The Role of the Medical and Dental Council of Nigeria in Regulation of Medical Practice and Curbing Negligence in the Health Sector

Okoh Christiana Oyoh*

Abstract

The restricted postures assumed when regulation of Medical Practitioners is called in question, as opposed to the broad sense in understanding the context of involvement of Medical and Dental Council of Nigeria (MDCN) in curbing medical negligence, requires a certain perspective that will lay the proper foundation for any discuss aimed at helping to curb the acts that constitute medical negligence itself and its possible ramifications. The aim of this article is to examine the role of the MDCN in the regulating medical practice and curbing negligence in the health sector. Our objective was to (a) examine the role of MDCN in checking negligence; (b) examine the implication of regulating medical practice; (c) identify acts amounting to negligence visa viz quackery; (d) identify enablers of quackery; (e)examine the challenges involved in curtailing health related negligence and (f) to make recommendations which will be useful in checking medical negligence. The work recommended that availability of trained specialists, pro bono services to help victims of negligence, awareness trainings on acts of negligence, imposition of maximum required punishment for specific offences, involvement of Medical Practitioners in reporting quackery and negligent practices is germane to addressing quackery and negligence.

Keyword: Negligence, Quackery, Medical Practitioners, Allied Professionals, Duty of Care.

1. Meaning of Negligence

There is no universally acceptable definition of negligence. It may be defined in different ways by different authors.[1]The principles

* Okoh Christiana Oyoh(Mrs.) LL.M; LL.B (HONS.); AISMN; Doctoral student, Faculty of Law, University of Jos; oyoh_christiana@yahoo.com; +234 703 128 6897; Managing Consultant and Medical Law Practitioner at JOACC Achievers Attorneys and Consultants Apple Chambers, Suit 23 Amuzie Plaza, No. 1&2 New Zaria Terrace, Jos Plateau State (joaccachievers.applechambers@gmail.com)

1 R.K. Bag,*Law of Medical Negligence and compensation with supplement*(2nd edn, Eastern Law House 2011)3.

of negligence stems from a duty to take care. Almost all writers on negligence are agreed that Negligence involves a breach of duty of care.[2] The duty of care was a principle established in the celebrated case of *Donogue v Stevenson*[3] which is popularly known as the neighbour principle. A doctor who is negligent exposes himself to disciplinary action from the MDCN and actions for civil and criminal negligence.[4]

Negligence connotes a careless state of mind which may amount to recklessness or indifference. In most cases negligence is used interchangeably as medical malpractice or infamous conduct in professional respect.[5]Okojie defines negligence of a medical practitioner as the failure to exercise a reasonable degree of skill and care in the treatment of a patient.[6]

Negligence is defined in a general sense to cover activities of professionals including Medical Practitioners as the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do; or doing something which a prudent and reasonable man would not do.[7]

The principle underlying professional negligence is that anyone who holds himself out as having professional skill is legally expected to demonstrate the amount of competence associated with the proper discharge of the duties of that profession. If he falls short of that and injures someone in consequence, he is not demonstrating the requisite ability and isipso facto, liable. Medical negligence in the strict sense of the word applies to acts of carelessness only on the part Medical Practitioners, whereas negligence as a general term applies in all professional activities including other health practitioners.[8] However, the sense in which negligence is used in this work is to situate it within the specific area of health.

The question of negligence arises only where some damage occurs as a result of breach of the duty to take care. In order to establish negligence, there must be in existence a duty of care i.e. the medical practitioner owes the patient a duty to exercise due care; a

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2 Abubakar Sadiq Ogwuche, (ed)*Compendium of Medical Law Under Commonwealth and United States Legal Systems* (1stedn, Maiyati Chamber 2006) 21.

3 Donogue v Stevenson [1932] AC 562; [1932] SC (HL) 31.

4 Festus O. Emiri *Medical Law and Ethics in Nigeria* (Malthouse Law Books 2012) 269.

5 Okojie Anyemere, *Medical Practice and the Law of Negligence in Nigeria* (Ambike Press 2013) 4.

6 Okojie,ibid, 21 and Emiri (n 5) 267

7 Byth v Birmingham Water Works Co., (1856) II EX 781.

8 J. A. Dada, *Legal Aspects of Medical Practice in Nigeria* (2ndedn, University of Calabar Press 2013) 126.

breach of that duty and the occurrence of damage or injury flowing from that breach of duty.[9]A man cannot be charged with negligence if he has no duty to exercise diligence.[10]

In *Surgeon Captain C.T Olowu v The Nigerian Navy*[11] the Appellant, a consultant obstetrician and gynecologist, was an employee of the Nigerian Navy Medical Center as the commander of the Medical Centre. He had a patient, who was at the medical Centre for antennal care. Prior history of the patient is that, she had a still birth and had a caesarean section on her because induced labour failed thereby putting her at a high risk, hence the need for close monitoring in her current pregnancy. The surgeon who was aware of her condition did nothing to attend to her and eventually referred her to another facility at the time her condition had already deteriorated as she was bleeding profusely from her vagina. She had another caesarian section where it was discovered that the baby was dead and was outside the womb with the placenta. The patient's uterus got ruptured and she can no longer have children as a result of the prolonged labour. The Appellant was arraigned for negligence and abandoning his duty post. He was found guilty and sentenced to a reduced rank from Navy Captain to commander of four years seniority. The sentence was confirmed by the Navy Board. Dissatisfied with the judgement, the Appellant appealed to the court of Appeal which affirmed the judgment of the General Court Martial. On appeal to the Supreme Court, the Court affirmed the decisions of the lower Court.

Some other acts which constitute negligence include attending to a patient by a drunk specialist, careless retention of an operating instrument inside a patient's abdomen, application of wrong treatment as a result of failure to conduct proper diagnosis, failure to visit a patient to whom the medical practitioner owes professional responsibility.[12]

In *Adebayo v MDPIP*[13], the court enumerated acts which constitute negligence as follows:

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9 Emmanuel Mbonu Osuagwu,*Ethics and Medico Legal Aspects of Medical Practice*(Jaron Industries Limited 2010) 55; see also Lily Srivastava,*Law & Medicine*(2nd edn, Universal Law Publishing Co. 2015) 72.

10 Srivastava*ibid,* p.72-73.

11 Surgeon Captain C.T Olowu v The Nigerian Navy (2011) MLR VOL. 1 Pt 2 2015 161; Olowu v Nigeria Navy (2011) LPELR-3127 (SC) 19-20; Olowu v Nigeria Navy (2006) LPELR-11815 (CA) 51-54.

12 (n6) 3 – 4.

13 Adebayo v MDPIP (2018) LPELR-45537 (CA), P. 30-32.

> The following among others constitute Professional Negligence: (A) Failure to attend promptly to a patient requiring urgent attention when the practitioner was in a position to do so. (B) Manifestation of incompetence in the assessment of a patient. (C) Making an incorrect diagnosis particularly when the clinical features were so glaring that no reasonable skillful practitioner could have failed to notice them. (D) Failure to advise, or proffering wrong advice to, a patient on the risk involved in a particular operation or course of treatment, especially if such an operation or course of treatment is likely to result in serious side effects like deformity or loss of organ. (E) Failure to obtain the consent of the patient (informed or otherwise) before proceeding on any surgical procedure or course of treatment, when such consent was necessary. (F) Making a mistake in treatment e.g. amputation of the wrong limb, inadvertent termination of a pregnancy, prescribing the wrong drug in error for a correctly diagnosed patient. (G) Failure to refer or transfer a patient in good time when such a referral or transfer was necessary. (H) Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient. (I) Failure to see a patient as often as his medical condition warrants or to make proper notes of the practitioner's observations and prescribed treatment during such visits or to communicate with the patient or his relation as may be necessary with regards to any developments, progress or prognosis in the patient's condition.

Other specific acts which constitute medical negligence include where a medical practitioner falls to take blood pressure and misses an impending stroke, if a doctor did not warn the patient of the risk of a procedure, failure to refer a patient to a consultant or a relevant specialist doctor and avoidable complications follow, failure to answer a call while on duty making avoidable mistakes, neglecting accident victims, as is sometimes common in some of our hospitals, with staff insisting that the personnel bringing the accident victims should pay the necessary fees or produce police report, which may

result in death or irreparable damage.[14] Though this has been addressed to a large extent in the recent law on compulsory treatment for victims of gunshot injuries and the National Health Act 2014 which has criminalized such acts,[15] it still rears its ugly head on news headlines.[16]

2. Negligence of members of Professions Allied to Medicine

Persons who fall within the group of allied professionals include Nurses, Medical Technologists, Radiographers, Community Health Practitioners, Occupational Therapists, Optometrists and Dispensing Opticians, Medical Laboratory Scientists, Pharmacists, Physiotherapists, e.t.c. and other health technicians.

Negligence occurs with those who assist Medical Practitioners for example, Pharmacists can be guilty of negligence if they do not dispense drugs according to the prescribed dosage by a Medical Practitioner, or, Nurses for instance can be guilty of negligence in the administration of drugs prescribed by a Medical Practitionerby not adhering to the prescribed dosage or prescribed care to provide for patients.[17]

The following are practical and live instances in which persons other than Medical Practitioners, have been held liable in negligence.[18] In *Harrison v Axelrod*,[19]the Nurse was charged with patient neglect foradministering the wrong dosage of the drug Haldol to a patient on seven occasions while she was employed at a nursing facility. The New York Supreme Court, Appellate Division, held that there was proof of wrong dosage administration of prescribed drugs

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14 Abdulmumini Hassan Rafindadi, *Handbook of Forensic Medicine*(Amana Publishers Limited 2003) 111.

15 Compulsory Treatment and Care for Victims of Gunshot Act 2017, s1 and National Health Act 2014, s 33(1).

16 Bridget Edokwe, 'Outrage Over Dead of Robbery Victim 'Denied' Treatment by Lagos Clinic'. 4 December, 2019<https://outrage-over-dead-of-robbery-victim-denied-treatment-by-lagos-clinic/>accessed 16 September, 2021; Bridget Edokwe, 'Lady Narrates How Cousin Died After Hospital 'Refused to Treat Him' Over Police Report' 27 March, 2021; <https://lady-narrates-how-cousin-died-after-hospital-refused-to-treat-him-over-police-report/>accessed 16 September, 2021.

17 George D. Pozgar, *Legal Aspects of Health Care Administration.* 8th ed. Aspen Publishers, Inc. 2002. P. 96.

18 Though these cases were not decided in Nigeria, they provide real instances that provide us with perspectives in which allied health workers can be held liable in negligence. In Nigeria, the bodies charged with the responsibility of regulating allied professionals have never published any evidence of how they have disciplined professionals for failing in their professional responsibilities. The burden is placed heavily on the Medical Practitioners.

19 Harrison v Axelrod [1993] 599 N.Y.S. 2d 96 (N.Y.App. Div.).

to the patient thereby grounding a case of neglect of patient against the nurse.

In *Parrish v Clark,*[20]a nurse was held to be negligent for not discontinuing the injection of saline solution into an unconscious patient's breast after she noticed ill effects from continued injection of the solution.

In *Betty Larrimore v Homeopathic Hospital Association of Delaware,*[21] nurse was held to be negligent when she administered medication wrongly because she did not go through the patient's record for any modification of medication by the Medical Practitioner. In that case a patient had been given a particular drug by injection over a period of time. The Medical Practitioner wrote an instruction on the patient's order sheet changing administration of the drug from injection to oral medication. A nurse who had been off duty for some days resumed and prepared to administer the drug by injection, the patient and his wife refused and referred the nurse to the doctor's instruction, but the nurse dismissed the patient's request and went ahead to administer the drug by injection. Upon the death of the patient, his wife brought an action against the hospital and it was held liable for the conduct of the nurse.

Also, in *Helmann v Sacred Heart Hospital,*[22]ward nurse and hospital attendants attended to two patients at the same time moving from one patient to another without washing their hands before attending to the other thereby transferring infection from one patient to the other. The court held that the infection was caused by the hospital's negligence in that its personnel failed to follow sterile techniques in ministering to its two patients.

In *Cokertonv Mercy Hospital Medical Center,*[23]the patient was taken to the X-ray department by wheel chair. An X-ray technician, who took charge of the patient in the x-ray rooms transferred the patient from a wheel chair to a portable chair for the procedure during which,the patient complained of nausea and the technician observed that her pupils were tilted but failed to use the restraint straps to secure the patients to the chair. At some point during the procedure, the patient had a fainting seizure. The patient fell as a result of which the physician noticed a deflection on the patient's nose. A specialist was contacted to correct the deformity and he

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20 Parrish v Clark [1933] 145 50. 2d 848 (Fla).

21 Betty Larrimore v Homeopathic Hospital Association of Delaware [1961] 176 A.2d 362

22 Helmann v Sacred Heart Hospital [1963] 381 P.2d (Wash.)

23 Cokerton v Mercy Hospital Medical Center [1992] 490 N.W. 2d 856 (Lowa Ct. App)

observed that there was a substantial injury to the nose to deflect it to that severity. It was held that the hospital was liable for the negligence of the nurses and technicians who left the patient unattended or failing to restrain her, which proximately caused her fall and injury.

And in *Hooks v MCLaughlin*,[24] the Indian Supreme Court held that a Pharmacist had a duty to refuse to refill prescriptions at an unreasonably faster rate than prescribed pending directions from the Medical Practitioner.

There are varying degrees of negligence. However, the Medical Practitioner being placed with the greater burden of responsibility for the patient ought to constantly check, where possible, to ensure that the proper thing is being done by other health professionals working in his team, in order to arrest a situation before it results in an irreparable damage.

3. The Role of MDCN

A Medical Practitioner, within the context of this article is one who has met the requirements for registration as a medical practitioner and has been so licensed to practice medicine by the MDCN[25].The Medical and Dental Practitioners Act CAP M8 2004 (MDPA) which regulates Medical Practitioners and also regulates medical practice in a restricted sense, established the MDCN, giving it the same status that parallels those of a High Court, to regulate medical practice. Pursuant to the powers conferred on it by the MDPA in Section 1(2)(c) and (e), the MDCN establishes enforceable principles of practice in the profession.[26] The Code of Ethics in Nigeria, made by the MDCN pursuant to its mandate makes provision for punishment of recurrent professional negligence or gross professional negligence.[27]

Payment of practicing fees is a requirement for practicing medicine.[28]Practice without payment of the required fees has grave consequences which is classified as an offence with punishment of

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24 Hooks v MCLaughlin[1994] 642 N.E. 2d 514 (ind.)

25 Qualifications for approval for registration and licensing are contained in MDPA s9(1) and (2), while s8 contains requirements for registration.

26 See the Code of Medical Ethics in Nigeria; Medical and Dental Medicine (Clinical Laboratory) practice in Nigeria (2nd edn); Medical and Dental Council of Nigeria (MDCN) Approved Guidelines on Clinical Laboratory Accreditation Practice in Nigeria, all made pursuant to the provisions of section 1 (2) (c) and (e) respectively.

27 Code of Medical Ethics in Nigeria, Rule 29 and 30.

28 MDPA, s14(1)

fine[29].It should be born in mind that a person who engages in medical practice without fulfilling all the conditions for licensing commits an offence and is liable to fine or imprisonment if found guilty.

The major role of the MDCN is to ensure that the practice of medicine is restricted only to those who are registered and licensed to practice as such to ensure the safety of those who access health care services in Nigeria from those who have not received the proper training nor met the requirement for registration and licensing.[30] Thus the responsibility of keeping a register to guide the nation in the event an issue arises as to whether a person engaging in the practice of medicine is qualified or not to practice the profession is very crucial.

The general functions of the MDCN are provided in section 1 of the MDPA, however, in order to fulfil its functions more effectively it was conferred with some powers to make rules, regulations and orders.[31] It is therefore the duty of the MDCN to ensure that the necessary boundaries are set by these rules. The law bestowed on it the necessary powers to hold persons subject to its powers accountable to their duties under these rules, regulations and orders through the institution of the Medical and Dental Practitioners Investigation Panel (MDPIP) and the Medical and Dental Practitioners Disciplinary Tribunal (MDPDT). However, the MDCN's jurisdiction to discipline those who go contrary to the rules and regulations do not cover persons trained to practice allied professions in the health sector, even though the transgression might be one which go contrary, or, is in breach of the provisions of the MDPA. This raises the issue of how the MDCN can play its role to ensure a system that is rid of quackery. There are also provisions of the law which prohibits non-medical practitioners from engaging in medical practice beyond their calling.

The Nursing and Midwifery (Registration, etc.) Act (NMA), s22[32] provides in unequivocal terms as follows:

> Registration under this Act shall not confer the right to assume any name, title or designation suggesting or implying that the person registered is by law entitled to

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29 MDPA, s14(5)

30 Quacks

31 This role of the MDCN is therefore affirmed by the MDPA ss18(1) and 19(1).

32 NMA Cap 332 LFN 2004.

> take charge of cases of abnormality or disease in or relating to any pregnancy requiring medical attention.[33]

Code of Medical Ethics (CME) 2008, Rule 37 states the position law as contained in NMA s22. It further states that:

> It is normal for medical practitioners to accept patients who have obstetric abnormalities who midwifes refer to them as emergencies. If the midwife, nurse or any other person has attempted procedures beyond their professional competence and called undesired complications, the doctor must not shield such a nurse or midwife, she must not be protected if she tries to undertake the responsibilities of a doctor, an action which contravenes the law.
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> A practitioner who knows but fails to report the case where a nurse or midwife compromises a patient's health by performing functions they ought to have referred to a registered practitioner is himself/herself guilty of professional malpractice.

MDPA s13(1)(a) talks about approval by the MDCN of a person selected for employment for a limited period in Nigeria as a practitioner of medicine, surgery, dental surgery or midwifery, which suggests that the regulatory powers of the MDCN extend beyond medical practitioners. The real issue being to commence disciplinary proceedings[34].

Who then punishes or disciplines the allied professional for illegally encroaching into medical practice in other words, engaging in quackery since the MDPDT cannot legally assume jurisdiction over them?It would seem that the MDCN has the responsibility to report them to the security operatives and follow up for prosecution

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[33] Compare with MDPA s17(1)(a)-(c) which provides that "Subject to subsections (6) and (7) of this section, if any person who is not a registered medical practitioner- a.) for or in expectation of reward, practices or holds himself out to practice as a medical practitioner;orb.) takes or uses the title of physician, surgeon, doctor or licentiate of medicine, medical practitioner or apothecary; or c.) without reasonable excuse takes or uses any name, title, addition or description implying that he is authorised by law to practice as a medical practitioner, he shall be guilty of an offence" and MDPA s18 (1) provides that "A person shall not hold an appointment or practice as a medical practitioner or dental surgeon in Nigeria unless he is registered with the Council under the provisions of this Act".

[34] Section 13(1) – (6) MDPA)

since there are criminal sanctions attached to those who contravene the valid provisions of the law, or, report to the regulatory body to which the offender is subject to, if an act of negligence falls below the expectation of a person of professional calling of the allied health practitioner where a register of the members of that allied profession are kept.

Medical negligence is a term which is associated with a person registered as medical practitioner. Quacks are persons not registered to practice medicine in the first place. Thus, the first thing to do when one who is alleged to have committed negligence is, to check whether he is registered by the MDCN, if registered, he is subject to be tried by the MDPDT, if not, he ought to be handed over to the security agents[35] for prosecution. MDCN will then participate in the trial by providing witnesses and evidence of such illegal practice as alleged.

The CME Rules 37, 38, 38.1, 38.2, 38.2a, 38.2b, 38.3.1, 38.3a and 38.3b imposes on medical practitioners the responsibility of exposing unqualified allied practitioners who engage in medical practice[36] to check quackery.

Another way of resolving this quagmire is to arrive at the conclusion that, since MDCN has powers to sue and be sued[37] then it can apply those powers to sue anyone whose actions interfere with effective, efficient and safe health care delivery.

4. Challenges to Regulating Medical Practice

There is a disturbing trend going on currently as the provisions of the Medical Laboratory Science Council of Nigeria Act 2003 is being interpreted as impliedly repealing theMDPA,1988 in areas that give the MDCN powers to regulate medical practice in clinical laboratory[38]. The implication of this is that non-medical practitioners will be allowed to take over the responsibility of Medical Practitioners and MDCN can no longer checkmate activities of the non-medical practitioners in laboratory medicine practice, thereby subjecting members of the dominant profession in the health sector under control and supervision by allied professionals who insist on

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35 police.

36 Medical Practitioners will be in a better position to know and identify where and when quacks engage in medical practice and should stand up to their responsibility in reporting them as failure to do so would amount to infamous conduct under the CME Rule as provided in Rule 26.

37 MDPA s1(1).

38 Which is a field of medical specialization

regulating medical practice in certain areas, contrary to the mandate given to the MDCN to regulate only those within its registered membership in the preamble to the Act. In *Nigeria Union of Pharmacists, Medical Technologists and Professionals Allied to Medicine & 1 other v Obafemi Awolowo University Teaching Hospitals Complex Management Board Others*, where the National Industrial Court held that the provisions of the Medical Laboratory Science Council of Nigeria Act (MLSCNA) 2003, s29(b) have impliedly repealed provisions of MDPA s1(2)(e) of the. The Court stated: "I therefore have no discretion other than to declare that, the in consistent provisions of the MDPA are impliedly repealed by the inconsistent provisions of the MLSCNA, 2003", this decision was followed by Incorporated Trustees of the Association of Laboratory Scientists of Nigeria and Others. v the Attorney-General and Commissioner for Justice, Enugu State and Others[39]. Where the Court reiterated that, "I therefore harbour no further qualms that the two statutes cannot stand side by side: they are very un-accommodative of each other. The MLSCNA, 2003 being later in time than the MDPA 1988 has demonstrated a clear intention to amend the contrary provisions of the MDPA".[40]

The decisions failed to take into consideration the fact that medical doctors who are trained as Laboratory Medicine Doctors (Pathologists)and basic medicine would engage in clinical practical, in training Laboratories, in furtherance of their medical training which the MDCN oversees by making regulations to guide the training of those entrusted to it. By the above decision, the Court sanctioned that the MDCN is ousted from its function to regulate the training of Medical and Dental Practitioners and vested same in the Council regulating an allied profession to regulate training of doctors.

The decision is oblivious of the fact that Medical Practitioners are trained in various areas of specialisation corresponding to the profession of allied practitioners to equip them with the skill to tackle abnormalities that arise in patients who are being attended to by the allied practitioners, for example, there is the Obstetrician and

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39 Incorporated Trustees of the Association of Laboratory Scientists of Nigeria and 4 Others. v Attorney-General and Commissioner for Justice, Enugu State and Others. (Unreported, Suit No. NICN/EN/53/2017) 27 July 2020.

40 Nigeria Union of Pharmacists, Medical Technologists and Professionals Allied to Medicine & 1 other v Obafemi Awolowo University Teaching Hospitals Complex Management Board and 6 Others (Unreported) Suit No. NICN/ABJ/284/2014 27 January 2016

Gynecologist who is a trained medical specialist that takes care of abnormalities and diseases associated with a person under the care of a Midwife. In the course of his training, he has to acquire education that nurses received to place him in a position to understand what the nurse has done before his attention was called in, so he can know where to take over from the nurse. This will also equip him with the knowledge of where the nurse has crossed his/her boundary of the extent of involvement with patient. Thus, the doctor specialist is in the position to give a nurse directive, instructions and supervise to ensure his patient receives proper care and not the other way round.The same with the Optometrists and Dispensing opticians (allied professional) and Ophthalmologists (medical practitioner),Physiotherapists (allied professional) and Orthopedic Surgeon (medical practitioner), Radiographer (allied professional) and Radiologist (medical practitioner). Medical Laboratory Technologists, technicians and Scientists (allied professionals) and Pathologists (medical practitioner) etc. These specialists provide expert interpretation of things beyond the scope of practice of the allied professionals not trained to practice as medical practitioners. This supervisory posture of medical practitioners account for their inclusion as members of decision making/regulatory body of the allied professions.[41]

In the case of *Awolowo v Shagari*,[42] the Supreme Court per Justice Atanda Fastayi Williams stated that, the purpose of a law can be known from its preamble:

> But if any doubt arises from the terms employed by the legislature, it has always been a safe means of collecting the intention to call in aid the ground and cause of making the statute and to have recourse to preamble which according to Chief Justice Dyer in STOWELL V. LORD ZOUCH (1959) IPLOWD 369 is the key to open the minds of the makers of the Act and the mischief which they intend to redress".

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41 Optometrists and Dispensing Opticians (Registration, ETC.) Act LFN 2004, s2(1)(e) and (g); Radiographers (Registration, etc.) Act LFN 2004, s2(1)(e) and (i); Medical Rehabilitation Therapists (Registration, etc.) Act LFN 2004, s2(1)(d) and (h); Community Health Practitioners (Registration, etc.) Act s 2(1)(i); Nursing Midwifery (Registration, etc.) Act of 1979,s 2(1)(i); Dental Technologists (Registration, etc.) Act 1993 s2(1)(d).

42 Awolowo v Shagari (1979) 6-9 S.C 37 at 68, 46-47.

The implication of the decision of the National Industrial Court above is that section 1(2)(e) of MDPA and all resources employed in pursuance of same are exercise in futility and waste of precious man time.

The decisions of the National Industrial Court have been appealed to the Court of Appeal. It is hoped that this disturbing trend is addressed to save the health system from depriving patients the much-needed professional attention of a specialised Medical Doctor in that field of study.

Unfortunately, the allied professionals are currently claiming that they have knowledge of things that the doctor is also trained in and claim to be entitled to engage in practice that are exclusively for medical practitioners and have been endangering lives by diagnosing and prescribing drugs for people. The MDCN ought to have paid agents to report these incidences and take the necessary action to curb these acts of quackery.

However, where other health workers are subject to other regulatory bodies established principally to regulate their practice, only infractions of their professional duties will activate the disciplinary proceedings by the relevant body. The MDCN should be actively involved to ensure that infractorsare properly investigated and disciplined since their professional infraction of duty or negligence at their duty post affect the outcome of treatment plan by Medical Practitioner which, ultimately robs off on Medical Practitioner. This will keep the other health worker in check.

The power to check quacks is also given to the MDCN under Section 17(7) which limits to Medical Practitioners any activity involving an incision in human tissue or to administering, supplying or recommending the use of dangerous drugs on any person[43]. MDPA s17(7) provides that any activity involving an incision in human tissue or administering or recommending the use of drugs is restricted to Medical Practitioners or someone else under his supervision.[44]The question is- has the MDCN been able to live up to its full responsibilities under the Act? By conducting visits to places in which alternative medicines are practiced where they admit people

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43 MDPA s17(7) provides that any activity involving an incision in human tissue or administering or recommending the use of drugs is restricted to Medical Practitioners or someone else under his supervision see also section 49 (1), 52(1) and (2) and section 64 of the National Health Act 2014.

44 MDPA ss49 (1), 52(1) and (2) and 64.

and make cuts on their skin to apply herbal or other products believed to cause healing and cure of diseases.

Matthew identified shortage of Pathologists as one of the challenges of Autopsy in Nigeria which he regarded as enablers of quackery. He stated as follows:

> People who never undergo through formal training as pathologist some time assume the position of doctors and carry autopsy. This sometimes led to unethical and illegal consequences. It also affects the validity of such autopsy report.[45]
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> Pathology is one of the rarest specializations of medicine in Nigeria. Thus, there are few pathologists in Nigeria. It was established that out of the population of over 180 million Nigerians, there are only 150 practicing pathologists.[46]

However, the bad leadership in Nigeria has exacerbated rather, than help the situation, as specialist doctors who are not even adequate to cater to the health needs of the nation are exiting the country in their large numbers[47].

5. Execution of the Role of the MDCN

The MDCN has to some appreciable extent acted up to it responsibility under the act with respect to taking action against Medical Practitioners who were negligent in their duties, however, there are no visible evidence of actions against non-medical practitioners illegally practicing medicine as quacks. Thereare expectations from the MDCN in this regard, especially at this point in time when Pharmacies have become consulting rooms for all kinds of diseases. The following are some of the ways the MDCN has enforced its rules against negligent conducts pursuant to its powers under the MDPA exercised through the MDPIP and the MDPDT:

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45 Matthew Godfree'An Appraisal of Medico-Legal Autopsy under the Nigerian Law' in *Journal of International Law & Jurisprudence* (JILJ) (3)(1) 2017, (Mono Expressions Ltd) 285.

46 *Ibid,* 284.

47 Doctors In Mass Exodus Amidst NARD Strike23 August 2021 <http://dailytrust.com/doctors-in-mass-exodus-amidst-nard-strike> accessed 4 September, 2021.

In *Chairman, MDPIP v Dr. Emmanuel Emelumadu*,[48] the defendant was charged on two counts, with negligently failing to: carryout appropriate test; investigate the cause of the delayed healing of the wounds to determine further line of treatment, or the necessity to refer the patient to a centre with better facilities for his treatment; take or record, or cause to be taken or recorded, patient's vital signs to assist in determining further and appropriate line of treatment; that he failed to: obtain formal or informed consent from the patient; refer the patient to another centre with better facilities even though he knows that his hospital had no or adequate facilities to deal satisfactorily with the patient's condition, among other changes. He was admonished to be of good professional conduct on count 1 and suspended from engaging in Medical Practice for three (3) Calendar months on Count 2. The Tribunal stated that it is not going to tolerate sloppy management patients, and all doctors should know that, no matter how good they are, they must not manage patients where there are insufficient facilities to give to patient's better chances of survival.

In *Chairman, MDPIP v Dr. Osagie Ondiwu*,[49]the defendant was found guilty on two counts charges of, undertaking a major surgical operation on the now diseased patient without the required specialised training in his unregistered private clinic which was not intended for and had no or no adequate facilities to handle and manage such major operations; he was found guilty of practicing without paying his Annual Practicing fees for two years. The Panel suspended him from practicing medicine for six months each on count one and two to run concurrently. It was held that "Good clinical practice demands that he should have transferred the patient to the surgeons and failure to do that is dangerous to patients. it was alsoheld that the defendants practice was illegal having not paid his practicing fee, that the MDCN use the occasion of the renewal of the practice license to ensure that its professionals attend an adequate number of workshops to keep their knowledge and skills up-dated.

In *Dr. Robert O. Akintade v Chairman, MDPDT*,[50]the Court of Appeal affirmed the sentence of 3 months suspension from practice

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48 Chairman, Medical & Dental Practitioners Investigation Panel v Dr. Emmanuel Emelumadu (CHARGE No. MDPDT/26/2003) Judgment delivered on 1st December 2005 reported in Medical Law Report Vol. 1 Pt 2 March 2015. Pp.24 – 39.

49 Chairman, Medical & Dental Practitioners Investing Panel v Dr. OsagieOndiwu (CHARGE N0. MDPDT/2005) reported in Vol. 1 MLR. (22 February 2007).

50 Dr. Robert O. Akintade v Chairman, Medical and Dental Practitioners Disciplinary Tribunal MLR Vol. 1 P.100-119. (9 December 2004).

passed by the Tribunal against the defendant, for failing to attend promptly to the patient; manifesting incompetence in the assessment of the patient by failing to properly diagnose her and failing to realize that the patient had post-operative complications and made glaringly avoidable mistakes in the course of treatment through inadequate history, making inadequate pre-operative investigations, deficient operative procedure and poor and faulty post-operative management.

In *Chairman, MDPIP Medical and Dental Practitioners Investigating Panel v Dr. Chukwuemeka Kelvin Ezem & 1 other*,[51]the panel held that "Doctors must always resist the temptation to pass the buck to junior people in circumstances where a human life hangs in the balance. It held that "there is a crying need for registration, accreditation and inspection authorities to heighten their control of hospitals and clinics in the county. The quality of health care in hospitals with properly qualified doctors is often not better than the numerous quack health institutions that abound in our environment. The only hospitals being seriously supervised are those accredited by MDCN. Practically, all others operate without any supervision. Unless supervisory activities are strengthened throughout the nation, poor clinical services will continue to cause suffering and distress to the Nigerian public.It stated that it is mandatory to make frequent observations of the vital signs on seriously ill patients day and night, for as ill as this patient, one would have expected no less than about four hourly observations.

In *Chairman, Medical & Dental Practitioners Investigating Penel v Dr. ObiomaAzubike Okezie*,[52] the defendant was held negligent for failing to secure the professional services of an anaethetist and also of qualified registered nurses to provide necessary care as required during the period for the patient.It was held that the failure of the defendant to provide cross-matched blood and oxygen which would have been used to resuscitate the patient at the time of impending respiratory failure, which set in post-operatively, as constituting serious negligence because the doctor ought to ensure that these very essential requirements are met before starting an operation.

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51 Chairman, Medical and Dental Practitioners Investigating Panel v Dr. Chukwuemeka Kelvin Ezem & 1 other (CHARGE NO. MDPDT/13/2003). Reported in MMLR Vol. 1 NO. 1 201416.

52 Chairman, Medical & Dental Practitioners Investigating Penel v Dr. ObiomaAzubikeOkezie (CHARGE NO. MDPDT/15/2003) 4 March 2005, MMLR. 43.

It also held that the defendant, leaving a patient in the dangerous immediate post-operative period, to the care of the 70-year-old mother was an irresponsible and unprofessional act. The doctor was suspended from practice for six months.

In *Chairman, MDPIP v Dr. Sumade Adesegun Olumide*,[53]the medical doctor left a huge piece of cloth in the patient's abdomen. This was held to be serious negligence. The panel stated that "A swab count does not absolve the surgeon from ensuring that what he puts in an abdomen when he opened it, he must take out before closing it. A surgeon must look on the other theatre staff as only assisting him. The doctor was suspended from practice for six months.

The Medical Council has also done quite commendable jobs in cleaning the sanctuary of health care through its disciplinary institution by publishing of the names of person who have been found guilty of negligent acts and punished accordingly. This is one of the ways the MDCN has tried to keep medical negligence under check. Most recently in 2021, the names of three doctors who were found guilty by the MDPDT were removed from the register of medical practitioners in Nigeria, twelve, were suspended from medical practice while the other convicted five were admonished[54].

6. Conclusion/Recommendations

In this article, the writer has been able to articulate the intricacies involved in regulating medical practice with the aim of proffering suggestions for curbing negligence and quackery.

The following are the writer's recommendations on how medical Negligence be effectively curtailed:

Constant educational enlightenment and orientation for health practitioners on the position of the law concerning negligence. This is very important because legal knowledge of certain actions and its consequences help to deter law abiding people and ignites caution in not so law-abiding persons.

In sentencing, the MDPDT and MDPIP ought to pay attention to the sentencing especially when death is the result of negligence. Rule 30 of the Code of Medical Ethics in Nigeria prescribes punishment

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53 Chairman, Medical Dental Practitioners Investigation Panel v Dr. Sumade Adesegun Olumide (CHARGE NO. MDPDT/21/2003) 9 December 2004, MMLR. P. 79.

54 Ojoma Akor "Full List: Medical Council Releases Names and Hospitals of Doctors Expelled Over 'Unprofessionalism' <www://dailytrust.com/full-list-medical-council-releases-names-and-hospitals-of-doctors-expelled-over-unprofessionalism>accessed 4 September 2021.

of six months or having name struck off the register of medical practitioners however, this was not followed in the case of *Medical & Dental Practitioners Investigating Panel v Dr. Iroha UkpolaIroha*[55] where the panel found that the defendant conducted surgery without the assistance of a professional anesthetist, he did not use suction Machines which he had in the clinic, that the defendant did not use the proper anesthetic agent to monitor the anesthetic effect which contributed to the patient's death, he entrusted the work of nursing the patient to her husband instead of deploying a trained nurse to nurse the patient recovering from general anesthesia. The panel cautioned against this to avoid suffering and further unnecessary loss of life. The panel decided on the two-count charge and sentenced him to 3 months' suspension from practice on each count to run concurrently. Maximum sentencing can help to curtail negligence and quackery.

Constant publishing of the names of offenders, not just of Medical Practitioners but also of report of actions taken and followed to a logical conclusion against allied professionals who engage in medical practice illegally.

The MDCN should rise up to its duty and be supported on its role of making regulations and orders pursuant to section 19(1) MDPA and put in place mechanisms to ensure compliance with section 49(1) National Health Act, Section 17(1)(a)-(b) etc.

More doctors should be trained in specialist areas of medicine, however, the exodus of specialists due to poor working condition in Nigeria will still make the problem of quackery persist as more quacks will take advantage of non-availability of specialists. So, quackery can be checked by political goodwill through provision of a conducive working environment, to augment the work of MDCN.

Since not all allied professions have Disciplinary tribunals, the MDCN can leverage on its power under section 1 (1) of the MDPA to bring legal action in its name to restrain allied health workers from illegally engaging in medical practice for the safety of the people if it has enough evidence to establish the claim.

If more organisations provide *pro bono services* for more indigent persons on cases of alleged negligence among health practitioners, not just medical practitioners, it will awaken a sense of accountability among all health care practitioners. Though care should be taken not to take up every mistake of Medical Practitioners

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[55] Medical & Dental Practitioners Investigating Panel v Dr. IrohaUkpolaIroha (charge NO. MDPDT/1/2003) MLR, Vol. 1 Part 2 2005. 1 – 16.

as no one is perfect otherwise, it might put a practitioner in a position of fear. Every of his/her action, rather than motivated by desire to save life will be under taken from a care to avoid legal action, thereby creating a gap that would affect smooth doctor/patient cordial relationship. "We just must admit that mistakes or errors are part of our human nature"[56]. There are concerns that health professionals working in specialties in which litigation is potentially most likely have "been practicing defensive medicine"[57].

One of the ways medical negligence can be effectively tackled is for Medical Practitioners to maintain their traditional supervisory role in health institutions[58]. The medical practitioner should not be denied access to discuss or make enquiries into the duties of allied professionals about his patient[59]. The work of a medical practitioner must involve an appreciable interaction with allied professionals. As far as the patient is concern, there cannot be a clear cut dichotomy or independence in health care service provision.

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56 Festus O.E. (n.5)

57 Jean McHale and Marie Fox *Health Care Law Text and Materials* (2nd edn, Sweet & Maxwell 2007) 157; see also M. Jones, *Medical Negligence*, Sweet & Maxwell, 2003. 6-16.

58 Complete autonomy of allied professional, each profession minding its business strictly will only worsen patients' health security in hospitals as it discourages any form of health synergy of medical practitioners with allied professionals. Autonomy of allied health professionals should be allowed only to the extent that core issues such as whether a person is qualified to be admitted as a member of an allied profession, whether condition of annual license have been complied with, professional competence and such related matters, but not to completely alienate them from medical practitioners as that would incapacitate them in their life saving task.

59 Web<"Addressing the crisis in Nigeria's health sector Part 1