



EXPERT WITNESS IN PROVING THE CASE OF MEDICAL NEGLIGENCE A CONDITION FOR DOCTORS LIABILITY:

Case Study of Dr. Shehu V. Danagundi CA/K/93/2014

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Abstract

Since the view of the Law Lord Denning in his book the Discipline of Law, that no doctor shall be held liable for negligence unless his brothers in the profession will say he ought not to have done it the way he did. The need for expert in the field to testify became significant in any medical negligent claim. By implication you need an expert witness, his colleagues in the profession to opine that the doctor is wrong for acting the way he acted. This view of the learned law Lord was adopted and followed by the House of Lord in the celebrated Bolam case. The aim of this paper is to review the case of Dr Shehu being one of the classical negligence cases that emanated from Kano State High Court of Justice but was overturned on appeal by the Court of Appeal. The brief fact of the case will be given in the paper to show the wisdom of requiring an expert witness in the case of medical negligence. The paper concludes by showing how the unwritten Code of Medical Ethics (Conspiracy of Silence) is killing cases of medical negligence in court. It should therefore be recommended that doctors should see testifying against colleague as a sacrifice to protect the integrity of the profession and the society at large. It should also be recommended that as it is a professional duty to report any erring legal practitioner who violates the rules of the legal profession, doctor should also adopt same rule.

Key words: Negligence, Expert, Doctors Conspiracy of Silence

1.1 Introduction

Medical profession like legal profession is one of the most highly regulated profession. This is because of the fact that when things go wrong is a matter of life and death. The profession has a body name Medical and Dental Practitioners Disciplinary committee, responsible for punishing erring medical practitioners in Nigeria.¹ However, it only hears and treats complaint of medical misconduct in a professional respect. Where the act or conduct of the medical practitioner is considered by his brothers as unprofessional and unethical. But, where a case involves medical negligence it is safer and better to go before a High Court of justice where the cause of action arises to seek for redress. Although nothing stops the Committee from treating cases of medical negligence. However, to proof a case of medical negligence

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¹AE Omonisi, AO Komolafe and WO Odesanmi, 'Contemporary Ethicolegal Issues in Medical Practice in Nigeria - The Role of Medical and Dental Council of Nigeria' [2022] The Nigerian Stethoscope 33.



the court requires evidence including expert testimonies as a condition precedent to prove the case. At least to do what Lord Deming said that the judge should find out whether his brothers in the profession will have done it the way he did. High Court is a court of justice, and the system is adversarial in nature. To get justice one must prove his case with evidence at least at the preponderance of probability. In the case of medical negligence a special kind of witness (expert witness) is required to prove a case against a doctor. Reason being that what is negligent in the eyes of a doctor may not be in the eyes of a lay man. However, the problem is the “Unwritten Code of Medical Ethics”² where doctors do not testify against their fellow colleagues.³ This paper review the case of Dr. Shehu in which the Nigerian Court of Appeal reversed the decision of the Kano State High Court of Justice in the case of medical negligence for want of expert testimonies. The paper will also show the wisdom behind the need for an expert witness in the case of medical negligence.

Medical negligence is different from ordinary tort of negligence especially from its definition. Alderson B., in the case of *Blyth v. Birmingham Water Works Company*⁴ stated 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 do, or doing something which a prudent and reasonable man would not do.”

Thus, this definition implies that negligence cannot be established without establishing a legal duty and the failure to discharge the duty diligently and damages resulted therefrom. In relation to medical negligence if the duty impose by law is neglected through lack of adequate care in the treatment of a patient or failure to follow standard established by reputable body of doctors which may result into harm. In any case taking civil action against doctors for unfortunate situation which has no element of negligence shall be discouraged. This is because it will not help the situation as Lord Denning put it:

“We should be doing a disservice to the community at large if we were to impose liability on hospitals and doctors for everything that happens to go wrong. Doctors will be held to think more of their

²Joseph Kelner, ‘The Silent Doctors- The Conspiracy of Silence’ (1970) 5 University of Richmond Law Review.

³S.I Salihu, ‘The Need for Expert Witness in Medical Malpractice Suits and the “Conspiracy of Silence”’ (2019) 5 Journal of the Nigerian Bar Association Kano Branch.

⁴(1856) 11 EX 781,784.



own safety than that of the good of their patients. A proper sense of proportion requires us to have regard to the conditions in which hospitals and doctors have to work. We must insist on due care for the patient at every point, but we must not condemn as negligence that which is only a misadventure.”⁵

The Law Lord understood the fact that there are many factors that contribute to so many misfortune in the medical practice generally. The working condition, the number of patient in need of care. For example in Nigeria the doctor patient ration is far beyond the threshold. The tools for the work and the ordinary human nature which is susceptible to errors and mistakes without intention to harm anyone. These and many more reasons will make it difficult and dangerous to hold at every little mistakes doctor responsible for every harm.

Therefore, this paper look at the fact that it is almost impossible to prove medical negligence without the assistance of other members of medical profession who will with certainty say that a doctor in question is negligent and he has not exercised care and prudent on his patient. This will be analysed using the case of Dr Shehu decided by the Kano State High Court by her Lordship Hon. Justice Aisha Ibrahim Mahmud.

2.1 Fact of the Case

Maijidda Aminu was admitted into Abdullahi Wase Hospital Kano on the 22nd April 2008 with a pregnancy of over 38 weeks. She delivered but started bleeding profusely hours after delivery and there was no Doctor to attend to provide her with the needed care. The family tried severally to get the attention of the doctor who was in charge of her care, but he was nowhere to be found. She bleedfor over ten hours the doctor could not come and attend to her. Several effort including sending ambulance driver to get him prove abortive. He was not at home nor his private hospital, the nurses could not also get him on phone after several attempts. After over ten hours in her condition the doctor came and just prescribed some medication after checking her condition and left again. Maijidda died as a result of that condition and her family wrote a written complain to the Commissioner of Police and copied the Kano State Hospital Management Board. The management of the hospital constituted a committee to look into the matter. The Committee finished and submitted its report, but refused to release the report to the family of the deceased. After several demand to see the report at least to know the cause of their daughter’s death. The family filed a suit before Kano

⁵*Roe v Minister of Health (1954) 2 QB 66 30.*



State High Court claiming the sum of 50,000,000 (Fifty Million Naira) damages for the negligent of the doctor that led to the death of Maijidda and the matter was assigned to her Lordship Aisha Ibrahim Mahmud.

Several witnesses testified for and against the case, none included an expert witness (Doctor) who could say there was negligence on the part of the defendant. The learned justice found the defendants liable for negligence and award the sum of 50,000,000 (Fifty Million Naira) against the defendant. Not satisfied the defendant appealed to the Court of Appeal where the Court of Appeal quashed the decision of the lower court for failure to get an expert testimony who will say that the doctor has done something which his brothers in the profession will have considered wrong or negligent.

A discussion of some of the key issues in this case will follow showing the wisdom behind requiring an expert testimony and the difficulties that this create for successful case of medical negligence in Nigeria.

3.1 Fundamentals of Liability for Medical Negligence

Medical liability for negligence can either be fault-based or no-fault- based system depending on the jurisdiction where the case emanates.⁶ In a fault-based jurisdiction like Nigeria, a doctor can only be liable for negligence if fault from his part can be proved. This is unlike the opposite of the system that is no-fault-based. In this regard a doctor could be found liable even where he is not at fault from any medical procedure, this is applicable in countries like New Zealand. Therefore, it goes without saying that you require evidence to show the fault of the doctor in the fault-based system like Nigeria. Accordingly, expert witness is required to be able to fault the doctor from medical view point before he could be held liable for negligence.⁷

The implication of the no-fault-based system is that it encourages defensive medicine where doctors shy away from their patients for fear of litigation, or request for unnecessary diagnosis to rule out any mistake which may make the patient to suffer unnecessarily. Defensive medicine also make doctors to choose patient and avoid cases that may not be successful, all in attempt to avoid responsibility or liability. Therefore it is in favour of the patient to avoid putting doctors in defense against liability for any wrong or mistake. As Lord Denning observed in one of his decision.⁸

⁶Festus O Emiri, *Medical Law and Ethics* (Malthouse Press Limited 2012).4

⁷Paul Eisenberg, 'The New Criteria for Expert Evidence in British Courts – Case Law, Statutory Rules and a Negligence Case Study' (2018) 4 458.

⁸*Hatcher v Black 1954*.



Duty of care is a necessary condition for the proof of medical negligence. Is an old Common Law principle for tortious liability that duty of care must exist between doctor and his patient.⁹ This position is the first element to be proved in any case of negligence. That is there must be duty of care or the doctor must owe his patient duty of care.¹⁰ The breach of such duty and the damages occur as a result of the breach of such duty are the remaining two elements.¹¹ It is appropriate to presume duty where a doctor attends to a patient whether he starts a treatment or a particular procedure. And the moment the doctors assume such duty he must see it to the end of the care.¹² Because he can only be liable where he breaches such duty. According to Lord Esher in *Lievre v Gould*¹³ “a man is entitled to be as negligent as he pleases towards the whole world if he owes no duty to them.” Therefore, what indicates duty of care is where the defendant’s omission or action can result into injury to his victim. This position was first established by Lord Atkin:

“The rule that you are to love your neighbor becomes, in law, you must not injure your neighbor and the lawyer’s question, who is my neighbor? Receives a restricted reply, you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor, who then, in law is my neighbor? The answer seems to be persons who are so closely and directly affected by my acts that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”¹⁴

The principle of duty impose to proof liability can be seen from the statement that one is liable where he reasonably must have foreseen harm as a result of his act or omission. For example, in the case under consideration, Dr Shehu ought to have foreseen that the patient he admitted will require his attention and therefore it is neglecting his duty leaving her to bleed for nearly ten hours without his presence to take appropriate action. With due respect to the learned justices of the Court of Appeal they ought to have sought for the answer to the question that is it normal to have spent ten hours without knowing the condition of your

⁹Original Article, ‘Administrative and Legal Protection of Medical Personnel against Criminal and Tortious Negligence (2019) 28 Nigerian Journal of Medicine 253.

¹⁰*U.T.B Ltd v Ozoema* [2007] 3 NWLR (Pt 1022) 488

¹¹*Bouygues (Nig) Ltd v O Marine Services Ltd* [2013] 3 NWLR (Pt 1342) 441.

¹²Miyetti Quarterly and Law Review, ‘Principles of Medical Negligence: An Overview of the Legal Standard of Care for Medical Practitioners in Civil Cases. Michael Aondona Chiangi*’ (2019) 4 Miyetti Quarterly Law Review 1.

¹³*Lievrev. Gould* (1893) 1 QB 491 at 498

¹⁴*Donoghue v. Stevenson* [1932] AC 562

patient as a doctor? In the case of *Bolitho v. City and Hackney Health Authority*¹⁵ the defense counsel in this case accepted that the doctor is negligent for not attending to his patient and nobody was assigned to look at his situation which has resulted into fatal brain damage and subsequently led to death. This presupposes that failure to attend to patient on time will result into serious damage especially where if the situation is quickly addressed the damage could have been averted as in the case of Dr shehu under consideration. Although in the Bolitho case no liability was found against the doctor, that was only because it was established in evidence that had the doctor attended on time he would not have intubated the child, (which is what the parent wanted the doctor to do) and therefore applying the Bolam test¹⁶ the doctor was not held liable because a reasonable body of medical professional agree that they will not have done what the parent wanted, to intubate the child. In other words there is breach of duty but it was not what led to situation warranting the claim for damages. Otherwise the doctor must have been made to pay damages to the parent.

Therefore, a doctor is under a duty where he assume a position where his actions or omission may harm his patient.¹⁷ Having established a legal duty exist, it must be shown that the duty is breached. The standard to establish whether a duty is breached is adumbrated by Alderson B. in *Blyth v. Birmingham Waterworks*, thus:

“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.”¹⁸

This test is objective, although it applies to any case of negligence, in this paper we restrict its application to medical negligence. Therefore, the rule in the Bolam test¹⁹ is very instructive here. What will the body of professional of his standard have done in the situation will determine whether the doctor is negligent. In the case under consideration, this particular condition is what make the case against Dr shehu to be very bad for the plaintiff at the Court

¹⁵*Bolitho v City and Hackney Health Authority* (1997) 39 BMLR 1’.

¹⁶*Bolam v Friern Hospital Management Committee* (1957) 1WLR 582 6.

¹⁷A Ndrew G Old and others, ‘Triangular Torts and Fiduciary Duties’, *Contract Status and Fiduciary Law* (2016).

¹⁸*Blyth v. Birmingham Waterworks* (1856)11 EX.781

¹⁹ In this case two significant legal principles were formulated namely: (a) where the defendant claims or holds out himself as having a special skill, the judgment of his conduct would be according to the standard of a reasonable person, having similar skill which the defendant claims to have, and not the standard of a reasonable lay person. (b) The law will not regard a professional defendant as having fallen below the requisite standard of care if it is shown that the defendant’s conduct is regarded as proper by one responsible body of professional opinion (even though some members of the defendant’s profession may regard the conduct as amounting to negligence).



of Appeal. Failure of the plaintiff in the case to call such number of medical doctors to testify or to show what they will have done in the situation made the respondent lose the case at the Appeal Court. The learned justices asked the nagging question, how do the trial judge know the act of the doctor is negligent? There is no evidence to that effect and the court found in favour of the appellant (Dr Shehu).

Therefore to prove the case of negligence, the question must be answered that what will a prudent medical doctor in his position do in the situation. In this case other medical doctors in his own standard will have to be called to show whether the procedure he followed is an acceptable and recognize procedure in the circumstance.²⁰ Or his omission leading to such damages a body of doctors would have done the same thing, which is an acceptable procedure. However, it must be noted that there is a shift from the Bolam test in the case *Montgomery v Lanarkshire Health Board*.²¹ That is the rule that where a reasonable body of doctors accept a particular procedure as standard, any misfortune resulting from it will not be negligent in the eyes of the law. In brief, the shift is in respect of informed consent. That is to say that patient must be fully informed about every material risk for them to decide within the options available. It is not for the doctor to assume what is the best for his patient.²² The patient must be fully informed and options be given where there is alternative treatment.

In the Montgomery case, the UK Supreme Court shifted from the Bolam case to establish the legal position that the fact that some body of doctors professionally agreed to the procedure which resulted into harm, does not exempt the doctor from liability where he failed to fully inform the patient of the risk involve in such procedure. Therefore, the so-called “Therapeutic Privilege”²³ is no longer applicable principle of the law. In the case, one Montgomery, a patient with diabetic condition noticed her baby was becoming larger which may be difficult to deliver virginally. Because of shoulder dystocia the child and the mother face serious complication, resulting in hypoxic injury with resultant cerebral palsy. Her doctors refused to inform her about the risk of virginal delivery. Also no information was provided to her in order to decide on the available option, that is operation. Montgomery filed a suit for

²⁰Ademola A.Taiwo, Adekunbi Imosemi Administrative and legal protection of medical personnel against criminal and tortious negligence, *Nigerian Journal of Medicine*.2019.28,3 p.250

²¹Montgomery v Lanarkshire Health Board (2015) AC 1430

²²S. I Salihu, Yuhaniif Yusif and Rohizan Halim, ‘Autonomy, Self Determination and Paternalistic Medical Practice in Nigeria: Some Suggested Limitations’ (2017) 2 UNIMAID Journal of Private and Property Law 34.

²³ This is where doctors have the privilege to withhold information from their patient to avoid scaring him of the risk involve. If the patient is fully informed he may not agree to undergo the procedure which is for his own good. It is considered a paternalistic medical practice where the view of the doctors matters more than the view of the patient. This doctrine is rejected by the UK Supreme court in Montgomery case.



negligence arguing that had she been informed about the risk of vaginal delivery she would have opted for a Caesarean Section. Upholding her claim the UK Supreme Court rejected the view established in the Bolam case.

The rule was set that patient condition is not determined by clinical opinion, but the view of the patient himself.²⁴ That the doctors should give full and adequate information to their patient for them to make an informed decision. The decision has also altered the rule for informed consent. The law now is that doctors are considered to have duty of care to inform their patient of every material risk in every medical procedure. The doctor must presume that patient will attach significance to such risk if fully disclosed. Therefore, failure to make such material disclosure is a breach of duty of care by medical practitioners. And therefore liability can be established and the court can award damages against the doctor. Like the case of Dr Shehu under consideration here, the doctor asked the family of the deceased not to shift the patient or change her position as she is on the clinical bed. However he did not inform the nurses nor the patient's family the material risk in changing her position. It was in evidence that the parent took her to bath room against the advice of the doctor. However relying on the decision requiring expert testimonies it would not have changed the judgment, the doctor will still not be found liable in the absence of other doctor's opinion.

4.1 Challenges of Proving the Case of Negligence against Doctors

Proving a case for medical negligence is an uphill task. This is because of the standard established in the Bolam's case²⁵ and other subsequent cases.²⁶ At the risk of repetition the rule in Bolam is that a doctor will only be liable if reasonable body of professionals can say that the procedure employed by such doctor is not the normal and standard procedure acceptable to reasonable body of professional of his skill and knowledge. In other words, to prove a case of medical negligence expert witnesses must be called to testify. Otherwise the court will not be able to say with authority whether the doctor is right or wrong. The decision in the above case further confirmed this position. Because the learned Justice of the Court of Appeal asked the expected question that how did her lordship come to the conclusion that the doctor in question is negligent? Now the problem is the so-called "Conspiracy of Silence"

²⁴Montgomery v Lanarkshire Health Board (2015) AC 1430

²⁵*Bolam v Friern Hospital Management Committee* (1957) 1 WLR 582 6 (n 17).

²⁶*Bolitho v City and Hackney Health Authority* (1997) 39 BMLR 1'. 'Montgomery v Lanarkshire Health Board (2015) AC 1430'.



The conspiracy of silence is a situation where doctors are now making it a rule not to allow anyone among them to advocate or give evidence against his fellow doctor before any court of law for any medical malpractice suit.²⁷ Initially, it was only blameworthy to do so, but now a further step is being taken to provide a disciplinary action in some jurisdictions against any doctor who testifies against colleague.²⁸ This practice is not unusual in some jurisdiction like the United State. In the year 1986, it was asserted by the American Medical Association that if the practice of medicine can be regulated nothing will stop regulating doctors giving testimony in court as expert witnesses. That therefore necessitate making expert testimony as part of the practice of medicine.²⁹ Like any other issue involving public interest, Seventh Circuit had to settle this issue, where Neurosurgeon challenged a Voluntary Association of Neurosurgeon and claimed damages, because he was suspended for six month for testifying in a medical malpractice trial against a member of the Association.³⁰ The plaintiff argued (which remains the conviction of this writer) that if doctors could be blamed for testifying against a colleague for malpractice it will be against public interest and a bad business for the administration of justice.³¹ But the court could not see the wisdom in such argument; it held anyway that if any member of any association could benefit from being its member then it has the right to restrain him from doing something that will be good for the association.

To make the matter worst, some other associations make it look like a crime to testify against any erring doctor as a defendant. For example, American Medical Association urged its member to notify it of any member who testifies against any of its members for him to be punished with suspension or even revoking his licence. The argument has always been that it is in the interest of medical profession to allow its members to testify against colleague. This will not only ensure caution in the practice of medicine but it will add more confidence of patient in the practice. Where it is accepted to conceal the truth that will make doctors take proper care for granted, but as it was rightly argued, why then do doctors report their colleague to any committee or tribunal for disciplinary action and why it is wrong to give expert evidence where a fellow doctor is giving his defense or where he is a plaintiff.

²⁷S.I Salihu, 'The Need for Expert Witness in Medical Malpractice Suits and the "Conspiracy of Silence"' (2019) 5 Journal of the Nigerian Bar Association Kano Branch.

²⁸Kelner (n 3).

²⁹Jeffrey IH Soffer, 'A Professional (Lack of) Courtesy: The Emergence of Expert Testimony in Legal and Medical Malpractice Cases' (2015) 5 St.Mary's Journal on Legal Malpractice and Ethics 347.

³⁰*Austin v American Association of Neurological Surgeon*. F.3d 7th cir 2001, 967

³¹*Ibid.*.



Another difficult challenge is the secret and closed nature of medical practice in Nigeria. Surgical rooms in the hospitals are made restricted areas save for the staff in most of the cases. Once a patient or his next of kin signs the consent form for any medical procedure he may not see his relatives again until the operation is completed he will then be informed about its success or otherwise. With this situation it is difficult to observe whether the treatment is standard or less. It will also be difficult to describe or give description of what happen. Whatever may be said by any witness will end into the rule of hearsay evidence. And the custom of the doctors is to remain silence on the issue. Except where the principle of *Reps Ipsaliquitor* will apply which is very seldom.³² The claimant can assert that a plea of *Res ipsa loquitor* is applicable, meaning ‘the fact speaks for itself’. If this rule is successfully applied that will do away with the need to provide proof of his case. The plea implies that if not for the defendant negligence the situation and consequences will have been different. Therefore, the burden of proof shifts to the defendant to negate such presumption of such negligence or was caused by other factors. The court in most cases hesitate to invoke the doctrine especially in medical cases which makes the proof of medical negligence cases more difficult. This is particularly because of the nature of the human system and medical practice.³³

However, on the need for expert testimonies from the same profession, the case is different in the legal practice, the Court is made a public place where everyone can witness what is happening. By that evidence of negligence, misconduct or even malpractice can be seen and appropriate action taken. While the rules of professional conduct on the other hand makes it a duty on lawyers to report any wrong doing to protect the sanctity of the profession. It is important to add that this rule should be better if medical professionals will employ it in their practice.

5.1 The Role of Medical and Dental Practitioners Tribunal in Cases of Medical Negligence

Having realized that a claim for medical negligence are very difficult to prove against doctors, will it be said that an alternative may be obtained from the body responsible for the regulation of the medical and dental practice? This part of the paper tries to explore the options available to the victim of medical malpractice or medical negligence. It is a fact that

³²Oluseyi Ademola Adejumo Oludamilola Adebola Adejumo, ‘Legal Perspectives on Liability for Medical Negligence and Malpractices in Nigeria’ (2020) 8688 Pan African Medical Journal 1.

³³*Ibid.*.



every profession has different method of ensuring regulations. Medical profession has two method: Self-regulation and Public accountability method. Medical and Dental Practitioners Act 1988 established the Medical Council which has the responsibility of determining and reviewing the standard of knowledge and skills of medical practitioners. The time and space may not allow the details of its function, but its role relating to protection of patient against medical negligence will be briefly discussed as another procedure of curtailing medical negligence. It has the power to make statement of Code of Conduct for medical and dental practitioners. The Code of 2004 set up standard of care the breach of which may amount to medical negligence. The Act also established Medical and Dental Practitioners Disciplinary Tribunal which handles cases of negligence and malpractice after a preliminary investigation is carried out by an Investigative Panel. Every member of the public can file a complaint relating to malpractice or misconduct or even a case of negligence to the Council.³⁴ The Council make reference to the decision of the Tribunal and Investigative Panel and decision of the Nigerians Court in making the rules of professional conduct. Every medical and dental practitioner is expected to abide by the Code.³⁵

Therefore, by implication the most fundamental element required to be proved before a claim of medical negligence succeeds i.e. duty on medical practitioners is set out by the medical council of Nigeria. It is from the duty that a standard of care must be provided. Where it fails the remaining conditions relating to the breach, damages will be claimed. In essence the role of the Council is to set standard that must be complied with to protect the health care of the patient in Nigeria. Where the standard is breached anybody can complain to the council. In the case under consideration the plaintiff respondent filed a further complaint to the council after securing judgment from the state High Court where the doctor was suspended by the council. However, after the decision of the Court of Appeal the decision of the council is also quashed.

6.1 Conclusion

Undoubtedly, every Hospital has a Management Board which plays a more significant role in ensuring and preventing medical negligence. The role of the Board is to make sure that its employee do not over step their bounds in providing standard of care. Where the board obtains evidence of misconduct, like swapping babies, murder or any gross medical negligence, the

³⁴ (n20)

³⁵ Fremgen F. Bonnie, *Medical Law and Ethics* (4th ed., Pearson Prentice Hall 2012) 20.



board will hand over the doctor to the police and other disciplinary bodies.³⁶ Where the board fails to discharge its responsibility the board and the practitioners shall be held vicariously liable.³⁷

Various court's decisions including the case under review here have shown how difficult it is to succeed in making medical negligence claim in Nigeria. This is except where the doctrine of *Reps IpsaLiquitor* is used to established liability. In any case this paper will urge doctors and their professional bodies to encourage expert testimonies in cases of medical negligence.

³⁶ Ademola A.Taiwo, Adekunbi Imosemi (n 10).

³⁷ *Roe v. Minister of Health* (1954)2 QB 66.