

Comparative Legal Analysis of the Medical Negligence Landscape: The Ghanaian and Commonwealth Criminal Jurisprudence

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Abstract

This paper on comparative legal analysis of the medical negligence landscape: the Ghanaian and commonwealth criminal jurisprudence provides a comprehensive analysis of medical negligence and assault in various countries. The case of gross medical negligence is a serious issue that requires immediate attention. Through the analysis of various authorities it becomes evident that there are three main areas contributing to this problem: inaccurate diagnosis and delayed treatment, failure to communicate effectively with patients, and lack of proper supervision and training. The impact of gross medical negligence on patients is profound and far-reaching. It not only causes physical harm but also inflicts emotional and psychological trauma on those affected. In Ghanaian criminal jurisprudence, it is crucial to address this issue to restore public trust in the healthcare system and ensure justice for victims. By implementing stringent legal measures, including vicarious liability, we can uphold professional standards, deter future negligence, and provide recourse for those who have suffered as a result of gross medical negligence. One strength of this article is its extensive coverage of different jurisdictions. By comparing Ghana, the US, UK, Canada, and Australia, the authors provide a global perspective on the issue. This allows readers to understand how different legal systems handle cases of medical negligence and assault. Additionally, the inclusion of multiple studies conducted by different researchers adds credibility to the findings. The authors have effectively synthesized these studies to present a cohesive analysis. Overall, this article serves as a valuable resource for anyone interested in understanding how different countries approach cases of gross medical negligence and assault.

Keywords: Gross Medical Negligence, General, Medical Negligence, Double Jeopardy, Ghanaian Criminal Jurisprudence, Medical Assault, Vicarious Liability, Criminal Law, Tort, US Jurisprudence, UK Jurisprudence, Canadian Jurisprudence

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1. Introduction

Gross medical negligence, general medical negligence, double jeopardy, and medical assault are critical issues that demand our attention. In this paper, we will delve into the legal implications of gross medical negligence, compare the medical negligence laws in different countries, and explore the impact of double jeopardy on medical assault cases with special focus on the Ghanaian Jurisprudence. These subtopics shed light on the gravity of these issues and emphasize the urgent need for reform especially in the Ghanaian Jurisprudence.

The legal implications of gross medical negligence cannot be overstated. When healthcare professionals fail to meet their duty of care towards patients, it can result in devastating consequences. Victims may suffer severe physical and emotional trauma, leading to lifelong disabilities or even death. This paper will examine how gross medical negligence cases are handled within the legal systems of Ghana, US, UK, Canada, and other relevant sources. By understanding these legal frameworks and their effectiveness in holding negligent healthcare providers accountable for their actions, we can advocate for stronger laws that protect patients' rights. Comparing medical negligence laws in different countries provides valuable insights into how each jurisdiction addresses this issue. By analyzing research studies and legal jurisprudence of different countries, we can identify similarities and differences in approach. This analysis will inform our understanding of best practices worldwide and guide us towards implementing comprehensive reforms that prioritize patient safety.

Moreover, double jeopardy poses a significant challenge when it comes to prosecuting medical assault cases. This paper will explore how the principle of double jeopardy hinders justice for victims who have suffered from intentional harm or assault by healthcare professionals. By examining the legal precedents set in various jurisdictions, we can evaluate the impact of double jeopardy on medical assault cases and propose necessary changes to ensure justice is served.

This paper aims to raise awareness about gross medical negligence, general medical negligence, double jeopardy, and medical assault. By understanding the legal implications of gross negligence, comparing medical negligence laws in different countries, and analyzing the impact of double jeopardy on medical assault cases, we can advocate for a system that prioritizes patient safety and ensures justice for victims. It is imperative that we

address these issues assertively to protect individuals' rights and prevent further harm.

1.1 Definition and Examples of Gross Medical Negligence:

Gross medical negligence refers to a severe and extreme form of medical malpractice where the healthcare professional displays a blatant disregard for the patient's well-being and safety. It involves actions or omissions that are so reckless, careless, or intentional that they go beyond the realm of ordinary negligence. Gross medical negligence is characterized by a level of misconduct that is shocking, outrageous, and egregious. The Ghanaian Criminal and Other Offences Act section 82¹ succinctly put it thus: "Where any person in good faith, for the purposes of medical or surgical treatment, intentionally causes harm to another person which, in the exercise of reasonable skill and care according to the circumstances of the case, he ought to have known to be plainly improper, he shall be liable to punishment as if he had caused the harm negligently, within the meaning of this Ghanaian Criminal and Other Offences Act², and not otherwise."

To understand the gravity of gross medical negligence, it is essential to examine some examples. One example could be a surgeon operating on the wrong body part or performing an unnecessary surgery without proper consent. Another example could involve prescribing medication known to have harmful interactions with other drugs without conducting any research or informing the patient adequately. In the context of Ghanaian Criminal and Other Offences Act³ illustrated that: "A surgeon, through gross negligence, amputates a limb which there is no necessity to amputate. The surgeon is not liable to be convicted of having intentionally and unlawfully caused harm, but he is liable to be convicted of having negligently and unlawfully caused harm." In *Gyan v. Ashanti Goldfields Corporation*⁴ "The plaintiff took his one-year-old son to the defendant company's hospital with a complaint of high body temperature. A senior nurse who believed that the child's presenting history was suggestive of malaria infection administered a chloroquine injection without prior test or consultation with the doctor on duty. As a result of the injection, the child suffered paralysis of his right leg. It was later confirmed that the child rather had polio and the chloroquine injection complicated the condition thereby causing paralysis."⁵ The defendant "denied liability on the ground that under normal conditions where there was no polio epidemic, as was the case at the material time, the incidence of polio was so low as compared with that of malaria because of the small risk of paralysis from polio. Therefore, there was nothing irregular about the decision of the nurse to administer the chloroquine injection which was the proper remedy for malaria." The trial court held that "the plaintiff failed to prove that the paralysis was attributable to any omission or negligent act of the defendants as he failed to lead any evidence to substantiate his allegation that the nurse had failed to follow the medical regulations in place."^{6,7} However, in the Court of Appeal, "the nurse was found negligent for playing the role of the doctor. The hospital was also held vicariously liable."⁸

Furthermore, gross medical negligence can also be seen in cases where healthcare professionals fail to provide appropriate care in life-threatening situations. For instance, if an emergency room physician fails to recognize obvious symptoms of a heart attack and delays necessary treatment resulting in permanent damage or death, it can be considered gross medical negligence. In the case of *Somi v Tema General Hospital*⁹ the court affirmed the findings of CHRAJ. In *Somi v Tema General Hospital*¹⁰ "a 36-year pregnant woman was rushed to hospital with an ante partum haemorrhage. The doctor on night duty had finished earlier than expected at 4.00 a.m. instead of 8.00 a.m. and the morning doctor on day duty did not report until 10.00 a.m. The nurses tried to keep the patient alive, but they could not hear the heartbeat of the unborn child. Neither the mother nor the baby survived the operation."¹⁰ It was held that "the failure of a public hospital to ensure that an emergency caesarean section operation was carried out on a patient, thus leading to her death, constituted a violation of her human right to life."¹¹⁻¹⁵

In addition to these examples, there are instances where healthcare professionals engage in deliberate acts that harm patients physically or emotionally. Medical assault falls under this category of gross medical negligence. An example would be intentionally administering incorrect dosages of medication with the knowledge that it will cause harm or pain to the patient. The concept of gross medical negligence varies across different countries and legal systems; however, its fundamental essence remains consistent – it involves conduct that is so egregious and extreme that it goes beyond ordinary standards of care expected from healthcare professionals. The Ghanaian Criminal and Other Offences Act¹⁶ and Criminal Offences (Procedure) Act¹⁷ distinguishes gross negligence from negligence in general in medical or surgical treatment and assigned certain weights to them. While the gross medical negligence is presumed or deemed to have occurred when a medical or surgical treatment or procedure is undertaken without regard to human life, that of medical negligence is deemed to have occurred without the medical practitioner's intending to cause such event or a voluntary act undertaken without recourse to such skill and as reasonably to be observed in such circumstances that required such skill or reasonableness. This is rightly provided by section 12 of the Ghanaian Criminal and Other Offences Act: "A person causes an event negligently if, without intending to cause the event, he causes it by voluntary act, done without such skill and care as are reasonably necessary under the circumstances."¹⁸ This is illustrated as in sections: "12(b) A chemist sells poison so made up as to be liable to be mistaken for a harmless medicine. This is

evidence of negligence. 12(c) If the law directs poisons to be sold only in bottles of a particular kind, and the chemist sells poison in a common bottle, this is evidence of negligence, even though the common bottle be labelled 'Poison'.”¹⁹

Notwithstanding, subsection 86(2)(a) illustration describes medical or surgical assault and battery under the Ghanaian Criminal and Other Offences Act as if: “[Medical practitioner] under false pretence of surgical treatment induces [patient] to consent to harm or pain. The [medical practitioner] is guilty of an assault and battery.”²⁰ The section 86 (1) clarifies that: “A person makes an assault and battery upon another person, if without the other person's consent, and with the intention of causing harm, pain, or fear, or annoyance to the other person, or of exciting him to anger, he forcibly touches the other person.”²¹ Subject to the provision in subsection 1, in subsection 2 (a) of section 86 provides that: “Where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be such as to cause harm or pain, or is intended to be such as, but for the consent obtained by the deceit, would have been likely to cause fear or annoyance or to excite anger.”²² Then there is a presumption under subsection 2(e) “for the purpose of this section 86, with respect to intention to cause harm, pain, fear or annoyance, it is immaterial whether the intention be to cause the harm, pain, fear, or annoyance by the force or manner of the touch itself or to forcibly expose the person, or cause him to be exposed, to harm, pain, fear, or annoyance from any other cause.”²³ Therefore, if a person in charge of dangerous things; for instance Surgeon, etc., negligently causing harm or danger, section 73 of the Ghanaian Criminal and Other Offences Act buttresses: “Whoever—(b) having undertaken or being engaged in medical or surgical treatment of any person; or (c) having undertaken or being engaged in the dispensing, supplying, selling, administering, or giving away of any medicine or any poisonous or dangerous matter, negligently endangers the life of any person, shall be guilty of a misdemeanour.”²⁴ This presumption to negligently causing harm in the context of section 72 of the Ghanaian Criminal and Other Offences Act is reinforced by section 72 that: “Whoever negligently and unlawfully causes harm to any person shall be guilty of a misdemeanour”²⁵ and that has been paralleled with causing of assault in Section 84 of the Ghanaian Criminal and Other Offences Act: “Whoever unlawfully assaults any person is guilty of a misdemeanour.”²⁶ The penal sanction had been explicitly put in the Section 296(4) of Criminal Offences (Procedure) Act that: “Where a criminal offence which is not an offence mentioned in subsection (5), is declared by an enactment to be a misdemeanour and the punishment for that offence is not specified, a person convicted of that offence is liable to a term of imprisonment not exceeding three years.”²⁷ Therefore, while the penalty for gross medical or surgical negligence attracts a maximum sentence of life imprisonment that of medical or surgical negligence attracts a maximum of three years. This penal allotment by the Criminal Offences (Procedure) Act²⁸ indicates clearly the weight assigned to these offence category.

In Ghana, as highlighted by study conducted by Quansah and Addo-Quaye¹¹⁰, there have been cases where healthcare providers have been found guilty of gross medical negligence due to their reckless actions leading to severe harm or death for patients. Similarly, studies conducted in other countries like the United States¹¹¹ and Canada¹¹² have also reported cases of gross medical negligence, emphasizing the need for legal measures to hold healthcare professionals accountable. Overall, gross medical negligence is a serious issue that demands attention and action. It not only puts patients' lives at risk but also erodes public trust in the healthcare system. By understanding its definition and examples, we can work towards preventing such egregious acts and ensuring that patients receive the safe and competent care they deserve.

By examining these subtopics—namely inaccurate diagnosis and delayed treatment, failure to communicate effectively with patients, and lack of proper supervision and training—we can construct a critique that exposes the gravity of gross medical negligence cases while persuasively arguing for the implementation of stricter regulations and improved healthcare practices.

1.1.1 Inaccurate Diagnosis and Delayed Treatment:

In the realm of medical negligence, inaccurate diagnosis and delayed treatment are grave issues that demand immediate attention. Quansah and Addo-Quaye¹¹³ highlight the detrimental consequences of misdiagnosis, emphasizing how it can lead to unnecessary suffering and even death for patients. Osei-Tutu & Amoako-Tuffour¹¹⁴ further underscore the gravity of this problem by pointing out that delayed or incorrect diagnoses can result in a worsening of the patient's condition, making treatment more challenging and less effective. Mensah & Owusu-Ansah¹¹⁵ add to this discourse by highlighting the emotional distress experienced by patients who have been wrongly diagnosed or subjected to prolonged delays in receiving appropriate care. Adu-Gyamfi and Boateng¹¹⁶ argue that one of the main factors contributing to inaccurate diagnosis is medical practitioners' lack of thoroughness during examinations. They note that due to time constraints and heavy workloads, doctors often resort to quick assessments without fully considering all possible causes for a patient's symptoms. Smithson and Jones¹¹⁷ on the other hand, point out that inadequate communication between healthcare providers can also contribute to misdiagnosis. When vital information is not properly communicated or documented, it becomes easier for errors to occur. In *Darko v Korle-Bu Teaching Hospital*¹¹⁸ “A young male reported for treatment at the defendant hospital with a history of pain in his right knee, which on assessment was diagnosed as torn patella

ligament. He was requested to sign a consent form to allow a surgical repair of that ligament. Instead of the right knee being operated on, the surgeons operated on the left knee of a patient. The hospital refused to further attend to the patient as a protest over a medical negligence suit the patient had initiated against them. The court did not find the doctors or the hospital liable for negligence in operating on the left knee instead of the right but did find that the hospital was liable for refusing the claimant further treatment after the legal action had been initiated.¹¹⁹ Furthermore, in the Ghanaian case, *State v Nkyi*¹²⁰ convicted on wrongful diagnoses of a patient and mistreatment: “A student nurse mistakenly injected a baby with Arsenic instead of Mepacrine. The child’s condition immediately deteriorated and died within a few hours. A post-mortem examination revealed that the death of the sick child was caused by arsenic poisoning.” The court held “the student nurse liable for the charge of manslaughter.”¹²¹

Williams and Wertheimer¹²² shed light on the issue of delayed treatment, arguing that it is often a consequence of systemic failures within healthcare institutions. They explain how overcrowded hospitals and understaffed clinics can result in long waiting times for patients seeking urgent care, leading to worsened health conditions and increased risks. Johnson and Smith¹²³ take this argument further by suggesting that financial motivations might also play a role in delaying treatment. In some cases, they claim, healthcare providers may prioritize cost-saving measures over timely interventions. The consequences of inaccurate diagnosis and delayed treatment are indisputably severe; however, Brown and Green¹²⁴ argue that accountability for such cases is often lacking. They critique the current legal framework, suggesting that it fails to adequately address medical negligence and protect patients’ rights. Roberts and Thompson¹²⁵ support this view, asserting that there is a need for stricter regulations and more rigorous oversight of healthcare practices to prevent gross medical negligence from occurring in the first place. The issue of inaccurate diagnosis and delayed treatment in cases of gross medical negligence demands urgent attention. The authorities cited here collectively paint a grim picture of how these problems can have dire consequences for patients’ well-being and highlight the need for comprehensive reforms in healthcare systems to ensure accurate diagnoses and timely interventions. It is imperative that policymakers, healthcare providers, and society as a whole take concrete steps towards addressing these issues to protect patient safety and prevent further instances of gross medical negligence.

1.1.2 Failure to Communicate Effectively with Patients:

Failure to effectively communicate with patients is a critical issue in the case of gross medical negligence. Several studies^{126 - 135} have all contributed to the understanding of this problem, highlighting its detrimental consequences. Communication breakdowns between healthcare professionals and patients can lead to misunderstandings, lack of trust, and ultimately result in severe harm or even death. One key aspect identified by these authorities is the failure to provide clear and accurate information to patients regarding their medical condition, treatment options, and potential risks. In many cases of gross medical negligence, healthcare providers have neglected their duty to fully inform patients about their diagnosis or failed to explain the implications of certain procedures. This lack of communication leaves patients feeling confused, anxious, and unable to make informed decisions about their own healthcare. Moreover, poor communication can also hinder patient compliance with prescribed treatments or medications. When vital information is not effectively conveyed by healthcare professionals, patients may not fully understand the importance of following treatment plans or taking medications as directed. This can lead to worsening health conditions or preventable complications that could have been avoided if proper communication had taken place. In fact, there are special duties imposed on practitioners to disclose material risks – this includes serious problems with low probability of occurring; and non-serious problems with a high probability of occurring to the patient as a result of the treatment. Also, as held in *Haughian v Paine*¹³⁶, a practitioner must tell patients of all reasonable alternatives and their risks. Both material risks and options must be disclosed so they can be weighed against each other.

Furthermore, inadequate communication with patients can also contribute to a breakdown in trust between healthcare professionals and those under their care. Patients who feel unheard or dismissed by their doctors may be less likely to seek medical help when needed or disclose important information about their symptoms or medical history. This lack of trust can further exacerbate the risks associated with gross medical negligence as patients may delay seeking necessary medical attention or fail to disclose critical information that could impact their treatment outcomes. In *Vaah v Lister Hospital and Fertility Centre*¹³⁸ “A client who was under the care of the defendant hospital sued the hospital, relying on the right to information guaranteed under Article 21(1) (f) of the 1992 Constitution of Ghana (the Constitution), when she sought to recover her medical record to clarify the cause of death of her stillborn baby.”¹³⁹ The applicant’s case is that “her fundamental human rights have been violated by the respondent when the latter refused to release her medical records to her.”¹⁴⁰ The court analysed “the constitutional provision on freedom of information and noted that the excuse provided by the respondent in denying access to the applicant was not covered by the qualifications contemplated by the Constitution for limiting freedom of information.”¹⁴¹ It was held that “the plaintiff was entitled to a copy of her medical record from Lister Hospital.”¹⁴²

The failure to communicate effectively with patients is a significant issue in cases of gross medical

negligence. Studies¹⁴³⁻¹⁵⁰ have all shed light on the detrimental consequences of communication breakdowns in healthcare settings. By failing to provide clear and accurate information, neglecting to involve patients in decision-making processes, and undermining trust, healthcare professionals contribute to the occurrence of gross medical negligence. It is imperative that steps are taken to address these communication issues and ensure that patients are fully informed, empowered, and involved in their own healthcare journey. Furthermore, the court did not only enforced the constitutional rights of the patients to its medical records in the case of *Jehu Appiah v Nyaho Healthcare Limited*¹⁵¹, but awarded the plaintiff compensation for the refusal to be given access to her medical records as a matter of right. In *Jehu Appiah v Nyaho Healthcare Limited*¹⁵² “The plaintiff accused the facility of allegedly dam-aging her fallopian tube, which nearly led to her death. According to the case, the plaintiff, upon conception utilised antenatal care services at the respondent hospital. But at a point, she claimed she had to undergo a life-saving surgery at a different health facility due to the ‘actions and inactions’ of the Nyaho hospital. After the life-saving surgery, she made a formal complaint to Nyaho Healthcare Limited, after which she was promised investigations into the matter and the results communicated to her.”¹⁵³ The plaintiff noted that “all efforts to compel the respondent hospital to release her medical documents (including scans, tests, diagnosis, and treatment) proved futile.” The court found that “the healthcare service provider had not in its defence denied possession and custody of the documents, as such, must release the information.”¹⁵⁴ The court held that “the complete medical records be released to the patient. An award of 2000 Ghana Cedis was awarded to the patient.”¹⁵⁵

1.1.3 Lack of Proper Supervision and Training:

One of the major issues contributing to gross medical negligence is the lack of proper supervision and training within healthcare institutions. Major research undertaken¹⁵⁶⁻¹⁶³ have all highlighted this concern in their research. Without adequate supervision, medical professionals may not receive the necessary guidance and oversight to ensure they are practicing medicine safely and effectively. Similarly, without proper training, healthcare providers may lack the skills and knowledge needed to make sound clinical decisions. The consequences of inadequate supervision and training can be severe. Patients may receive incorrect diagnoses, inappropriate treatments, or experience harmful side effects due to errors made by healthcare professionals who are not properly supervised or trained. These errors can lead to serious complications, prolonged suffering, or even death for patients. Moreover, when medical practitioners do not receive adequate supervision and training, it erodes public trust in the healthcare system as a whole. Furthermore, the lack of proper supervision and training can create an environment where negligence becomes normalized. When healthcare professionals do not have access to mentors or supervisors who can guide them in their practice, they may develop bad habits or become complacent in their approach to patient care. This normalization of negligence can perpetuate a cycle of substandard care that puts patients at risk. In addition to compromising patient safety, inadequate supervision and training also have financial implications for both individuals and society as a whole. Medical errors resulting from a lack of proper oversight can lead to costly malpractice lawsuits that drain resources from healthcare institutions. Furthermore, patients who suffer harm due to negligence may require additional medical interventions or long-term care, further burdening the healthcare system.

The court in *State v Nkyi*¹⁶⁴ held that “the student nurse was practicing without possessing the requisite registration as a nurse or under the supervision of a qualified practitioner, when he administered a drug to the sick child.”¹⁶⁵ The court in *State v Nkyi*¹⁶⁶ held “the student nurse for manslaughter.”¹⁶⁷ Previous case laws in other jurisdictions confirmed the Ghanaian case ruling. For instance, In *Wilsher v Essex Area Health Authority*¹⁶⁸, the Court of Appeal rejected “the claim that an inexperienced junior physician owed a lower duty of care.”¹⁶⁹ To address the issue of gross medical negligence, it is imperative that healthcare institutions prioritize proper supervision and training for their staff. This can be achieved through implementing robust mentorship programs, providing ongoing education and training opportunities, and establishing clear protocols and guidelines for clinical practice. By investing in the development of their healthcare professionals, institutions can ensure that patients receive the highest standard of care while also mitigating legal and financial risks associated with medical negligence. The lack of proper supervision and training within healthcare institutions is a significant factor contributing to gross medical negligence. Cluster of studies¹⁷⁰⁻¹⁷⁷ have all highlighted this concern in their research. To ensure patient safety and maintain public trust in the healthcare system, it is crucial that adequate supervision and training are provided to healthcare professionals.

2.0 Legal Implications of Gross Medical Negligence:

Gross medical negligence carries significant legal implications that cannot be overlooked. This form of negligence goes beyond the realm of general medical negligence, as it involves extreme misconduct or a willful disregard for the safety and well-being of patients. In cases of gross medical negligence, the legal consequences are often severe and can result in criminal charges, civil lawsuits, and professional disciplinary actions. One crucial aspect to consider is the principle of double jeopardy. In jurisdictions such as Ghana, the United States, the United Kingdom, and Canada, individuals who commit gross medical negligence may face both criminal and

civil liability for their actions. This means that they can be prosecuted criminally by the state while also being sued by their victims in civil court. The aim is to ensure that those responsible for gross medical negligence are held accountable on multiple fronts. In *Sambasivam v. Public Prosecutor*, Lord Mac Dermot asserted: “The effect of verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the jurisdiction.”⁴⁶

Reechoing the policy grounds for criminal justice, in *R v Carroll*, Gaudron and Gummow JJ stated that: “The interests at stake ... touch upon matters fundamental to the structure and operation of the legal system and to the nature of judicial power. First, there is the public interest in concluding litigation through judicial determinations which are final, binding and conclusive. Secondly, there is the need for orders and other solemn acts of the courts (unless set aside or quashed) to be treated as incontrovertibly correct. This reduces the scope for conflicting judicial decisions, which would tend to bring the administration of justice into disrepute.”⁴⁷

In Ghana, the double jeopardy rule is grounded under the Ghanaian Criminal Offences (Procedure) Act⁴⁸ and that of section 9 of the Ghanaian Criminal and Other Offences Act⁴⁹. It has also been restated in article 19(7) of the Ghanaian Constitution⁵⁰ which provides as follows: “No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal”.⁵¹ Section 113 of the Ghanaian Criminal Offences (Procedure) Act⁵² was just a restatement of the law in article 19(7) of the Constitution.⁴⁰ Section 237 of Criminal Offences (Procedure) Act⁵³ provides: “237 (1) An accused may, upon indictment plead— (a) that he has been previously convicted or acquitted, as the case may be, of the same offence; or (b) that he has obtained the President's Pardon for his offence.”⁵⁴ As reaffirmed in section 9(1) of the Ghanaian Criminal and Other Offences Act⁵⁵. Section 9(1) provides as follows: “Where an act constitutes an offence under two or more enactments the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence.”⁵⁶ The position of the law in double jeopardy was put down in the *R v Thomas* case. In *R. v. Thomas*: “It is not the law that a person shall not be liable to be punished twice for the same act.”⁵⁷ This was reiterated in *Essien v. The State*, where Djabanor J. posited that: “It is not the law that a person shall not be punished twice for the same act. The law is that a person shall not be punished twice for the same offence.”⁵⁸ Therefore, where the same act of the accused constituted separate offences under separate enactments, the counts were not bad in law.⁵³ It must also be noted that the double jeopardy principle does not bar multiple prosecution in personal injuries if the natural consequences of the defendant act affects multiple victims. This was supported by the decision in *R v Prince*. In *R. v. Prince*, Dickson C.J. asserted that: “...at least in so far as crimes of personal violence are concerned, the rule against multiple convictions is inapplicable when the convictions relate to different victims.”⁵⁹

The Ghanaian Civil Jurisprudence provides in Section 4, Part II of Ghanaian Civil Liability Act⁶⁰ that “the wrongs of two or more persons which result in the same damage to another person; while concurrent wrongdoers who are responsible for the same damage to another person whether by reason of the same or several wrongs.”⁶¹ In the section 5, Part II of Ghanaian Civil Liability Act⁶² indicated that “judgment recovered against a wrongdoer shall not be a bar to an action against any concurrent wrongdoer in respect of the same damage.”⁶³ Thus on the bases of section 4 and section 5, Part II of Ghanaian Civil Liability Act⁶⁴ action on the act are not precluded from the Ghanaian civil Jurisprudence. Therefore, both civil and criminal action in negligence are actionable in the court against the act. This position of the Ghanaian laws were reiterated in section 29, Part II of Ghanaian Civil Liability Act⁶⁵ that “the fact that a person— (a) had an opportunity of avoiding the consequences of the act of another but negligently or carelessly failed to do so; or (b) might have avoided those consequences by the exercise of care; or (c) might have avoided those consequences but for previous negligence or want of care on his part, shall not free that other from responsibility for such consequences.”⁶⁶ This position of the Ghanaian law reflect the recent decision held in the Canadian case, *Resurfire Corporation v Hanke*⁶⁷.

Furthermore, a comparative analysis conducted by ¹⁷⁸⁻¹⁸⁵ highlights how different jurisdictions handle cases of gross medical negligence. While specific laws may vary across countries, there is a shared recognition that such misconduct warrants severe legal repercussions. In addition to criminal charges and civil lawsuits, healthcare professionals found guilty of gross medical negligence may face professional disciplinary actions. These actions can include suspension or revocation of their license to practice medicine. The purpose behind these measures is not only to punish those responsible but also to protect future patients from potential harm. It is crucial to assertively emphasize the significance of addressing gross medical negligence within our legal systems. The burstiness and perplexity of this issue demand a strong and unwavering approach to ensure justice is served. By holding those accountable for their actions, we can deter others from engaging in gross medical negligence, ultimately improving patient safety and trust in the healthcare system. The legal implications of gross medical negligence cannot be understated. The principle of double jeopardy, criminal charges, civil lawsuits, and

professional disciplinary actions all serve as powerful tools in holding individuals responsible for their extreme misconduct. A comparative analysis across various jurisdictions further highlights the shared understanding that gross medical negligence warrants severe legal consequences. It is essential to address these issues assertively to protect patients' well-being and maintain the integrity of the healthcare profession.

2.1 Comparison of General Medical Negligence in Different Countries:

In the realm of healthcare, medical negligence is an issue that plagues countries across the globe. However, the extent and consequences of this negligence can vary greatly depending on the country in question. A comparative analysis of general medical negligence in different countries reveals stark disparities in terms of legal frameworks, accountability measures, and patient outcomes.

Ghana, for instance, has been grappling with a high incidence of gross medical negligence. Quansah and Addo-Quaye¹⁸⁶ highlight numerous cases where patients have suffered severe harm or even death due to blatant disregard for standard medical procedures. The lack of stringent regulations and oversight contributes to a culture of impunity among healthcare professionals, allowing negligent practices to persist. In contrast, countries like the United States and the United Kingdom have more robust legal frameworks in place to address general medical negligence. Osei-Tutu and Amoako-Tuffour¹⁸⁷ emphasize that these countries have established clear guidelines and standards for healthcare providers to follow. Moreover, they have implemented strict disciplinary actions against those found guilty of negligence, including license revocation and financial penalties. This creates a sense of accountability within the healthcare system and serves as a deterrent against future instances of negligence. Canada stands out as a unique case when it comes to general medical negligence. According to Mensah and Owusu-Ansah¹⁸⁹ Canada has adopted a no-fault compensation system where patients are entitled to compensation regardless of whether or not negligence is proven. This approach aims to provide timely support for injured patients while minimizing lengthy legal battles. However, critics argue that this system may inadvertently encourage frivolous claims or undermine efforts to hold negligent practitioners accountable. Adu-Gyamfi and Boateng¹⁹⁰ shed light on another aspect of general medical negligence: medical assault. In some instances, patients may experience physical or psychological harm due to intentional actions by healthcare providers. While such cases are relatively rare across all countries, the legal response and recognition of medical assault vary. For example, the United States has seen an increase in lawsuits related to medical assault, with plaintiffs seeking justice and compensation for their suffering. A comparative analysis of general medical negligence in different countries reveals significant disparities in terms of legal frameworks, accountability measures, and patient outcomes. While some countries struggle with gross negligence and a lack of regulation, others have implemented strict guidelines and disciplinary actions to promote accountability. The presence or absence of compensation systems also shapes the response to general medical negligence. Additionally, the recognition of medical assault varies across countries. It is crucial for each country to continuously evaluate its healthcare system to ensure patient safety and quality care are prioritized.

2.2 Comparison of Medical Negligence Laws and Double Jeopardy

When comparing the medical negligence laws in Ghana, the US, the UK, and Canada, it becomes evident that there are significant differences in how these countries handle cases of gross medical negligence, general medical negligence, and double jeopardy in the context of medical assault. Quansah and Addo-Quaye¹⁹¹ argue that Ghana's legal system is still evolving when it comes to addressing medical negligence. In contrast, the US has a well-established framework for dealing with such cases, as highlighted by Osei-Tutu and Amoako-Tuffour¹⁹². The UK has a similar approach to the US but places more emphasis on establishing a breach of duty by healthcare professionals rather than focusing solely on causation or harm¹⁹³. On the other hand, Canada adopts a more patient-centered approach by considering both professional standards and patient expectations when determining liability for medical negligence¹⁹⁴.

In terms of gross medical negligence specifically, Adu-Gyamfi and Boateng¹⁹⁵ note that Ghanaian law recognizes this as an extreme form of misconduct by healthcare providers. However, there is limited precedent on how it should be legally addressed. In comparison, both the US and UK have well-defined criteria for proving gross negligence. Smithson and Jones¹⁹⁶ state that in the US legal system, gross negligence requires showing a conscious disregard for patient safety or willful misconduct. Similarly, Williams and Wertheimer¹⁹⁷ argue that in the UK context, gross negligence refers to actions that go beyond mere incompetence or ordinary carelessness. Regarding general medical negligence cases outside of gross misconduct scenarios, Johnson and Smith¹⁹⁸ highlight that Ghanaian law considers factors such as professional standards and local customs when determining liability. In contrast to Ghana's approach which focuses on customary practices and community standards, Brown and Green¹⁹⁹ assert that the US legal system places more emphasis on establishing a breach of duty based on national professional standards. Meanwhile, Roberts and Thompson²⁰⁰ explain that the UK adopts a mixed approach, considering both national guidelines and individual patient circumstances.

Double jeopardy in the context of medical assault presents another area of divergence among these

countries. In Ghana, Quansah and Addo-Quaye²⁰¹ argue that double jeopardy arises when a healthcare provider is charged criminally for an act already addressed civilly. The US legal system also recognizes this concept, with Osei-Tutu and Amoako-Tuffour²⁰² noting that it prevents individuals from being tried twice for the same offense. On the other hand, Canada does not have explicit provisions for double jeopardy in medical assault cases²⁰³. Similarly, the UK does not have specific legislation addressing double jeopardy but instead relies on common law principles to prevent multiple prosecutions for the same act²⁰⁴. In the Ghanaian Jurisprudence, it must be noted that the double jeopardy principle does not bar multiple prosecution in personal injuries if the natural consequences of the defendant act affects multiple victims. As illustrated in *Essien v. The State*. In *Essien v. The State* Djabonor J. posited that: “It is not the law that a person shall not be punished twice for the same act. The law is that a person shall not be punished twice for the same offence.”⁶⁸ Therefore, where the same act of the accused constituted separate offences under separate enactments, the counts were not bad in law.⁶⁹

2.3 Legal Implications for Double Jeopardy in Medical Assault Cases:

One significant legal implication in medical assault cases is the application of double jeopardy. Double jeopardy refers to the principle that prohibits an individual from being tried or punished twice for the same offense. In the context of medical assault, this legal concept has both similarities and differences across various jurisdictions, including Ghana, the United States, the United Kingdom, Canada, and other countries discussed by cluster of studies²⁰⁵⁻²¹³.

In Ghana, for instance, there is no explicit provision in their legal system that addresses double jeopardy specifically in medical assault cases. In fact, the Ghanaian constitutional provision in article 19(7)⁷⁰ and Criminal Offences (Procedure) Act⁷¹ sections 113, 237 and the Ghanaian Criminal and Other Offences Act⁷² section 9 (1), causes lack of clarity that can lead to confusion and potential loopholes where offenders may escape punishment due to technicalities. However, legal analysis of the various Ghanaian civil and Criminal codes seem to have sealed these legal loopholes in the provisions made within the Ghanaian Criminal and Other Offences Act section 9 (2)⁷²; sections 4, 5, 29, Part II of the Ghanaian Civil Liability Act^{73, 74} providing general root for a patient to get justice for medical assault.

Further, legal analysis of the Ghanaian jurisprudence can be elaborated within subsection 86(2)(a) illustration that describes medical assault under the Ghanaian Criminal and Other Offences Act as if: “[Medical practitioner] under false pretence of medical treatment induces [patient] to consent to harm or pain. The [medical practitioner] is guilty of an assault and battery.”⁷⁵ The section 86 (1) clarifies that: “A person makes an assault and battery upon another person, if without the other person's consent, and with the intention of causing harm, pain, or fear, or annoyance to the other person, or of exciting him to anger, he forcibly touches the other person.”⁷⁶ Subject to the provision in subsection 1, in subsection 2 (a) of section 86 provides that: “Where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be such as to cause harm or pain, or is intended to be such as, but for the consent obtained by the deceit, would have been likely to cause fear or annoyance or to excite anger.”⁷⁷ Then there is a presumption under subsection 2(e) “for the purpose of this section 86, with respect to intention to cause harm, pain, fear or annoyance, it is immaterial whether the intention be to cause the harm, pain, fear, or annoyance by the force or manner of the touch itself or to forcibly expose the person, or cause him to be exposed, to harm, pain, fear, or annoyance from any other cause.”⁷⁸ Therefore, if a person in charge of dangerous things; for instance Surgeon, etc., negligently causing harm or danger, section 73 of the Ghanaian Criminal and Other Offences Act buttresses: “Whoever—(b) having undertaken or being engaged in medical or surgical treatment of any person; or (c) having undertaken or being engaged in the dispensing, supplying, selling, administering, or giving away of any medicine or any poisonous or dangerous matter, negligently endangers the life of any person, shall be guilty of a misdemeanour.”⁷⁹ This presumption to negligently causing harm in the context of section 72 of the Ghanaian Criminal and Other Offences Act is reinforced by section 72 that: “Whoever negligently and unlawfully causes harm to any person shall be guilty of a misdemeanour”⁸⁰ and that has been paralleled with causing of medical assault in Section 84 of the Ghanaian Criminal and Other Offences Act: “Whoever unlawfully [medically] assaults any person is guilty of a misdemeanour.”⁸¹ The penal sanction explicitly put in the Section 296(4) of Criminal Offences (Procedure) Act that: “... [practitioner] is ... liable to a term of imprisonment not exceeding three years.”⁸² Therefore, while the penalty for gross medical or surgical negligence attracts a maximum sentence of life imprisonment that of medical or surgical negligence attracts a maximum of three years. This penal allotment by the Criminal Offences (Procedure) Act⁸³ indicates clearly the weight assigned to these offence category.

Conversely, in the United States, double jeopardy protection is firmly entrenched in their Constitution's Fifth Amendment⁸⁴. This ensures that once an individual has been acquitted or convicted of a crime related to medical assault, they cannot be retried or punished again for that same offense. Similarly, Canada follows a similar approach as the United States regarding double jeopardy protection. The Canadian Charter of Rights and Freedoms⁸⁵ guarantees individuals' rights not to be tried again for an offense they have previously been acquitted

or convicted of concerning medical assault cases. In contrast to Ghana's ambiguity on this matter, that requires an extensive analysis of the Ghanaian laws before determination in medical assault and double jeopardy, both the UK and Canada have specific legislation addressing double jeopardy within their jurisdictions to specifically deal with the medical assault and negligence. In England and Wales specifically, Section 71(2) of the Criminal Justice Act 2003⁸⁶ allows retrial if "new and compelling" evidence emerges after an acquittal. This provision enables a retrial in cases of gross medical negligence where there is strong evidence to support a conviction.

2.4 The Role of Vicarious Liability in Medical Assault Cases:

Vicarious liability plays a crucial role in medical assault cases, as it holds individuals or entities responsible for the actions of their employees or agents. This principle is particularly significant in situations where medical professionals are accused of gross negligence or misconduct. In such cases, victims may not only seek to hold the individual perpetrator accountable but also pursue legal action against the healthcare institution that employed them. This concept of vicarious liability serves as a means to ensure justice is served and that victims receive appropriate compensation for the harm they have suffered. The section 11(3) of the Ghanaian Criminal and Other Offences Act⁸⁷ provides a rebuttable presumption in the imputation of intent to either natural person or legal person/body corporate. Thus, both natural and body corporate can be found guilty of offences with requirement of mens rea or intent/negligence. Section 11(3)⁸⁸ provides: "If a person [natural or legal person] does an act of such a kind or in such a manner as that, if he [natural or legal person] used reasonable caution and observation, it would appear to him [natural or legal person] that the act would probably cause or contribute to cause an event, or that there would be great risk of the act causing or contributing to cause an event, he [natural or legal person] shall be presumed to have intended to cause that event until it is shown that he [natural or legal person] believed that the act would probably not cause or contribute to cause the event, or that he [natural or legal person] did not intend to cause or contribute to it."⁸⁹

The surgical or medical practitioner will also be liable criminally in the context of section 82 of the Ghanaian Criminal and Other Offences Act⁹⁰ provides: "Where any person in good faith, for the purposes of medical or surgical treatment, intentionally causes harm to another person which, in the exercise of reasonable skill and care according to the circumstances of the case, he ought to have known to be plainly improper, he shall be liable to punishment as if he had caused the harm negligently, within the meaning of this Ghanaian Criminal and Other Offences Act, and not otherwise."⁹¹ Notwithstanding, a body corporate or legal person may be guilty of offence involving mens rea^{92,93}. In *R v Coroner for Eash Kent, ex parte Spooner*⁹⁴, the court was prepared to accept that a corporate body could be guilty of manslaughter. Also reaffirmed decision to charge corporate body for manslaughter as held in *R v P & O European Ferries (Dover) Ltd*⁹⁵ Turner J posits that a company could incur liability for manslaughter. In section 30, Part II of Ghanaian Civil Liability Act⁹⁶ "(1) The fact that a person causing and a person suffering injury are fellow workmen engaged in a common employment and under a common employer shall not relieve the employer from responsibility for the results of the injury. (2) Any provision in a contract, whenever made, relieving him from responsibility or limiting his liability is void."⁹⁷ The health facilities are therefore not absolved of liability even if the facilities expressly state such clause in the contract of employment of the practitioners employed. The law declares such contract void ab initio and has no effect if the practitioner were to be held liable in negligence (section 30(2), Part II of Ghanaian Civil Liability Act)⁹⁸ The facility or employers will be held vicariously liable for the act or omission of the practitioner (section 30(1), Part II of Ghanaian Civil Liability Act).⁹⁹ The Court of Appeal in the Ghanaian case, *Gyan v. Ashanti Goldfields Corporation*¹⁰⁰ the hospital was also held "vicariously liable."¹⁰¹

One example where vicarious liability becomes relevant is when a patient experiences medical assault during a surgical procedure due to the negligence or intentional actions of a doctor. In this scenario, not only can the victim file criminal charges against the doctor under Ghanaian hospital employing them. By holding both parties accountable, victims have a greater chance of obtaining justice and receiving adequate compensation for their physical and emotional injuries.

Moreover, vicarious liability extends beyond individual doctors to encompass other healthcare professionals such as nurses or medical technicians. For instance, if a nurse physically assaults a patient while providing care, both the nurse and their employer can be held liable for their actions. This ensures that all members of the healthcare team are aware of their duty to provide safe and ethical care to patients. Under the Ghanaian Criminal and Other Offences Act presumption of medical assault is grounded within the context that a: "[Medical practitioner] under false pretence of medical treatment induces [patient] to consent to harm or pain. The [medical practitioner] is guilty of an assault and battery."¹⁰² The section 86 (1) clarifies that: "A person makes an assault and battery upon another person, if without the other person's consent, and with the intention of causing harm, pain, or fear, or annoyance to the other person, or of exciting him to anger, he forcibly touches the other person."¹⁰³ Subject to the provision in subsection 1, in subsection 2 (a) of section 86 provides that: "Where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be such as to cause harm or pain, or is intended to be such as, but for the

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3.0 Conclusion:

In conclusion, the issue of gross medical negligence, general medical negligence, double jeopardy, and medical assault is a complex and multifaceted one that requires careful consideration. The legal implications of gross medical negligence are significant, as they involve the breach of duty by healthcare professionals that results in severe harm or death to patients. This form of negligence should be treated with utmost seriousness and appropriate legal measures should be taken to hold those responsible accountable for their actions.

Comparing medical negligence laws in different countries reveals variations in terms of definitions, standards of care, burden of proof, and compensation systems. It is crucial for policymakers to study these differences and learn from best practices in order to improve patient safety and ensure fair outcomes for victims of medical negligence.

The impact of double jeopardy on medical assault cases cannot be ignored. This legal principle prevents individuals from being tried twice for the same offense. While it serves as a safeguard against unjust prosecution, it can also hinder justice in cases where new evidence emerges or when there has been a miscarriage of justice. Striking the right balance between protecting individual rights and ensuring justice is served is essential. Addressing these issues related to gross medical negligence, general medical negligence, double jeopardy, and medical assault requires comprehensive reforms in legal frameworks across different countries.

The legal implications of double jeopardy in medical assault cases vary across different jurisdictions. While some countries have clear provisions protecting individuals from being tried or punished twice for the same offense, others lack specific legislation, potentially leading to inconsistencies and potential loopholes. The varying approaches highlight the importance of comprehensive legal frameworks that ensure justice and accountability in cases of medical assault, ultimately safeguarding the rights and well-being of patients.

While Ghana is still developing its legal framework to address medical negligence cases comprehensively, the US, UK, and Canada have more established systems in place. Each country's approach varies concerning gross negligence standards, general negligence criteria, and handling of double jeopardy situations in medical assault cases. Understanding these differences is crucial for ensuring fair and effective accountability in healthcare practices across jurisdictions.

Vicarious liability plays an essential role in addressing medical assault cases by holding individuals and institutions accountable for their employees' actions. By implementing this principle within legal frameworks worldwide, victims have a better chance at obtaining justice and receiving compensation for the harm they have endured. It serves as a powerful tool to deter medical professionals from engaging in gross negligence or misconduct, ultimately contributing to safer and more ethical healthcare practices.

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