BREACH OF THE DUTY OF CARE BY MEDICAL PRACTITIONERS IN CAMEROON

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ABSTRACT

Case law is been use as a means to punish medical practitioners for breach of their duty of care towards patients. When a medical practitioner negligent leads to an injury suffered by the patient, the victim may have the right to pursue legal compensation against the negligent doctor. One of the main elements of a negligent claim is a duty of care. This article therefore looks at the three-part test elements in establishing a medical professional's breach of duty of care. The three-part tests are;

- The doctor owed a duty of care to the patient
- The duty of care was breached and as a direct result of the breach
- The patient suffered harm (damages)

Keywords: Duty of care, medical Doctors/ practitioners; patients and Cameroon law; liability/ Responsibility, Damages.

INTRODUCTION

The duty of care which the doctor, hospital has to exercise towards the patient is very much influenced by the ethics and codes of the profession as well as the statutory regulations which especially the hospital is dependent on for the obtaining and maintaining of its license. Therefore, respect for life is the primary duty of a doctor[i].Doctors must treat all sick persons with equal diligence, whatever their status, nationality, religion and the feelings he may have concerning them.[ii]

The principle of duty of care was established by Donoghue v Stevenson (1932) where in Lord Atkin identified that there was a general duty to take reasonable care to avoid foreseeable injury to a neighbor.[iii]

In this case, a woman in paisley drank ginger beer from a bottle and she found a decomposing snail at the bottom and as a result, the woman became ill and the case was brought to court against the ginger beer company producing i. this company was negligent in failing to ensure her woman's safety during the production process. Thus, the company was held liable. It's same senarriour which applies to the doctor's / patient's relationship.

Members of the medical profession and hospitals are therefore expected to respect, honor and observe the standard of care and may be held liable in law for their failure to observe the duty to take care

Commencing from the Doctor/ hospital – patient relationship, it is clear that this relationship has historically governed the behavior of the parties, interparty and continues to do so till today. One of the core features of the relationship is the promotion and maintenance of medical standards in which the interests of the patient is advanced. Arising from the relationship is also an obligation and commitment not to deviate from the standard of conduct as a means to do harm to the patient in anyway.

The nature of the relationship has also been shaped by a strong commitment to long-standing principles of medical ethics in which conscience and the intuitive sense of goodness, public conscience, responsibility and the Hippocratic Oath play a major role. The relationship is also said to be founded upon trust and respect and which together with normative ethics, influence the relationship.

Normative ethics on the other hand, entail he responsibility of medical practitioners and hospitals to comply with standards of conduct, including moral principles, rights and virtues.

Legal scholars on the other hand suggest that, duty of care comprises several catalogued duties; attending, diagnosing, referring, treating and instructing the patient.

One's a physician breaches the duty of care and a patient experiences an injury, as a result, the physician maybe found guilty of negligence and forced to pay the injured patient or family monetary damages

The department of health estimated that 10% of hospital inpatient admissions results in an adverse event.[iv]But 2% of claims for medical negligence handled by the NHS litigation authority result in court action.[v]However, both the number of claims for negligence and the sums involved in settlement are increasing.so, it is important for medical practitioners to know the claims of negligence and the sum involved.

MEDICAL NEGLIGENCE

Negligent may mean a mental element in tortious liability or it may mean an independent tort.

As a mental element, negligence usually signifies total or partial inadvertence of the defendant to his conduct and or its consequences as a tort is the breach of a legal duty to take care which resulted to damages, undesired by the defendant, here in the doctor, to the plaintiff, the patient.

Simply, it is the failure to exercise due care. The three ingredients for negligence are; (a) a legal duty.[vi] On the part of the doctor towards his patient to exercise care (b) the breach of that duty by the Doctor (c) consequential damage suffered by the patient. These ingredients cannot always be kept apart as Lord Denning had observed that, there are simply three different ways of looking at one and the same problem. To some extent, the standard of care required from doctors is more than that required of a man in the street.

The Medical Standard of Care

Doctors owe a certain level of skill, expertise and care that ultimately be summed up as; **do no harm.**

In court, these standards are determined by assessing the degree of skill, care and diligence expected by a reasonable competent physician under the same or similar circumstances includes;

- The area of medicine in which the doctor practice
- The customary or accepted practices of other doctors in that area
- The level of equipment and facilities available at the time and in the local area

As individuals responsible for people's lives and handling life or death choices, doctors are held to especially high standards. Each doctor pledges to live up to these standards. This means, a doctor is not expected to adequately diagnose and treat serious health conditions irrelevant of their different specialized field of medicine. If a doctor does not perform as expected of someone in his or her field, he doctor may be held liable for any harm that resulted from not adhering to the standards.

A Doctor's Duty to Warn and Advise

Doctors have the duty to communicate and relate adequate information's to their patients. These information's includes;

- Disclosing a diagnosis or proven health warnings to patient in an appropriate time frame
- Informed consent; informing the patient of the reasonable risk of procedures or the cost of treatment.
- Informing patients of any danger or potential side effects associated with drugs prescribed to them
- Disclosing information about possible consequences of treatment that could potentially harm third parties. that is, prescribing medication that causes drowsiness and informing the patient due to the risk of injuring other people while driving or operating heavy machinery.

Duty of Care

Duty of care deals with legal obligations. The specific duty of care depends on the circumstances surrounding both parties. Daycare and schools owe a duty of care to keep the children safe in their surroundings. Doctors owe strict duty of care to patients based on their

professional medical standards. In a medical malpractice claim, establishing a medical professional's breach of duty requires proving;

The Doctor owed a legal duty to the patient

The relationship between a doctor and a patient is a special one. When the patient I admitted at the hospital, a duty of care relationship is created which can be applied to any doctor coming into the contact with the patient not just the team. hence, it has been argued by medical law academics team, any patient we come across in our professional environment is owed a duty of care not only by the patients which the doctor came into contact with but also by those who are employed by the trust to deliver patient care. For example, a patient who has cardiac arrest on a hospital corridor is owed a duty of care by any doctor who happens to be passing and provision of assistance in such circumstances would probably be expected and would not be known as a **good Samaritan act.**

Decree No 83-166 of 12 April 1983 on Cameroon code of medical ethics has clearly established that, there is a duty of care[vii] whose failure to discharge give rise to medical negligence. This duty can either be contractual or a duty arising out of tort law. In some cases, though a Doctor-patient relationship is not established, the courts have imposed a duty upon the doctor. This can be seen in the case of Parmanand Kataria *v union of India* which the Supreme Court states that," every doctor at the Governmental hospital or elsewhere has a professional duty of care".

Another issue is the issue of reasonableness of medical doctors. It has been recognized by the court that, what amounts to reasonableness changes with time[viii].Therefore, a doctor has to constantly update his knowledge to meet the standard expected of him. Also, it may not be necessary for him to be aware of all the developments that have taken place since only reasonable knowledge is required.[ix]

Doctors have a duty to seek consent from their patient before performing acts like surgical operations and in some cases, treatment as well.[x]The duty does not extend to disclosing all possible information or warning a patient of all the normal attendant risks of an operation.

Proving the Existence of a Doctor- Patient Relationship

In order to prove that a doctor owe a legal duty to a patient, the existence of a doctor- patient relationship at the time of the breach of the duty must be evident. This relationship is usually

voluntary and it is entered by agreement. Documents and testimonies that can be used as evidence to support a doctor- patient relationship should show;

-The patient elected to be treated by this particular doctor

-The patient agreed to and was provided examinations for the purpose of treatment for a certain condition or health issue

-Treatment by the Doctor was on going at the time of the malpractice.

Maintaining copies of medical records that provide proof of a completed course of treatment is essential as evidence for the injured patient.

A Doctor may be able to claim that, the Doctor- patient relationship ended before the date of malpractice if there is no evidence otherwise. It's important to understand that, outside a hospital or doctor's surgery, a doctor will not typically owe a duty of care if he did no attempt to help. This means, Doctors are not legally obligated to act a Good Samaritans. However, once a doctor announces his or herself and starts to acts as a doctor, a duty of care has been taken towards hat patient. Under this circumstance, the Doctor can be potentially liable for negligence.

Breach of the Duty

Breaching duty of care can also be called "Negligence". If a doctor negligently – as in carelessly or irresponsibly- breached his or her duty of care to a patient, and caused injury, the Doctor can be responsible for damage.

A breach of duty can be accidentally or purposefully, with malicious and criminal intent. *Bolam v Friern Hospital Trust* is the most well-known case in relation to professional standard[xi].This case concern a patient who sustained fracture during E C T treatment and who alleged that care under anaesthesia had been negligent in part because he had not been given muscle relaxation for the procedure and had not been warn for the risk of fracture. It was concluded that, negligence could not be established as evidence was proven that at the time, it was not universal practice to administer muscle relaxation. It was argued that, if a doctor acted in accordance with a practice that was considered acceptable by a responsible body of Doctors that was sufficient and the claimant must show that no reasonable Doctor actin in the same circumstances would have acted in that way.

The liability of a doctor arises not when the patient has suffered any injury but when the injury has resulted due to the conduct of the Doctor which fall below that which is reasonable. In other words, the Doctor is not liable for every injury suffered by a patient. He is liable for only those that are consequence for breach of his duty. Ones the existence of duty has been established, the plaintiff must still prove the breach of duty and causation. Where there is no breach or the breach did not cause damages, the Doctor will not be liable.[xii]

A breach of duty can be accidental or purposefully with malicious and criminal intent. The following are examples of types of legal claim's regarding medical negligence and breach of duty

- Prescribing a patient incorrect medication
- Failing to review a patient's current medications
- Writing a prescription for the incorrect dose of medication
- Administering incorrect drugs
- Failing to diagnose a health condition entirely
- Ignoring or misreading laboratory results
- Failure to order adequate tests
- Prematurely discharging a patient from care
- Failing to warn a patient of known risks of a surgery, procedure o treatment
- Making a severe mistake during surgery, such as performing surgery on the wrong part of the patient's body or carelessly leaving foreign objects or surgical tools inside the body.

A poor medical result does not mean that a doctor or medical practitioner breached a duty of care and committed malpractice. The Doctor or medical practitioner must have acted in an irresponsible manner that breached the duty of care which led to injury.

In order to show a breach of duty[xiii], the burden on the plaintiff will be first to show what is considered as reasonable under the circumstances and then that the conduct of the Doctor was below this degree. The test of deciding whether there has been a breach of duty as laid down in the Doctrine of *Alderson B*, in *Blyth v Birmingham waterworks co*[xiv] that "negligence is the omission to do something which a reasonable man, guided upon those considerations which

ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do".

Proving Medical Negligence Caused Harm

After establishing the duty of are, breach of the duty of care, the next element of a medical malpractice case is proving the negligent caused hrm.it can be difficult to do so as the negligence on professional actions must be distinct from the illness or injury the patient already had. Example, if a patient passes away while diagnosed with cancer and the family believe that the medical team was negligent in some way.it would be complicated to determine whether it was cancer or negligence that led to the death. The burden of prove lies with the plaintiff to prove every element in the malpractice claim.

In addition, there needs to be a clear line connecting the injury with the medical care provided. For instance, he standard of care for a broken arm is to take an x-ray and set the arm correctly before placing it in a cast to heal. A breach of duty would be if the doctor improperly set the arm or not cast it at all, resulting in the patient's arm healing incorrectly with loss of partial or full use. This would leave the patient suffering in pain and will require surgeries to repair the damage. This is a direct connection between injury and the provided medical care.

Sometimes, in the absence of reasonable explanation for a phenomenon, the principle of 'res ipsa loquitur' (literally, the thing speaks for itself) applies. E.g. the finding of a retained swab in the abdomen at laparotomy can only be assumed to be due to its negligent lo during a previous laparotomy.

Consequential Damage

After establishing the duty of care, breach of the duty of care, it is important to prove that, the plaintiff's damage must have been caused by the defendant's breach of duty and must be remote. Therefore, before remoteness, it must be decided that the breach of duty was as a matter of fact, a cause of the damage and the burden of proving this rests with the plaintiff[xv]. If he fails to prove that, the breach of duty was in fact one of the causes of this damage, then his claim must fail. In *Barnett v Chelsea and Kensington Hospital Management*[xvi], three night-watchmen, one of whom was the plaintiff's husband called early in the morning at the defendant's hospital and complained of vomiting after drinking tea. The nurse on duty

consulted a doctor by telephone and he said that the man should go home and consult their own doctor later in the morning. Later the same day, the plaintiff's husband died of arsenical poisoning and the coroner verdicts was one of murder. In failing to examine the deceased, the doctor was guilty of breach of his duty of care but this breach was not the cause of the death because, it was established that even if the deceased had been examine and treated with proper care, the probability was that, it would have been impossible to save his life. The plaintiff claims therefore failed.

It is important for us to know that, the liability of a Doctor arises not when the patient have suffered any injury but when the injury has resulted due to the conduct of the doctor which has fallen below that of a reasonable care.

In addition, the negligence and professional action must be distinct from the illness or injury the patient already had. For instance, imagine a patient passes away while diagnosed with cancer and the family believes that, the medical team was negligent in some way. I would be complicated to determine whether it was the cancer or negligence that led to the death. The burden of proof lies with the plaintiff to prove every element in the malpractice claim

More so, as regards to damages caused to the patients, it must be significant and specific damages and it include;

- Cost of hospitalization, procedures and treatments.
- Loss of wages from absent work
- Loss of future income and earning capacity
- Chronic pain
- Punitive damages. Additional compensation in the event that health care professionals purposely and maliciously harm a patient
- Wrongful death.

Medical Malpractices by Medical Practitioners in Cameroon

These are some malpractice or wrongs which are el known to exist but does not have any specific name. These are wrong which maybe torts but the code of medical ethics forbids any practice of it

- **Abortion by the Doctor**

  This is forbidden to be practice following the medical ethics but tolerates cases of therapeutic abortion. For this to occurs, the doctor needs to obtain the opinions of two colleagues, one of whom shall be chosen from the civil court list of experts and the other a member of the council of the association who will give a written attestation that the life of the mother can only be preserved by such therapy[xvii].however , where the opinion of two colleagues cannot easily be obtained, the decision to induce therapeutic abortion shall be at the discretion of the doctor in charge[xviii].

  In addition, doctors are obliged to professional confidence[xix].This is considered as the mainstream of the duty of Doctor's towards their patients. A physician or surgeon is under an obligation not to reveal any confidential fact which has come to his knowledge or has been confided to him solely by reason of his profession or duties without permission from the patient. He is exempted from this obligation within the scope of a commission from the prosecution or of his reference as an expert referee.

  In all, doctors are linked to their patient by a contract. As a result of this contractual obligation, the violation of the above duty may result of civil responsibility for the wrong suffered by the patient. The Doctor shall be called upon to pay for the damages caused by his faults under the law of tors and contract. On the other hand, his fault may have a connection with criminal law.

Criminal Offences Committed by Physicians

Two elements are involved when it comes to criminal offence. That's, the ACTUS Reus[xx] and men's Rea[xxi]Therefore, to be guilty of an offence, the accused, here in the Doctor, must not only have behaved in a particular way but must also have had q particular mental altitude to tat behavior[xxii].

The lists of the said offences committed by medical Doctors are broken into two classes: unintentional harms and intentional offences.

Unintentional Harms Committed by Doctors

This is stipulated in section 28 of the penal code. It states in subsection (1) that "whoever by lack of due skill, carelessness, rashness or disregard of regulation cause another death or such

harm, sickness or incapacity as its described in section 277 or 280 hall be punishable with imprisonment of from three months to five years or with fine from ten thousand to five hundred thousand francs or with both such imprisonment and fine". From the above section, we notice that a Doctor can be responsible because his recklessness or negligence has caused damage to his patients.[xxiii]

- **Recklessness**

Recklessness is taking a risk which cannot be justified. The focus here will be what the defendant (doctor) as thinking. In the case of R V G and another[xxiv], in 2003, according t the house of Lords judgment, in this case, the court favored the definition of recklessness provided by the law commission' draft criminal code Bill in 1989 as follows: "A person act recklessly… with respect to:

A circumstance, when he is aware of a risk that exists or will exist:

A result, when he is aware of a risk that it will occur: and it is, in the circumstances known to him, unreasonable to take the risk[xxv]

In order to satisfy the test, medical practitioners must always be aware of the risk. In addition, their conduct must have been unreasonable. It would appear that any level of awareness of a risk will be sufficient, provided the court finds the risk taking unreasonable

- **Negligence**

If negligence occurs as a result of carelessness and it is judged to be 'gross' then, the doctor may be subject to a charge of criminal negligence. Although the requirement to prove criminal negligence is a much higher one.[xxvi]A Doctor found guilty of criminal negligence is also likely to be subject to unfitness to practice procedures by the General medical council.

Intentional Harms Committed by Doctors

Under part III of the penal code of Cameroon[xxvii] dealing with "felonies and misdemeanours against private interest". The following offences are offences committed by medical practitioners

- **Murder, euthanasia, infanticide and capital murder.**

  By virtue of section 275 of the penal code,' whoever causes another death shall by punished with imprisonment for life' .

  Euthanasia[xxviii] can be equated to murder in the absence of a statutory definition to that offence in Cameroon law.

  Section 276 of the PC on its part punishes with death." Whoever commits murder after premeditation, by poisoning or in the preparation, facilitation or commission or a felony or misdemeanor or to enable the escape or to procure the impunity of the offender or of an accessory to such felony or misdemeanor".

  The definition of infanticide under section 340 of the pc is to punish "for murder within the meaning of sections 275 or276 or for abetment of such murder by a mother or her child within one month of birth with imprisonment for from five to ten years, provided that, nothing in this section shall reduce the penalty as against another or accessory These provisions are applicable to the doctor as a mere human being and a professional in the practice of hi calling.

- **Failure to assist**

  A Doctor who fails to render assistance to a person in danger of death or grievous harm, whether by his own endeavors' or by calling for help, where such assistance involves no risk to himself or to any other person's shall be punished with imprisonment for from one month to three years or with fine of from twenty thousand to one million francs, or with both such imprisonment and fine.

- **Abortion and Assault on woman with a child**

  Section 337 of the pc punishes abortion. Paragraph 2 of that section states that "whoever procures the abortion of a woman, notwithstanding her consent shall be punished with imprisonment for from one to five years. And with fine of from one hundred thousands to two million francs". The penalties prescribed by subsection 2 shall be doubled where the offender (a) engages habitually in abortion or(b) practices the profession of medicine or an allied profession". This prohibition is reinforced by the code of medical

ethics in section29 (1) simply states as "any practice or act of abortion shall be forbidden[xxix].

Section 338 of the PC punishes with imprisonment for from five to ten years and with fine of from one hundred thousand to one million francs." Whoever uses force against a woman with child or against a child being born causes intentionally or unintentionally death or permanent incapacity of the child?"

However, section 29(2) of the code of medical ethics, as section 339 of the pc and section 14 of the protocol to the African Charter on human and people's rights on the rights of women in Africa[xxx], recognizes to the women the right to health including sexual and reproductive health. These include the right to; control their fertility, to decide whether to have children, the number of children and the spacing of the children. On the other hand, therapeutic abortion may be performed if such action is the only way of safeguarding the mother's life. Section 14(2) (c) of the protocol recommends that state parties shall take all appropriate measures to " protect the reproductive right of women by authorizing medical abortion in cases of sexual assault, rape, incest and where the continue pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus".

LIABILITIES FOR MEDICAL NEGLIGENCE

Aaron mujati and Joseph chirwa[xxxi] opined that, medical practitioners as professional are liable for damage suffered by individuals who rely on their professional advice. This liability arises because the medical professionals have socialized knowledge, competences and skills which makes them different from their ordinary citizens. As a result of such liabilities, medical practitioners should discharge their duties with care, diligence and skill. Individual medical practitioners will be liable for damages only when they are operating a surgery or clinic or medical center on their name or where they are offering their services as a consultant.in any other situation, it is the hospital that will be vicariously liable for the negligence of an employee, doctor or medical practitioners. In the case of *Collins v Hertfordshire Health country council*[xxxii], it was held that, the hospital was liable for the actions of the surgeon as her employee. Also, in the case of *Cassidy v ministry of Health*[xxxiii], it was held that: hospital authorities can no perform treatments and surgeries by themselves: they have no ears to listen

through her stethoscope and no hands to hold surgeon's knife. They must of it through the staff they employed and if they are negligent in performing the treatment, they are just as liable as anyone else who employs others to do his duties for him".

Civil liabilities for Medical negligence

Civil liability gives a person right to obtain redress from another person. For there should be an award for damages, the injured, person has to have suffered an actual loss, be it personal injury, damage to property of financial loss. In the case of *Mohan v Osborne*[xxxiv], the court of appeal held that, the standard of care I to be measured by expert evidence. Furthermore, in the case of *Hunter v Hanley*[xxxv], lord president Clyde stated that: to succeed in an action based on negligence… where the conduct of a doctor or indeed of any professional man is concerned, the circumstances are not so precise and clear cut as in the normal case. In the realm of diagnosis and treatment… one man clearly is not negligent merely because his conclusion does not differ from that of other professional men, nor because he has displayed les skill or knowledge than others would have shown.

The true test for establishing negligent… on the part of the Doctor is whether he has proved to be guilty of such failure as a doctor of ordinary skill would be guilty of acting with ordinary care.

Subsequently, to prove that the Doctor had positively breached the duty of care owed in the circumstance to the patient, the plaintiff has the burden to prove that the defendant had strayed from the recognized standard of care in profession. This imposes upon the plaintiff of the burden of establishing first what the professional standard of care is in any given case and then the fact that, the defendant has departed from it.

Criminal liability for medical negligence

Criminal proceedings have the objective of punishing the person who has committed crime[xxxvi]. There is no satisfactory definition which will embrace the many acts and omissions which are criminal and which will at the same time exclude all those acts and omissions which are not. In criminal matters, it is usually the state prosecuting the defendant before the magistrate in court. The basic assumption in criminal liability is that, there is both a mental element and physical element to the offence. Criminal liability for negligence was dealt in the case of *R v*

Bateman[xxxvii], in this case, lord Hewart was of the view that, in the law of criminal liability, to convict one of manslaughter, the prosecution must prove that the accuse fell short of that standard[xxxviii]. The extent of his liability depends not on the degree of negligence but on the amount of damage done.

In criminal courts, the amount and the degree of negligence are the determining question.

In explaining the test which should be applied to determine whether the negligence , in a particular case, amounted or did not amount to a crime, judges have used many epithets such as culpable, criminal , gross, wicked, clear, complete. But whether epithet be used or not, in order to establish criminal liability, the facts must be such that, in the definition of the jury, the negligence of the accused went beyond subjects and showed such disregard for the life and safety of others as to the amount to a crime against the state and conduct deserving punishment.

A similar view was taken in *R V Adamako* , where A, an anaesthetist while during an operation the endotracheal tube which supplied oxygen to the patient became disconnected. Approximately 9 minutes after the disconnection, the patient suffered a cardiac arrest from which he died. It was only at this point that A discovers the disconnection and it as held that A was guilty of gross negligence and was convicted for manslaughter. He appeals but his appeal was dismissed.

Appeal for Revision on the Medical Domain in Cameroon

Ones, a medical practitioner breach his duty of care towards a patient, he incurs liability. The liability law has two main objectives: to compensate patients who are injured due to the breach and to deter providers from practicing the profession negligently. But our current liability system in Cameroon is not achieving her compensation goal.

To prove medical negligent, it is so strong in such a way that the patient and persecution have to acquire some medical skills. Also, the medical equipment's in Cameroon is not the best. In Cameroon, not everyone gets to enjoy their rights to healthcare due to the population and the limited number of qualified medical human resources, equipment's and infrastructure. The government has failed in her obligations to ensure health and treatment of her citizens. Hospitals are social amenities and they have duties such as: the duty to diligently attend to the

patient, the duty to protect the patient from harming himself, the duty to provide competent Doctor, nurses and staff of which duties are not brought into reality.

The lack of high-performance equipment's and means for treatment reduces the possibility to establish responsibility on the Doctor. The only possibility for a patient to be awarded compensation is through the principle **Res ipsa loquitur** and the shift of the burden of proof to the doctor to show the means and discharge himself from any liability.

CONCLUSION

This paper sought to show that, despite the occurrence of breach of the duty of care by medical practitioners in Cameroon, the liability of medical practitioners in the Cameroonian context is no easy to establish. It depends on the potential exhibit adduced by the patient or the prosecution who are laymen in the medical field. Even though it is said the judge can call in an exert but the expert is as well a medical practitioner and such will not carry out the duty worth their honor and conscience due to the moral support, they owe to the accused colleagues. Therefore, the principle Res ipsa loquitur meaning the thing speaks for itself should be a prima facie evidence to be used in any medical negligence.

The author argues in the shift of the burden of proof in the domain of medicine from the patient and prosecution who are generally laymen and lack technicality to proof their claims.

We recommend the shift of the burden of proof from the patient to the doctor as done in France since 1997 during the Hedreul case[xxxix]. Where It was held that the doctor had to adduce evidence that he gave all the information to the patient and administered what should be considered as the best treatment at the moment just like the "reasonable man" he is supposed to be.

ENDNOTES

[i] Section 1 of the decree no 83-166 of April 1983 on the code of medical ethics
[ii] Ibid section 2(1)
[iii] Donoghue v Stevenson 1932 AC562
[iv] Donaldson L. making amends; a consultation paper setting out proposals for reforming the approach to clinical negligence in the NHS- London; department of health. June 2003
[vv] NHS litigation authority. Available from http//www.nsisla.com/claims/accssed on 1st November, 2022
[vi] Decree No 83-166 of 12 April 1983 in Cameroon code of medical Ethics. Read part II- Duties of Doctors towards their patients.
[vii] Decree No 83-166 of 12 April 1983 on Cameroon code of medical ethics. Read part II. Duties of doctors towards their patient.
[viii] See vacwell engineering co. ltd. V British Drug house chemicals ltd(13DHC), CIRCA(1971) 1 q.b.111. the result of the vacwell case was tat B.D.H was found responsible for the damage because the company did not do a proper job of researching risks.
[ix] See section 25(1), 26 and 29(4) of Decree No83-166 of 12 April 1983 on Cameroon code of medical Ethic.
[x] A doctor must, if necessary accepts the refusal of the patient who has been duly informed. There shall be no exception to this rule, save in the case of extreme urgency and where the patient is not in a fit state to give her consent. Read section 29(4).
[xi] Bolam v frrien Hospital/ management committee 1957 I W L R 582
[xii] S V JOGA RAO . medical negligence liability under the consumer protection Acts. A review of judicial perspective, Indian journal of urology, 2009 July- Sep- 25 (3), 361-371.
[xiii] It must be noted that it is not sufficient to prove a breach, to merely show that there exists a body off opinion which goes against the practice of the doctor
[xiv] Blyth v Birmingham waterworks co(1856) II EXX.781, 784
[xv] Metropolitan RY.V Jackson (1877) 3 APP.CAS.193 wakelin VL$ S.W. RY (1886) 12 App. Cas. 41
[xvi] Barnett v Chelsea and Kensington Hospital Management committee(1969) 1 Q.B.428.
[xvii] Section29(2)
[xviii] Section 29(3) of medical ethics
[xix] This offence is also a criminal offence punishable under section 310 of the cpc which talks of professional confidence. Physician or the surgeon shall be punished with imprisonment from3-months to 3 years and with the fine from twenty thousands to one hundred thousands francs.
[xx] Section29(1) of the Decree No 83-166 of 12 April 1983, code of medical ethics
[xxi] Section29(2).
[xxii] Section 29(3) of the medical ethics code
[xxiii] This offence is also a criminal offence punished under section 310 0f the cpc as professional confidence. The physician or the surgeon shall be punished with imprisonment for from three months to three years and with fine of from twenty thousand to one hundred thousand francs.
[xxiv] R V G and another (2003) UKHLSO.
[xxv] Catherine Elliott $ Frances Quinn,p.22
[xxvi] That I, beyond reasonable doubt, th sanctions are considerably greater and may include a custodial prison sentence for any Doctor found guilty of such an offence.
[xxvii] Penal code of Cameroon, law No 65/LF/24 of 12 June, 1967
[xxviii] Penal code of Cameroon, law No 65/lf/24 of 12 November 165 and law No 67/lf/ 1 of 12 June 1967
[xxix] Decree No 83-166 of 12th April 1983, code of medical ethic, section 29(1).
[xxx] Maputo protocol 11th July 2003
[xxxi] Mujujati and chirwa on medical law and ethics in Zambia, thorn bird literary agency, 2019.
[xxxii] 1947,1 ALL ER 633
[xxxiii] 1951 2 KB 343
[xxxiv] 1939 2 KB14
[xxxv] 1955 S L T 213
[xxxvi] AG V Radloff(1854)10 EXCH 84
[xxxvii] 1925 19 cr. APP. R8
[xxxviii] R V Bateman (1925) 19 cr. APP R. 8
[xxxix] Arret hedreul, cassation civile 1ere, Arret No 426, 25 fevrier 1997