

Medicine, the Law & You

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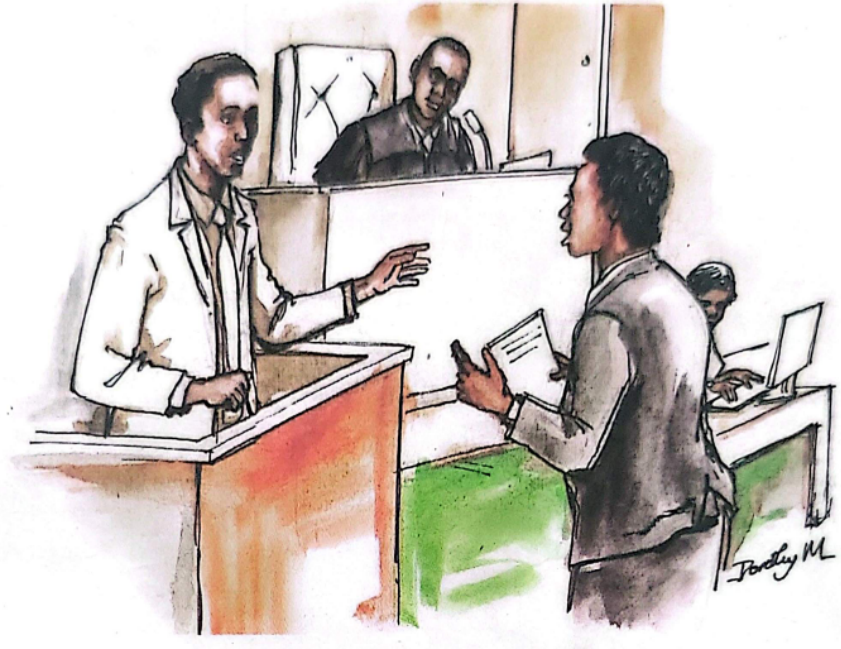
Was it negligence?

OPERATION GONE WRONG. A patient walked into the hospital for a simple operation but she never work up. Whose fault was it.



A 51-year-old mother of five died two days after a surgical operation to remove her appendix. The health facility was sued for medical negligence. One issue court had to address its mind to was whether the health workers were negligent in conducting the medical operation and if the events during the operation led to the death of the patient.

Breach of duty

Medical negligence is a legal term and for it to occur, there must be a duty of care owed to a patient and then a breach of that duty. A breach of duty in medicine is a deviation from what a reasonable and competent health worker would have done. Further, the breach of duty must have been the direct or proximate cause of the loss, injury or damage. A proximate cause is one which is a natural and continuous sequence, unbroken by any intervening event which ultimately produces the injury complained of and without which the injury would not have occurred. For medical negligence to be proved in a court of law, it must be shown that a usual and normal medical practice exists and this usual and normal medical practice was deviated from. It must also be shown that what was done instead of the usual and normal medical practice was what no professional or ordinarily skilled health worker would have done. A doctor is not guilty of medical negligence if he or she has acted in accordance with a practice accepted as proper by a responsible body of medical persons skilled in that act. However challenges exist if more than one practice is considered usual and normal.

In this particular case, the facts admitted before court were that the patient was well before the surgery, save for the appendicitis. The patient was examined and declared fit for surgery. At the beginning of the operation, the anesthetist had challenges in inserting the tube for oxygen in the trachea of the patient. The monitors had not been switched on and when the doctor made the first incision, he realized that the patient's blood was dark in colour unlike the normal bright red.

Cause of death

The team operating on the patient then discovered, to their dismay, that the patient's heart had stopped. They however succeeded in reviving the heart and continued with the operation. Unfortunately the patient had suffered severe brain damage during the operation. The patient did not regain consciousness after the operation and died two days later. The patient was admitted by a doctor working in the hospital, which hospital was duly registered to offer health services including surgical operations. The hospital therefore clearly owed the patient a duty of care after admitting her.

Who carried the blame

The negligent acts complained of were failure to switch on the monitors before the start of the operation, failure to properly insert in the tube for oxygen, failure to monitor the vital signs of the patient and failure to transfer the patient to an intensive care unit. The lawyer for the family submitted to court that the cause of death was heart and lung failure caused by brain death due to lack of oxygen. This was primarily because the patient was placed under anesthesia without external oxygen. Although the ventilator machine had been installed, the medical team did not attach a pulse oxymeter and was therefore unable to detect in time that there was no oxygen supply to the patient, most probably due to a faulty intubation. Having found that intubation was difficult after three attempts, the operating team failed to devise alternative means to give the patient oxygen even when these alternative methods were readily available. The lawyer concluded that the medical team in this particular case failed to meet the standard of care expected and were therefore negligent.

Hard decisions

The lawyer for the hospital contested the cause of death that was documented since the method used to determine it did not take into account the fact that the patient spent two days in the ward after the operation. The method used was clinical observations and not a postmortem which is the gold standard in establishing the cause of death. The possibility of intervening causes was never ruled out and the procedure used in the death audit was very unreliable considering that it focused only on the procedures immediately before and during the operation but ignored those after the operation.

The argument before court was whether the acts complained of were truly responsible for the death of the patient or whether there were some other factors which contributed significantly to the death other than the acts complained of. Court hence had to address its mind to the issue of causation of death.

to be continued...

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