

# Medical Negligence in Kenya: The Medico-Legal and Ethical Questions

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## Abstract

The most basic and fundamental value of the practice of medicine dating from antiquity to the present is the preservation of human life. This is because human life is sacred and sacrosanct, and enjoys ecclesiastic blessing. According to Dworkin "the life of a single organism commands respect and protection. No matter in what form or shape, because of the complex creative investment it represents and because of our wonder at the divine or evolutionary processes that produce lives from old ones."<sup>1</sup>

This much is captured in the Hippocratic Oath to which every physician and other healthcare professionals must subscribe to in order to practice medicine honestly. In its modified form, physicians swear on their honor inter-alia:

*'That above all else I will serve the highest interest of my patients through the practice of my science and art'*

Over the years the significance and application of the oath has been watered down as it observed more in the breach. Recurrent cases of medical misdiagnosis, negligence and rising cases of malpractices and unethical conducts abound in Kenya. It is in the light of this background that this paper seeks to examine the standard of medical practice in Kenya against the existing legislations vis-avis the roles and function of the Medical Practitioners

and Dentists Board and such other allied professional bodies in regulating and enforcing standard in the healthcare sector. Recommendations are made for the establishment of specialized institutions to promote excellence in medical practice.

Keywords: Medical negligence, medical malpractice, ethical consideration, duty of care, legislations.

## Introduction

*"It would be not be correct to say that every moral obligation involves a legal duty; but every legal duty is founded on a moral obligation.*

- Lord Chief Justice Coleridge in R. V. Instan 1893

Medicine is the most important, fundamental and essential requirement for the physical and spiritual wellbeing of mankind. No wonder for all our toils and labour, we strive heavily and continuously to remain in good health. The desire and pursuit of man's well being informed the gradual emergence of the practice of medicine crystallizing into its present state of scientific and technological advancement. The practice of medicine comes with its own challenges; these are legal, moral and ethical in nature and of course greatly impact on the practice of medicine.

Medicine, broadly speaking, could be defined as the applied science or practice of the diagnosis, treatment and prevention of disease. In every facet of human endeavour, law is the change agent and the driver of that change, and as observed by Lord Coleridge every legal duty is founded on moral obligation. Whereas morality may even be a simple question of intuition and, on this criterion alone it is difficult to argue that an individual's personal value system is wrong. Ethics on the other hand usually operates within an established framework of values which serve as a reference from which to conduct the debate about the rightness or wrongness of an action. (Mason et al 2005.P4).<sup>2</sup>

This ethical and legal concern in medical practice must have influence the formulation and adoption of the Hippocratic Oath by Hippocrates the most famous figure in Greek Philosophical Medicine. In its compressed form, the Oath states as follows:

*I do solemnly vow, to that which I value and hold most dear:*

- 1. That I will honour the profession of medicine, be just and generous to its members, and help sustain them in the service of humanity.*
- 2. That just as I have learnt from those who preceded me, so I will instruct those who follow me in the science and act of medicine.*

3. *That I will re-organize the limits of my knowledge and pursue life-long learning to better the care for the sick and prevent illness.*
4. *That I will seek the counsel of others when they are more expert so as to fulfill my obligation to those who are entrusted to my care.*
5. *That I will not withdraw from my patients in the time of need.*
6. *That I would lead my life and practice my art with integrity and honour using my power wisely.*
7. *That whatever I shall see or hear of the lives of my patients that is not fitting to the spoken I will keep it confidence.*
8. *That whatever house I shall enter it shall be for the good of the sick.*
9. *That I will maintain this sacred trust holding myself far aloof from wrong, from corruption, from the tempting of others to vice.*
10. *Above all else I will serve the highest interest of my patients through the practice of my science and of my art. That I will advocate for patients in needs and strive for justice in the care of the sick.*

This oath has become the cornerstone upon which modern medicine is built and enjoys the semblance of formalism as it has found its ways into statute books all over the world. The Declaration of Geneva (as amended at Stockholm, 1994) and the Declaration of Tokyo, 1975 are ready cases of reference, In all medical consideration the health, wellbeing, wellness and the best interest of the patient must come first. Therefore medical law borrows deeply from international and municipal laws. Articles 6 of the International Covenant on Civil and Political Rights<sup>3</sup> guarantees that every human being has the inherent right to life and that this right shall be protected by law. Article 1 of the same covenant gives all people the right to self determination which is the bases of the medical principle of autonomy. The African Charter on Human and Peoples Rights<sup>4</sup> in Article 4 guarantees the in inviolability of human life. Article 16 of the Charter is even more poignant as it provides:

1. *Every individual shall have the right to enjoy the best attainable state of physical and mental health.*
2. *States parties to the present Charter shall take necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.*

The Republic of Kenya is as well concerned about the physical and mental health of her

citizens and therefore constitutionalised the right to the highest attainable standard of health which includes the right to healthcare services, including reproductive health in Article 43 (1)(a) of the Constitution of Kenya 2010.

This legislation and many others which ensure the hope for a better and longer life for the people place great moral and professional burden on health care providers to act in the best interest of the patient and at least to do no harm to the patient as reflected in the values of beneficence and non-maleficence.

Over the years in Kenya, notwithstanding the plethora of legislations and regulations to ensure the highest standard of health for the people, regrettable cases of medical malpractice, negligence and unethical conduct are on the rise.

Reality is indeed different from perception in the real world as Shirley Mclean put it... “an absolute commitment to the sanctity of all life is absent in every community.”<sup>5</sup> This alarming rise in medical malpractice and negligence and the low of standard in health care delivery in Kenya informs this paper.

### **Medical Malpractices and Negligence**

That cases of medical malpractices and negligence are on the rise in the country is now recondite. In a recent Special Report ran in the Standard Newspaper entitled Bad Medicine disturbing and worrisome statistics were revealed.

This includes that but not limited to:

- One in every five Kenyans that walk into a hospital for treatment end up dead due to mistakes by those treating them.
- According to the National Hospital Sector Strategic Plan; as many as half of all malaria patients die during treatment. Many of these deaths, doctors now say arise from variety of cases that were wrongly diagnosed or treated as malaria.
- Three out of ten patients undergo unnecessary and possibly life-threatening surgical procedure before mistakes are discovered.<sup>6</sup>

What then is medical negligence as one may ask?

### **Medical Malpractice**

Medical malpractice is professional negligence by act or omission by a health care provider in which the treatment provided is below the accepted standard of practice in the medical community and causes injury or death to the patient, with most cases involving

medical error.<sup>7</sup> Medical malpractices are considered to be either an act of professional negligence or an error made by any level of health care provider. It is also taking to mean „bad, wrong or injurious treatment of a patient professionally which results in injury, unnecessary suffering or death.<sup>8</sup>

### **Medical Negligence**

Medical negligence strictly speaking is not in a class of its own as its not particularly different from the tort of negligence. Negligence is generally any conduct that falls short of the standard expected of a person where a duty of care is owed and which causes foreseeable damage to another person. Flowing from the law of tort therefore, medical negligence can be defined as the commission of an act that a prudent person would have fulfilled, resulting in injury or harm to another person.<sup>9</sup>

The term medical malpractice and medical negligence are hardly inseparable as in law, negligence is the substratum on which malpractice enjoys attention. Furthermore, for an action in medical malpractice/negligence to succeed the patient must prove that:

- The healthcare provider(s) owes her a duty of care. A legal duty exists whenever a hospital or healthcare provider undertakes care or treatment of a patient.
- The duty so owed was breached; that is, the provider failed to conform to relevant standard of care.
- The breach caused an injury. The breach of duty was a direct cause and the proximate cause of the injury; and
- Damage resulting from such breach- without damages (losses which may be pecuniary or emotional) there is no basis for a claim, regardless of whether the medical provider was negligent.<sup>10</sup>

In all cases of medical negligence, as maybe deduced from cases reported below, two critical medico-legal and ethical issues are involved either jointly or separately; lack of informed consent and violation of the standard of care.

### **Cause Célèbre in Medical Malpractice in Kenya**

In 2012 the Kenya National Commission on Human Rights (KCHR) published a report which amongst other thematic issues painted a gory and disturbing picture of floods of cases of medical malpractice / negligence occasioned by healthcare providers in Kenya.<sup>11</sup> Some of these cases are as follows:

### ***Sterilisation without consent:***

A mother of three was admitted with abruption placenta at a Mission Hospital, where she was later taken to theatre for C Section and, unknown to her, bilateral tubal ligation was carried out. She was not informed of the latter and since she did not wish to conceive shortly after the operation she commenced on a family planning method. She had taken two doses of Depo Provera when a doctor (elsewhere) happened to read her discharge card which showed she had actually been sterilized!

### ***A case of ruptured uterus and fetal death***

A woman was admitted at a Public District Hospital in early labour. She had previously delivered by C Section and so was asked to sign consent for repeat CS which she did. However, a doctor who was drunk saw her in the Labour Ward and asked her to begin pushing the baby, without any success. He then tried unsuccessfully to apply forceps. By the time she eventually was taken to the operating theatre her uterus had already ruptured, the baby had died, and she subsequently developed difficulty in controlling urine (Vesico Vaginal Fistula). She has not conceived since then and she could as well have had a hysterectomy done.

### ***Forgotten foreign bodies after surgery***

A relative told of the case of a woman who had a C Section performed by a doctor during which an abdominal pack was (accidentally) forgotten in the abdomen. When she returned two weeks later complaining of abdominal pain and swelling she was told she needed another operation to remove a foreign body which required further payment. This could not be done because she did not have any more money. The patient died of complications most probably associated with the foreign body.

Another case was that of a single mother of two who delivered normally at a Health Centre (Level 3). An episiotomy had been performed and a swab left in the Vagina which should have been removed after a few hours. However, the patient was not informed about it, and the swab was left in for two weeks. By that time infection had set in and she had also developed faecal incontinence. She is now ashamed of her condition and has not mentioned it to anyone except her mother. (It is a possibility that she suffered rectal injury when the episiotomy incision was made).

### ***Doctor refused to come to the hospital when summoned***

A mother of three was admitted to a public District Hospital in labour where she remained for 48 hours without delivery mainly because the only doctor who could do a C

Section refused to come. When eventually the doctor came she was taken to theatre, delivered of a very depressed child who breathed after prolonged resuscitation, but the mother died on the table. The child is now intellectually handicapped.

### *Hysterectomy performed on a woman diagnosed with ovarian cyst*

A woman with dwarfism (possibly achondroplasia) was diagnosed with uterine fibroids at a Provincial Hospital and advised she needed an operation to remove the fibroids. She was taken to theatre but afterwards was not explained what had been done. When three weeks later she realized that a hysterectomy had been performed she sought explanation from the doctor. She was taken aback when the doctor wondered aloud if in her condition she really expected a baby!

The cases reported in the KNHCR 2012 Report is only on sexual violence and reproduction- based and, of course merely a tip of the ice- berg as cases of medical negligence run through the entire gamut of the complex health care delivery system. The Special Report by the Standard Newspaper<sup>12</sup> showed that three out of ten patients are misdiagnosed and prescribed the wrong medication. A few cause of misdiagnosis will suffice her.

On 27th September 2008, Phoebe Atieno took her four year old son Odhiambo to PCEA Kikuyu Orthopedics Rehabilitation Center for corrective surgery on his leg with the hope that he would walk properly thereafter. However her hopes were dashed after the surgery to rectify the rickety legs instead damaged the boy's brain. This happened after an aesthetic drug was administered on him. The matter is before the court and therefore subjudice and I need not say more.<sup>13</sup> In another case, Otis Caroline, Menganga Joseph, a nurse developed cough and fever. She went to see a doctor at Pandya Memorial Hospital in Mombasa and on 16th June 1999 she was „diagnosed. with tuberculosis and was placed on anti-TB injection for four weeks. It later turned out that she was wrongly diagnosed with tuberculosis forcing her to seek redress in the court since August 2000.<sup>14</sup>

The case of Okuthe is equally relevant and instructive. Brian Okuthe a secondary school pupil had reported to Agha Khan Hospital with complaint of vomiting and was tested for malaria. When the symptoms persisted, scanning was done and the doctor advised he needed a surgery to correct a minor obstruction to his digestive system.

Four days later Brian underwent laparectomy (excision of abdominal wall strips to correct laxity of the muscle). This operation cost the parents Ksh.317,201. This surgery was later found out to be unnecessary, ill-advised, poorly and unskillfully done and negligently performed on the boy. As a result of complication arising from this

misdiagnosis and the avoidable surgery, the boy had to undergo four more surgeries at Nairobi Hospital at the cost of over Ksh. 7 Million. A civil suit is pending at High Court at Kisumu.<sup>15</sup>

The case of Rahab Muthoni is more pathetic. In November 2006, she reported at Moi Teaching and Referral Hospital complaining of a throbbing headache. Unknown to Rahab she had meningitis but doctors at the hospital instituted malaria treatment and by the time they realized the misdiagnosis and changed the course of treatment it was too late. She lost her eyesight in the botched treatment. Now Rahab is blind, destitute, forsaken and even abandoned by the husband.<sup>16</sup>

The instances of medical malpractices and misdiagnosis are legion. According to Dr. Peter Wangai a medical doctor and an Advocate, within a span of six years his firm was briefed in 250 cases of medical negligence.<sup>17</sup>

By the admission of Dr. Daniel Yamba, the CEO of the Kenya Medical Practitioners and Dentists Board (MPDB) the Board received about 760 cases of medical negligence between 2000 and 2012.

When and why did the situation go so bad against the run of professionalism, morality, rule of law and good conscience?

## **Causes Of Medical Negligence**

Many reasons have been adduced for the rising cases of medical negligence globally and same apply to Kenya *mutatis mutandi*. These reasons include weak institutional capacity, lack of legal and regulatory regime, dereliction of duty and self preservation or what the military refers to as *spirit de corp*. Attempt is made here to discuss these reasons.

### **Weak Institutional Capacity**

Kenya has many statutory bodies established under the law with varying regulatory functions in the area in the area of health care. These bodies have their own constraints, challenges and weaknesses. Examinations of a few of such bodies will suffice here.

#### **(i) *Public Health Act, Cap 242***

The main enforcement entity has never been fully established and hence it cannot adequately exercise her mandate of which observed consequences are as follows:

- Mushrooming of unregistered clinics;
- Poor physical healthcare infrastructures;
- Poor equipment or inappropriate technology;

- Low health standards;
- Medical malpractices and negligence;
- Corruption and poor inspection; and use of unapproved premises for provision of medical services.

(ii) ***Medical Practitioners and Dentist Act, Cap 253***

- There seems to be partial enforcement of regulation;
- No laws requiring physicians to update their skills;
- No clear laws to protect patients against negligent health staff including doctors;
- Unregistered clinics run by quacks, which threaten the well being of the population;
- Unregistered persons practicing medicine and dentistry;
- Misuse of the title „doctor. which may deceive the public;
- Rapid increase in unlicensed and unregistered laboratories;
- Unqualified persons working in laboratories;
- Use of a wide range of terminologies;
- Lack of enthusiasm of disciplining irate practitioners/colleagues;
- Corrupt and capriciousness during licensing and inspection process;
- Private health facilities operating without meeting all the requirements;
- Doctors operating more than one clinic against the law.

(iii) ***Pharmacy and Poisons Act, Cap 244***

The following were observed as a consequence of poor regulation:

- Pharmacists practicing and going by the title doctor;
- No laws regulating the state of affairs under which a pharmacist can set up private practice in medicine;
- No laws regulating practice by pharmaceutical technologist;
- A market swamped with sub-standard medicine;
- Expired drugs finding their ways to the market;
- Uncertified or banned drugs being offered for sale locally;
- Unhampered practice of companies providing drug samples to medical practitioners;
- Sale of drugs over the counter in shops and by unlicensed street peddlers;
- Use of unapproved premises for provision of medical services.

(iv) ***Clinical officers Act, Cap 260***

Due to poor regulation and implementation the following were observed:

- Slow pace of instilling discipline to officers in the field;

- Clinical officers operating more than one clinic;
- Clinical officers misrepresenting themselves as doctors; and
- Treatment of ailments other than those they are supposed to (e.g. tetanus, cancer, diabetes, typhoid fever, etc).

(v) *Nurses Act 257*

Discrepancies have been highlighted due to poor legislations in this field:

- Lack of rules for private practices by nurses; and
- Lack of clear education attained for nursing qualification.

### **Self-inflicted Lethargy**

i) *Refusal to update knowledge*

All medical staff must keep up with major developments in their particular specialism. For example, a cancer specialist must know about important new treatment. However, this is hardly the case as the new crop of doctors are more contended with the glamour and prestige of a stethoscope hanging on their neck than acquiring new skills.

ii) *Ego tripping*

The practice of medicine has always involved teamwork as no one individual professional has monopoly of knowledge nor is he a Jack of all trade and master of all. Regrettably, and particularly for doctors in private practice, the resort to more experienced colleagues is viewed as condescending and demeaning with the possible fear of losing clients. In this ego tripping, human lives and good health become the victim. In the case of Dr. Jackson Mutuku Mutinda who caused the death of a patient in February, 2008, Medical Tribunal constituted by the MPDB found inter- alia that Dr. Mutinda, been a junior gynecologist did not consult one of his seniors before he decided to carry out the second operation.<sup>18</sup>

iii) *Lack of resources*

There is competing demand for scarce government resources and money appropriated to healthcare is hardly enough to make ends meet. Healthcare administrators and services provider cut corners into to render a semblance of comprehensive health care delivery system. In the process, standards and professionalism are sacrificed. In the case of Dr. Jackson Mutinda; the Tribunal also found that the hospital employed medical practitioners who had not fully qualified to perform major operations.<sup>19</sup>

#### iv) ***Lack of Regulatory Framework***

There is astronomical upsurge in advancement in medical Science as a result of research and experimentations to which healthcare practitioners are avail of .Regrettably, the law in this part of the world is many light years behind. In Kenya practices of in vitro fertilizations (IVF) and surrogacy are common. There are currently six IVF centers operating in the country; four in Nairobi, one in Eldoret and one in Mombasa.<sup>20</sup>

According to Dr. Joshua Noreh of the Nairobi IVF centre, in 2012 alone, his centre carried out 24 surrogate arrangement procedures.<sup>21</sup> Yet, other than Article 43 (1) (a) of the Constitution and Article 16(1) & (2) of the ACHPR which guarantee reproductive rights, there are no laws locally, (like the Surrogacy Arrangements Act 1985 and the Human Fertilization and embryology Act 1990 of U.K) to regulate the practice. The lack of such legislations creates serious moral and ethical challenges particularly with reference to the parenthood of the baby so conceived.

#### **Patients Lethargy and Slow Complainants treatment mechanism**

As a result of the combined effect of illiteracy and poverty,<sup>22</sup> most patients who are victims of medical malpractices either do not know that a malpractice has occurred or are too grieved to bother or feel there are too little to challenge the behemoth called hospitals. Further still, deaths and injuries and or complication are viewed as the normal course of treatment. In any case, the slow pace of investigation of report/complaint by the MPPB is enough to discourage a not- too resilient complainant.

Unlike in the U.S, in Kenya, cases of medical negligence and malpractices from all over the country are brought to one central location, the MPDB in Nairobi. This makes it harder for those outside the capital to pursue their cases<sup>23</sup> and of course increases the cost of pursuing or prosecuting the complaints.

To make matters worse, there is no time limit within which the complaints received by the MPDB must be investigated and decided upon.

#### **Remedies for Medical Negligence**

It is now recondite that a healthcare provider owes his patient a duty of care; and this duty of care arises once a doctor or other health care professionals agree to diagnosed or treat a patient. That professional assumes a duty of care towards that patient.<sup>24</sup> Once this duty of care is breached and injury is caused, it is actionable. This is based on the principle of *ubi jus ibi remedian* (to every wrong, there is a remedy) and the equitable maxim that equity will not suffer a wrong to be without remedy.

Victims of medical malpractices or claimants could resort to criminal prosecution, and or action in tort or a claim under enforcement of fundamental human rights.<sup>25</sup>

A quick consideration of this process is relevant.

(i) ***Criminal Proceedings***

A doctor or healthcare provider could as well be prosecuted criminally for his negligent conduct. The possible offences for which such a person could be charged with under the Penal Code<sup>26</sup> includes manslaughter (SS.202 & 205), murder (SS.203 & 204), suicide pact (S.209), infanticide (S.210), responsibility of person who has charge of another, (S.216), aiding suicide (S.225), killing unborn child (S.228) causing grievous harm (S.234) failure to supply necessaries (S.239), surgical operation (S.240) and supply of harmful substance to children (S.242).

In the case of Gatamu Waigwa and Republic. Cr. App. No. 74 of 2003 the Court of Appeal sitting at Nairobi affirmed the decisions of the lower appellate court and the trial magistrate court which found Dr. Gatamu Waigwa (the appellant) guilty of causing the death of one Analise Nabwire on or about the 6th day of June 1999 at his Diamond Hospital, Kayole Estate, Nairobi contrary to S.205 of Penal Code and he was sentenced to eight (8) years imprisonment.

ii) ***Action in tort***

An aggrieved person can approach the court for remedy for injuries caused by the negligence of his healthcare provider and this can be seen from a few cases cited below.

In Jimmy Paul (Semenye) Vs. Aga Khan Health Services Kenya T/A and 2 Ors Case 807 of 2003.<sup>27</sup> the High Court at Nairobi found the 1st and 2nd defendant liable for jointly and severally causing baby Semeye to suffer Erbs palsy or bronchial plexus injury when he was been delivered at the 1st defendants facility on 18th March 2003. The court awarded the plaintiff general and special damages at the total cost of Ksh.920, 000.

A very pathetic and sad case of negligence occurred in the case of Leah Wambui Githuku Vs. AG and Dr. Njage. (Suit No. 195 of 1997). In that case the plaintiff was diagnosed of psychotic episode i.e unsound mind characterized by thought pattern and behaviour and was admitted at Mathari Mental Hospital. As a result of the negligence of the defendants, on the night of 15th July, 1994 she was attacked by other inmates who gouged out her right eyes and removed the left eye partly leaving it hanging on her face. Leah lost both eyes. On 4th August, 1997, she sued the Ministry of Health and the Medical Offices in charge of the facility for her injuries. On 17th March 2005, the court

found the defendants liable and awarded her special damages of Ksh.61, 760 and general damages of Ksh.2, 000,000.

iii) ***Fundamental Right Enforcement Procedure***

Article 22 of the Constitution provides that any person whose right is breached, being breached or likely to be breached could approach the courts for redress. Interestingly, most of the conducts, acts or omission amounting to medical malpractices border on the violation of the claimant's rights.

Commencing treatment without the informed consent of the patient is a violation of the patient's right to autonomy which is a derivative of the rights to self determination and freedom of conscience, religion, belief and opinion; the offences of murder, manslaughter, suicide pact, infanticide are violations of the right to life; battery and causing bodily/grievous hurt are infractions to the rights to dignity of the human person and freedom from torture, inhuman and degrading treatment; revealing confidential medical information of a patient without her consent is a violation of the right to privacy.<sup>28</sup>

This being the case, Article 22(1) of the Constitution invests on every person claiming that a right has been denied, violated or infringed, or as threatened the right to institute court proceedings.

iv) ***Complaints to KNCHR***

A claimant without prejudice to the right of litigation can lodge complaints of medical malpractices occasioning injuries with the Kenya National Commission on Human Rights which is charged under Article 59(1) (e) of the Constitution to receive and investigate complaints about alleged abuses of human rights and to take steps to secure appropriate redress where human rights have been violated.

**Conclusion**

From this paper, there is no gainsaying that the desire to live a healthy and productive life is high on the pecking order of human beings. However, because of the complex nature of creation coupled with man's activities, environmental factors and acts of God, it is unavoidable that man will face challenges with his mental and physical well being and; therefore the need to have persons trained in the art and science of restoring health and the prevention and control of diseases.

The medical profession is therefore view with awe, respect and trust almost bothering on

cult followership. The place of trust and faith in the healthcare delivery system cannot be over emphasized. We have established based on jurisprudence that health care providers owe patients a duty of care and that in so many cases, this duty have been breached and continue to be breached thus eroding the much needed confidence the profession of medicine deserved.

Causative factors responsible for the high rates of medical negligence were identified. It is therefore our recommendation as follows:

- i) There is the need to review the curriculum of medical schools to incorporate training in ethics and law in order to acquaint medical professional of the legal consequences of medical negligence.
- ii) The capacity of the supervising ministries with oversight functions in respect of health needs to be enhanced for greater control and efficiency.
- iii) Existing health related legislations need review and amendments in order to bring them abreast with advancement in medical science as a result of rapid results in research and experimentation. This will include enactment of legislation to regulate and control in vitro fertilization and surrogacy arrangements. The U.K Surrogacy Arrangement Act 1985 (and the sequent amendment) and the Human Fertilization and Embryology Act of 1990 are recommended models.
- iv) The Medical Practitioners and Dentist Act Cap 253 in particular need urgent amendment in order to expand the functions of the MDDDB to give her more bite and expedite complaint response and resolution mechanism.
- v) Our count must not only do justice to cases of medical negligence brought before them, but justice must be seen to be done. Situation where cases are pending for ten years are unacceptable and very discouraging.
- vi) To stem the tide of this evil called medical negligence, our court must exercise her jurisdiction with firmness and courage by awarding punitive and exemplary damages that would appeal to good judgment and serve as deterrence.
- vii) Whereas the courage and independence asserted by the KNCHR in proactively pursuing human right courses is commendable, more needs to be done in the area of public enlightenment considering the level of ignorance in the society. The current state of anomies and lethargy are unacceptable. Acceptance of things that are not right as acts of God reduces the drive to bring about change. The public needs to know their fundamental freedoms so that when a breach occurs, appropriate mechanism will be activated.

This paper may not be exhaustive but we have opened the hornet next with the possibility of more investigations into this field. Ethicists will need to look more into the correlation between medicine and ethics. Be that as it may we make bold to conclude that the health care and medical sectors are the key pillars that the future of any country rest; as health is said to be wealth and any affront to this all important aspect of the Gross Domestic Product must be viewed as an affront to law and national security.