

A pilot study assessing litigation in health care services in Nigeria

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Summary

Litigation in healthcare system especially in nursing practice is rapidly increasing globally. Litigation affords an individual explanation and compensation for perceived wrong acts. It also serves to control all service providers. However, observation shows that health care providers in Nigeria behave as if they are litigation proof even in the presence of gross malpractice and negligence. The prime concern of this study attempts finding out Nigerians attitudes to litigation. This paper reports the result of the qualitative aspect of the study. In-depth interviews were conducted from January, 2006- March, 2007 for purposive and randomly selected fifty (50) adults from different ethnic, cultural, and social backgrounds. The study was carried out in Ibadan, the largest city of Nigeria. The instrument was a semi structured interview guide designed to assess the use of orthodox medical practice by Nigerians; examine Nigerians experience of unethical practice or injustice; identify Nigerians' attitude to litigation in health care practices and identify factors responsible for their attitudes to litigation. Data were analysed using content analysis. The result shows that Nigerians utilize the hospitals and are aware of their rights as consumers of healthcare services but show poor attitudes to litigation for different reasons. This attitude was found to be a function of the prevailing socio-cultural factors in Nigeria. Litigation is at low ebb in Nigeria, health care providers should endeavour to deliver safe and ethically sound care despite the prevailing circumstances. Health care is a fundamental human right and so, should be provided with dignity and people should have access to dignified treatment always.

Keywords: - *Litigation; health care services; Nigeria.*

Résumé

La mitigation sur le système des soins de santé spécialement en soins infirmier est rapidement en croissance globalement. La mitigation permet une explication individuelle et une compensation des actes perçus mauvaises et sert à contrôler tous les

professionnels de sante. Cependant, l'observation montre que les services de santé au Nigeria se comportent comme si ils sont protégé contre la mitigation en présence des mauvaises pratiques et la négligence. Le problème majeur dans cette étude essaie de trouver les attitudes des Nigériens en mitigation. Ce papier rapporte le résultat des aspects qualitatifs de cette étude. Des interviews profondes étaient conduites de Janvier, 2006- à March, 2007 dans le but de choisir au hasard 50 individus de différents groupes ethniques culturels et sociaux. L'étude était faite a Ibadan, la plus large ville du Nigeria. L'outil était une interview semi structure guide designer pour évaluer l'usage des pratiques médicales orthodoxes par les Nigériens; examiner l'expérience des Nigériens des pratiques non éthiques ou l'injustice; identifier les attitudes des Nigériens sur la mitigation des services des soins de sante et identifier les facteurs responsable pour leurs attitudes en mitigation. Les données étaient analysées. Le résultat montre que les Nigériens utilisent les hôpitaux et sont avertis de leurs droits comme consommateurs des soins des services de santé mais montrait des faibles attitudes à la mitigation pour différentes raisons. Cette attitude était fonction des facteurs socioculturels excitent au Nigeria. La mitigation est plus faible chez les Nigériens, les professionnels de santé doivent assures d'apporter les soins sécurisée et selon l'éthique voir ces circonstances existantes. Le soin de sante est un droit humain fondamental et ainsi, doit être apporté avec dignité et les gens doivent toujours avoir accès a un traitement dignifié.

Introduction

Among the various things the society needs to remain in existence and performs its function is a functional health care system. The health system in Nigeria is basically two; first, the indigenous medical practice otherwise known as traditional healthcare system and second, the modern/orthodox medical practice which is patterned according to the usual health practice across the globe [1].

Traditionally, healthcare was in the hands of 'medicine-men'. These medicine-men were trained to know the different herbs and roots, how to prepare them, which ailments they cured, how to administer them. The incoming of modern medicine in Nigeria brought many

'modern' hospitals and clinics. Nowadays, doctors and nurses are relied on more for the curing and preventing of diseases, rather than the traditional healers.

The indigenous medical practice is less structured [2,3]. The indigenous medical practitioners are usually members of the same community with their clients and even sometimes related [2,3,4]. The modern medical practice unlike the former is highly structured with specialization. Bureaucracy and relationships are well defined [3,5]. Every act can be interpreted within the context of the law. The latter is regulated legally by the various federal and state legislations and the different professional bodies in the health care to meet the needs of the people [6,7]. In the process of meeting health needs, problems usually ensue between the providers and the consumer hence litigation in health service. At this point, it is important to state that this paper focuses on litigation in modern medical practice.

Litigation in healthcare system especially in nursing practice is rapidly increasing globally [8]. This could be a direct effect of high demand on nurses [9], the rising cost of health care [10] and increased access to health information, which makes every recipient of care to be highly conscious of what to expect. This increase in law suits and disciplinary action is a major reason for the purchase of liability insurance by nurses [11] in the developed world like United Kingdom and United States of America.

The Nigerian legal system has had a lot of influence from English law on its growth [12]. Right now, English law forms a substantial part of Nigerian law. However, the Nigerian legal system is somewhat complex, and has several sub-systems [13].

- At the Federal level, there is a general federal legal system that is applicable throughout the country.
- At the lower levels, each state (including Abuja) has its own legal system.
- Also, local customs are applicable laws in some states

The legal framework in Nigeria adopts the civil and public law system except for a state (Zamfara) which practices the religious law.

The judicial process primarily functions to settle disputes peacefully and in accordance with the law: A lawsuit has strict procedural rules. There are generally five steps in the process viz.

1. A document called a complaint is filed by a person referred to as the plaintiff, who claims

that his/her legal rights have been infringed upon by one or more persons, referred to as defendant(s)

2. A written response, called an answer, is made by the defendant(s)
3. Both parties engage in pre-trial activities referred to as discovery in an effort to gain all the facts of the situation.
4. In the final of the case, all the relevant facts are presented to a judge.
5. The judge renders a decision, a verdict. If the outcome is not acceptable to one of the parties, an appeal can be made for another trial.

During a trial, a plaintiff must offer evidence of the defendant's wrong doing. This duty of proving an assertion is called the burden of proof.

The concept of vicarious liability is gradually and in most cases giving way to professional accountability [12], this automatically makes the nurse and other health care providers liable for their actions and inactions. In Nigeria, the story is quite different. It is observed that despite noticeable and concrete errors in healthcare services [15], Nigerians seem to be too distressed to seek redress. It is not clear whether Nigerians are not aware of their rights or they do not want to appropriate provision for litigation in the law courts. It is against this background that the study aimed at identifying factors responsible for this attitude to litigation in health care services in Nigeria. The study sets out to pursue the following objectives:

1. Assess the use of orthodox medical practice by Nigerians
2. Examine Nigerians experience of unethical practice or injustice
3. Identify Nigerians attitude to litigation in health care practices
4. Identify factors responsible for their attitudes to litigation

Materials and method

This aspect of the study is purely qualitative, adopting in-depth interview method of data gathering. The study was carried out in Ibadan among various ethnic groups. The ethnic groups were consulted differently and participants were randomly selected among willing and consenting people. The respondents consisted of twenty five men and twenty five women with varying socio-demographic characteristics. The interview lasted for a maximum of one hour per person. The interview continued until no new ideas were found, in all there were fifty (50) respondents. This represents the Nigeria

Nation in that most of the leading ethnic groups were represented and controlled for in sample selection. Ethical issues like freedom of participation, freedom to withdraw at any point of the interview, confidentiality of person and information among others have been addressed, interviewees' consents were obtained. The interview focused on their utilization pattern of hospital facilities; their experiences with medical and nursing staff during hospitalization of self or relation(s); evidences of malpractice or negligence; and attitude to litigation. The interviews were recorded manually and electronically and at the end of each interview session a re-play was done to validate each interview. Data collected were transcribed, sorted and coded. Thematic analysis and quantification of data were used to present results.

Findings

Socio demographical data: The age range of respondents was between 30- 65 years with a mean age of 47.4years. There were 26(52%) Muslims and 24(48%) Christians. These adult were all married and were engaged in different trades to earn their living. All the respondents 50 (100%) had at one time or the other utilize the hospital.

The study revealed that all the respondents 50(100%) had different unpleasant experiences with doctors (20) 40%, and nurses (30) 60%. Such unpleasantness were; lack of or inadequate information(20%); total neglect or lack of attention 24%; lack of confidentiality 24%, defamation (slander) 12%; medication error 4%; lack of privacy and respect 4%; false imprisonment 4%; falls 4%; inadequate assessment of client's condition and reporting 4%.

It was surprising that none of the respondents attempted seeking redress. Many reasons were responsible for their attitudes; some were simple while majority were combination of the following reasons:

1. God ordained 35 (70%)
2. No money to contact a lawyer 40 (80%)
3. Legal process unduly prolonged 5 (10%)
4. Doctors and nurse will cover up their mistakes in the law court 20(40%)
5. Human beings are not immune from mistakes 26 (52%)
6. The nurse or doctor may be a relation (sentiments) 15(30%)
7. It does not rectify the error 45(90%)

Discussion

Litigation in-health service is no longer new especially in the more advanced or industrial societies. In a culture bound society like Nigeria, various reasons which could be regarded as cultural and social factors however were found to mediate litigation rate. In any Nigerian community, the mode of relationship is usually a reflection of kinship system [16,17,18]. In this case everyone is treated as a member of the family because of the belief of having the same pedigree. The legal system on the other hand; is perceived as a dividing force than an instrument of peace and unity [19]. Problems are referred to the elders within the family for settlement because of the belief that "*the law courts are meant for enemies and that you cannot institute a legal action and remain friends*". This factor is responsible for why many civil cases are never taken to law courts [19] in an attempt to preserve the bound of unity.

The religious dispositions of many Nigerians were found to arbitrate litigation. Every act was regarded as God ordained even in the face of human errors. The strong beliefs in God as being in control of everything speak of the limitations of every human act and so, litigation was perceived as an act of querying God. Health/ illness and even death are viewed from cultural [16] and spiritual [16] perspectives than from the biological and physical [16] (germ-theory) perspectives that obtain in the orthodox medical practice. People prefer to turn to God for solace and to avoid re-occurrence than to spend time and money seeking justice from men in the court of law. Justice is generally believed to be an attribute of God and not man hence justice belongs to God. This belief is self-sufficient to limit litigation in Nigeria.

Economic and legal factors were some of the reasons for low litigation in Nigeria. The country is going through a period of economic hardship [19] that scale of preference is used for the available meagre resources. This means that money is not available for everything, it is only available for survival needs. Seeking redress was perceived as an extra burden on the available resources that people seem not to be interested about since the service was not free. This indicates that where some are interested in seeking redress for any unpleasant service; such people may be hindered for financial reason and the unduly prolonged legal process that obtains in the country.

The implication of this for health care providers is that litigation will increase as soon as these factors

are rectified. Given the high interaction that exists in nursing practice, the nursing curricular are well packaged to prepare nurses to deliver litigation free nursing care [20,21]. It is however, sad to note that this preparation does not reflect in practice [15]. Health care providers need not practice as if culture is static and not responsive to other factors. As a matter of fact, Nigerians living in other countries will behave differently because of their exposure to other cultures. Within the country itself, improved education on human rights; improved system of communication; struggle for economic survival and rapid transition from rural to urban lifestyles will make cultural and social factors to have a loose hold on litigation. The two cases of negligence that was widely reported in the Nigerian Daily Newspapers [22,23] go to buttress this. The first was that of Baby Kehinde Babalola, who was admitted to the University College Hospital Ibadan, with complaints of diarrhoea on May 26 2004, but ended up with amputation of his right hand. The second was that of Baby Eniola who was infected with HIV in November 2005 after a blood transfusion at the Lagos University. The baby tested HIV positive nine days after the transfusion. However, both parents of Baby Eniola were tested HIV negative, prompting suspicions that the baby was transfused with infected blood.

Conclusion

This descriptive study has its main thrust in the use of in-depth interview to find out factor influencing litigation in health care services in Nigeria. The findings revealed that the orthodox medical practice is patronized for various health problems. However, litigation rate is low compared to other countries due to inherent social and cultural factors.

Litigation rate is likely to increase with time in Nigeria; health care providers should endeavour to deliver safe and ethically sound care despite the prevailing circumstances. Health care is a fundamental human right and so, should be provided with dignity and people should have access to dignifying treatment always. If people are cared for as People, litigation rate may remain low. Education becomes very important to demystify litigation. Though litigation is stressful but it can help in ensuring safe and quality practice.

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