edition, page 1196

¹⁰ Ssentongo V Uganda Medical & Dental Practitioners Council & anor (Misc. Cause No.128 of 2016 [2016] UGHCCD 58 (14 October 2016)

¹¹ Center for health, human rights and development (CEHURD) and others Vs Uganda National Health Research Organization (UNHRO) and others (miscellaneous application 439 of 2019) [2023] UGHCCD 288 (29th September 2023)

and dentistry has advanced. The current parliamentary act that governs the council was promulgated in 1996 and is known as the “Uganda Medical and Dental Practitioners Act 11 of 1996”. “The council is a quasi-government professional organization established by an act of parliament responsible for licensing, monitoring, and regulating the practice of medicine in the country”.¹² Furthermore, “ the council is mandated by the Uganda Ministry of Health to carry out the following functions; to develop and maintain accurate registers for all physicians and surgeons, to develop and maintain accurate registers of all dental surgeons, to monitor how surgeons practice their work, to advise and educate the public on medical and dental matters”.¹³

“Health received 6.6% representing UGX 3,265.9 billion of the 2023/24 national budget, but donor funding comprises nearly 80% of resources”.¹⁴ The government is increasing public-private partnerships for health care investment where it contributes land; private investors build and operate a facility. the powers of the medical council include regulating medical practice, investigating and addressing complaints, promoting ethical standards and many others. The council committee members include the following: education and training committee, ethics and disciplinary committee, finance and administration committee, inspection quality, and research.

On the 29th /01/2016, “ the Uganda medical and Dental Practitioners Council delivered its decision in the maternal health case of the late Anguko Jennifer the petitioner lost her life at Arua Regional Referral Hospital in October 2010”.¹⁵ “After the death of the late Anguko, the Ministry of Health was moved by the woman MP to investigate the uncertain death and the decision of Uganda Medical and Dental Practitioners Council was that intervention to save the life of the late Anguko

¹² The Uganda Medical and Dental Practitioners Act of 1996

¹³ The Uganda Medical and Dental Practitioners Act of 1996

¹⁴ New vision. <https://www.newvision.co.ug>

¹⁵ Anguko Jennifer, Constitutional petition No 6 of 2011, CEHURD <https://www.cehurd.org>

was delayed, the midwife did not use the standards used to monitor the progress of an expectant mother, hospital administration failed to ensure the duty roster is available and known to staff, doctor was on call and didn't know he was on duty".¹⁶ The council's recommendations are adopted by the courts of law in that they are given as punishments to the doctors who have acted negligently in their duty.

Furthermore, the case of Kamwokya Medi Care Center which was decided by the Uganda Medical and Dental Practitioners Council where the patient (Mpumwire Doreen) went to the hospital to consult as to why she was not giving birth and on scanning results showed she had fibroids. After a few days, the patient started feeling pain in the stomach and went back to the facility for treatment. On 19th /01/2023, at this point, the doctor (Dr. Waigumba) said he was going to do a myomectomy and cystectomy on her, and the operation would unblock her tubes so that she could conceive normally. After the operation, the patient was responding well, but after a few days, her condition started deteriorating. She started complaining of pain in the chest, not going to the toilet, not being able to feed, and she started breathing.

When the complainant (Andrew Ikwap), husband of the patient, asked the nurses if they were sure of what they were doing, they assured them that the patient was being managed and would be fine. (Dr. Waigumba) told them to remove the oxygen, they started to resuscitate the patient, and after that, they said the patient was dead. the doctor took 40 minutes to write the medical notes, the certificate of death showed different causes of death. After the inquiry, an inspection was done by council members, and they observed the following; old unmodified residential building, olds ultrasound machine, the light was dim and had a small oxygen cylinder, two toilets separating male

¹⁶ Anguko Jennipher, Constitutional petition No 6 of 2011, CEHURD <https://www.cehurd.org>

and female, no medical records and no staff files, the medical officer who had no valid practicing license.

The council found that; the health facility, which was licensed as an outpatient clinic, was not suitable for this operation, it was ill-equipped to handle the magnitude of the operation, doctors were unqualified to do the surgery, Dr. Waigumba convicted the patient that he was a gynecologist, yet he was not; the nurses' observations were not documented in the patient's file. The recommendations include suspension from medical practice, re-apply for reinstatement on the register, and nurses referred to nurses and the midwifery council for disciplinary action.

1.1 BACKGROUND

“The idea of doctors being responsible for their actions dates back thousands of years and in ancient Greece, medical practitioners could be charged with murder for patient deaths, but there was no compensation for victims”.¹⁷ Still in ancient times, medical liability was often based on the patient's social position and the physician's capacity. The first recorded medical negligence case was Stratton Vs Swanlond, “where the surgeon tried to repair a woman's mangled hand, but after the surgery, she was still deformed, yet the surgeon said she could cure her”.¹⁸ the first malpractice case in the United States was in 1794 and in the mid-19th century, the number of medical negligence cases in the united states increased significantly. In 1970, big settlements led to states passing reform laws, and in 1980, dramatic malpractice cases led to sweeping legislation. In 2017, we see medical negligence today.

The concept of medical negligence stems from the locus classicus case of Donoghue Vs Stevenson “where courts affirmed the neighbor principle when Lord Atkin stated that ‘the rule that your to

¹⁷ <https://en.wikipedia.org>

¹⁸ Stratton Vs Swanlond (1374), Weiss &paarz, <https://www.weisspaarz.com>

love your neighbor becomes in law that you must not injure your neighbor?" who is then your neighbor?¹⁹ the answer is persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when am directing my mind to the acts or immersions which are called in question' hence therefore when a person fails to take reasonable care to avoid act or omission which injure the neighbor will result to negligence .

Medical doctors have a duty to provide treatment to their patients, and this should be in line with the medical standard of care a test was introduced in Bolam vs V FRIERN hospital management²⁰ where it stated that " a doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art and any health professional taking responsibility for treating a patient will thereby owe that patient a duty of care".²¹

Medical negligence is deemed to occur when a health professional, through a negligent act, falls below the standard of care accepted in the medical profession, hence causing injury to the patient. "Medical negligence occurs where a medical professional (1) owes a duty of care to the patient, (2) the care is breached, (3) the breach caused the injury, damage, or death, (4) the damage or death is a result of the breach of the duty and the patient must prove that it was due to the negligence of the medical worker that the injury happened."

In Uganda, there is not a comprehensively codified law governing medical negligence; however, there are pieces of legislation that try to address issues relating to medical negligence indirectly.

The courts of Uganda have addressed issues of medical negligence, as in the case of Sarah

¹⁹ Donoghue Vs Stevenson [1932] AC 562, [1932] UKHL 100, 1932 S.C (H.L) 31, 1932 S.L.T 317 , [1932] W.N.139

²⁰ Bolam Vs Friern Hospital Management Committee [1957]1 WLR 583

²¹ Bolam Vs Friern Hospital Management Committee [1957]1 WLR 583

Watsemwa and another Vs Attorney General of Uganda, “where the court stated that a doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care”.²²

Medical negligence is by omission or commission. omission is when you omit to do something, and it “ occurs when medical care providers fail to fulfill their professional obligations where every medical provider has a duty of care they owe to patients; if they don’t fulfill the duty of care, it may be considered as medical negligence, and this is seen in the case of Kimosho V Wakapita and 2 other²³ where the defendant negligently dispersed medical advice to the plaintiff but put her life and unborn child at risk, and on suing, they were awarded general damages, court held that to establish liability of a health worker, it must be shown that there was a deviation from normal practice, that the worker has not adopted the practice and cause adopted by the health worker is one that no professional skill person would have taken”.²⁴

Mangani V Registrar Trustees of Malamulo Hospital²⁵ where it was held that the defendant hospital and its medical personnel were liable for medical negligence on different accounts (1) the hospital denied the plaintiff her relatives from attending to her and promised that the hospital would provide nurses to monitor her 24-7 which they failed to do, (2) the night duty nurse slept, and she was called by the plaintiff the whole night while bleeding but she didn’t hear so the plaintiff fell in the bathroom hence damaging her ligaments, (3) the doctor who did he x-ray scan failed to detect that the plaintiff’s ligament was torn and was not treated in time thereby making the plaintiff

²² Sarah Watswemwa Goseltine Vs Attorney General of Uganda civil suit no 675 of 2006

²³ Kimosho Hellen V Wakapita, case medical center, Medical & Dental Practitioner’s Council civil suit no 385 of 2014, (2018) UG HCCD 71

²⁴ Kimosho Hellen V Wakapita, case medical center, Medical & Dental Practitioner’s Council civil suit no 385 of 2014, (2018) UG HCCD 71

²⁵ Mangani Vs Registrar Trustees of Malamulo Hospital [1996] MLR 486.

have permanently torn ligament which would have healed had the defendant given the right treatment.

In Uganda, the 1995²⁶ under objective xx of NODPSP²⁷ “provides that the state shall take all practicable measures to ensure the provision of basic medical services to the production and further, it guarantees the right to life under Article 22(1)”.²⁸ “The Ministry of Health is a key stakeholder with respect to health-related matters since it bridges the gap between the people and the medical profession and supervises both government and private facilities within the country”.²⁹

The health profession has many bodies that regulate the different medical professions; Clause 4³⁰ indicates that a practitioner shall not violate the human rights of the patient. The Nurses and Midwives Council Act cap 274 is “mandated to train, register, enroll, and discipline nurses and midwives of all categories in Uganda”.³¹ The allied health professional’s council is “mandated to regulate, supervise, and control allied health professionals when a violation of human rights with respect to health, particularly when medical negligence arises, complaints are to be addressed by these bodies”.³² In 2009, the Uganda patients charter was adopted “to raise the standard of health care, empower patients to responsibly demand good healthcare from health facilities and inform patients of their entitlement to appropriate healthcare”.³³

However, despite the above laws being in place, medical negligence in Uganda is an increasing public health concern among healthcare providers, which affects patient safety. According to a

²⁶ Constitution of the Republic of Uganda as amended 1995

²⁷ National objective and directive principles of state policy (XIV)

²⁸ Constitution of the republic of Uganda as amended

²⁹ Ministry of Health, <https://health.go.ug>

³⁰ Medical and dental practitioners Act cap 271

³¹ The Nurses and Midwives Act Cap 274

³² The Allied Health Professionals Act, Cap 268

³³ Ministry of Health Uganda, [https:// library. Health.go.ug](https://library.health.go.ug)

report by Center for Health, Human Rights and Development “where it indicates that Ugandans can sue health workers for medical negligence and offers a mechanism to demand accountability from the government as to how it is investing in social and economic rights”.³⁴

The World Health Organization Global Patient Action Plan 2021-2030 which aims and focuses on eliminating avoidable harm in healthcare, “has established that every year, large numbers of patients are harmed because of unsafe healthcare, creating a burden of death and disability worldwide, especially in low and middle-income countries, which greatly violates the patient’s right to life and access to health services”.³⁵

Studies have consistently shown that the quasi-disciplinary actions taken by the Uganda Medical and dental Practitioners Council against medical workers, warning the medical practitioners, putting them on probation, withdrawing their licenses, and de-registration are a lingering mockery to the victims of medical negligence is ineffective compared to the injury that the patients may have been subjected to.

There are different categories of patients include; children, adolescents, elderly, mentally ill patients, and sedated patients. Common law further recognizes that the only person capable of consenting to the medical treatment for a minor is the parent of the child, who should ensure that proper treatment is administered to the child.

A hospital cannot be held liable for the negligence of a doctor affiliated with the hospital unless the doctor is employed by the hospital. The hospital has also been immune in the past from liability however this has changed as the courts have confronted the evolution of the modern hospital. The

³⁴ A report by Center for Health, Human Rights and Development Civil suit No 111 of 2012

³⁵ The world health Organization Global Patient Action Plan 2021- 2030, <https://www.who.int>

hospital is independently liable only if it is negligent in its administrative and housekeeping functions, for example, causing a patient to slip and fall on a wet floor. The case of Nabbale and 2 others vs the Registered Trustees of Kampala Archdiocese “held that a doctor can be held guilty of medical negligence only when he falls sort of the standard of reasonable medical care”.³⁶

1.2 STATEMENT OF THE PROBLEM

The medical profession has continued to experience an increase in medical negligence cases and the legislation has not expressly made any law against medical negligence and as statistics shows that most incidences of wrongful death, wrong diagnosis go unreported. Medical negligence is a critical issue often leading to severe consequences to patients including injury, prolonged suffering and death. Furthermore, there are instances of unqualified or skilled doctors who lack the knowledge about the disease and they end up working on the patients which leads to gross mismanagement of the patient resulting to death. Despite the fact that the doctor has a duty of care to the patient, the doctor should be qualified enough and licensed so as to work on the patient and give correct dosage of the medicine. The legal implications of medical negligence are very significant as they determine liability, compensation and professional accountability.

Under funding and staffing of health facilities of government “health facilities are some of the attributes increasing medical negligence in Uganda, it has led to the low ratio of medical professionals to patients”.³⁷ This low ratio has made medical professionals work long hours and attend to a high number of patients, which subjects them to fatigue and prone to errors that may be regarded as negligence. The Uganda Medical and Dental Practitioner Council “ records over fifty complaints of medical negligence annually, and this goes ahead to show that medical negligence

³⁶ Nabbale and 2 others vs The Registered Trustees of Kampala Trustees of Kampala Archdiocese T/A St. Francis Hospital Nsambya (civil appeal 49 of 2021) [2024 UGHCCD 144 (6th September 2024) page 8

³⁷ Uganda Human Rights Commission ,14th annual report 2011 to the Parliament of the Republic of Uganda

is a reality in Uganda and more cases are increasing”.³⁸ “Services of the doctors are covered under the provisions of the Consumer Protection Act,1989, and the patient can seek redress of grievances from the consumer courts despite the fact that there is a lack of information as to the procedure to follow when lodging a complaint of medical negligence”.³⁹

Most developed health care systems have a doctor–nurse ratio of 1;2-⁴⁰5. the country`s health sector allocation is 8.9% of the national budget(2019/2020) health allocation in 2020/2021⁴¹ was 6%(2.7 billion) The problem of medical negligence is still on a rise and this is because there are unqualified doctors who give wrong dosage to the patients , poor documentation and record keeping which leads to wrong prescription of medicine resulting into death of the patient, there is failure to refer the patients to better health centers in case the hospital cannot handle the complication. Due to negligence, patients face long term effects, injuries and an example of a minor mistake causing long life effect is the Kenyan broadcast⁴² read as follows KNH management suspended the rights of a neurosurgery registrar for operating wrong patient. The doctors didn`t realize the mistake until hours into the surgery and realized there was no blood clot. After the patient passing through all this negligence and injury done to them, the patients are not compensated for the harm done.

Therefore, when there are weak legal or ineffective legal implications of medical negligence, this will lead to increased medical errors, lack of accountability, erosion of public trust and increased medical litigation. despite the legal frameworks, many patients face challenges in proving negligence due to complex legal procedures and lack of medical expertise. the study seeks to

³⁸ As per Dr. Katumbe Ssentogo, the registrar of the Uganda medical and Dental Practitioner

³⁹ The Consumer Protection Act ,1989

⁴⁰ The Uganda`s Budget for the Financial year 2019/ 2020, new direction, [https:// cristaladvocates.com](https://cristaladvocates.com)

⁴¹ The Uganda National Budget 2020/2021, david Rupiny, june 12 2020, <https://www.ugandainvest.go.ug>

⁴² [https://www.bbc.com/news/world – Africa-43255648](https://www.bbc.com/news/world-Africa-43255648) accessed on 31st December 2021

examine the legal implications of medical negligence focusing on the duty of care, breach of duty of care and damages.

1.3 OBJECTIVES OF THE STUDY

1.3.1 GENERAL OBJECTIVE

The general objective of the study is examining the legal implications of medical negligence among patients in Uganda.

1.3.2 SPECIFIC OBJECTIVES

The specific objectives of the study are:

1. To analyze the forms of medical negligence among patients in Uganda
2. To examine the legal implications of medical negligence among patients
3. To examine the legal framework of medical negligence among patients

1.4 RESEARCH QUESTIONS

1. What are the forms of medical negligence among patients?
2. What are the legal implications of medical negligence among patients?
3. What are the legal frameworks of medical negligence among patients?

1.5 SIGNIFICANCE OF THE STUDY

This research communicates to policymakers to make laws, amend existing ones to help curb down the problem relating policymakers to make laws, and amend existing ones to help solve the problem relating to medical negligence among patients. On the side of patients, the research speaks to patient safety and reduced harm; it also ensures appreciation of the magnitude of negligence, and this is through addressing the different forms of medical negligence. The study contributes to reduction in healthcare costs associated with treating preventable injuries and complications.

Furthermore, on the side of healthcare providers, the study promotes patient-centered care by encouraging healthcare providers to prioritize patient needs and well-being, and it also encourages healthcare providers to implement effective risk management strategies.

On the side of healthcare facilities, the study informs quality improvement initiatives leading to enhanced patient safety and care. The study informs quality improvement initiatives leading to enhanced patient safety and care. The study, through the legal implications, helps to caution medical workers to avoid negligence and provide patients with the right to claim compensation give sanctions on negligent doctors, which include; suspension, re-apply for reinstatement on the register, permanent erasure from the register, and this ensures the provision of quality health services.

1.6 JUSTIFICATION OF THE STUDY

The Uganda Human Rights Commission reported “the most patients who visited government hospitals complained of negligence and harassment from staff and the commission recommended that parliament make laws that comply with international standards on the right to health to combat negligent acts”.⁴³ There are very many unsafe practices happening to patients while in hospitals that violate their right to life. There are three goals of medical negligence legislation and litigation, which include deterring unsafe practices to patients, compensating persons, exacting corrective justice by creating accountability.⁴⁴ If the study was not carried out, there would be an increased death in the number of patients, hospitals with no equipment’s will continue to operate, unlicensed

⁴³ Uganda Human Rights Commission, <https://www.cehurd.org>

⁴⁴ Keeton WP, Dobbs DB, Keeton RE, Owens DG, Proseer and Keeton on the law of torts, 5th edition St Paul, Minn: West Publishing 1984

doctors could continue working on patients hence leading to gross mismanagement of the patient, and lastly falsification of the patient`s records would increase

The inadequacies in the current laws of Uganda have left the victims of medical negligence with no remedy for the injuries that they would have acquired in the hospitals. Furthermore, common law provides for compensation for negligence, but today, this is very difficult because the patients have to pass through a long court process (litigation), which is very expensive. At times, the compensation is lesser than the injuries acquired by the patient because some injuries are permanent injuries that may end up in death. Life can't be compensated with money that simply means that if a person dies, money can bring them back. This study aimed to evaluate whether the availability of medical records, the presence of better equipment, patient complaints and feedback, and expert testimony can actually address medical negligence among patients.

1.7 SCOPE OF THE STUDY

The scope of this study was limited to the conceptual scope, time scope, geographical scope

1.7.1 CONCEPTUAL SCOPE

The study examined the legal implications of medical negligence among patients in Uganda. The study also considered principles of medical negligence, medical ethics, medical consent, and duties of the state.

1.7.2 TEMPORAL (TIME BASED) SCOPE

Information used in this research was produced in the past years, beginning from 1957 to 2025.

1.7.3 GEOGRAPHICAL SCOPE

The study was limited to Uganda's situation area and undertaken with the aid of statutes, articles, and reports. The study covered public and private health centers in Uganda, and, draws reference to literature in other countries with a better approach to the topic.

1.8 HYPOTHESIS

Medical negligence has a significant legal implication for patients, including potential compensation claims, increased litigation rates, and impacts of healthcare standards, which influence both patient rights and medical practice regulations. For patients who experience medical negligence, there is a significant increase in the risk of long-term health complications. Therefore, the research came up with new solutions to address the gaps in law and different recommendations to address the issues in regard to medical negligence in Uganda.

1.9 DEFINITION OF THE TERMS

Negligence means “the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, doing something which a prudent and reasonable man would not do”.⁴⁵ The case established the reasonable person standard which is used to assess whether the person acted negligently or if a reasonable person acted differently than negligence may be established.

Medical negligence is “the act of omission which a reasonably competent medical practitioner guided by such medical knowledge and practice as is commonly known at the time and the place where he /she practices and guided by such other considerations which regulate the conduct of a

⁴⁵ Blyth Vs Birmingham waterworks company (1856) 11 Ex Ch 781, 156 ER 1047

reasonably competent medical practitioner doing something which a reasonably competent medical practitioner would not do”.⁴⁶

1.10 LITERATURE REVIEW

The research review discusses the options, findings from different authors, publications, magazines, websites, and all possible sources as a basis of foundation for the research study.

It is important to note that medical negligence is globally a discussed issue especially in the developing countries thus it is in an area of key concern within the judicial system. Many scholars, academicians, lawyers, researchers, judicial officers, non-government organizations and other related agencies have researched and written about this issue of medical negligence and possibly reported about it and I greatly recommend them on this initiative.

A lot of analysis has been made about the issue of medical negligence but minimal implementation has been done. this can be witnessed in the developing countries where many loop holes exist in the medical sector and this has given rise to medical negligence among the patients. therefore, this study focused on the legal implications of medical negligence among patients in Uganda.

Kumar L Basita ⁴⁷ defined medical negligence as “an act or omission by a health care provider which deviates from the accepted standards of practice in the medical community and which cause injury to the patient. Medical negligence is a predominant theory of liability concerning allegations of medical negligence and it has been a controversial issue since 1970⁴⁸. The concept of medical negligence developed from the English common law of tort, which aims at compensating a

⁴⁶ Bolam Vs Friern Hospital Management Committee (1957) 1 WLR 583

⁴⁷ Dr Lavesh Kumar (2011) medical negligence- meaning and scope in India. department of forensic medicine & toxicology, S B K S Medicine institute & R C Gujarat India, page 2 vol 51 No 1 issue 181, Jan – March 2011, <https://www.researchgate.net> (Monday 10th march 2025)

⁴⁸ West`s Encyclopedia of America Law (2nd edition), copyright 2008

claimant who has suffered pain and financial loss by suing a person in the wrong and this was developed in the case of *Donoghue v Steveson*⁴⁹ they defined medical negligence as the omission to do something a reasonable man would do, doing something which a reasonable man would not do. Medical negligence is the failure of a medical practitioner to provide care, which is expected in each case, hence resulting in injury or death of the patient.

Medical negligence can take different forms which include the following;

Surgical errors are mistakes during surgery, such as operating on the wrong body part and leaving instruments inside the patient, lead to injuries, which can result in death. Most operations in Uganda are successful, however, mistakes are made for example, the low ratio of a medical professional to patients has led to long hours of work of medical professionals which leads to fatigue and errors because they work on very many people⁵⁰. Where a doctor makes a mistake, this will result in negligence, common examples include wrong operation being performed, wrong body parts being operated on, and foreign objects being left in the body.

Medication errors can be through prescribing the wrong medication, incorrect dosage, or failing to check harmful drug interactions. These refer to preventable adverse injuries that occur during medical care, resulting in harm to the patient, and they can occur in hospitals, clinics, and physician offices. Examples of medical errors include prescribing the wrong medication, performing surgery on the wrong patient, administering the wrong dosage, leaving a surgical instrument inside a patient, and failing to monitor a patient`s condition. This can further be seen in the case of *Hellen Kimosho Vs Wakapita and 2 others*⁵¹ where the defendant negligently dispersed medical advice to

⁴⁹ *Donoghue V Stevenson* [1932] A.C 562, [1932] UKHL 100, 1932 S.C (H.L) 31,1932 S.L.T.317, [1932] W.N.139

⁵⁰ The Uganda Human Rights Commission, 14th Annual report 2011 to the parliament of the republic of Uganda

⁵¹ *Hellen Kimosho v Wakapita and 2 others* HCCS NO 385 OF 2014 [2018 UG HCCD 71]

the plaintiff but subsequently put her life and the unborn child at risk, they were awarded general damages. This is relevant because it brings out the responsibilities of medical practitioners and health care institutions in ensuring patient safety and adhering to professional standards.

Misdiagnosis or delayed diagnosis is a situation when a doctor fails to diagnose a condition correctly or delays leading to harm. This can be seen in my case study, where the doctors delayed referring the patient to a better hospital, which led to the death of the patient. When a medical practitioner fails to diagnose a medical condition or arrives at the wrong diagnosis, the patients can suffer harm as result, patients get the wrong dosage. One of the most common cases of Uganda v Namubiru Rosemary, where the accused was a senior nurse who pricked herself with a needle and then injected the same needle, yet she was HIV positive and was sentenced to three years' imprisonment. Summarily, the case is very relevant to the study because it clearly brings out the aspect of misdiagnosis on the side of the nurse nurse's side.

Failure to obtain informed consent is where a health worker fails to obtain a patient's informed consent before performing a medical treatment or test. It is a fundamental principle that ensures patients are fully aware of the risks, benefits and alternatives of a proposed treatment. The elements of informed consent include the healthcare provider must disclose all relevant information about the treatment including the risks, the patient must make a voluntary decision free from duress, patient must have capacity to make informed decision. If a doctor doesn't obtain consent from the patient, this leads to a loss of trust between the patient and healthcare provider, patient harm, especially If the patient is not aware of the risks, and patients may sue the healthcare providers if they fail to obtain informed consent.

Birth injuries. Negligence during childbirth leads to injury for the mother or baby, such as improper use of forceps or failure to perform a C-section when necessary. This can see in the case of the

Kabito Vs Attorney General “where proper medication and attention were not given to the deceased, who bled and died while in labor, and failure by the defendant workers to provide lifesaving blood and equipment left the deceased to bleed and die”.⁵² According to the researcher, the case is very relevant to the study because if the medical care providers had provided standard health care to the woman, she wouldn’t have died with her baby, since pregnant women require a lot of care during delivery, which was not rendered to her. About 7 birth injuries occur for every 1,000 children in the United States, and examples of the birth injuries include; cephalohematoma, cerebral palsy, brain damage, shoulder dystocia, spinal cord injuries, and stillbirth. In Uganda there are perinatal death rate of 38% per 1000 births.

Hospital acquired infections are diseases patients acquire during their stay in a hospital or other healthcare facility, which can be caused by bacteria, viruses, fungi, and poor hygiene. examples include urinary tract infections, pneumonia, clostridioides difficile and norovirus infections. However, they can be prevented through proper cleaning and disinfection, antibiotic stewardship, use of personal protective equipment, and hand hygiene. Furthermore, the medical personnel have adopted a bad habit of spreading diseases to the patients by using one needle for more than one person. This is unprofessional and leads to the spread of HIV/AIDS. In Uganda V Nambiru Rosemary⁵³ “ the accused was a senior nurse who pricked herself with a needle and then injected with the same needle, yet she was HIV Positive and was sentenced to three years imprisonment”.⁵⁴ According to the researcher, the case is very applicable to the research because the mother took the baby to the hospital for treatment without any infections but due to the negligence of the nurse, the nurse infected the baby with AIDS.

⁵² Kabito vs Attorney General HCS 26 of 2012 [2019 UG HCCD 197]

⁵³ Uganda v Namubiru Rosemary [HCT- 00- CR-0050- 2014]

⁵⁴ Uganda v Namubiru Rosemary [HCT-00-CR-0050-2014]

The legal implications of medical negligence among patients

Medical malpractice lawsuits which indicate that all medical professionals, doctors, nurses and other health care providers are responsible for health care and safety of their patients and are expected to provide a high level quality care but unfortunately, “ medical professionals and health care providers can fail in this responsibility to their patients by not giving them proper care and attention, acting maliciously or providing substandard care thus causing complications personal injuries or death”.⁵⁵ therefore professionals providing care to patients are equally responsible for providing due care to their patients. And in case of negligence on their part, they be charged with medical negligence by the patients. Furthermore, “ patients are authorized to receive good medical treatment during their course of treatment, hence any negligence can be charged”.⁵⁶

Patients can sue healthcare providers for medical malpractice to seek compensation for damages. The elements of a malpractice claim include the following; duty of care (the healthcare provider had a duty to treat the patient with care) , breach of duty of care (the provider failed to meet the standard of care), causation (the negligence directly caused harm), damages(the patient suffered injury, loss, death).a person who alleges negligence must prove that the duty of care was owed by the medical practitioners , the practitioners violated the applicable standard of care, the person suffered injury and the injury was caused proximately due to standard conduct. Therefore, “ a breach of duty of care gives the patient a right to initiate action against negligence”.⁵⁷ To sue a hospital, the patient needs to consult with the attorney, gather evidence, file a complaint. Conclusively therefore, patients who suffer harm due to negligent medical care have the right to

⁵⁵ Sweta s Agrwal &Swapnil, medical negligence- Hospital's responsibility

⁵⁶ Medical negligence and liability, a critical review in present legal regime in Siri Lanka, proceedings of 8th edition international research conference, published November 2015

⁵⁷ K K K S R, Murthy, medical negligence and the law, India journal of medical ethics, Vol no.3(2007) p-116

seek legal redress through the courts and they aim to compensate the victim for damages incurred including punitive damages, compensatory damages.

Criminal liability of health care provider is another legal implication of medical negligence. In extreme cases, medical negligence can lead to criminal prosecution. When a health care `s actions are reckless, neglectful or intentionally harm they may face criminal charges such as manslaughter, fraud. If a patient dies due to gross negligence, the provider can be charged with medical manslaughter which may lead to imprisonment. Furthermore, doctors may face criminal charges for falsifying medical records, prescribing unnecessary procedures, covering up mistakes. The doctors can also fail to treat patients which can worsen the patient`s condition and lead to death and this error often occurs when patients are discharged too soon and not monitored adequately, when physicians refuse to treat patients due to financial constraints. According to the survey about 16% of medical malpractice lawsuits are filed due to physicians `s failure to provide proper treatment to the patients and this come out to be a legal implication of medical negligence among patients. The case of state Maharashtra v Dr Praful⁵⁸ which indicated that doctors can be criminally liable for medical negligence if their actions cause death. According to the researcher this case is very significant because it clearly brings out the extent a medical doctor can be held liable for medical negligence if the actions cause death.

The other implication of medical negligence is regulatory action. When negligent practices are carried out by the doctor, nurses and the patients are affected due to their negligence, the medical board looks into these matters. Medical professionals are subject to regulation by medical licensing boards. when a case of medical negligence is reported, these bodies may conduct investigations

⁵⁸ State of Maharashtra Vs Dr. Praful B Desai (2003)

about the machines available, valid licenses for the doctors, the facility has medical records of all patients, availability of nurses to take care of the patients, and after all these findings may take disciplinary actions. The disciplinary actions include suspension of the license, revocation of the license which may prevent the health worker from working for some time.

The case of Kamwokya Medi care center⁵⁹, council found out that, there was also very poor documentation and medical record keeping, falsification of the patient`s records, failure to refer the patient to a better health center which would handle the matter. Other disciplinary measures include fines and sanctions which may require the medical practitioner to go for additional training to ensure the practitioner meets the professional standards. A negligent medical doctor may be placed under strict supervision or undergo further training before resuming practice. This can be seen in the case Patel Vs Medical Board of Australia ⁶⁰ where the surgeon (Dr Jayant) was responsible for multiple patient deaths due to botched surgeries which resulted into his license to be revoked and criminal charges filed against him. This clearly brings out the regulatory action that was put against the surgeon.

Patient rights and advocacy. Article 12(2) provides “ the steps to be taken to be taken by the state parties to ensure the full realization of the right to health and they include the prevention and treatment of epidemic diseases, improvement of all aspects of hygiene”.⁶¹ The state shall follow principles of fulfill, protect and respect human rights. the state violates the obligation to fulfill human rights where it fails to enact, adopt necessary legal and policy frameworks for realization of the right of health. When patients suffer harm due to substandard medical care, they are entitled

⁵⁹ In the matter of an inquiry into alleged medical negligence if the medical personnel (Dr Richard, Dr James and Dr Odonkara Andrew) of Kamwokya Medi Center leading to the death of Mpumwire Doreen Ikwap

⁶⁰ Patel Vs The medical board of Australia (2005-2010), Australian associated press, Friday 15th may 2015 02.53 BST, [https:// www.the-guardian.com](https://www.the-guardian.com), Monday 10th March 2025

⁶¹ International Convention on Economic, Social, Cultural rights

to legal protection and representation. Article 12⁶² provides “ that state parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure equality of men and women in excess of health care services like family planning”.⁶³

Furthermore, the case of Christopher Mutikila vs. the Attorney General of Tanzania provides “that fundamental rights and freedom of the individuals are inherent by birth and not granted by the state”.⁶⁴ Medical negligent cases highlight gaps in healthcare systems, prompting stronger patient rights and advocacy to ensure accountability. patient rights are fundamental principles that ensure individuals receive safe, ethical and quality medical care and some of these rights include; right to safe and quality health care, right to informed consent, right to privacy. furthermore, patients have the right to informed consent including right to be informed about treatment options, risks.

Healthcare providers should maintain confidentiality and privacy. they must comply with HIPAA regulations, including maintaining patient confidentiality and protecting patient health information. Patients have a right to privacy including the right to control who has access to their medical information. This can be seen in the case Bryne Vs Avery Center for obstetrics and⁶⁵ gynecology where a medical clinic provided a patient`s records to a third party without consent hence breached patient confidentiality in medical records. These principles build trust between healthcare providers and patients, encourage open communication and uphold ethical and legal standards in medical practice. Patients have a right to decide who can access their health data, right to receive treatment in a private and respectful manner, protection of their medical records. there are circumstances under which a client`s information may be disclosed which include where a

⁶² The convention on the elimination of all Forms of Discrimination against women

⁶³ The convention on the elimination of All Forms of Discrimination against women

⁶⁴ Christopher Mutikila v Attorney General of Tanzania Ref no 2 of 2007

⁶⁵ Emily Bryne Vs Avert center for Obstetrics and Gynecology, PC. (SC 1987), Rogers C.J and Palmer, Mc Donald, Robinson and d`auria, law.justia.com, [https :// law.justia.com](https://law.justia.com)

client threatens to harm another, when patient consents to sharing information, where information is shared to members who need information for continuity of care and when disclosure is allowed by law.⁶⁶

Medical record keeping is an important aspect as well. Health care providers must maintain accurate and complete medical records including documentation of diagnoses, treatment and medications. They must keep records for a specified period, as required by law. Based on my case study, the scanty medical records do not provide evidence that there was post-operative monitoring of the patients, as stated by the nurses, they did vital signs but didn't record them exhibiting ignorance of the importance of the proper clinical documentation. In *Hughton Vs Mid Essex Hospital services NHS trust*⁶⁷ stated that failure to keep accurate records and document can lead to complications of patient's health. Proper records help in diagnosing, treating and preventing medical errors in the health sector.

Informed consent means a patient's voluntary and informed agreement to a medical procedure, based on clear understanding of its nature, purpose and potential risks. Whereas "patient was not informed of possible consequences of a course of treatment and would have declined the medical treatment had proper information been provided in advance".⁶⁸ Furthermore, the case of *Montgomery v Lanarkshire Health Board* became a landmark case "in consolidating the law on standard of care of doctors with regard to duty on disclosure of information to patients on the risks of proposed treatment and possible alternatives".⁶⁹ Doctors are now obliged to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended

⁶⁶ An article "keeping secrets: the health worker's duty of Confidentiality, updated 23rd April 2024, www.ausmed.com, Monday 10th March 2025

⁶⁷ *Hughton Vs Mid Essex Hospital Services Nhs Trust* (2015) UK

⁶⁸ Larson A, *Medical malpractice law* (retrieved 13th December, 2017)

⁶⁹ UK Supreme court. *Montgomery (appellant v Lanarkshire health board UKSC, 2015*

treatment .the supreme court of the United Kingdom decided in 2018⁷⁰ the duty of care extended to information given to patients by medical staff and this highly commendable since it clears all would be loopholes for claims under medical negligence since patients and their care takers shall be aware on steps being taken during times of administering medical services.

1.11 RESEARCH DESIGN

A research design is a strategy or plan to answer a set of question.⁷¹A research design refers to overall that a researcher chooses to integrate the different components of the study in a logical way thereby ensuring the research problem is addressed. The study applied explanatory- analytical research design through documents, articles analysis, legal analysis of the different laws and policies.

1.13 METHODOLOGY

There are two types of research method which include qualitative research method and quantitative research method. Examples of the qualitative research method include interviews, focus groups, observational research, case studies, ethnography, content analysis and narrative research. Examples of quantitative include surveys and questioners, experiments, observational studies, existing data analysis.

Therefore, this research method is mainly the quantitative research method since it is premised in the existing data analysis and the decided cases. The existing data analysis applied in the patient doctor relationship and also the estimated budget for the health sector which is 6.6% representing 3265.9 billion. The decided cases include Donoghue Vs Stevenson.⁷²

⁷⁰ Health service journal ,11th October 2018, retrived on 12th November 2018

⁷¹ McCombes, 2019

⁷² Donoghue Vs Stevenson [1932] AC 562

This research refers to the research approach that involves collecting and analyzing data from existing sources such as books, articles, reports, online resources. The researcher utilized the library for research and access to published information and decided cases.

1.14 CHAPTER SYNOPSIS

Chapter one covered the introduction of medical negligence among patients, background, problem statement, objectives, scope of the study, hypothesis, justification, significance, methodology, it also reviews the available literature

Chapter two established the non-legal aspects of the subject matter

Chapter three established the legal regime governing

Chapter four included a summary of the findings, conclusions, and recommendations.

In conclusion, chapter one indicated the background of medical negligence and where it originated from, the situations where a medical professional falls below the standard of care they were held negligent. Negligence has greatly increased in different countries which has led to the death of people, injuries and criminal cases in the courts of law. Due to this the patients have to prove the negligence in the courts of law and they have to be compensated in one way or another. There are recommendations that have been established in order to curb medical negligence in the health sector.

CHAPTER TWO

NON LEGAL ASPECT/ FRAME WORK OF MEDICAL NEGLIGENCE

2.0 INTRODUCTION

This chapter contains the non-legal implications of medical negligence among patients in Uganda. It also entails the causes of medical negligence. It provides an insight on the concept of medical negligence, need to address medical negligence, Ubuntu principles, and other principles that help determine the non-legal issues. Medical negligence carries a multitude of consequences beyond the courtroom and the implications encompass physical, emotional, psychological, social and economic dimensions of a patient's life. Therefore, the non-legal issues of medical negligence among patients handled in this chapter include physical harm and disability, decline in public confidence and trust in the medical system, huge financial hardship on patients and their families, decline in public confidence in Uganda health institutions, negative consequences on medical workers, increased case backlog in medical bodies, violation of the ethical code of conduct, family breakup, decline in physician and patient relationship , emotional trauma and medical negligence acts .

The concept of medical negligence can be traced back to the code of Hammurabi which is an extensive document from ancient Mesopotamia which states that if the doctor has treated a patient, he should be rewarded. If a physician has performed a serious operation on the eye of a gentleman with the scalpel and has saved him the eye, then should receive a reward 10 silver shekels.⁷³ Therefore, “ if it is a common citizen the doctor`s fee is to be 5 shekels and if it is a slave, the

⁷³ Article 218 of the Code of Hammurabi translated by L. W. King, Yale law School, Lillian Goldman Law Library in the memory of Sol Goldman 127 Wall Street, New Haven, CT 06511, Avalon Project Documents in the History and Diplomacy, Avalon.law.yale.edu, <https://avalon.law.yale.edu>

master of the slave is to pay the doctor 2 silver shekels”.⁷⁴ Furthermore, “the basic principle of penal law in the Hammurabi Code was the principle of lex talionis and an eye for eye, tooth for tooth, limb for limb was the penalty for assault upon an amelu”.⁷⁵

Medical negligence means “ more than heedless or careless conduct , whether in omission or commission, it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing”.⁷⁶ Medical negligence comes under law of tort , when professional intends to violate legal duty established by law.⁷⁷ According to settle-malpractice lawyers, the most common errors in medical negligence include surgical errors, failure to diagnose, birth injuries, medication errors and premature discharge.⁷⁸

2.1 FACTORS THAT DETERMINE MEDICAL NEGLIGENCE

2.1.1 Duty of care

Duty of care refers “to the standard of behavior which imposes restrictions on one`s conduct. ⁷⁹

Though a doctor may not in position to save the patient`s life all the time, he is expected to use his

⁷⁴ Article 221 and 223 of the Code of Hammurabi translated by L W King, Yale law school, Lillian Goldman Law Library in the memory of Sol Goldman 127 Wall Street, New Haven, CT 06511, Avalon Project, Documents in History and Diplomacy, [Avalon.law.yale.edu](https://avalon.law.yale.edu), <https://avalon.law.yale.edu>

⁷⁵ Babylonian Law – The Code of Hammurabi by Rev Claude Hermann Walter Johns, M.A. Litt. D. from the 11th Edition of the Encyclopedia Britannica, 1990-191, Yale Law School, Lillian Goldman Law Library in the memory of Sol Goldman, 127 Wall Street, New Haven, CT 06511, Avalon Project, Documents in the History and Diplomacy, <https://avalon.law.yale.edu>

⁷⁶ The law of medical negligence and compensation, covering the rights and liabilities under the Consumer Protection Act, 1986 by R.K. Bag, MA, LLB Assistant Director (Law) Sardar Vallabhai Patel National Police Academy ,Hyderabad published and processed in 1996 by EASTERN LAW HOUSE PRIVATE LIMITED.⁵⁴ Ganesh chunder Avenue Calcutta 700 013 email alh@cal.vsnl.net.in, first editionJuly 1996, first reprintOctober 1996, second reprint ...October 1998, Part A Chapter one page 3

⁷⁷ Understanding medical negligence and litigation, basic for the medical professional, by Dr. T Thirumoorthy, Singapore Medical Association SMA News February 2011, Page 12, <https://news.sma.org.sg>

⁷⁸ Top causes of Medical Malpractice –The Tinker Law Firm ,20th July 2017 <https://seattlemalpracticelawyers.com>

⁷⁹ Spouses Fredelicto Flores(deceased) and Felicisima Flores v Spouses Dominador Pineda and Virginia Saclolo and Florencio Candida, Marta, Godofredo, Blatazar and Luecena G.R. No 1518996, 571SCRA 83, Republic of the Philippines, November 14th 2008, lawphil.net, <https://lawphil.net>

special knowledge, keeping the interest of the patient who has been entrusted to him”.⁸⁰ Once the medical professional- patient relationship is established, the doctor owes the patient a duty of care and treatment with that skill, care expected of a reasonably competent doctor. “ The general principle forming the basis of duty of care enunciated by Lord Atkin in *Donoghue v Stevenson*⁸¹ known as the neighbor test expanding the scope of tortious liability”. Who then is my neighbor and the answer is a neighbor seems to be a person who are closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.⁸²

2.1.2 Standard of duty of care

Standard of care is established in the case of *Lanphier v Phipos* which “ indicates that every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of skill and care, hence if a person holds himself out as possessing special skill and knowledge, he owes a duty to the patient to use due caution in understanding the treatment”.⁸³ Doctor can only be held guilty of medical negligence only when he falls short of the standard of reasonable care and this can be seen in the case of *Dr Subramanyam Vs Dr. Krishina*⁸⁴, where the complainants contended that Dr. Krishina was negligent when he delayed endoscopic Sclerotherapy and excessively transferred blood which led to cardiac complications due to fluid overload.

⁸⁰ Medical Negligence; coverage of the profession, duties, ethics, case law, and enlightened defense: legal perspective M.S. Pandit and Shobha Pandit Indiana Journal 2009 July –sept, corporate Advocates 5th Floor, Mantri Kishore Park, Bhosale Nagar Pune 411 007, India, accessed on 23rd April 2025

⁸¹ *Donoghue v Stevenson* [1932] AC 562: 147 LT 281: [1932] All ER Rep 1: 1932 SL 317 HL

⁸² The law of medical negligence and compensation, covering the rights and liabilities under the Consumer Protection Act, 1986 by R.K. Bag, MA, LLB Assistant Director (Law) Sardar Vallabhai Patel National Police Academy, Hyderabad published and processed in 1996 by EASTERN LAW HOUSE PRIVATE LIMITED.54 Ganesh Chunder Avenue Calcutta 700 013 email alh@cal.vsnl.net.in, first edition July 1996, first reprint October 1996, second reprint ...October 1998, chapter 2, page 12

⁸³ *Lanphier vs Phipos* (1838) 8 C &P 475 AT 478

⁸⁴ *Dr. Subramanyam and another Vs Dr. B Krishna Rao and Anor* 11(1996)233 (NC), 21st June 1993

2.1.3 Breach of duty of care

For breach of duty to occur, it must have been the direct or proximate cause of the loss, injury. To show deviation from duty of care, one must show there was a normal practice, medical professional adopted the practice, medical professional adopted a practice that no skilled person would have taken which led to injury. “Every medical provider has a duty of care they owe to patients and if they don’t fulfill the duty of care, it may be considered as medical negligence and this can be seen in the case of *Kimosho v Wakapita and 2 others* where it indicated that to establish liability of a health worker, it must be shown that there was deviation from the normal practice, that the medical worker has not adopted the practice and the course adopted by the health worker is one that no professional of ordinary skill would have taken”.⁸⁵ *Mangani v The Registered Trustees of Malamulo Hospital*⁸⁶ where court held that doctors have a moral duty of care not only to save life but also to prolong the life of the patient who came to them for treatment. For negligence to arise there must have been a breach of duty. Breach of duty must have been the direct or proximate cause of the loss, injury and damage. “The breach of duty is one equal to the level of a reasonable and competent health worker and to show deviation from duty, one must prove that; it was a normal practice, that a health worker has not adopted that practice, that the health worker instead adopted a practice that no professional or ordinary skilled person would have taken”.⁸⁷

Furthermore, a medical professional is not negligent if he or she has acted in accordance with the practice of a skilled man and woman in that field or particular act.⁸⁸ The case of *Freda Kasaira v Registered Trustees*⁸⁹ indicated that the hospital staff failed to exercise the requisite standard of

⁸⁵ *Kimosho Hellen v Wakapita*, Case Medical Center, Medical & Dental Practitioners Council civil suit No 385 of 2014

⁸⁶ *Mangani V the Registered Trustees of Malamulo hospital* [1996] MLR 486

⁸⁷ *Nabbale and 2 others V the Registered Trustees of Kampala Archdiocese T/A St Francis Hospital Nsambya* (civil Appeal a49 of 2021) [2024] UGHCCD 144 (6 September 2024) Page 7

⁸⁸ *Bolam V Friern hospital Management Committee* [1957] 1 WLR 582

⁸⁹ *Freda kasaira and 5 others V the Registered Trusteed of Nebbi Catholic Diocese* civil suit no.0020 of (2016)

care expected in the medical profession when they administered improper anesthesia, failure to ensure a consistent oxygen supply, inadequate monitoring which later led to the death of the patient. Furthermore, the case of *Kabito Telesphorus v Attorney General*⁹⁰ indicated that if a person holds himself out as possessing medical special skills, knowledge and he is consulted by the patient, he owes a duty to the patient in understanding the treatment.

2.1.4 Causation

This is the relationship that must be found to exist between the acts of the doctor and the damage, injury or loss to the patient in order to justify a cause of action for negligence, patient must prove that the breach caused patient to suffer damage. The general test for causation is that, injury would not have occurred but for the negligence of the doctor, injury occurred. “This can be seen in the case of *McGhee Vs National Coal Board* which indicated that liability may be imposed if established that the negligence of the defendant materially increased the risk of harm which was sufficient to establish causation”.⁹¹

2.2 CAUSES OF MEDICAL NEGLIGENCE

2.2.1 Medical errors

This is incorrect dosage and combination that can cause harm to the patient. Patients may accidentally be administered wrong dosage or treatment that are meant for them, this is the most common medical negligence suit. This may arise out of doctor’s lack of knowledge. The light of present knowledge as to possibly tragic consequences of the administration of drugs to pregnant women, holding as to foreseeability in previous cases should serve as a warning to doctors when prescribing medicine to women and conditions unknown to them. ⁹²Hence the liability against the

⁹⁰ *Kabito Telesphorus v Attorney General, Dr Kwikiriza Nicholas & the Medical Superintendent* HCT-01-CV- CS-026 of 2012

⁹¹ *McGhee vs National Coal Board* (1972) 3 ALL ER 1008 AT 1011

⁹² Meyer 1963, A Dialectal remedy for the unborn child, *Eat African law journal* 449.

doctor must be established that the doctor had acted below the standards of a reasonable doctor in some circumstances.

2.2.2 Failure to obtain informed consent from patient

Patients have a right to make informed consent about their own health care. This helps to choose whether the patients should undergo certain procedures or not. consent can also be made by the next of kin in emergency situations, patients incapacitated to speak or the doctor may proceed without consent.

2.2.3 Failure to give prompt attention

Doctors or nurses must take their time to examine or attend to a patient. a patient may report to the hospital in the morning but will be attended to after 3 hours. This can clearly be seen in *Kabito Teleshorus v Attorney General* where the deceased arrived at the hospital at 3:00pm and was taken to the theater at 5:00pm, being a high risk patient she should have been worked on with emergency. Therefore , “the deceased later died due to lack of proper medical attention, failure to provide lifesaving blood by the defendant, leaving the deceased to bleed which led to her death”.⁹³

2.2.4 Poor moral due to poor pay

Due to lower pay of medical workers, they tend to punish the patients instead, by striking and deliberately not performing their duties. for example, a midwife may decide to ignore a woman in her labor pains until she bleeds and dies or a doctor may decide to perform surgery poorly. In November 2017, doctors in Uganda went on strike demanding better pay and working conditions particularly in public health facilities.⁹⁴

⁹³ *Kabiito Telesphous v Attorney General, Dr Kwikiriza Nicholas, The Medical Superintendent Fort Portal Referral Hospital HCT -01- CV- CS -026 OF 2012*

⁹⁴ Ugandan doctor`s strike paralyzes hospitals by Alex Gitta, 11th September 2017, <https://www.the-guardian.com>, 9th November 2017

2.2.5 Inadequate medical staff and unskilled staff

Some medical staff are unqualified thus end up messing when administering treatment to patients. Sometimes there are too few healthcare workers which leads to overwork, long patient waits times and rushed care. This will eventually lead to increased workload, higher rates of medical errors and delays in surgeries.

2.2.6 Inadequate medical facilities in hospitals

“Ministry of health recommits to ensure the right medicines of good quality are available in all health facilities when needed”. Availability of essential medicines in public facilities has increased to 75% in the last five years, this means that most health facilities are out of stock of medicines for two weeks out of eight weeks’ delivery cycle.

2.3 THE NEED TO ADDRESS MEDICAL NEGLIGENCE

The need for medical negligence is intended to serve the purpose of compensation for injury, accountability and foster patient safety. It is an avenue through which health care professionals may be accountable for their actions in court. Secondly, it helps ensure that professionals maintain a high standard of care since they fear paying out money once they have been successfully sued for poor practice. If the patient wins the case, he or she receives damages for compensation and this is done to exercise fairness on the side of the patient that suffer a result of medical negligence.

2.3.1 Compensation

Compensation has principles of equity that is fairness and efficiency which is to the effect that one who is liable for any injury should bear the costs and risks including medical bills, lost earnings

and suffering. For example, in the case where a lady lost the baby, Fatumah was given compensation of 50 million.⁹⁵

2.3.2 Accountability for actions

A patient's prime decision to sue is largely based on the patient's dissatisfaction. Medical professional and interpersonal skills, law suits deter medical profession from negligent acts and omission in performance of their tasks.

2.4 MORAL PRINCIPLES THAT SHOULD BE FOLLOWED

It would not be wrong to say that every moral obligation involves a legal duty but every legal duty is founded on moral obligation.⁹⁶ The conduct of medical professionals is not only regulated by various provisions in law, it is also informed and regulated by ethical guidance. Medical negligence refers to fundamental moral principles which govern the way in which we practice medicine.⁹⁷ There are principles that should be followed in regards to the non-legal aspect of medical negligence.

2.4.1 Respect for individual autonomy

Respect for individual autonomy speaks to the issues of confidentiality, informed consent, truth telling and communication and this is because the principle is about one's own life to make one's decision. The principle also requires that medical practitioners act positively to ensure that the patient is able to exercise the autonomy to the extent van der Reyden says health practitioners must enable effective exercise of patient autonomy.⁹⁸ Medical practitioner should know which patients

⁹⁵ Cehurd and Nakayima v the Executive Director, Mulago National Referral Hospital and Attorney General Misc Cause No 327 of 2016

⁹⁶ R vs Instan [1893] 1 QB AT 543

⁹⁷ Medical Ethics (1959) 5(8), The Central African Journal of Medicine 427, Vol 5 No .8 August 1959 by Maurice Davidson, published online 1st August 1959, <https://hdl.handle.net/10520/AJA00089176>; 5546, Page 424, <https://journals.co.za> accessed on 23rd April 2025

⁹⁸ Respect for patient autonomy, by K Moodley medical Ethics law and human rights, A southern perspective (2017), published in SADJ, 1st September 2003, accessed on 23rd April 2025, <https://pubmed.ncbi.nlm.nih.gov>

are not autonomous because of their age and wellbeing or group of patients who lack autonomy are those who have suicidal ideation, extreme psychiatric illness and infants. Court found that in order to give effect to patient's autonomy, medical doctor had to warn them of the risks involved and should obtain consent.⁹⁹

2.4.2 Rights of patients to make their decisions

In *Roe v Wade*¹⁰⁰ which legalized abortion based on women's rights to privacy and recognized a woman's decision whether to terminate a pregnancy as a fundamental personal liberty. *Rogers v Whitaker*¹⁰¹ where a woman was blinded in one eye and when she asked about the risk of the surgery on her other eye, the doctor failed to disclose the risk which led to total blindness, therefore failure to warn the patients results into medical negligence. The landmark case of *Montgomery v Lanarkshire health board*¹⁰² indicated that an adult person of sound mind is entitled to decide of the available forms of treatment to undergo therefore doctors must ensure that patients are aware of any material risk involved in a proposed treatment and of any reasonable alternatives if any. In conclusion therefore, patients have a right to make their own decisions about medical treatment based on full and honest information.

2.4.3 Beneficence

Beneficence means the act of doing good, showing kindness or promoting wellbeing of others, it is mostly used in ethics, medicine and philosophy to describe actions that benefit others for example helping those in need or making decisions that improve people's lives. In the health

⁹⁹ *Castell vs De Greef* 1994(4) S A 408 © at 409, A976/92, Cape Provincial Division, April 8th 1993, February 17th 1994, page 1

¹⁰⁰ *Jane Roe v Henry Wade*, District attorney of Dallas Country 410 U.S. 113(more 93) S. Ct.705; 35L.Ed.2d 147; (1973, U.S) LEXIS 159

¹⁰¹ *Rogers v Whitaker* High court of Australia 19th November 1992, (1992) 175 CLR 479;(1992)109 ALR 625; (1992)67 ALJR 47; (1992) 109 ALR 625; (1992) 67 ALJR 47 ;(1992) Aust torts reports 81 – 189 page 2

¹⁰² *Montgomery v Lanarkshire Health Board* [2015] UKSC 11

sector, beneficence means acting in a manner which will benefit the patient. According to Childress the principle provides support for various forms of obligations such as protecting and defending the rights of others, prevent harm to occur to others, remove conditions that will cause harm.¹⁰³ All medical professionals have a duty to avoid harm and provide beneficial treatment to patients and in order to ensure harm is minimized, doctors must do good.¹⁰⁴ This can be done by complete keeping of medical records, ensuring doctors have good medical training in order to have knowledge of the developments in their field. Therefore, failure to follow beneficence may lead to harm. The case of Bolam v Friern Hospital¹⁰⁵ which indicated that if a doctor acted in what they believed to be best interest of the patient, based on accepted medical standards, they may not be negligent even if harm occurred. Furthermore, in the case of Montgomery v Lanarkshire Health Board¹⁰⁶ which reinforced that acting in patient's best interest cannot override their right to make informed choices, beneficence must be exercised alongside respect for autonomy.

2.4.4 Non maleficence

This is a principle in ethics and medicine that means "do no harm" and requires individuals especially healthcare professionals to avoid actions that could cause unnecessary harm or suffering to others. It helps in guiding decisions to minimize risks and prevent harm while providing care. Childress outlines five rules of non-maleficence that the medical professional needs to adhere to, which include do not cause pain, don't incapacitate others and don't deprive others of goods of

¹⁰³ Beauchamp and Childress, The Four Principles of Bioethics by Douglas J. Burks, Ph.D., Department of Biology, Wilmington College of Ohio, <http://ifedayoadekeye.blogspot.com/2016/01/patient> -autonomy -fundamental -right of html, page 6, <https://www.uc.edu>, accessed on 22nd April 2025

¹⁰⁴ Beauchamp and Childress, The Four Principles of Bioethics by Douglas J. Burks, Ph.D., Department of Biology, Wilmington College of Ohio, <http://ifedayoadekeye.blogspot.com/2016/01/patient> -autonomy -fundamental -right of html, page 6, <https://www.uc.edu>, accessed on 22nd April 2025

¹⁰⁵ Bolam v Friern Hospital Management Committee [1957] 1 WLR 583

¹⁰⁶ Montgomery v Lanarkshire Health Board [2015] UKSC 11

life.¹⁰⁷ Most medical professional “have risks and benefits are of a greater proportion, as long as the medical personnel ensures that proposed treatment has benefits which outweigh the harm”.¹⁰⁸ Refusing to provide an emergency blood transfusion to patient for reasons which are not medically justified would be in contravention of the principle of do not harm.¹⁰⁹ Were an error is made the medical profession should disclose it in a meaningful manner, as the patient may feel angry or annoyed and in such circumstance an apology is necessary as it will help maintain the patient-doctor relationship.¹¹⁰ This principle can be seen in the case of *Barnett v Chelsea & hospital*¹¹¹ that stated even though the hospital breached its duty of care by turning the patients away, court found that the patients would have died hence medical practitioners must not ignore patients in need – non maleficence includes timely attention.

2.4.5 Justice

Justice must be in line with the law and fair.¹¹² There are obligation which “ include respect for morally acceptable laws, respect for people1 rights, fair distribution of limited resources”. Its aim is to ensure that there is access to quality, affordable personal healthcare services for the people. every patient has a right to emergency treatment, however failure to provide emergency treatment to patients may result into violation to the distribution of justice. There are instances where the medical professional may choose expensive treatment over affordable treatment on the side of the

¹⁰⁷ Beauchamp and Childress, the four Principles of Bioethics by Douglas J. Burks, PH.D. , Department of Biology Wilmington College of Ohio, <https://www.pinterest.com/pin/547398529690437577>, page 5, <https://www.uc.edu>, accessed on 22nd April 2025

¹⁰⁸ *Medicine, Patients and the Law* (2016), by Margaret Brazier Emma Cave & Rob Heywood, published August 2016, publisher Manchester University Press, 6th Edition, <https://manchesteruniversitypress.co.uk>

¹⁰⁹ *May doctors for religious reasons refuse to give patients’ blood transfusions under any circumstances* (2019) 82 THRHR 481 by W Freedman

¹¹⁰ *Disclosure of medical errors: physicians, knowledge, attitudes and practices (KAP) in an oncology center* by Razan Mansour, Khawlah Ammar, Amal AI Tabba Thalia Arawi, Asem Manour & Maysa AI-Hussaini, published 20th August 2020, BMC Medical Ethics 21, article number 74, page 1

¹¹¹ *Barnett v Chelsea & Kensington Hospital Management Committee* (1969)

¹¹² *Medical Ethics, law and human rights: A South African Perspective* 2nd edition (2017) 200, 0627034667, 2017, by K Moodey,

patient which hinders their right to access to equal treatment of the patient. The case of Agarwal v Jp Agarwal¹¹³ where justice was observed by holding medical professionals accountable for their actions. Furthermore, the case of Donoghue v Stevenson¹¹⁴ which emphasized fairness and justice by holding that manufacturers owe a duty of care to those who could reasonably be affected by their actions.

2.4.6 Humanity

Humanity is “quality we owe to each other, we create each other and need to sustain this otherness creation and if we belong to each other, we participate in our creation we are because you are, and since you are definitely I am. to be human is to affirm one’s humanity by recognizing the humanity of others and establish respectful human relations with them”. Therefore, medical professionals should be more human to the patients and treat them with equality and fairness and prevent discriminating on them basing on their age, gender, sex, culture and religion. Humanity can be seen in the case of Schloendorff v Society of New York Hospital which “ highlighted the importance of respecting human dignity of the patient by upholding their right to make decisions about their own body. it also emphasized that human beings should not be treated as objects for medical intervention but advocate the importance of respecting a patient’s autonomy and humanity in medical context”.¹¹⁵

2.5 INTERCONNECTEDNESS / THE PRINCIPLES OF UBUNTU

In addition, therefore, if a person is faced with a decision between wealth and the preservation of life of another person, then one should opt for preservation of life. Life is very important to every citizen of Uganda. If a patient goes to hospital, the medical practitioner should use his skill and

¹¹³ Agwarwal v Dr J.P Agarwal (1999) India

¹¹⁴ Donoghue v Stevenson (1932, UKHL)

¹¹⁵ Schloendorff v Society of New York hospital (1914, U.S)

care to save the patient's life as well as acting in regards with the standard acting procedures. The Ubuntu Principle provides for some principles as well that should be followed in regards to medical negligence.

2.5.1 Caring for the other

This highlights the ethical and moral responsibilities of the healthcare professionals and emphasizes the duty to provide compassionate, patient –centered care while recognizing the interconnectedness of humanity.(1) Ubuntu encourages healthcare workers to see patients as part of a shared community ensuring they receive proper attention,(2) accountability means acknowledging mistakes and taking corrective action in case of negligence,(3) fair redress through restorative justice like apologizing, making amends,(4) the holistic approach is more than treating illness and involves caring for the patients emotional, spiritual and psychological needs. The aspect of caring for each other can be seen in the case of *Bolam v Friern Hospital Committee*¹¹⁶ which emphasized that caring for patients involves adhering to recognized medical practices and medical practitioners must show mutual concern for their patients by ensuring patients well-being. Pregnant women can be cared for by providing mama kits to them during delivery, the requires drugs, antenatal care (aims to ensure the health and well-being of both the mother and the unborn child) Therefore caring for each other is a very important aspect in life as well as in medical negligence among patients in Uganda.

2.5.2 Common justice

Common justice refers to the fundamental principles of fairness, equity and reasonableness in addressing claims of malpractice. It ensures that claims are evaluated based on evidence, expert opinions, legal standard rather than excessive punishments. It further ensures that patients receive

¹¹⁶ *Bolam V friern hospital management committee* (1957, UK)

fair compensation, healthcare professionals are held accountable and legal proceedings are fair. Common justice can be seen in the case of *Donoghue v Stevenson*¹¹⁷ which established the neighbor principle where the defendant owed a duty of care to anyone who could be foreseeably affected by their actions. Justice must apply to all individuals and if harm occurs due to negligence, injured party has a right to seek justice. Therefore, common is a very clear aspect under the non-legal issues of medical negligence among patients.

2.5.3 Shared dignity

Shared dignity refers to the ethical and principle that both patients and healthcare providers should be treated with respect, fairness and humanity throughout the process. It ensures that medical professionals should be given a fair opportunity to defend their actions or be unfairly blamed, encourage a system where accountability is enforced without unnecessary damage to the reputation of the healthcare professionals and ensure respect of the patients.

2.5.4 Common humanity

Emphasizes the shared dignity, rights and responsibilities of all people regardless of the nationality, race, background. It promotes (1) interconnectedness which means all humans are fundamentally connected and what affects one part of the world can impact others, (2) encourages empathy or compassion among the patients (3) global responsibility helps in advocating for collective action in addressing global issues like poverty, healthcare, human rights (4) ensures that all patients access basic needs and fair treatment.

2.5.5 Communal responsiveness

Communal responsiveness is the collective responsibility of society, healthcare institutions and legal systems in ensuring accountability, patient's safety and ethical malpractice. It emphasizes (1)

¹¹⁷ *Donoghue v Stevenson* (1932, UKHL)

community awareness which educates the public about medical rights, patient safety (2) institutional accountability where hospitals and medical organizations must respond proactively to cases of negligence, implementing better training (3) legal and ethical responsibility should clearly address medical negligence claims, balancing justice for patients while protecting healthcare workers.

2.5.6 Harmony in human relationship

Harmony in human relationship refers to maintaining mutual respect, fairness, ethical responsibility among patients, healthcare providers, legal institutions when addressing medical errors. It emphasizes that (1) patient –centered approach which acknowledges the suffering of affected patients while maintaining dignity for medical professionals (2) system improvement which encourages teamwork to prevent future negligence and enhance patient safety(3) respectful communication which include open, honest dialogue between patients and medical professional to seek solutions (4) balanced accountability ensures healthcare providers take responsibility for errors while preventing unfair blame.

However, there are social economic effects of negligence which include the following; unnecessary expenditure, further complications and worsening of patient conditions, high mortality rate and worsening patient doctor relationship. Unnecessary expenditure refers to additional costs incurred as a result of a healthcare provider`s mistake or failure to provide appropriate care and they can arise from corrective treatments, extended hospital stays, legal fees, home medication, transportation or accommodation and psychological impact. High mortality rate refers to the increased number of deaths resulting from preventable medical errors, improper treatment, failure to provide timely care and factors that cause high mortality rate include delayed diagnosis, surgical errors and birth injuries.

2.6 THE NON LEGAL ISSUES OF MEDICAL NEGLIGENCE

Medical negligence has profound non legal implications that impact patient's healthcare professionals and healthcare system at large. Beyond courtrooms, the non-legal issues of medical negligence include; physical harm and disability, huge financial strain on patients and their families, decline in public trust, negative impacts on medical workers, increased case backlog, decline in physician and patient relationship, violation of ethical code of conduct, family breakups, medical negligence acts.

2.6.1 Physical harm and disability

Physical harm and disability among patients are one of the non-legal issues that result from medical negligence among patients. surgical errors, negligence in treatment, misdiagnosis or delayed treatment can lead to lifelong conditions. Poor hygiene and wrong medication can worsen patient's health. Patients who suffer from surgical mishaps or severe medical errors may develop post-traumatic stress disorder (PTSD) and this led to mistrust of victims due to the after events of the medication. Patients who experience botched treatments may suffer from mental health disorders. This can be seen in the case of Sarah Watsemwa & Anor v Attorney General¹¹⁸ where Mulago Hospital breached their duty of care during child birth resulting the child developing cerebral palsy and epilepsy due to complications at birth. In Hellen Kimosho v Wakapita¹¹⁹ where the first defendant negligently and lawfully prescribed methotrexate which led to suffer a miscarriage at an early stage of pregnancy. Court awarded her twenty million shillings for the pain, suffering and inconveniences of a miscarriage in early pregnancy.¹²⁰

¹¹⁸Sarah Watsemwa & anor v Attorney General civil suit no 675 of 2006

¹¹⁹ Hellen Kimosho V Wakapita, Case medical Center & Medical and Dental Practitioners Council civil suit No.385 of 2014

¹²⁰ Hellen Kimosho V Wakapita, case medical Center & Medical and Dental Practitioners Council civil suit No 385 of 2014

2.6.2 Huge financial strain on patients and their families

Medical negligence imposes a huge financial strain on patients and their families. This is because the victims require prolonged hospital stays, corrective surgeries and specialized treatment which is very costly. Some patients travel outside Uganda to seek for better medical services due to lack of trust of the local facilities that might have been negligent in providing services to them. There are effects medical negligence which include that patients who become disabled develop chronic illnesses which leads to lose of work hence reducing household income. In cases where negligence leads to death, families struggle with funeral and burial costs adding to their financial distress. This can be seen in the case of *Center for health, human rights and development and 4 others v Nakaseke district local administration* where a mother sued the hospital after her newborn child died due to negligence, she incurred huge medical costs and emotional trauma because she had carried the baby for nine months ,only for the baby to die at the hospital.¹²¹ Summarily huge financial strain is another non legal issue that comes as a result of medical negligence among patients in Uganda.

2.6.3 Decline in public confidence and trust

Decline in public confidence in Uganda's health care institutions is another non legal issue of medical negligence. Many Ugandans avoid hospitals due to fear of negligence hence they opt for self-medication or herbal remedies. Most patients travel to Kenya, Rwanda for specialized medical care due the perception that Ugandan hospitals are unsafe. There is a gap between the rich and the poor patients this includes that the rich individuals prefer private hospitals while the poor patients are left with substandard care. Doctors owe a duty of care to their patients but due to the increased cases of medical negligence, the public has lost trust in the healthcare institutions of Uganda. “ If

¹²¹ *Center for Health, human rights and development and 4 others v Nakaseke District Local Administration* civil suit No 111 of 2012

a person holds himself out as possessing special skill and knowledge, by and on behalf of a patient, he owes a duty to the patient to use caution in undertaking the treatment hence the jury should not exact the highest standard nor should they be content with a very low standard”.¹²² Patients can also lose trust due to misdiagnosis by the medical personnel which may affect the patients’ health. In *Crinon Vs Barnet Group Hospital*¹²³ where “ there was wrong diagnosis, it is one of those misadventures and chances that life holds for people”.

2.6.4 Negative impacts on medical workers

Negative impact on medical workers can be another non legal issue of medical negligence among patients. Medical staff suffer from job insecurity and reputational damage in case medical negligence has occurred. This makes many doctors overly cautious, working slowly on patients because they fear making mistakes while working on patients which will result into them losing their jobs. Uganda’s health workers face a high patient load, understaffing, poor working conditions leading to stress and fatigue for example you might find one doctor working on over 100 patients in a day, this is very risky because doctors are human beings who get tired and can make errors due to fatigue. In spite of the doctors over working, they are paid less salary, delayed salary and due to all these bad working conditions, many are forced to go overseas where they will be appreciated which leaves Uganda in a medical crisis. In *Roe Vs Minister of Health*¹²⁴ where two patients suffered injury as a result of the injection of a contaminated spinal anesthetic drawn from cracked ampoules and court held there was no negligence on the part of the anesthetic and the hospital would have been held liable.

¹²² *R Vs Bateman* (1925) 19 Cr App R 8

¹²³ *Crinon Vs Barnett Group Hospital Management Committee* (1959) 19th November

¹²⁴ *Roe vs Minister of Health*, [1954]2 QB 66

2.6.5 Increased case backlog

Medical negligence has increased case backlog in medical bodies which has exposed their weaknesses in Uganda`s healthcare infrastructure. The Uganda Medical and Dental Practitioners Council has over 50 unresolved¹²⁵ negligence cases due to limited funding and bureaucracy. In 2020 over 60 doctors and 4 hospitals were under investigation for medical negligence. There has been hesitation of foreign investors to fund medical projects due to high risk of medical lawsuits.

2.6.6 Decline in physician and patient relationship

The maintenance of professional standard of conduct depends largely on the doctor`s own internal sense of professional obligation and on the willingness of the profession to enforce standards of conduct on its members. The bolam test clearly explains this in the case of Bolam v Friern Hospital Management where court held “ that the standard of care to be applied to medical practitioners was to be determined by a reasonable body within the medical profession”.¹²⁶ The patient – physician relationship is established immediately the patient walks into the health center and the doctor listens or works on the patient .The doctor owes “ a duty of care to the patient , to give the right dosage of medicine in order to preserve the patient`s right to life and the medical practitioner is liable only if his conduct fell below that of the standard of reasonable competent practitioner in his field. However, there are situations where a physician cannot be held liable”. Therefore, there is a decline in the physician and patient relationship due to the following reasons (1) physicians often face heavy workloads and limited time per patient due to institutional pressures and insurance models, hence this shortens the consultation times and reducing opportunities for meaning full dialogue. They also start working in the morning and end at night, hence results into wrong diagnosis, because they are also human and prone to mistakes. (2) commercialization of the

¹²⁵ In August 2024 by Flavia Nassaka, ugandaradionetwork.net

¹²⁶ Bolam vs Friern Hospital Management Committee (1957) 2 ALLER 118.

healthcare which reduces patients to data points rather than individuals with unique needs and experiences. (3) language barrier can lead to decline in physician and patient relationship and this is because the doctors use English only to communicate and prescribe the medicine which affects an old woman in the village who can't read and write hence, she will end up taking over dose or under dose. (4) electronic health record which makes it hard for the doctors to clearly listen to the patient's problem, since the doctor's attention is diverted away from the direct patient care because he is entering in data in the system.

2.6.7 Violation of the Ethical code of conduct

Medical negligence raises ethical questions about the value of human life and the responsibility of the healthcare professionals which results into a no legal issue. Negligence contradicts the Hippocratic Oath which requires to do harm, there is a lot of harm done to patients because some healthcare providers prefer profit over patient care especially in private hospitals. Subsequently the Hippocratic Oath was adopted by many western countries as a basis of western philosophy of medicine and this became necessary because doctors use skills and knowledge which many people don't possess in their practice to heal diseases, alleviate pain or suffering and prolong life. They exercise great influences over the people who are ill and vulnerable and come to them in dependent positions and not as equals.¹²⁷ In addition to the Hippocratic Oath it states that I will not give a lethal drug to anyone if I am asked nor will I advise such a plan or give a woman a pessary to cause an abortion and secondly, into whatever homes I go, I will enter them for the benefit of the sick, avoiding any voluntary act of impropriety or corruption, including the seduction of women or men

¹²⁷ Greek Medicine – The Hippocratic Oath, 19th July 2022 at 11:21am, history of medicine division National Library of Medicine, National institute of health, last published 7th February 2012
<https://www.nlm.nih.gov/hmd/greek/greek-oath.html> Page 1, <https://www.congress.gov>

,whether they are free men or slaves.¹²⁸ Ethical codes of conduct help medical personal to behave well and act in the best interest of their patients . Despite the fact that there are ethical codes of conduct, medical personnel have continuously violated the ethical codes of conduct and indulged in unlawful acts such as taking sexual advantage of their patients, taking bribes, negligence in treatment, failure to find them at the work station during working hours. Such acts have in turn compromised the lives and health of patients in Uganda hence violating the ethical code of conduct. Therefore, patients who experience medical negligence and unlawful acts often feel disrespected and helpless or some other patients die in waiting rooms or left unattended to further degrading healthcare.¹²⁹ . Therefore, violation of the ethical code of conduct comes as a result of medical negligence among patients and yet the ethical code of conduct ought to be respected.

2.6.8 Family breakups

Family breakups is another non legal issue that comes as a result of medical negligence among patients. Medical negligence has led to family breakups due to stress of losing a loved one, children whose parents suffer disability may drop out of school. furthermore, cases of medical negligence receive widespread media attention leading to public protests and debates on the healthcare reform. This can be seen in the famous case CEHARD v Nakyima Fatuma¹³⁰ where Fatuma went to give birth at Mulago Hospital and the baby went missing. But before delivery Fatuma was given a full dosage before measuring her weight. “This made Fatuma to suffer terrible psychological torture which affected her well-being and was a violation of her right to health because all her efforts to secure her baby after delivery dead, alive were futile. The civil division of the high court ordered

¹²⁸ Greek Medicine – The Hippocratic Oath, 19th July 2022 at 11: 21 am, history of medicine division National Library of Medicine, National Institute of Health, last published 7th February 2012, <https://www.nig.gov/hmd/greek/-oath.html> page 1, <https://www.congress.gov>

¹²⁹ Joyce Nakacwa v Attorney General [2002] UGCC 1 Constitutional petition no 2 of 2001

¹³⁰ CEHURD v Nakyima Fatuma and director of Mulago Referral hospital

Mulago Hospital to pay 50 million to 47-year-old woman as compensation for psychological torture and trauma suffered when she lost her baby”.¹³¹

2.6.9 Medical negligence actions

There has been an increase in the volume of medical negligence actions in Uganda as compared to the past decades and this has been attributed to the existence of growing compensation awareness in the minds of the public. Other authors have attributed this to the increase in patient expectations and greater transparency in medical decision making leading to the demystification of medicine which has made it easy for patients to take legal actions against doctors, health care professionals and medical institutions. This can be seen in the case of Rosemary Namubiru vs Uganda¹³² where the actions of the nurse of using the same cannula that she used to prick herself to prick the baby and yet she was HIV Positive amount to negligence of the health worker. According to a report by the officials of the Aids Support Organization, about 15,445 mothers with HIV/AIDS endured nasty experiences at the hands of their partners and health personnel.¹³³ The cases that have come forward have implicated the behavior of nurses towards expectant mothers by mishandling their babies and cases of doctors leaving swabs in patients after caesarean operations. There was a pregnant woman who was admitted to the hospital due to obstructed labor condition, but did not receive the appropriate medical care and attention owing to the absence of the doctor on duty to attend to her and manage the condition and the birth of the child so she died

¹³¹ A report by CEHURD social justice in health ,[market women get justice after seven years] <https://www.cehurd.org>

¹³² Rosemary Namubiru vs Uganda HCT 00-CR-CN-0050-2014(Arising from Buganda Road Court Criminal case no 23 of 2014)

¹³³ Uganda: Mulago staff can do better on HIV, 28th March 2006, <https://allafrica.com>, The Aids Support Organization

in the labor ward, despite the fact that she was assessed by the midwives on duty who made the diagnosis of obstruct labor pains. General damages of thirty five million shillings were awarded.¹³⁴

Conclusively, chapter two has highlighted the non-legal issues, that include family breakups, mistrust of the patients, increases case backlog, psychological torture and distress as discussed, physical harm and disability, huge financial strain on patients and their families, negative impacts on medical workers, decline in physician and patient relationship and violation of the ethical code of conduct. These non-legal issues affect patients, healthcare professionals and the broader medical system. Addressing these non-legal aspects is essential for fostering a culture of safety, compassion and continuous improvement in healthcare ensuring patients well-being remains priority.

¹³⁴ CEHURD and 4 others v Nakaseke District Local Administration civil suit No 111 of 2012 by Afya Na Haki, august 22, 2023

CHAPTER THREE

LEGAL FRAMEWORK

3.0 INTRODUCTION

This chapter discusses the inspection the legal framework in dealing with medical negligence in Uganda. The legal framework relating to medical negligence in Uganda is enshrined in different laws and policies and over the years, Uganda`s Ministry of health appeared to have focused more on geographical and financial access to health services, but little emphasis has been put on the quality of health services provided.¹³⁵ These laws are found in national instruments, international and regional instruments, public health bodies. The national instruments include the Constitution of Uganda, the Penal Code Act Cap 120, the Civil Procedure Act Cap 282, the Uganda Medical and Dental Practitioners Act 272, the Nurses and Midwives Act Cap 274, the Allied Health Professional Council, and the Pharmacy and Drug Act.

The international instruments include the Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration on Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disability, and the Convention on the Rights of the Child. The regional instruments include the African Charter on Human and People`s Rights (ACHPR), Optional Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), Treaty for Establishment of the East African Community 1999 and public health bodies include; the second National Health Policy 2010, Uganda National Health Laboratory Services Policy 2009, and the pharmaceutical society of Uganda.

¹³⁵ Report on the Review of the health policies and laws relevant to the establishment of the health professions authority in Uganda, Dr. Emmanuel Kasimbazi (Senior Legal Assistant) Dr. Paul Kabwa (Senior Health Consultant), July, 2013, Uganda Medical and Dental Practitioners Act Cap 274, <https://umdpc.go.ug>, viewed on 28th April 2025

In Uganda, medical practitioners “owe a duty of care to their patients, necessitating adherence to established medical standards. A breach of this duty, resulting in patient’s harm constitutes medical negligence”. The standard of care is evaluated based on what a reasonably competent medical professional would do under similar circumstances. The test for liability in medical negligence can be seen in *Bolam v Friern Hospital Management Committee*, “where the test for determining the standard of care owed by medical professional’s states that a medical professional cannot be held in breach of their duty of care if they acted in a manner that was in accordance with practices accepted as proper by professionals with expertise in that particular area”. Furthermore, the case of *Bolitho v City and Hackney* stated that “the Bolam test should include a proviso that practice accepted as proper by a responsible body of professionals must be based on logical and defensive grounds”.¹³⁶

3.1 NATIONAL LEGAL FRAMEWORK

3.1.1 The Constitution of the Republic of Uganda 1995

The constitution is the supreme law /mother law in the country thus any other law inconsistent to the provisions is null and void.¹³⁷ The legal framework is scattered in different laws and policies. These include the 1995 constitution which provides for the fundamental rights and freedoms of all individuals as inherent and is to be respected, upheld and promoted by all organs and agencies of the government and by all persons.¹³⁸ This also included the right to health and thus calling upon the medical professionals to critically observe the rights of patients in all aspects.

¹³⁶ *Bolitho v City and Hackney Health Authority* [1998] AC 232

¹³⁷ Article 2(2) of the Constitution of Republic of Uganda, 1995 as Amended

¹³⁸ Article 20 of the Constitution of Republic of Uganda, 1995 as Amended

Article 22 guarantees the right to life. “ No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellant court or no person shall have the right to terminate the life of an unborn child except as may be authorized by law”.¹³⁹ For example ,where Susan and her codefendant were both sentenced to death where the court found it as a violation of human rights.¹⁴⁰ Therefore Article 22(1) recognizes death penalty as an exception to the enjoyment of the right to life. In some states, they require doctors to participate in these executions i.e. use of lethal injections and if a doctor administers the lethal injection negligently, questions may arise about medical negligence in carrying out the death penalty. Also, it is important to note that the right to life is included on the list of the non derogable rights under Article 44 hence right to life (article 22) is a non –derogable and must be respected at all times even during national emergencies or states of war.

Article 22(1) allows deprivation of life only if it follows a fair trial, issued by a competent court, criminal offence, penalty is death. However, government may justify it as a way to deter serious crimes and maintain public order, claiming it upholds justice and protects society. Executing dangerous criminals ensures they cannot harm others, in some societies like Uganda the population still supports the death penalty especially for offences like aggravated murder. To a greater extent the death penalty violates the right to life especially as human rights are meant to be universal and inalienable, judicial systems can make mistakes and if someone has been sentenced to death and new evidence is brought then the cannot be brought back to life, no conclusive evidence has shown the death penalty deters crime, it is a form of torture and violates international human rights and

¹³⁹ Article 22 of the Constitution of Republic of Uganda, 1995 as Amended

¹⁴⁰ Susan Kigula & 416 others v Attorney General (constitutional Petition No.6 of 2003) [2005] UGCC 8(10 June 2005)

lastly it may be applied only to the poor who cannot afford quality legal defense. According to the researcher, life is very important to every human being and can only be taken away through lawful judicial processes and not through incompetence, errors, neglect of medical professionals in hospitals. Therefore, death from medical negligence amounts to constitutional violation of the right of life under Article 22(1) which results into compensation claims and improved hospital conditions.

Article 22(2) provides that no person has the right to terminate the life of an unborn child except as maybe authorized by law.¹⁴¹ The clause recognizes the right to life of the unborn baby which shows that abortion is not a constitutional right in Uganda unless permitted by law. Abortion is the medical termination of pregnancy typically before the fetus is viable outside the womb. It can be induced through medication or surgical procedures. Some states legalized abortion while others don't legalize abortion and these include Uganda. Roe v Wade, the court legalized abortion, ruling that the Constitution protects a woman's right to choose to have an abortion under the right to privacy.¹⁴² However, this decision was overturned in Dobbs v Jackson Women's Health Organization when it held that the Constitution does not confer abortion and the authority is returned to the individual states.¹⁴³ If a healthcare provider performs an abortion negligently, for example, using improper methods, misdiagnosing gestation age, which leads to infection or death, the healthcare provider may be sued for medical negligence. In situations where the abortion is unsafe, illegal, and results in death, criminal charges may apply under statutes for gross negligence.

¹⁴¹ Article 22(2) of Constitution of Republic of Uganda. 1995 as Amended

¹⁴² Roe v Wade (1973)

¹⁴³ Dobbs v Jackson Women's Health Organization (2022)

Furthermore, in situations where a doctor fails to detect an ectopic pregnancy during an abortion consultation, leading to rupture or severe harm, this may lead to a negligence lawsuit. In *Simpson v United States*, a woman died following a legal abortion performed at a federally funded clinic and court found that improper post-operative care contributed to her death and the government was liable.¹⁴⁴

According to the researcher, abortion is illegal in Uganda and violates the right to life of the unborn child under Article 22 of the Constitution and in situations where it has been carried out negligently, the doctors will be held liable under the law. Abortion is illegal except when performed to save the life or preserve the health of the mother and medical personnel who performs abortion outside these exceptions may be liable under criminal law. However, suppose a medical professional fails to terminate a pregnancy when it is medically necessary to save the mother's life. In that case, that may be deemed as medical negligence and the Uganda Medical and Dental Practitioners Council can take action against the healthcare provider.¹⁴⁵

If a patient's death results from negligent medical care for example misdiagnosis, surgical error and delayed treatment, it may be argued that their right to life has been unlawfully deprived and such a death isn't intentional but preventable hence unjustifiable under the constitution. Negligence can lead to state liability since the state has a duty to protect life under Article 22 and failure to ensure competent care may lead to dereliction of constitutional duty. In addition, a person affected by medical negligence can cite Article 22 in constitutional or civil suits claiming that the state or healthcare provider breached a fundamental right. Article 22 can be invoked in disciplinary

¹⁴⁴ *Simpson v United States* (1974) USA

¹⁴⁵ Savita Halappanavar – Ireland (2012) 9th September 1981-28th October 2012, <https://en.wikipedia.org>

proceedings against negligent health workers, reinforcing the gravity of their role in preserving life and this can be seen in the case of *Watsemwa and another v Attorney General*¹⁴⁶

Furthermore Objective XIV directs all organs of the state to fulfill the fundamental rights of all Ugandans to social justice and economic development including health services that is to say basic minimum standard to put in place for the enjoyment of right to health and the essence of the above articles is to prevent willful loss of life including abortion or medical negligence.¹⁴⁷ “All developmental efforts are directed at ensuring the minimum social and cultural wellbeing of people and all Ugandans enjoy rights and opportunities, access to education, health services, clean water, shelter, clothing, food security and retirement benefit”. Courts in Uganda have referenced the National Objectives in interpreting substantive rights such as right to life, right to dignity and equality before the law.

In *Musiimenta Jennifer v Mulago hospital*, where the lady gave birth to a child, but the child disappeared, and the hospital failed to account for the baby, which subjected them to psychological torture, so the court indirectly applied principles of state duty and accountability in healthcare delivery, aligning with Objective XIV.¹⁴⁸ Therefore, Objective XIV guides the formulation of health regulations such as standards of licensing, patient care, and medical accountability; hence, failure to comply can increase liability in negligence claims.

The principle legislation informing health and law in Uganda is found in the Constitution of the Republic of Uganda which is the National objectives and directive principle of the state policy

¹⁴⁶ *Sarah Watsemwa Goseltine and Baby David Goseltine (through Sarah Watsemwa Goseltine Mother and next friend) v Attorney General of Uganda Civil Suit No 675 of 2005*

¹⁴⁷ Objective XIV of National Objective and Directive Principles of State Policy -1995 Constitution of the Republic of Uganda

¹⁴⁸ *Jennifer Musiimenta and Michael Mubangizi v Mulago Hospital (2017)*, released on Tuesday 22nd March 2021, <https://www.cehurd.org>

under Objective XIV provides that “ the state shall ensure that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work , decent shelter, adequate clothing, food security and pension retirement benefit”.¹⁴⁹ This is to ensure that the patients in the country get quality and adequate health services. Health and the law has seen a slow but sure growth in the courts of law where courts have set precedent in several cases such as Joyce Nakacwa v Attorney General which was unfortunately not heard on its merits.¹⁵⁰ The case of Baby David v Attorney General discusses “ medical negligence which contributes to death, damage, injury of patients”.¹⁵¹ Therefore when filing a civil suit for medical negligence, citing Objective XIV helps demonstrate the broader duty of care owed by government or its agents.

National Objectives and Directive Principles of State Policy under objective XX expresses the state`s commitment to take all practical measures to ensure the provision of basic medical services to the population.¹⁵² This will increase the life expectancy, reduce health inequalities, and increase trust and stability in the health institutions. The state is also enjoined to protect the family as the natural basic unit of society.¹⁵³

This is an essential provision since the country cannot sustain families when women are dying of avoidable maternal causes.¹⁵⁴ Therefore, Objective XX serves as a constitutional guideline for interpreting legal duties in healthcare delivery and strengthens arguments in cases involving

¹⁴⁹ Objective XIV National Objective and Directive Principles of State Policy -1995 Constitution of the Republic of Uganda

¹⁵⁰ Joyce Nakacwa v Attorney General [2002] UGCC 1; Constitutional Petition No.2 of 2001

¹⁵¹ Baby David Goseltine and another v Attorney General High Court Civil Suit No 675 of 2006

¹⁵² Objective XX of National Objective and Directive Principles of State Policy – 1995 Constitution of the Republic of Uganda

¹⁵³ Objective IX of National Objective and Directive Principles of State Policy -1995 Constitution of the Republic of Uganda

¹⁵⁴ Barriers to the Protection of Rural Women`s Right to Maternal Health Care in Uganda by Twinomugisha Ben K, 2005, Periodical - East African Journal of Peace and Human Rights, Volume 11, Issue 1, Page 67-92

medical negligence. It also affirms that the state has a constitutional duty to ensure access to basic medical services.

“It is certainly regrettable that the right to health, as defined in international instruments, has not been adequately expressed in the constitution and the inclusion of this right among the National Objective and Directive Principles of State Policy expresses the intention to render it unenforceable and non-binding to the state”. Its location within the introductory provisions of the constitution, instead of the main body, has prejudiced its importance.

Article 23 provides “for the protection of personal liberty. No one shall be deprived of personal liberty to prevent the spread of an infectious or contagious disease”.¹⁵⁵ For example, if a person is reasonably suspected to be of unsound mind or addicted to drugs, the care or treatment of that person is important. In 2002, the case of Minister of Health v Treatment Action Campaign, the court stated “ that the government was wrong to restrict access to the antiretroviral medicine that is effective in reducing the risk of mother-to-child HIV transmission and ordered the government to make the medicine available to pregnant women living with HIV”.¹⁵⁶ Case in point is that some hospitals have unlawfully detained patients for failure to pay bills, and such detention, especially without a court order, violates Article 23(1); hence, hospitals and medical staff can be held liable for false imprisonment, medical negligence, and unlawful conduct.

Article 39 affirms every Ugandan `s right to clean and healthy environment.¹⁵⁷ This means that every person is entitled to live in an environment that is safe, non-toxic, and conducive to health and well-being. That is to say that everyone should have access to uncontaminated water,

¹⁵⁵ Article 23 of the Constitution of the Republic of Uganda. 1995 as amended

¹⁵⁶ Minister of Health and others v Treatment Action Campaign and others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5TH July 2002)

¹⁵⁷ Article 39 of Constitution of the Republic of Uganda. 1995 as Amended

economic activities should not harm the environment and communities should be involved in decisions affecting their environment or access to legal remedies. In 2022 the United Nations General Assembly declared the right to a clean, healthy and sustainable environment as a universal human right.¹⁵⁸ If a hospital operates in unhygienic conditions (dirty ward or poor waste disposal), it may amount to medical negligence and violation of Article 39 therefore affected patients can pursue civil claims and constitutional breach of their right to a healthy environment.

Article 40 requires “Parliament to enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions”.¹⁵⁹ The economic rights ensure individuals can live with dignity and security. They also ensure direct access to healthcare and the conditions necessary for a healthy life. For example, without economic rights such as right to work, earn a fair wage many individuals cannot afford medical services, food, clean water and proper housing. In addition, if people are economically empowered, they are able to seek timely medical care, adhere to different treatments and live in environment that support physical and mental well-being. Hence the realization of the right to health is deeply dependent on the fulfillment of economic rights.

Furthermore, economic rights encourage patients to acquire a higher standard of care and reduce systematic negligence in hospitals, ensure equal treatment, and reduce vulnerability to negligence. Lastly, medical negligence leads to additional medical costs or loss of income; hence, economic rights into play to reduce the financial burden on victims through insurance, ensure equal

¹⁵⁸ The UNGA resolution on human rights , UN General Assembly recognizes human right to a clean, healthy and sustainable environment by Moustapha Kamal Gueye, head of the ILO’s Green Jobs Unit and Tim de Meyer, Senior Adviser in the NORMES Department, explain the broader implications of the new UNGA resolution declaring a clean, healthy and sustainable environment to be a universal human right, 29th September 2022, <https://www.ilo.org> accessed on 29th April 2025

¹⁵⁹ Article 40 of Constitution of the Republic of Uganda.1995 as Amended

treatment, and reduce vulnerability to negligence.¹⁶⁰ The State may be accountable for failing to enforce occupational health laws, especially through the Ministry of Labor.¹⁶¹

Article 45 provides “for other human rights, which include access to healthcare and legal remedies for malpractice”.¹⁶² This is to ensure the human rights of people are respected and not violated in any way or another. Medical negligence occurs when a healthcare provider neglects to provide appropriate treatment that causes harm, injury or death to a patient.¹⁶³

When a person dies due to medical negligence, it is a violation of their right to life, a fundamental human right. The report revealed that many medical negligence cases are against private hospitals because complainants find it easier to get compensation from a private health facility than from government hospitals. Therefore, recommendations to curb medical negligence include providing indemnity against doctors so that they work with care, as there will be a punishment for negligence. Health facilities need to be accredited and supervised regularly to ensure that they maintain the minimum standards. Rights such as informed consent, access to emergency care, and privacy in medical treatment are not directly listed in the constitution but can be protected under Article 45. Furthermore, courts can interpret medical negligence cases in light of the international norms and treaties, even if they are not directly incorporated in Ugandan law.

Article 169 provides for “the establishment of the health service commission. It shall consist of six other members at least three of whom shall be persons who have substantial experience in health

¹⁶⁰ Empowering citizens to demand for a health sector that is accountable and relevant, a project implemented by Uganda National Health Users/ Consumers` Organization (UNHCO) and funded by Open Society Foundation <http://unhco.or.ug>

¹⁶¹ Ministry of Gender Labor and Social Development. <https://mglsd.go.ug>.

¹⁶² Article 45 of Constitution of the Republic of Uganda. 1995 as Amended

¹⁶³ A report titled ‘‘A study on medical negligence in Uganda ‘‘ by Dr. Sylvester Onzivua, Report unveils rampant medical negligence- Daily Monitor Monday June 17th 2024, by Anthony Wesaka accessed on April 23rd 2025, <https://www.monitor.co.ug/Uganda/news/national/report-unveils-rampant-medical-negigence-4660552>

science”.¹⁶⁴ Article 170 outlines the functions of the health service commission, which include advising the president on performing health services, appointing persons to act in office in the health service, reviewing the terms and conditions of service, and training members of the health service. Parliament shall regulate the functions of the commission and prescribe the categories of public officers to constitute the health service.¹⁶⁵ Therefore, Article 169 empowers the health service commission to take administrative action separate from civil or criminal liability when a patient suffers harm due to a public health worker`s negligence.

3.1.2 Penal Code Act Cap 128

Sections 187 and 197¹⁶⁶ for offences of causing death through negligence, which may apply to extreme cases of medical malpractice. Gross negligence manslaughter is a well-established common law offence, and gross medical errors are criminally punishable.¹⁶⁷ A health worker may face criminal prosecution, imprisonment, and loss of license if convicted.

Section 197 lowers the bar from manslaughter, allowing for criminal punishments of less egregious but still negligent conduct by medical professionals; hence, health workers may be criminally liable even without intent to kill if their negligence foreseeably caused death.

Section 224 provides that a person is not criminally liable for performing in good faith and reasonable care for his or her benefit upon an unborn child for the preservation of the mother`s life, if the performance of the operation is reasonable having regard to the patients` state at the time and to all the circumstances of the case.¹⁶⁸

¹⁶⁴ Article 169 of Constitution of the Republic of Uganda, 1995 as Amended

¹⁶⁵ Article 170 of Constitution of the Republic of Uganda, 1995 as Amended

¹⁶⁶ Section 187 and 197 Penal Code Act Cap 128, laws of Uganda

¹⁶⁷ Death caused by negligent medical care: Reconsidering the role of gross negligence manslaughter in the aftermath of Bawa – Garba by Ash Samantha and Jo Samantha, published 11th February 2021, volume 21, issue 4, <https://journals.sagepub.com>

¹⁶⁸ Section 224 Penal Code Act Cap 120, laws of Uganda

Sections 227-229 provide for criminal recklessness and negligence. Any person who, by a rash or negligent act not amounting to manslaughter, causes the death of another person is liable to imprisonment and a fine. Additionally, any person who, in a manner negligent as to endanger human life, gives medicine to any person they have undertaken to treat, or gives away any medicine or poisonous matter, commits a misdemeanor. Therefore, this act lays down the punishment to be administered to a medical professional who has breached his duty.

3.1.3 Civil Procedure Act Cap 282

The civil procedure act governs how civil suits for medical negligence can be filed and determined in Ugandan courts. This can be done by filing a plaint, serving summons and proceeding with trial. It further determines which court has jurisdiction depending on the value of the claim and location. The plaintiff must prove on a balance of probabilities that duty of care existed, breach of that duty, breach caused harm, actual damages. Furthermore, Order 10 rule 12 of the Civil Procedure Act allows for procedures like disclosure of medical records, expert witness testimony and interrogations which are essential in proving medical negligence.¹⁶⁹ It also provides legal machinery through which victims can bring civil claims and obtain compensation or remedies for harm suffered due to negligent medical care.

3.1.4 The Medical and Dental Practitioners Act Cap 272

This act establishes the Uganda medical and dental practitioner's council that is responsible for licensing, monitoring and regulating the practice of medicine and dentistry in Uganda. The Medical and Dental Practitioners Act ¹⁷⁰ regulates the medical profession and mandates the Uganda Medical and Dental Practitioners Council to handle complaints of professional misconduct

¹⁶⁹ Order 10 rule 12 of the Civil Procedure Act Cap 282

¹⁷⁰ The Dental Medical and Practitioners Act cap 272

including negligence. Section 33 provides that “the council shall hold an inquiry where it receives an allegation which if proved would constitute professional misconduct on the part of the registered practitioner under the act”.¹⁷¹ Section 47 provides that on conviction, a medical professional is liable to a fine not less than three hundred thousand shillings and not more than three million shillings or imprisonment for not less than three months and not more than a year or both.

Furthermore, the Medical and Dental Practitioners Act establishes disciplinary measures for negligence, protects society from abuse of medical and dental care and research, advise and make recommendations to the government on matters relating to the medical and dental professions. The functions of the Medical Council clearly incorporate international principles of medical ethics and bring about the system of self-regulation of medical practitioners, which ensures professional autonomy of the medical profession, which is a benefit to patients. The council has also introduced online renewal of licenses for Ugandan Practitioners who are required to have at least 48 CPD points on their online account.¹⁷² This can be seen in *Katabira v Attorney General* where they awarded compensation for surgical errors, setting a precedent.¹⁷³ Despite this, Uganda faces systematic issues, the Health Service Commission is understaffed, corruption is rampant and rural areas lack legal access.¹⁷⁴ In addition, the leader of Syria has used bombs against people fighting for their rights which has fallen on places like hospitals and schools resulting into death or innocent

¹⁷¹ Section 33 of Medical and Dental Practitioners Act Cap 272

¹⁷² Uganda Medical and Dental Practitioners Council – accessed on April 23rd 2025, <https://umdpc.go.ug>

¹⁷³ L/CPL Katabira Swaibu v Attorney General HCT -000- CV- Civil Suit 0223-2017 ,15th February 2018, Court Case Administration System Uganda`s Judiciary, <https://www.judiciary.go.ug>

¹⁷⁴ Human Rights Watch, World Report 2022, Pictures by the Picture Communications Symbols 1981- 2016 by Mayer Johnson LLC a Tobili Dynavox company. All Rights Reserved Worldwide. Thousands of resources available for free at www.boardmakeronline.com Document checked by Hackney People First.

people.¹⁷⁵ Fear of stigma and poverty often deter victims from pursuing litigation, perpetuating impunity.

Section 17 outlines the eligibility requirements for registration.¹⁷⁶ This helps to eliminate the issue of quack doctors, and it is easier for law enforcement bodies to curb practitioners without valid licenses. The Act provides for the removal from the register¹⁷⁷ any name of medical practitioners who is found guilty of professional misconduct by the council, and this serves as a deterrent to would-be offenders of the codes of conduct of medical ethics.

3.1.5 The Nurses and Midwives Act Cap 274

It is mandated to train, register, enroll, and discipline nurses and midwives of all categories in Uganda. Section 1 gives the definition of a midwife as a person who is trained and qualified in the care of women in relation to childbirth and in the care of infants and who is registered or enrolled under the Act.¹⁷⁸

A person who qualifies to be registered “as a nurse or midwife may apply to the Council for registration or enrollment and if the council is satisfied that the applicant is eligible for registration, it shall authorize the registrar to enter that person’s name on the register or roll”. Furthermore, section 28 provides that “the Council may remove from the register or roll the name of the person who is convicted by a court of law of a criminal offence involving moral turpitude or found guilty of professional misconduct by the Council”.¹⁷⁹

¹⁷⁵ Human Rights Watch, World Report 2022, Page 9

¹⁷⁶ Section 17 of Uganda Medical and Dental Practitioners Act

¹⁷⁷ Section 25 of Uganda Medical and Dental Practitioners Act

¹⁷⁸ Section 1 of The Nurses and Midwives Act Cap 274

¹⁷⁹ Section 28 of The Nurses and Midwives Act Cap 274

Midwives play a vital role in saving the lives of mothers and their newborn babies, and their work is evidently reflected in the reduction of maternal and infant death rates in Uganda. Midwives and nurses make up 75% of health professionals in Uganda. Of these 43% of midwives and nurses work in rural Uganda, where 80% of the population lives. Uganda has a total of 21,155 midwives registered with the Uganda National Medical Council who are eligible to practice, and according to the health ministry, this translates to having one midwife for every 2,000 people. Most midwives have continuously faced a challenge of poor accommodation, high cost of living, lack of refresher courses to improve their efficiency and work overload. The government has addressed these challenges by creating accommodation for over 1,000 health workers, including midwives, in the 414 renovated health centers III across the country.

The government has also increased salaries for nurses and midwives in 2021, following an industrial action by nurses and currently the lowest paid midwife gets a salary of one million shillings only. Furthermore, section 36-42 of the Nurses and Midwives Act provides the regulatory and disciplinary framework that holds nurses and midwives accountable for professional negligence.¹⁸⁰ It ensures that those who breach standards of care can face sanctions independent of court proceedings, reinforcing patient safety and public trust.

3.1.6 The Allied Health Professionals Council

It is established under Allied Health Professionals Act, Cap 268 which shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its own name.¹⁸¹The functions of the council shall be to regulate the standards of the allied health professionals in the country, to approve courses of study of the allied health professionals, to approve or supervise the

¹⁸⁰ Section 36-42 (part VII) of the Nurses and Midwives Act Cap 274

¹⁸¹ Section 2 of The Allied Professionals Act Cap268

training institutes for the different categories of allied health professionals, to supervise the registration of allied health professionals and publications of the names in the gazette and to make recommendations to the government on matters relating to the allied health professions.¹⁸²

In addition, section 38(1) provides that “ where the council receives an allegation which if proved, would constitute a professional misconduct on the part of the person registered under this act, may refer the matter to the disciplinary committee to hold and inquire into the alleged misconduct”.¹⁸³

A clinical officer found guilty of misconduct by Allied Health Professional Council may be sued for damages by the affected patient under the penal code. Through standard enforcement, continuing professional development, AHPC helps prevent negligence by promoting quality care.

3.1.7 The Pharmacy and Drug Act Chapter 280

Section 15 provides that “ for the purpose of disciplinary matters relating to the professional conduct of pharmacists, there shall be a committee of the board known as the disciplinary committee, empowered to take disciplinary measures related to the conduct of pharmacists”.¹⁸⁴

Where a registered complaint is made to the registrar against a pharmacist or he or she has been guilty of professional misconduct specified in the second schedule which include supplying addictive drugs contrary to schedule 2(10) and supply of substances ordinarily requiring a prescription of a medical professional contrary to schedule 2(13).¹⁸⁵ Therefore, in case of negligence, a pharmacist is to be reported to the disciplinary committee.

¹⁸² Section 4 of the Allied Professionals Act Cap 268

¹⁸³ Section 38 of The Allied Health Professionals Act Cap 268

¹⁸⁴ Section 15 of The Pharmacy and Drugs Act chapter 280

¹⁸⁵ Section 16 of The Pharmacy and Drugs Act chapter 280

3.2 INTERNATIONAL AND REGIONAL INSTRUMENTS

Additionally, to the national legislations, Uganda has ratified a number of international and regional treaties and declarations addressing issues relating to human rights to which the right to health care is embedded. The World Health Constitution was the first international instrument to recognize right to health. The WHO preamble refers to the Preamble of the Constitution of the World Health Organization, which outlines the foundational principles and goals of the organization. The Preamble further states that health is a fundamental right and that the attainment of the highest possible level of health is of paramount importance to all people.¹⁸⁶ It also emphasizes the responsibility of governments for the health of their people, highlighting the need for adequate health and social measures.¹⁸⁷

3.2.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Article 12 provides that states “ shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure equality of men and women, access to health care services including those related to family planning”.¹⁸⁸ Therefore gender equality should be observed when providing health services, both female and male should be treated equally in regards to the right to health. The state must protect women from harmful practices by ensuring redress mechanisms, promoting legal reforms that support women`s rights in healthcare.

¹⁸⁶ The Preamble of the Constitution of the World Health Organization by Frank Grad, www.scielosp.org,

¹⁸⁷ Constitution of the World Health Organization, World Health Organization, <https://www.who.int>

¹⁸⁸ Article 12 of Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature or ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with article 27(1)

3.2.2 Convention on the Rights of the Child (CRC)

Article 24 provides that “state parties recognize the right of the child to the enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health or ensure the provision of necessary medical assistance to all children with emphasis on the development of health care” .¹⁸⁹ States have a duty to ensure that health institutions provide safe and ethical care to children, and if the state fails to hold providers accountable, it can lead to legal action through domestic courts or reporting to the UN Committee on the Rights of the Child. Therefore, if any child suffers harm due to medical negligence through misdiagnosis, delayed treatment by medical professionals, this constitutes a violation of the children`s rights.

3.2.3 Convention on the Rights of Persons with Disabilities and Optional Protocol (CRPD)

Article 25 provides that “state parties recognize persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability”. They shall take measures to ensure access for persons with disabilities to health services that are gender-sensitive including health related rehabilitation.¹⁹⁰ Most times persons with disabilities are given little or no treatment when they go the health centers which is very discriminatory. At times they are humiliated and disrespected due to their inability to do particular activities like the rest of the people, yet medical professionals owe a duty of care to all patients including those with disabilities. Medical workers fail to provide medicine, wheel chairs, clutches which would help the disabled people to enjoy their life. If doctors deny treatment to disabled patients at the hospitals, this will result into medical negligence which is based on discrimination which has legal consequences on human rights.

¹⁸⁹ Article 24 of Convention on the Rights of the Child, 20th November 1989

¹⁹⁰ Article 25 of Convention on the Rights of Persons with Disabilities and Optional Protocol

3.2.4 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The convention was entered into force on 3rd January 1976 and Uganda is a signatory. This convention provides for the right of the highest attainable standard of physical and mental health.¹⁹¹ The state parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken include provision for the reduction of stillbirth rate or infant mortality, improvement of all aspects of environment, prevention or control of epidemic and occupational diseases, creation of conditions which would assure medical attention in the event of sickness.

The states have the duty of making functional public health care facilities in sufficient quantity. When a patient suffers harm due to the medical professional's negligence that is breach of duty of care expected which leads to violation of the right to health and yet states must ensure accessible, acceptable and available health services. Medical negligence greatly affects the patients right to health services since it leads to death, loss of trust, medical expenses and disability therefore patients who have failed to enjoy their right to health and have been affected can seek for remedies which include compensation, reparations and accountability through medical boards.

3.2.5 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

Article 25(1) states that “ everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing , medical care and right to security in the event of unemployment, sickness, disability, old age or lack of livelihood in circumstances beyond his control”.¹⁹² This was observed in the case of CEHURD v Nakaseke, where the court held that the deceased's rights to health or medical care were violated due to the

¹⁹¹ General Comment No.14; the Right to the highest attainable standard of health (Art.12 of the Covenant)

¹⁹² Article 25(1) of Universal Declaration of Human Rights

fact that the doctor was absent from the hospital during working hours.¹⁹³ Therefore Article 25(1) guarantees right to adequate medical care, while medical negligence undermines this right and this can be a strong legal claim against the medical professionals who practice medical negligence.

In case the patients right to health has been violated due to medical negligence, article 25 can be used to reinforce the patient`s right to health and dignity. Furthermore, the Article supports access to remedies for patients of medical negligence and need for legal aid that is accessible to the poor who are most affected by medical errors in Uganda.

The above covenants and declarations indicate the steps taken by state parties to achieve full realization of the right of health. “The ratification of these international conventions and declarations creates an obligation upon Uganda and development partners to ensure that legal institutional frameworks are in place to provide health care within a minimum standard so as to protect its citizens from medical negligence that may infringe their enjoyment of the right to health”.

3.3 REGIONAL LEGAL INSTRUMENTS

3.3.1 Treaty for the Establishment of the East African Community, 1999

Article 118 provides that “ the partner states undertake to prevent and control communicable diseases or pandemics and vector borne diseases, promote management of health delivery systems and better planning mechanisms to enhance efficiency of health care services, develop a common drug policy, harmonize drug registration procedures so as to achieve good control of pharmaceutical standard without obstructing the movement of the products, develop common approach through education of the general public and their law, promote the development of good nutritional standards, cooperate in the development of specialized health training or reproductive

¹⁹³ CEHURD and 4 others v Nakaseke District Local Administration civil suit No 111 of 2012

health, cooperate in promoting research and development of herbal medicine and harmonize national health policies and regulations”.

Therefore, due to the increased cases of medical negligence, the public has lost trust on the services of the hospitals and resorted to the use of herbal medicine to heal their diseases, this can lead easily affect the health of the people because not every illness is treated with herbal medicine. Victims of medical negligence can use Article 118 to pressure government to improve health systems and hold the different actors accountable. It furthers offers a regional framework which supports national litigation aimed at improving health care quality and legal remedies.

3.3.2 Protocol to the African Charter on human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)

Article 18 provides “for a right to a healthy and sustainable environment. Women shall have a right to live in a healthy and sustainable environment and state parties shall take all appropriate measures to ensure participation of women in planning, management and preservation of the environment and sustainable use of natural resources at all levels”.¹⁹⁴ Article 16 provides for the right to 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 necessary measures to protect the health of their people and ensure they receive medical attention when they are sick.¹⁹⁵ Therefore, medical doctors need to exercise their duty of care diligently not to injure the patients.

The African Charter on Human and People`s rights recognize health as a human right, but enforcement remains weak. South Africa`s court as seen in *Buthelezi v Ndaba* have awarded

¹⁹⁴ Article 18 of Protocol to the African Charter on Human and People`s Rights on the Rights of Women in Africa (Maputo Protocol)

¹⁹⁵ Article 16 of Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)

damages for negligence, yet many African nations lack robust legal mechanisms.¹⁹⁶ Oosthuizen and Carstens (2020) highlight that cultural barriers and corruption further impede accountability leaving many victims without recourse.

3.4. PUBLIC HEALTH POLICIES AND AUTHORITIES

The government of Uganda has put in place the national strategies and authorities to guide policies on health care and they include

3.4.1 The Second National Health Policy 2010

It developed in 2010 and it emphasizes promoting people's health and nutrition as fundamental human rights and government's obligation to provide health services.¹⁹⁷ The policy further recognizes that private policy shall be seen as contemporary to the public sector in terms of increasing access to health services.¹⁹⁸ Courts may refer to the SNHP to interpret what is considered reasonable and expected professional conduct. The policy promotes the rights of patients to consent and dignity which are central to negligence claims and this can help curb negligence since patients are aware of their rights.

3.4.2 Uganda National Health Laboratory Services Policy 2009

The policy was first established in 1994 and several efforts have come into producing the policy with one draft written in 2004, another in 2006. It was established to put in place an appropriate organization and management structure for coordinating laboratory services. The rationale of this policy is that health laboratory services are essential for the delivery of quality health care and should be made available to all people of Uganda.¹⁹⁹ The National Health Policy advocates the

¹⁹⁶ *Buthelezi Gabriel v Priscilla Zanele Ndaba* (575/2012) [2013] ZASCA 72 ; 2013 (5) SA 437 (SCA) (29 May 2013)

¹⁹⁷ Second National Health Policy 2010, MOH Knowledge Management Portal, <https://library.health.go.ug>

¹⁹⁸ Second National Health Policy 2010, promoting people's health to enhance social economic development July 2010

¹⁹⁹ Uganda National Health Laboratory Services Policy, August 2009, Ministry of Health, Page 1

attainment of a good standard of health by all people in Uganda, in order to promote a healthy and productive life. to achieve these points of patient- provider contact for care which are health facilities need to function effectively.

Furthermore, “a well-functioning health laboratory service provides vital information needed for proper planning and utilization of health resources, more so in resource limited settings. It creates a link between clinicians, laboratory practitioners and patients which ensure that patients get correct diagnosis which promotes better management of diseases”. In addition, this will enhance trust between clinicians and laboratory practitioners hence building confidence in the health system. It is the Ministry`s intention to fully translate this policy into practice within the health system and the it has already embarked on developing a National Laboratory Strategic Plan. This will give clear guidance on strategic actions needed to improve the laboratory systems.²⁰⁰

3.4.3 The Pharmaceutical Society of Uganda

It is the national professional organization and governing body for pharmacy in Uganda; it was founded in 1960 and is currently governed by Uganda pharmacy and drugs act of 1970. The law mandates PSU to the control of the professional and practice in Uganda.²⁰¹ The act consolidates the law relating to the control of the profession of pharmacy and trade in and use of drugs and poisons. The requirement for being a member of the society include; a person should be twenty one years of age and paid prescribed fees; a person should have been adjudged by a court to be of sound mind.²⁰² Section 14 requires “ the registrar to cause a list of all pharmacists whose names

²⁰⁰ Uganda National Health Laboratory Services Policy, August 2009, Ministry of Health, Page 15

²⁰¹ Report on review of health policies and laws relevant to the establishment of the health professional authority in Uganda by Dr. Emmanuel Kasimbazi (Senior Legal Consultant), Dr. Paul Kabwa (Senior Health Consultant), July 2013, Page 18, Uganda Medical and Dental Practitioners Act, <https://umdp.go.ug> , viewed on 6th May 2025

²⁰² Report on the review of health policies and laws relevant to the establishment of the health professional`s authority in Uganda by Dr. Emmanuel Kasimbazi (Senior Legal Consultant), Dr. Paul Kabwa (Senior Health Consultant), July 2013, Page 19, Uganda medical and dental practitioners act, <https://umdp.go.ug> , viewed on 6th May 2025

appear in the register on the thirty first day of December in each year to be published in the gazette during the following January”.²⁰³

Conclusively there is no clear legislation enacted to deal with medical negligence as a challenge, however the above discussed legal framework that is to say national, international and regional have played a great role towards fighting medical negligence among patients and easing their access to health. The legal and institutional framework are in place to provide healthcare within the minimum standards so as to protect its citizens against any acts that may infringe their enjoyment of the right to health incidence of medical negligence.

²⁰³ The Pharmacy and Drugs Act cap 280

CHAPTER FOUR

MAJOR FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

4.0 INTRODUCTION

This chapter summarizes the researcher's results gleaned from desktop research. It also presents recommendations based on the study's findings and the research work's conclusions.

4.1 PRESENTATION OF FINDINGS

Medical negligence is a great concern in Uganda. Various studies and reports highlight issues and cases that have affected patient care. The concept of medical negligence stems from the landmark case of *Donoghue v Stevenson*²⁰⁴ where courts affirmed the neighbor principle when Lord Atkin stated that 'the rule that you love your neighbor becomes in law that you must not injure your neighbor? who is then your neighbor?'²⁰⁵ Medical negligence occurs when a medical professional neglects to provide appropriate treatment or gives substandard treatment that causes harm, injury, or death to the patient. For medical negligence to be proven, it must show that (1) the medical practitioner owed a duty of care to the patient, (2) the doctor was in breach of the duty of care, and (3) the patient suffered damage as a result. The different examples of medical negligence include seeking medical intervention, failure to disclose history, poor training of medical personnel, inadequate resources, long working hours, poor work ethics, failure of some doctors to go to court and testify in medical negligence cases.

Medical doctors to provide treatment to their patients, and this should be in line with the medical standard of care. A test was introduced in *Bolam v Friern Hospital Management*, where it stated that a doctor is not guilty of negligence if they have acted by a practice accepted as proper by a responsible body of medical men skilled in that particular art. Any health professional taking

²⁰⁴ *Donoghue Vs Stevenson* [1932] AC 562, [1932] UKHL 100, 1932 S.C.(H.L.) 31, 1932 S.L.T.317, [1932] W.N.139

²⁰⁵ *Donoghue Vs Stevenson* [1932] AC 562, [1932] UKHL 100, 1932 S.C (H.L) 31, 1932 S.L.T 317, [1932] W.N.139

responsibility for treating a patient will thereby owe that patient a duty of care. The report revealed that most of the medical negligence cases are against private hospitals, and this is because it is easier to get compensation from private hospitals than from government hospitals.²⁰⁶ The Uganda Medical and Dental Practitioners Council has more than 50 cases of medical negligence that are unresolved, and many of them arise from obstetrics and surgery-related complications.²⁰⁷

There are several cases that indicate medical negligence which include the following; *Rose Namubiru v Uganda* where the nurse was administering intravenous antibiotics to a child and when she was trying to prick the child's arm, she pricked herself with the needle, it was later discovered the appellant was living with HIV. She had infected the child with HIV and court concluded that the nurse had acted negligently.²⁰⁸ In *Watsemwa and Anor v Attorney*, the court found that the hospital staff breached their duty of care by failing to follow standard procedures and delaying emergency intervention. The court also found that the hospital staff breached their duty of care by failing to follow standard procedures and delaying emergency intervention. Furthermore, the court found that the hospital staff breached their duty of care by failing to follow standard procedures and delaying emergency intervention. The government was held vicariously liable for the negligence of its employees.²⁰⁹ This case indicates the importance of adhering to established medical protocols during childbirth, furthermore, in *Kanyamugule and another v Attorney General*, it was held that the doctor's failure to perform the surgery promptly constituted negligence.²¹⁰ This case indicates the duty of healthcare facilities to ensure timely medical intervention and prevent harm.

The Uganda Medical and Dental Practitioners' Council handles the cases of medical negligence. some of the cases decided by the council include *Ssentogo v Uganda Medical Dental Practitioners Council*.²¹¹ The court held that the decision to ignore the report of the NIC that cleared the applicant

²⁰⁶ A report titled "A study report on medical negligence in Uganda," by Dr Sylvester Onzivua, Report unveils rampant medical negligence, Monday 17th June 2024, monitor.co.ug

²⁰⁷ A report titled "A study report on medical negligence in Uganda," by Dr Sylvester Onzivua, Report unveils rampant medical negligence, Monday 17th June 2024, monitor.co.ug

²⁰⁸ *Rosemary Namubiru v Uganda* (2014), HCT-OO-CR-CN—0050-2014 Uganda, high court

²⁰⁹ *Watsemwa and Anor v Attorney General* (2015)

²¹⁰ *Kanyamugule and anor v Attorney General and 3 Ors* (2015)

²¹¹ *SSentongo V Uganda Medical & Dental Practitioners Council & anor* (Misc Cause No.128 of 2016[2016] UGHCCD 58(14th October 2016)

and demand that the applicant provide further proof of completion of the internship amounts to unfair treatment by an administrative body charged with a public duty. Another case decided is the CEHURD Vs Uganda National Health Research Organization²¹², which indicated that courts have a role in addressing alleged rights violations related to health services and right to life. Furthermore, health received 6.6%, representing UGX,3,265.9billion of the 2023/24 national budget²¹³But donor funding comprises nearly 80% of resources, hence the government is increasing public-private partnerships for health care investment, where it contributes land; private investors build and operate a facility.

The other finding is that medical negligence has led to human rights violations. The rights that can be violated include(1) the right to life under Article 22²¹⁴ Which provides that when a patient dies due to negligent medical care, like delayed treatment or wrong diagnosis, (2) right to health under Article 12²¹⁵ which provides for failure to provide accessible or timely healthcare workers is a violation of people`s rights, (3) right to human dignity (lack of proper care can lead to undignified treatment, hence affecting patients' dignity), right to consent(performing procedures without patients voluntary agreement violates their rights to their body)

The researcher also found out that the 1995 Constitution does not expressly provide for the right to health. The presence of the right under the National Objectives and not the Bill of Rights renders it enforceable. Parliament is obliged to enact laws for good governance, yet to date there is no comprehensive law on the right to health in Uganda but scattered laws on a few aspects of health.

The majority of the institutions with a mandate to promote the right to health are constrained in terms of financial resources and skilled labor. For example, in 2011, CEHRD filed a petition to

²¹² Center for health, human rights and development (CEHURD) and others Vs Uganda National Health Research Organization (UNHRO) and others (miscellaneous application 439 Of 2019) [2023] UGHCCD 288 (29th September 2023)

²¹³ New vision. <https://www.newvision.co.ug>

²¹⁴ Article 22 of Constitution of Republic of Uganda 1995 as Amended

²¹⁵ Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) The conduct of medical professionals is not only regulated by various provisions in law, it is also informed and regulated by ethical guidance. Medical negligence refers to fundamental moral principles which govern the way in which we practice medicine.²¹⁵ There are principles that should be followed in regards to the non-legal aspect of medical negligence.

challenge the state's failure to provide basic health commodities, the state raised a preliminary objection because it addressed issues of a political nature, thus not providing a judgment.²¹⁶ This, renders the right to health vague and difficult to assert towards better health service delivery.

The researcher also found out the jurisprudence in the recent case of the CEHURD decision of 2020, which places the right to health and access to basic maternal health commodities, which are justified under the Uganda Constitution. The court agreed that objective XIV and XX oblige the government to provide health and basic medical services to people.

The researcher identified the causes of medical negligence, which include medical errors, failure to obtain informed consent, failure to provide prompt attention, poor morale due to inadequate compensation, insufficient medical staff, and inadequate medical facilities. Furthermore, the need for medical negligence is intended to serve the purpose of compensation for injury, accountability, and fostering patient safety. It is an avenue through which health care professionals may be held accountable for their actions in court. Secondly, it helps ensure that professionals maintain a high standard of care since they fear paying out money once they have been successfully sued for poor practice. If the patient wins the case, he or she receives damages for compensation, and this is done to exercise fairness on the side of the patient who suffers as a result of medical negligence

In addition, the researcher found out that the conduct of medical professionals is not only regulated by various provisions in law, but also informed and controlled by ethical guidance. Medical negligence refers to fundamental moral principles which govern how we practice medicine.²¹⁷

²¹⁶ Yamin AE (2013) `` From ideals to Tools Applying Human Rights to maternal health `` Plos Med 10(11)

²¹⁷ Medical Ethics (1959) 5(8) ,The Central African Journal of Medicine 427, Vol 5 No .8 August 1959 by Maurice Davidson , published online 1st August 1959, <https://hdl.handle.net/10520/AJA00089176>; 5546 , Page 424, <https://journals.co.za> accessed on 23rd April 2025

should be followed regarding the non-legal aspect of medical negligence. They include respect, rights of patients to make their decisions, beneficence, non-maleficence, justice, and humanity.

The researcher also found out that medical negligence has profound nonlegal implications that impact patient, healthcare professionals, and the healthcare system at large. Beyond courtrooms, the non-legal issues of medical negligence include physical harm and disability, a substantial financial strain on patients and their families, a decline in public trust, negative impacts on medical workers, an increased case backlog, a decline in physician-patient relationships, a violation of ethical codes of conduct, family breakups, and acts of medical negligence. These non-legal implications affect patients due to the results of medical negligence caused by doctors in hospitals.

The researcher further found out the legal framework for dealing with medical negligence in Uganda. The legal framework relating to medical negligence in Uganda is enshrined in various laws and policies. Over the years, Uganda's Ministry of Health has appeared to focus more on geographical and financial access to health services. Still, it has placed little emphasis on the quality of health services provided.²¹⁸ These laws are found in national instruments, international and regional instruments, and public health bodies.

4.2 RECOMMENDATIONS

4.2.1 Recommendations for the Government

The government should put mechanisms in place that will guarantee the accessibility of elderly health services, maternal health services, and dental health services, particularly in neglected areas.

Some of the ways the government can do this are modernizing health facilities in all districts and

²¹⁸ Report on the Review of the health policies and laws relevant to the establishment of the health professions authority in Uganda, Dr. Emmanuel Kasimbazi (Senior Legal Assistant) Dr. Paul Kabwa (Senior Health Consultant), July, 2013, Uganda Medical and Dental Practitioners Act Cap 274, <https://umdp.go.ug>, viewed on 28th April 2025

employing more skilled doctors who will treat patients carefully, which will reduce medical negligence in health facilities. The insufficiency of better medical facilities is a great contribution to medical negligence of doctors; therefore, if hospitals are put in place, fully equipped with the necessary drugs and materials, the rate of medical negligence shall be minimized.

The law should impose on the government the immediate obligation to inform the population of their rights as patients and the different possibilities of challenging the doctors before the courts of law. Patients' rights are very important, both before and after administering medication in a health center. When patients are informed of their rights, this will help reduce medical negligence among patients in Uganda.

There should be prioritization of health care issues. Government should therefore be held accountable where they fail to allocate adequate resources to health care and a great deal of resources to the military. Furthermore, prioritization of the right to health over economic rights to health should be considered as the highest attainable standard of the right to health, which will help eradicate medical negligence among patients in Uganda. These will help reduce the exploitation of patients— make them understand what they are paying for, hence fostering trust in the healthcare system. Furthermore, a well-structured and fair system ensures that more people can afford quality health care services, which reduces the chances of medical negligence among patients by doctors because they receive quality health care services.

The MoF should propose that the government health expenditure as a percentage of GNP be an indicator of the right to health. Therefore, the relative allocation of resources is a measure that should become integral to monitoring the realization of social and economic rights. Hence, the more resources allocated to the health care services, the higher or better the quality of health services offered, which reduces the chances of medical negligence among patients in Uganda.

The remuneration package of doctors should be revised so that the doctors' and nurses' pay is sufficient to meet their daily requirements. This can be done through increments of their wages and provision of allowances, exploring non-monetary initiatives like rewards and recognition for good performance, referral scholarships, and promotions, and tax waivers on their cars. This will boost their performance in terms of discharge of their duties toward patients and increase their availability in hospitals during working hours, which will reduce the death of patients due to the absence of qualified doctors who are supposed to carry out the surgery, hence reducing the rate of medical negligence among patients in Uganda.

The law should also impose on the government the immediate obligation to inform the population of their rights as patients and the possibility of challenging the duties of doctors before courts of law and availing them with proper or necessary information before medical services are availed to them. When patients know their rights, it protects them from potential harm caused by medical errors and also helps them to speak up when something is unsafe. When patients speak up when something is unsafe or when they know their rights, it will be easy for them to report the errors done to them, which reduces the number of medical negligence cases among patients in Uganda.

This research aims to help policymakers communicate effectively to make laws, amend existing ones, and address the issue of medical negligence among patients allows The amendment of existing laws helps doctors adjust to modern treatment, which improves the quality of healthcare services and provides new standards of care to patients, thereby addressing the issue of medical negligence.

There is a need to review the practicing licenses that are issued to the medical professionals. And withdrawal of these licenses from those doctors who have caused medical issues within the health sector of Uganda. Reviewing of licenses helps identify the qualified doctors from the unqualified

doctors. In most cases, unqualified or unskilled doctors are the ones who carry out operations, which can lead to the death of patients or leave instruments in them, especially pregnant women, which is harmful to their health. Reviewing licenses greatly helps to address the issues of medical negligence among patients.

The government through applying the human rights approaches to rectify inequalities. All health policy strategies and programs are designed with the objective of progressively improving the enjoyment of all people to the right to health, and these include non-discrimination, availability, accessibility, acceptability, and quality. Furthermore, the right to health is interdependent on other human rights like the right to life, the right to housing, the right to work, the right to privacy, and the right to a clean environment. Hence, there should be respect for other human rights. There should also be equality to ensure the right to access to health, especially for vulnerable people, women and this will help to resolve the issue of medical negligence among patients

There is a need to amend the constitution to cover the rights to attain the highest standard of health, which includes the right to healthcare services. This is because the constitution has no specific provision regarding the right to health; thus, the government ought to amend it to include the right to healthcare services. This will stipulate the punishments given to health workers who violate patients' rights or carry out medical negligence, addressing the issue of medical negligence among patients.

The legal framework of the study resolution; thus, it is recommended that alternative dispute resolution be established instead of litigation, which is a more expensive resolution. This approach is more cost-effective. The legal framework also provides for justice and compensation, which restores patients' trust in the healthcare system. careless, and this prevents the would-be doctors from being negligent with their patients. Additionally, it promotes accountability by holding

healthcare providers accountable for their careless actions, deterring would-be doctors from being negligent with their patients. This approach greatly helps resolve the issue of medical negligence among patients.

The inclusion of the right to health in Chapter Four of the Constitution could clarify any doubts regarding its justifiability. It could encourage public interest litigation through courts that direct the government to improve public health policies and ensure implementation. The Committee on Economic, Social and Cultural Rights suggests that health, incorporating the right to health into the domestic legal order, can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.

4.2.2 Recommendations on Patients

On the side of patients, the research shall lead to improved patient safety and reduced harm; it shall also ensure an appreciation of the magnitude of negligence, which will be achieved by addressing different forms of medical negligence. It further eliminates the risks in health care delivery, which reduces the chances of medical negligence among them. In addition, the study shall reduce healthcare costs associated with treating preventable injuries and complications.

4.2.3 Recommendations on health care providers or Medical Practitioners

Furthermore, on the side of healthcare providers, the study will promote patient-centered care by encouraging them to prioritize patient needs and well-being. It will also encourage healthcare providers to implement patient-centered care by enabling them to prioritize patient needs and well-being. It will also promote the implementation of effective risk management strategies. The study, through its legal implications, will help caution medical workers to avoid negligence and provide patients with the right to claim compensation, including sanctions on negligent doctors, such as

suspension, reapplication for reinstatement on the register, permanent erasure from the register, and this will ensure the provision of quality health services.

Medical practitioners must also be in a position to maintain their fiduciary relationship with patients, which requires the patient's best interests to come before anyone else. This promotes trust of patients in the health care centers and resolves the issues of medical negligence among patients. Furthermore, medical practitioners should also be educate themselves with the different well-informed about the nature of their duties and stay up-to-date with the latest trends in their profession.

4.2.4 Recommendations on health care facilities

On the side of healthcare facilities, the study aims to inform quality improvement initiatives that lead to enhanced patient safety and care. Hospitals and their staff need to prepare hospital systems to end instances that give rise to medical negligence. Therefore, training should be done, supervising and evaluation of the practice of medical professionals, ensuring patient safety systems, and carrying out more research on patients. Furthermore, hospitals should ensure that they have proper record-keeping systems and are in a position to report medical negligence cases when they arise.

4.2.5 Recommendations on citizens

Citizens should participate in civic and advocacy activities, which can be achieved through pro bono participation in activities organized by the Uganda Law Society. Furthermore, this participation may be through community sensitization activities, which could increase public knowledge.

4.2.6 Recommendations to Donors

Donors should put pressure on the government to emphasize the provision of quality health services. Many donations have been made to improve Ugandans' living conditions, but no attempt has been made to ensure accountability, hence slowing the development rates. Donors like the World Health Organization should make every effort to ensure that monies designated for the provision of these health services are put to use, and this may be accomplished by closely monitoring the initiatives.

4.2.7 Recommendation to courts

Courts should prioritize hearing cases regarding the right to health instead of seeing them as political doctrines to hold the government liable for failure to respect, promote, and fulfill the right to health. There are many undecided cases over 50 undecided cases under the Uganda Medical & Dental Practitioners Council of medical negligence, and this includes medical errors, which in the end delays access to justice among the patients in Uganda. Therefore, courts should normalize litigating issues of medical negligence so as to reduce the case backlog, and this shall also enforce the duty of care of doctors, which will control the violation of patients' rights.

4.3 CONCLUSION

Patient injury resulting from medical care is common, and medical negligence remains a huge problem in Uganda despite the initiatives the Ministry of Health has come up with. Despite the initiatives, medical negligence cases are still frequent in the health sector, hence leading to implications like death, injury, and damage. It is very evident that the problem of medical negligence is still prevalent in Uganda and has implications for the lives of Ugandans. From the study the researcher has conducted, it is evident that there is no specific law to protect the right to health in Uganda thus a challenge in fighting medical negligence and the existing laws are not

proper and adequate to help deal with the vice since most of the most medical negligence cases are often referred to as connected to political nature which makes court ignore the case. The study goes on to identify the causes of medical negligence and how they can be addressed. Furthermore, the legal implications come into play to provide compensation to the injured patients, and accountability by holding the doctors liable for their negligent acts. In an attempt to address medical negligence, the government avails more equipment in hospitals, trains more skilled doctors, and provides sufficient drugs to the patients to promote their right to health.

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