



Jackson, Etti & Edu

*JEE Sector Thought Leadership Series*

# **“AND ANNA DIED...”**

***Liability & Risks During Emergency Care –  
Issues & Options***

**Toyosi  
Odunmbaku**  
Health & Pharmaceuticals  
Sector



After another challenging day at work, Anna finally shuts down her computer, grabs her bag and makes her way to the car park, determined to make it home before her kids turn in for the night. As she drives out of the office complex and approaches the third mainland bridge, she notices an unusual bottle neck of traffic at the mouth of the bridge. Unknown to Anna, a band of armed robbers had just finished carrying out an exercise on the bridge and were attempting to escape... Anna watched in trepidation, as drivers hurriedly exited their cars and made for the bushes... As she attempts to follow suite, an array of bullets are suddenly released by the robbers and Anna is hit in the abdomen, by a stray bullet. Bleeding profusely, she is hurriedly rushed to a nearby private hospital, by some compassionate bystanders\helpers in the neighborhood and by the time they arrive at the hospital, around 12.00 mid-night, Anna is unconscious. The attending Doctor and nurse on duty, advise the helpers that in order for Anna to receive any emergency treatment, they would require a Police Report, as well as some deposit on account. The helpers who were unprepared for this request, take a decision to rush Anna to a nearby government hospital, where they imagine they will not have to expend any money. By this time, Anna Anna has lost a lot of blood and has received no emergency care since sustaining her injuries many hours ago.

Consequently, before they can make their way to the government hospital, Anna passes away.

This unfortunately, is an example of the situation that usually occurs with gun-shot wound victims in Nigeria. This is no doubt in itself, quite disheartening, as deaths arising from gunshot wounds may be avoidable, if proper emergency care is given at the appropriate time. It is sad however, to note that due to questionable internal controls in health-care establishments, gunshot wound victims are not given proper care, thereby opening the responsible healthcare provider or worker to avoidable criminal and civil liabilities.

Concerns about potential liability for medical negligence, healthcare malpractice and medication errors during emergencies have never been more acute for the health care industry. Not only are the substantive laws increasingly complex, but the risk of detection of violations and imposition of penalties have never been greater.

Thus, it has become increasingly important that healthcare providers, healthcare workers and healthcare establishments understand and formulate, preventive and detective internal controls to avoid, , mitigate or reduce these attendant liability and risks.

Indeed, the necessity to chart a system of internal controls during emergency care becomes glaring in the face of criminal and civil liabilities imposed on Healthcare providers and Healthcare workers under the *National Health Act* and the recent *Treatment and Care of Victims of Gunshot Act*.

A painstaking look at Sections 20 to 30 of the National Health Act 2014, and Sections 1 to 16 of the Treatment and Care of Victims of Gunshot Act (2018) imposes obligations and sanctions of far reaching consequences on Healthcare professionals and Establishments. For instance, Section 20(1) of the National Health Act provides that “a health care provider, health worker, or health establishment shall not refuse a person emergency treatment for any reason whatsoever”.

Section 20(2) of the said Act further provides that any person who contravenes the above section is liable on conviction to a fine of NGN100,000 or to imprisonment for a period not exceeding six months or to both.

It would appear that the Act does not place any limitation on the kind of emergency, as it gave a broad indication that all

emergencies are to be treated with urgency.

A consideration of the Treatment and Care of Victims of Gunshot Act (2018) reinforces the duty of Healthcare professionals and Healthcare Establishments in emergency situations. Section 1 of the said Act provides that “every hospital in Nigeria whether public or private shall accept or receive for immediate and adequate treatment with or without police clearance, any person with a gunshot wound”. The Act further provides in Section 6 that the Police may not receive any person with gunshot wounds from

***It would appear that the Act does not place any limitation on the kind of emergency, as it gave a broad indication that all emergencies are to be treated with urgency.***

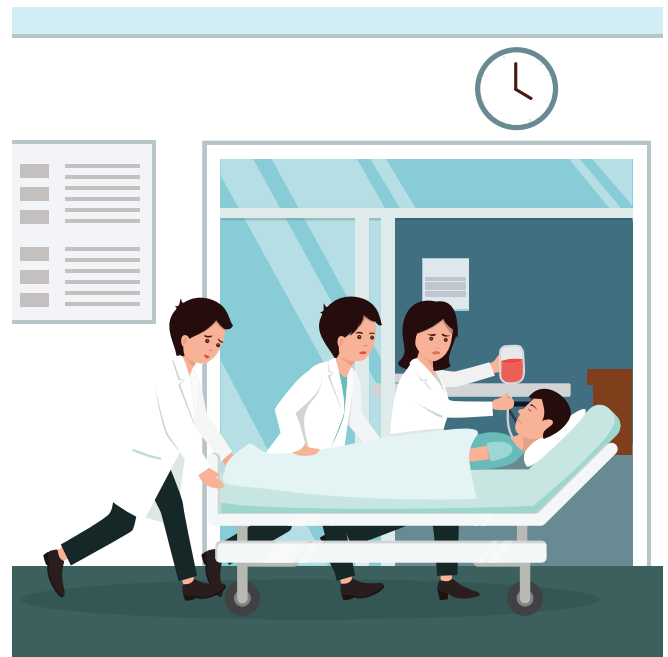
the hospital for the purposes of investigation, unless and until the Chief Medical Director of the Hospital certifies him fit and no longer in dire need of Medicare. Section 13 of the Act subsequently provides that “any person or authority including

any police officer or other security agents or hospital who stands by or omits to do his bit, which results in the unnecessary death of any person with bullet wounds, commits an offence and shall on conviction be liable to 5 years imprisonment or a fine of NGN50,000 or both”.



It would therefore appear that the health-care provider may be liable, even where its worker is not found liable. Section 22 of the National Health Act 2014 lays the burden on the healthcare provider to indemnify a healthcare worker that is eventually not found liable for negligence with the costs of litigation. This is quite awkward in our opinion, as the Claimant in the court action should be the one to indemnify the health worker in a situation where the health worker has not been found liable. It only goes to show that where a claim of negligence arises, the healthcare establishment may be unable to escape liability, whether or not it was complicit in the breach of duty of care, to such patient or claimant.

With the above analysis in mind, it is my humble opinion, that for proper risk control and for the avoidance of liability risk (which includes civil and criminal liabilities) and exposure, it is necessary and crucial for healthcare establishments to consider internal control measures that should be taken, to prevent liabilities attached to emergency care. I therefore recommend that the measures to consider for internal control of risks, as they pertain to emergency care under the National Health Act (2014) and the Treatment and Care of Victims of Gunshot Act (2018) are as follows:



### **(1) Develop an Emergency Care Checklist**

To avoid criminal and civil liability, it is important that a checklist of all actions that must be taken during emergency care is issued to and understood by healthcare professionals (including support staff) in healthcare establishments. The suggested checklist should reflect the execution of obligations under the National Health Act (2014) and Treatment and Care of Victims of Gunshot Act (2018). Such obligations include the duty to disclose relevant information pertaining to a patient's health and treatment to such patient; the duty of confidentiality; the duty to report a gunshot wound to the Police within 2 hours of treatment; the duty not to certify a gunshot wound (GSW) patient as fit, unless he is not in dire need of medicare; and the duty to notify family members or relations of the GSW patient as far as they may

may ascertain within 24 hours of becoming aware of the victim or patient's identity.

## **(2) Maintain clinical competency**

One of the easiest ways to reduce liability risk is to ensure that the healthcare professionals have the necessary expertise to work under emergencies, so they can perform their duties as accurately and competently as possible. Thus, the best hires should be made, and continuous on the job training should be encouraged.

Additionally, it is necessary that the responsible health care professional knows how to use all of the equipment they may need to use on a patient. Some malpractice cases can stem from mistakes using this equipment, so knowing how it works is essential. Understanding the strengths and weakness of each health care professional during emergencies within the establishment is another way of avoiding liability. This would allow the establishment avoid assignments its employees feel they are unable to complete successfully without any error.

## **(3) Document everything accurately**

Another essential statutory step to take, towards reducing and avoiding liability



risk is to ensure that every step of emergency treatment is documented, from admission to treatment, and to discharge. For instance, if there is a complaint of any pain or ongoing issues, this information needs to be kept on record. Other things that should be documented

include:

- Interviews and discussions with patients
- Results of diagnostic procedures
- Changes in the condition of patients
- Patient assessments during rounds

This documentation can be critical if a healthcare establishment or healthcare professional is ever faced with a malpractice lawsuit or criminal prosecution for negligence in emergency care. By having a record of all the important information of each patient, healthcare professionals can have proof of everything that has happened with them, which can be used in court to help them defend themselves.

Record management is pivotal for many healthcare operations. Having records of everything from patient lists, medical files and even petty cash, enables healthcare organizations to prevent and avoid unnecessary liability.

#### **(4) Physical and Electronic safeguards**

The use of security personnel and cameras can assist the medical office in reducing risk and protecting the establishment from liability, especially against unscrupulous claims. Therefore, it is important to have security personnel in place (at least two), and cameras can be placed at each entrance and exit, including the front desk.

#### **(5) Maintain presence**

Internal controls are effective tools for preventing losses and liabilities during emergency care. However, managers of Healthcare Establishments cannot understand the effectiveness of controls if they are out-of-touch with operations. Managers and executives need to be walking around their workspaces and letting people know you are observing operations.

#### **(6) Follow documented standards**

Generally, there will be a list of standards that healthcare professionals will have to follow on the job. Making sure they abide by this list is one of the easiest ways to prevent malpractice lawsuits.



Healthcare professionals who follow procedure will be able to avoid any issues that could stem from them doing something out of the ordinary.

#### **Proposal for the amendment to the National Health Act**

It is my position that that apart from laying civil and criminal liability burden on healthcare providers and workers, the laws should extend to protecting healthcare providers that have done everything to put internal controls in place. We are of the view that liability should be limited in such situations.

Indeed, a critical amendment that should be made is the provision requiring the healthcare provider to indemnify the healthcare worker for his costs for defending a litigation connected to breach of obliga-

tions, which may be tied to emergency care. I am of the view that the Plaintiff or Claimant should be the one to bear such burden, as such party was the one who took such healthcare worker to court in the first place.

The healthcare provider should not be made to bear a burden it was not responsible for. Apart from the above recommendations, the National Health Act should be amended to include provisions mandating health-care establishments to have internal risk control mechanisms in place, to prevent avoidable errors, which often, have wide implications that may lead to death or incapacitation of the victim(s) of such failure of process.

## Conclusion

My position is that decisions made during emergency care are crucial and may attract avoidable liabilities if a proper strategy is not in place to ensure compliance and avoidance of any unwarranted abuse or malpractice.

Jackson, Etti & Edu is a full-service law firm with a sector focus, rendering legal services to Nigerian, Pan-African and International clients in diverse jurisdictions. We have earned a reputation for delivering commercial advice across all the key sectors: energy & natural resources, fast moving consumer goods (FMCGs), financial services, health & pharmaceuticals, real estate & infrastructure, and technology, media & entertainment. Further information about the firm is available at [www.jacksonettiandedu.com](http://www.jacksonettiandedu.com). This is a publication of Jackson, Etti & Edu and is for general information only. It should not be construed as legal advice under any circumstances.

For further information, please contact us at [jacksonettiedu@jacksonettiandedu.com](mailto:jacksonettiedu@jacksonettiandedu.com)

## Key Contact



**Chinyere Okorocho**

Sector Head, Health & Pharmaceuticals  
[chinyereokorocho@jacksonettiandedu.com](mailto:chinyereokorocho@jacksonettiandedu.com)



**Jackson, Etti & Edu**

RCO Court 3-5, Sinari Daranijo Street,  
Victoria Island, Lagos, Nigeria.

t: +234 (1) 4626841/3, +234 (1) 2806989  
e: [jacksonettiedu@jacksonettiandedu.com](mailto:jacksonettiedu@jacksonettiandedu.com)

f: +234 (1) 2716889  
[www.jacksonettiandedu.com](http://www.jacksonettiandedu.com)