

## Constraints to the Regulation of Medical Malpractices in Cameroon

Ms. Grace Mary Nkafu Tazanu<sup>1,\*</sup>, Dr. Djieufack Roland<sup>2</sup>,

Dr. Alvine Longla Boma<sup>3</sup>

### Abstract

*The sharp decline in the ethical standard of medical practice in Cameroon is alarming. The professional practice of health personnel is so deplorable that there are questions as to whether these medical practitioners are actually supervised, monitored, and controlled. This study seeks to investigate the reasons for the persistence of medical malpractices in Cameroon despite the existence of regulatory mechanisms. These malpractices, mostly committed by conventional medical practitioners, are characterized amongst others by; poor reception, exorbitant bills, corruption, diversion of patients, absenteeism, quackery, parallel sale of drugs, and illegal practice of medicine. These deviant dispositions of health personnel, although contrary to deontology, are so embedded in Cameroonian hospitals causing the death of countless patients every day. This research posits that inefficient regulation, the lack of political will by the government to contain the expansion of these unethical anti-values, coupled with the malfunctioning of the judicial machinery are primarily responsible for the persistence of these malpractices, thereby placing a constraint on the regulatory mechanisms put in place to censor these behaviours. If the reoccurrence of these negative practices is to be curtailed, there is an urgent need to instill more stringent regulations coupled with effective implementation.*

**Keywords:** Regulation, Medical Malpractices, ethics, hospitals and Cameroon.

**Author for Correspondence\*** email id. [chatehtaza2011@hotmail.com](mailto:chatehtaza2011@hotmail.com)

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<sup>1</sup> Research Scholar, Department of English Private Law, Faculty of Law and Political Science, University of Bamenda, Bamenda, Cameroon.

<sup>2</sup> Associate Professor and Head of Department of Law, Higher Technical Teachers Training College, University of Bamenda, Bamenda, Cameroon

<sup>3</sup> Professor and Head, Department of Business Law, University of Buea, Buea, Cameroon

## Introduction

The medical practice is highly dynamic and demands that the professional exercise a high degree of discretion. Physician practice has been subject to regulation from time immemorial. Control of physician action through medical legislation and ethics has a long history and is not unique to modern society. Hippocrates, the father of modern Medicine as far back as the fifth century BC<sup>4</sup> instituted a code of conduct known as the Oath of Hippocrates which every practitioner must take when being admitted into the medical profession<sup>5</sup>. According to this oath, medical care should be practiced in such a way as to lessen the severity of the suffering that illness and disease bring in their wake, and the medical practitioner should be fully conscious of the ethics of the profession and act within its scope. In 1948 the World Medical Association adopted the Geneva Declaration<sup>6</sup> which spells out a physician's moral obligations to his patients and an explicit commitment to the humanitarian goals of medicine<sup>7</sup>. This declaration has been adopted as the International Code of Medical Ethics<sup>8</sup>. Cameroon has adopted a National Code of Medical Ethics<sup>9</sup>.

The overall objective of regulating medical practice is patient safety. Regulatory authorities compel doctors to put up their best practices and consider patient safety as primordial. Regulating medical practices also ensures that negligent practices are discouraged. The regulator does this by punishing negligent medical practices. It receives complaints from the public against misconduct or negligence by a medical practitioner, proceeds to inquiry, takes a decision on the merits of the case, and initiates disciplinary action or awards compensation against the defaulting doctor<sup>10</sup>. However, recently, materialistic influence has produced a highly selfish mentality; and

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<sup>4</sup> B.C. Umerah, *Medical Practice and the Law in Nigeria* (Longman Nigeria limited, 1989) p.7

<sup>5</sup> Section 62 of Decree N° 83-166 of 12 April 1983 on the Code of Medical Ethics in Cameroon provides that; "Every doctor shall, at the time of enrolment in the Association, declare before the Council of the Association that he has cognizance of the present Code of Ethics and shall undertake, under oath and in writing, to abide by it."

<sup>6</sup> The Geneva Declaration is an adaptation of the Oath of Hippocrates by the World Medical Association to bring it in line with the practice and language of modern medicine.

<sup>7</sup> See supra note 11

<sup>8</sup> This Code was first formulated by the World Medical Association in 1949. It's subsequent amendments by the World Medical Assembly in 1968 and 1983 in Sydney and Venice respectively.

<sup>9</sup> Decree N° 83-166 of 12 April 1983 on the Code of Medical Ethics in Cameroon

<sup>10</sup> Sections 41- 48 of Law No. 90/036 of 10 August 1990 Relating to the Organization and Practice of Medicine in Cameroon.

while engaging in professional activities at times medical practitioners lose sight of the ethical, human, and noble values of their profession.

Regulation of medical practice in Cameroon is done through the profession itself (self-regulation) with the government exercising supervisory authority over the activities of the regulator. The Cameroon Medical Council<sup>11</sup> is the regulatory authority empowered to monitor and supervise medical practice in Cameroon. Apart from this regulatory body, several Laws<sup>12</sup> and Decrees<sup>13</sup> also regulate the activities of medical practitioners.

In spite of the existence of these institutions and legislation to ensure safe practices, the ethical standard of medical practice keeps declining. This calls to question the effectiveness of these regulatory mechanisms. In fact, the professional practice of health personnel all over the country is so deplorable that there are doubts as to whether they are actually supervised and monitored. The Cameroon health sector is characterised by poor reception; double payments, corruption, and diversion of patients, parallel sale of drugs, and the illegal practice of medicine,<sup>14</sup> absenteeism, quackery, favouritism, and commoditisation of services<sup>15</sup>, amongst others. As the government turns a blind eye or is powerless to contain the expansion of these unethical anti-values in public health institutions, these institutions have been transformed into vast markets where medical practitioners and patients are engaged in several types of transactions<sup>16</sup>, all at the detriment of the patient.

The legal aspect of the regulatory machinery which sanctions these malpractices is not easily accessible to victims of medical malpractices due to its numerous substantive and procedural

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<sup>11</sup> *Ibid* Section 25

<sup>12</sup> Law No 90/036 of 10 August 1990 Relating to The Organization and Practice of Medicine in Cameroon is the Main text governing Medical Practice. Other laws regulate the profession of other specialize body within the medical core, for example, surgeons, dermatologists, dentists, and others. Also, the Cameroon Penal Code regulate the medical profession by sanctioning criminal activities of medical doctors.

<sup>13</sup> See supra note 9

<sup>14</sup> C. Zamo-Akono et al, (2013), "Institutions and Hospital Efficiency in Cameroon: A Data Envelopment Analysis", *Journal of African Development*, 15:1, p.51.

<sup>15</sup> B I. Mouliom., (2018), "Commodification of Care and its Effects on Maternal Health in the Noun Division (West Region-Cameroon)", *Bmc Medical Ethics*, vol,19:43, p.72

<sup>16</sup> C. Djoko, "Comprendre la Corruption au Cameroun", *Le Grand Soir*, October 3, 2010 at <http://www.legrandsoir.info/comprendre-la-crruption-au-cameroon.html>. (accessed on 5<sup>th</sup> day of November 2020)

obstacles. Where medical practitioners are aware that they can commit a wrong and get away with it, they become indifferent and less cautious in the performance of their duties, this partly explains the repeated cases of carelessness causing harm and injuries on an everyday basis. The persistence of these malpractices and the unwillingness or inability of the government to curtail them, coupled with the inability of victims to seek redress through legal recourse are a constraint to the effective regulation of malpractices in Cameroon.

### **Legal Constraint to the Regulation of Medical malpractices in Cameroon**

Access to justice refers to the substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress for violation of their legal rights within the system<sup>17</sup>. Where these mechanisms are absent, or present but not functional, as in the case of Cameroon, it leads to the inaccessibility of justice. Victims in such a situation cannot adequately vindicate their rights. Where the cost of justice is not affordable to the common man,<sup>18</sup> and where the courts are not sufficiently manned or are manned by men and women who are morally depraved, such a court can hardly guarantee justice to its litigant. Moreover, where procedural delays are endemic in a judicial system, judicial redress becomes a far cry. These are the characteristics typical of the Cameroon judicial system, some of which will be examined hereunder.

### **Inefficient enforcement of existing laws**

There exist several pieces of legislation<sup>19</sup> regulating medical practice in Cameroon; however, it is exasperating that these pieces of legislation are not fully implemented. The explosion of illegal clinics in the country points to this. In fact, in 2017, 2000 illegal private healthcare centers were uncovered in Cameroon<sup>20</sup>. Health care providers (nurses, laboratory technicians, midwives, etc.)

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<sup>17</sup> T. A. Zzouedja, (2021), "Access to Justice and Human Rights Protection in The Common Law Jurisdiction In Cameroon: Problems And Prospects", *Zien Journal Of Social Sciences And Humanities*, vol 1, issue 1, p.201

<sup>18</sup> M.I.Gwangudi, (2002), "Problems Militating Against Women's Access To Justice In Nigeria", *University Of Maiduguri Law Journal*, No. 5, pp.13-14

<sup>19</sup> See Supra Notes 12 and 13

<sup>20</sup> 2000 Illegal Hospitals Uncovered in Cameroon, *Journal Du Cameroun*. 10<sup>th</sup> April 2017, online at <https://www.journalducameroun.com>. (accessed on 30th day of May 2022) Retrieved on 30/05/22

with no qualification and license, are engaged in operating clinics and health centers here and there without the necessary infrastructure, equipment, and human resources. It is surprising that some of them employed doctors to work with them, and have authorisation numbers from MINSANTE, how they got the authorization is beyond comprehension. The Law relating to the organisation and practice of medicine specifically prohibits the illegal practice of medicine<sup>21</sup>, yet the operation of these illegal health centers is particularly rampant, especially in metropolitan cities like Douala, Yaoundé, and Bafoussam, where they can be found in almost every street or neighborhood. This questions the effective implementation of this law.

According to the Law Organizing the Practice of Medicine in Cameroon, unlawful medical practices attract severe administrative, civil, and penal sanctions. Indeed, persons guilty of unlawful practice of medicine are punished with imprisonment of from six days to six months or with a fine of from two hundred thousand francs to two million francs or with both such imprisonment and fine<sup>22</sup>. Moreover, the Council of the Cameroon Medical Association may also order the closure of the establishment irrespective of any court judgments<sup>23</sup>. With such a sanction, actors in this domain are supposed to be deterred from engaging in such malpractices, but this is hardly the case. The effective implementation of this law is yet to be achieved, in the face of outright violations. The failure to effectively implement the law and curtail the proliferation of these unauthorized clinics and practices constitutes a restraint to effective regulation of malpractices.

### **Access to Legal Redress**

There are a number of substantive and procedural obstacles or impediment that precludes the masses in general from having access to judicial redress in Cameroon. Relative to the economic situation in Cameroon, the cost of litigation is so high that the ordinary Cameroonian can hardly

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<sup>21</sup> Section 16 of Law No 90/ 038 of 10<sup>th</sup> December 1990 relating to the Organization and Practice of Medicine In Cameroon. This law defines unlawful practice to include; practicing without a license, practicing under an assumed name, practicing while on suspension, practicing in a business premise where medical apparatus is sold, engaging in consultation and diagnosis and treatment without authorization, and physicians offering assistance to persons who are not authorized to practice medicine are also guilty of unlawful practice

<sup>22</sup>*Ibid* Section 17

<sup>23</sup>*Ibid*

afford adequate legal representation when he/she has a legal matter to pursue before the ordinary courts. Lawyers are few in number<sup>24</sup>, located in urban areas, and command high fees, which the poorest and most marginalized in rural communities can neither physically access nor afford.

Secondly, the litigant must consider the cost of filing a claim in court. In Cameroon, to file a civil suit, the plaintiff is expected to pay the filing fee plus the cost of stamp duty<sup>25</sup>. This requirement by the courts for litigants in a civil suit to deposit 5 percent of the quantum of claim before the suit is filed<sup>26</sup> regardless of the chances of success of the action is a great hindrance to access justice because litigants who cannot afford this 5 percent cannot get legal redress.

Legal aid which plays a significant role in improving access to justice for impoverished, marginalized, and excluded groups<sup>27</sup>, is not well developed in Cameroon. The Law of Legal Aid<sup>28</sup> is fraught with many delays and a lot of procedural obstacles in its application such that it is not effective in assisting poor citizens to access justice<sup>29</sup>. Not only are many citizens unaware of the existence of Legal Aid but they scarcely meet the requirements. In Cameroon, Legal Aid Commissions are set up in the Court of First Instance, Military Tribunal, Court of Appeal, and Supreme Court. An application for legal aid is addressed orally or in writing to the secretary of the Legal Aid Commission, who is the Registrar of the competent court<sup>30</sup>. The secretary then

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<sup>24</sup> According to the Cameroon Bar Roll 2022, there are about 3500 lawyers in Cameroon as compared to the population of 27,543.748 in Cameroon

<sup>25</sup> This is 5 per cent of the quantum of claim

<sup>26</sup> This is in conformity with the Minister of Justice and Keeper of the Seals CIRCULAR NO 0012/MG/SG/DAG of 13 MARCH 1996 which demands that 5 per cent of the claim in civil suits be deposited in the court as stamp duty

<sup>27</sup> Legal Aid Service Provision A Guide on Programming in Africa, United Nations Development Programme, May 2016

<sup>28</sup> Law No 2009/004 of 14 April 2009 to organize Legal Aid in Cameroon.

<sup>29</sup> N. J. Sama, "Providing Legal Aid in Criminal Justice in Cameroon: The Role of Lawyers", Access to Justice in Africa and Beyond, Making the Rule of Law a Reality. Penal Reform International and Bluhum Legal Clinic of the North western University School of law.

<sup>30</sup> The application made must include the following; document of proof of impecuniosity, a copy of the tax roll or certificate from the head of the administrative unit specifying where appropriate if the applicant is liable to discharge tax, a certificate of lack of means by the mayor following inquiries by the appropriate social service. Failure on the part of the applicant to furnish these documents thirty (30) days after having been summoned to do so shall render the application inadmissible

forwards the application to the chairperson of the Legal Aid Commission, who is the president of the competent court, and who, in consultation with the counsel, makes a decision on whether the applicant qualifies for aid. The legal aid commission has the right to gather independently all information necessary to determine the inadequacy of the resources of the applicant<sup>31</sup>. Most litigants are unable to meet up with these requirements, thus restricting access to the courts.

### **Delays in Judicial Proceedings**

Justice delayed is justice denied, is the legal maxim meaning where a legal remedy is available for a party who has suffered some injury but is not forthcoming promptly, it is aptly the same as having no remedy at all. It is unfair for a victim to have to sustain an injury with little hope for restitution. This is a very relevant factor that determines the response of victims of medical malpractice to litigation. Speedy trial is a rare occurrence in Cameroon judiciary. Justice cannot be said to be rendered if it is made within a long period of time. This is because, beyond a certain time, the decision taken by the court may lose its value.

These delays can be accounted for by a number of factors, nonappearance of lawyers, corruption, in which the judges may deliberately not deliver judgment, and numerous adjournments, in order to elicit bribes from the litigants. Work overload also precludes magistrates from adjudicating cases on time. Again, witnesses summoned may fail to appear in court, thus months, years, and even decades may pass by, meanwhile, the life of the victim becomes miserable during this long and never-ending fight for justice.

### **Burden Of Proof**

Proving that loss or injury suffered as a result of the negligence of a medical practitioner is a severe task on the claimant especially when such proof turns out to be technically complicated and expensive due to the requirement of expert opinion<sup>32</sup>. In Cameroon, it is sad to know that medical malpractice claims are frequently launched and advanced at trial without expert medical evidence. The plaintiff comes to court and gives his or her account of what occurred but fails to back up allegations of malpractice with coherent evidence from a medical expert. In such

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<sup>31</sup> Section 20(1) of Law No 2009/004 Of 14 April 2009 to Organize Legal Aid in Cameroon

<sup>32</sup> Commission Green paper: Liability for Defective Products, Brussels, Com 1999 396 (28 July 1999), summary P 2.

circumstances, it is no surprise then that the courts will eventually heed the exculpatory evidence inevitably provided by experts on behalf of the defendant and dismiss the claim.

Due to the fact that allegations of negligence in the medical profession are serious, such that it may lead to the practitioner's name being deleted from the medical register and banned from medical practice, and the consequent damage to his reputation, a high standard of proof of negligence is required for liability so that the mere fact of a mishap or error of clinical judgment does not in itself amount to negligence<sup>33</sup>. The onus lies on their colleagues to provide expert evidence but most often the medical personnel are not willing to testify, a situation described as a 'conspiracy of silence'<sup>34</sup>.

Medical Expert are reluctant to openly criticize the professional conduct of their colleagues, moreover, it is difficult and expensive for a layman to produce evidence in such a technical domain that has to do with the skill and competence of a doctor, as such a victim of medical malpractice in Cameroon is not likely to succeed because expert witnesses are not willing to testify that the practices or procedures adopted by their colleagues should be stigmatized as negligent<sup>35</sup>.

In the Cameroonian case of *The People of Cameroon v. Yilareng Elias Afoni*<sup>36</sup>, the accused medical doctor was charged with assault occasioning death punishable under Section 278(1) of the Cameroon Penal Code. All through the trial, the prosecution produced only one witness, who was an investigator. The court held that the evidence adduced was grossly insufficient to buttress the charge, the accused medical doctor was able to produce an expert witness who testify that on examination of the deceased, it was evidenced that the fetus in her womb was already dead even before they got to the accused's clinic. On this score, the accused medical doctor was discharged.

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<sup>33</sup> Ese Malemi, *Law of Tort*, 2<sup>nd</sup> Edition (Lagos, Princeton Publishing Company, 2013) P362.

<sup>34</sup> F. Emir, *Medical Law and Ethics in Nigeria* (Lagos: Malthouse Press Ltd, 2012) pg. 286.

<sup>35</sup> This is so because of the duties they owe to their colleagues under the Code of Medical Ethics. Section 42(1) of Decree No. 83-166 of 12 April 1983, Cameroon Code of Medical Ethics provides that "doctors must maintain good professional relations between themselves", and section 42(2) forbids a doctor from slandering or disparaging a colleague, or to repeat any remarks likely to harm him in the practice of his profession.

<sup>36</sup> See Suit No HCK/15c/2020, (unreported)



## Judicial Corruption

The corrupt nature of Cameroon's judiciary cannot be overstated. Transparency International<sup>37</sup> had way back in 1999 classified Cameroon as the most corrupt country in the world with the judiciary leading. In 2021, according to the Transparency International Corruption Perception Index, Cameroon ranks 144 out of 180, even though there is an improvement in the score, it is still among the 30 most corrupt countries in the world. Even the National Anti-Corruption Commission (CONAC)<sup>38</sup>, published its Corruption Index in Cameroon in 2016 indicating that the police and the judiciary were the most corrupt sectors in Cameroon.

The paradigmatic image of judicial corruption is that of a judge taking bribes. However, judicial corruption is a lot more, it includes all forms of inappropriate influence that may damage the impartiality of justice, and may involve actors within the systems including lawyers and administrative support staff<sup>39</sup>. In Cameroon, litigants pay to get their case through the system, to influence the outcome of their case, or to delay it. Bribes are paid to judges or registrars or lawyers to remove files or get their cases assigned to a particular judge.

All the above limit effective regulation of medical practice, as such medical service quality continues to deteriorate with patients at the mercy of unprincipled practitioners who will do all to fill their pocket at the expense of what or whoever.

## Extra Legal Constraints to Regulation of Medical Malpractices in Cameroon

Apart from the numerous legal constraints to the effective regulation of medical malpractices, there exist other constraints, not legal in nature, which also limits or inhibits the full realization of effective regulation, and tends to nullify all efforts and initiative taken to control the malfeasances of doctors in Cameroon. These consist of incessant acts that constitute gross flaunting of the professional code of practice, indulged in with impunity by medical practitioners

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<sup>37</sup> Transparency international is a German registered nonprofit association founded in 1993 by former employees of the World Bank, with the purpose to combat corruption and prevent criminal activities. Its most notable publication is the corruption perception index.

<sup>38</sup> Created by Decree No 2006/088 of 11 March 2006

<sup>39</sup> S. Gloppen, (2014), "Courts, Corruption and Judicial Independence n T. Soreide and A. Williams *Corruption, Grabbing and Development: Real World Challenges*, (Cheltenham and Northampton, Edward Elgar Publishing, 2014)

in the face of weak and inefficient control by the Medical Council, and inaction by the government. This is the focus of this section.

### **Weak Regulatory Mechanism**

The overall objective of regulating medical practice is patient safety. Professional associations, as definers and guarantors of effective medical practice, have an implied contract with society to hold their members accountable<sup>40</sup>. They set out expected standards in relation to quality and accountability. It also highlights the duty a medical professional has to the profession, the wider community, and the organization in which he/she is working. They also empower patients to pursue malpractice suits to hold health providers accountable. Overall, the regulator serves as the institutional structure of checks and balances of medical practice.

In a developing country like Cameroon, professional associations' capacity to fulfill these roles is relatively limited. Regulatory bodies will always "in the last analysis put fairness to doctors ahead of patient protection"<sup>41</sup>, that is, the professions tend to be protective of their members. The Cameroon Code of Ethics forbids a doctor from criticizing a colleague or making any remark likely to harm him in the practice of his profession<sup>42</sup>. Thus, the Code enjoins them to support each other's reputation. When complaints do come in, the disciplinary process is self-serving; by doctors and for doctors. Members are at once players and referees on the field. Given the natural urge to protect one's own, and given the opportunity provided by self-policing, there is the likelihood that erring members would be left off the hook, based on the fellow-feeling theory<sup>43</sup>. The theory assumes that complaints against defaulters are likely to be treated lightly by other members, given that the non-erring members will exhibit a soft spot for their colleagues against whom complaints are lodged. Patients and the public seem to be ancillary, whereas they should be front and center. The domination of medical thought by men of the practicing profession

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<sup>40</sup>R. C. Sylvia et al, (2000). "Professionalism: A Contract between Medicine and Society". *Canadian Medical Association Journal*, 162(5), pp.668-669

<sup>41</sup> R. Smith, (2005), "The GMC: Expediency before Principle". *BMJ*. 330(7481), pp.1-2.

<sup>42</sup> See Supra Note 9, Section 42(2)

<sup>43</sup> B. Jeffrey., *Profession and Monopoly* (Berkeley: the University of California Press, 1975), p.88.

distorts the pursuit of medical knowledge and blocks the development and delivery of medical care<sup>44</sup>.

With this, it becomes almost impossible to obtain genuine expert evidence during litigation. Enhanced investigation and discipline, therefore, seem to be a far cry; one is tempted to ask why the investigation of problems or incidences should be confined strictly to self-regulated professional bodies. The tendency is for them to tilt in favour of their colleagues and come up with meaningless sanctions such as warnings, reprimands, and even recommendation reports instead of disciplinary actions. A case in point is that of *Affaire Monique Koumateke*<sup>45</sup> where the Commission of Inquiry (made up exclusively of medical professionals), set up by the Cameroon Medical Council in March 2016 to investigate the circumstances surrounding the death of Monique Koumateke, came up with a report of recommendations to the government and the medical corps with no sanctions<sup>46</sup>.

Monique Koumateke, was a pregnant woman who was disemboweled by her sister in a bid to save her unborn babies in front of a public hospital in Douala, precisely the Laquintinin hospital. From the investigative report<sup>47</sup>, there were instances of wanton neglect, carelessness, and indifference towards the pregnant patient, which portray the malfunctioning of the Cameroon Health system. She was taken to two hospitals before finally being brought to the Laquintinin hospital, where she was turned away by the hospital staff stating she was dead. The family of the patient claimed that she was still alive when they got to the hospital and that the real reason she was turned down was because they did not have enough money to pay her consultation fee<sup>48</sup>. All attempts to get the medical staff to attend to her were fruitless. Meanwhile, in a Press

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<sup>44</sup> *Ibid*.

<sup>45</sup> ONMC, Rapport de la Commission d'enquete du Conseil de L'ordre National des Medecins du Cameroun sur L'affaire Monique Koumateke. Mars 2016.

<sup>46</sup> *Ibid*

<sup>47</sup> *Ibid*

<sup>48</sup> J. Azétsop et al, (2018), "Morphologie du Quotidien, Souffrance Sociale et Parcours Individuels au Cameroun : La Mort De Monique Koumateke, Un Problème Social ?" *African Sociological Review*, 22:1, p.56

Conference<sup>49</sup> the Minister of Public Health, refuting negligence on the part of the Hospital staff, gave a different version of the story, that the pregnant woman and her unborn foetus had been dead for four hours already before being brought to the hospital<sup>50</sup>.

The Commission of Enquiry on its part, put up a scientific argument, relying on the three prenatal consultation reports of the victim, stating that Monique Koumateke died at home hours earlier from eclampsia complications before being taken to Lanquantinine hospital and that she refused to be hospitalized in the first health center she visited at PK13 in Douala<sup>51</sup>. That she carried a high-risk pregnancy and did not have any quality prenatal consultation. The family of Monique Koumateke made a complaint against the hospital for involuntary homicide, and failure to assist. They also denounce the Cameroon Medical Council for propagating false information, maintaining that Monique died in the hospital out of negligence and inhumane treatment from the hospital personnel<sup>52</sup>.

Indeed, instead of sanctioning the reprehensible actions of the hospital management and its personnel, actions which pose a threat to the community, the commission of inquiry, made up exclusively of medical personnel, tends to shield their colleagues by bringing up scientific arguments to shift the blame on the victim<sup>53</sup>. The report did not see any relationship between the death of Monique and the indifference of the personnel of the hospital, the treatment received by the victim and her family, medical ethics, the refusal of hospitalization at PK13, and the cost of treatment. It was hard to believe that the medical staff who consulted the deceased victim at PK13, knowing fully well that she had high-risk pregnancy and was in danger of death, allowed her to go home when she refused hospitalisation. The first mission of every health institution is to save a life, and where this mission is overlooked, the result is homicide.

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<sup>49</sup> Press conference held on 13/03/2016 against the backdrop of angry protest of the population against the treatment of Monique Koumeta

<sup>50</sup> Pregnant Woman's Shock Death Puts Cameroon's Healthcare under Spotlight, The Observer, France 24, 15/3/2016. at <http://observers.france24.com/en/20160315-pregnant-woman-cameroon-hospital-ceasarian>. (accessed on the 7<sup>th</sup> day of May 2021)

<sup>51</sup> See Supra Note 45.

<sup>52</sup> See Supra Note 48, pp. 68-69.

<sup>53</sup> See Supra Note 45

From the above it is sad to know that medical practitioners will always seek to defend their colleagues and their profession instead of respecting life which is their first paramount consideration. With this attitude, regulation of medical malpractices in Cameroon will remain a dream.

### **Persistent Absenteeism**

Health personnel availability is a major problem especially in public hospitals in Cameroon and needs to be addressed by effective regulation. This unavailability can be explained by the fact that private health facilities that accompany the government in the offer of health services to populations mostly have promoters, and medical doctors working in the public sector. These doctors spend most of their official working hours consulting in these private hospitals or in their homes. In fact, many patients who visit public health facilities are oriented by these doctors to their private health centers for medical care<sup>54</sup>.

Predatory or unethical behavior is rampant. The redirection of patients from formal to informal health centers is a widespread practice in Cameroon hospitals. Indeed, this practice contravenes Article 13 of the Prime Ministerial Decree<sup>55</sup> on the Code of Ethics of caregivers, which condemns diversions of users, (this consists in redirecting patients intercepted in public health facilities to private or informal care centers). This unethical practice is mostly done by specialist doctors, who transform their homes into informal healthcare centers and spend most of their work time in these centers regularly using materials diverted from public hospitals. Consequently, patients at public hospitals, after paying the consultation fee and waiting for hours are later told that the doctor is not on site<sup>56</sup>.

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<sup>54</sup>B. Yamb & O. Bayemi., (2017), "Corruption and Discrimination in Douala Metropolis Public Hospitals of Cameroon", *Journal of Economics Library*, 4(4), pp.505.

<sup>55</sup> Decree No 2004/321 of 18/12/2004 on the Code of Ethics of Care Givers, Article 13 reads; are forbidden, any commission, or acceptance or sharing of clandestine money between practitioners and patients; the acceptance of commission for any medical act, including for examinations, drug prescriptions, appliances, sending to a specific clinic, station cure, or health home.

<sup>56</sup> Direct observation at the Regional Hospital Bafoussam on 13/10/2020, where some pregnant women upon paying the consultation fee to see the gynecologist, were later told after several hours of waiting that she is not coming.

This presupposes that the public practitioner has the discretionary power which permits him/her to be absent from his official work and go to his private clinic or stay at home and receive patients during his contractual working period. The discretionary power held by the doctor allows him/her to reduce the quantity of service rendered, either by refusing to honor the appointment given to patients, or by simply refusing to serve them, or even by discriminating against them, and this is the most frequent case<sup>57</sup>. This he does without any fear of hierarchical authority. One author<sup>58</sup> concluded that absenteeism of healthcare workers is ubiquitous because public hospitals do not have systems to monitor and sanction staffs who fail in their public responsibilities. The culture within public hospitals is highly tolerant of absenteeism. A director's reluctance to confront doctors encourages other employees to also be absent during working hours<sup>59</sup>. As a result, high absenteeism and low productivity is widely reported in public hospitals<sup>60</sup>.

### **Corruption/Briber**

Corruption in Cameroon's public hospitals is severe. These public hospitals are marked by racketeering, extortion, and theft<sup>61</sup>. Patients are forced to pay fees that have no official reference<sup>62</sup>. To see a specialist involves paying additional fees or financially motivating the secretary of the specialist (bribe)<sup>63</sup>. Despite the public display of messages against corruption on

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<sup>57</sup>See Supra Note 49.

<sup>58</sup>B. McPake et al. (1999), "Informal Economic Activities of Public Health Workers in Uganda: Implications for Quality and Accessibility of Care", *Soc Sci Med*, 49, pp.849–65.

<sup>59</sup>A. García-Prado et al (2006), "The Impact of Hospital Management Reforms on Absenteeism in Costa Rica", *Health Policy Plan*, 21, pp. 91–100.

<sup>60</sup>M. Lewis "Governance and Corruption in Public Health Care Systems", Center for Global Development. Working Paper Number 78. 2006. at <http://www.cgdev.org/publication/governance-and-corruptionpublic-health-care-systems-working-paper-78> (accessed on the 22<sup>nd</sup> day of October 2020)

<sup>61</sup>V. Bayemi, (2008), "Corruption et Crise des Hôpitaux Publics à Douala: le Schémas d'une Organisation Tripolaire", In *Governing Health Systems in Africa*, Dakar, *Council for the Development of Social Science Research in Africa* (CODESRIA), P.12-24.

<sup>62</sup>That is; unregistered billing; extra-billing of real or presumed complementary services for their supposed rapidity or quality; payment for services which in fact have not been rendered; payments for services that are officially free of charge or subsidized such as mosquito nets and HIV screening and, the issuing of fake medical certificates.

<sup>63</sup>J. Ntangsi, "An Analysis of Health Sector Expenditures in Cameroon Using a National Health Accounts Framework". at <https://www.rad-aid.org/wp-content/uploads/Cameroon-Country-Report.pdf> (accessed on 24th day of October 2020)

all hospital notice boards, this ill prevails and money has become the driving force in service provision in Cameroon. As such it is the patient's economic capital that counts. Patients without enough or sufficient financial resources wait long hours in corridors; some die in pain under the indifferent gaze of the professionals who are supposed to take care of them, while financially viable patients are able to bribe caregivers to attract their favours, skip the queue and obtain prompt, careful, and effective care<sup>64</sup>.

### **Inflated Hospital Bills**

Exorbitant hospital bills are yet another disturbing issue that is restraining the effective regulation of medical malpractices. The public health sector in Cameroon is expected to provide the general population with cheap healthcare services and medications. However, what obtains is the reverse. Patients are given exorbitant bills, and immediate cash payment from patients for health services rendered is often demanded<sup>65</sup>.

The national and international press has reported cases in cities such as Douala and Yaoundé where people were denied in hospitals because of their inability to pay their health care bills. In 2012, the BBC reported the case of a mother and baby who were detained for 11 months by a hospital in Yaoundé due to the mother's inability to pay her medical bill.<sup>66</sup> In 2018, the France-based news agency France24<sup>67</sup> reported that the central hospital in the capital of Cameroon, Yaoundé, detained about a dozen mothers and their newborns for about a month owing to their inability to pay their hospital bills. Eleven women gave birth in the hospital through caesarian section, the hospital gave them exorbitant bills which varies between 200.000-300.000frs CFA<sup>68</sup>, not having the means to pay these bills within a time limit of 7 days, the hospital ask

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<sup>64</sup> See Supra Note 54

<sup>65</sup> C. A. Shu, "Public and Private Hospital in Cameroon: Service Quality and Patients' Choice of Hospital", (unpublished Master's Thesis) 2010, Institute of Graduate Studies and Research, Eastern Mediterranean University, North Cyprus, 2010.

<sup>66</sup> F. N. Ngwa, "Detained in Cameroon's Hospitals". BBC News, 29 Nov. 2012. Available online: at <http://www.bbc.co.uk/com/news/world-africa-20417377>. Retrieved on 02/11 2020 at 11.08 a.m.

<sup>67</sup> France24. Cameroon Hospital Detains New Mothers over Unpaid Fees. Available online: <https://observers.france24.com/en/20180813-cameroon-hospital-mothers-babies-detained-fees>. (accessed on the 24th day of October 2020)

<sup>68</sup> P. Chouta., "Denunciation - 13 Women and 11 Babies Locked in a Room in the Main Hospital in Yaoundé for Several Months like Prisoners" *The Observer*, 08/13/2018. at

them to vacate their beds in the wards, they were later crammed like animals in one small room in the maternity section where they slept on the floor and were treated like prisoners.<sup>69</sup>

Despite the prohibition of the confinement of indigent patients in public health facilities by the Cameroon Minister of Health, Malachie Manaouda<sup>70</sup>, the practice persists. In a letter dated March 14, 2019, to the heads of public health facilities in Cameroon, the Minister urges the Directors of public hospitals to propose better-adapted and less degrading solutions for the care of indigent patients as soon as possible<sup>71</sup>. However, these are mere rhetoric with no implementation strategies.

### **Inappropriate Medical Care**

The carelessness exhibited by medical practitioners leaves one wondering. Inaccurate diagnosis, medication errors, and inappropriate or unnecessary treatment are frequent<sup>72</sup>. Prompt diagnosis, with the greatest accuracy, that medical knowledge and technology permit, is a requirement for any level of quality medical care, and medical professionals and institutions are responsible for ensuring that it occurs<sup>73</sup>. This however is seldom obtained. This can partly be explained by the inadequate, obsolete, and poor quality of medical equipment in Cameroon hospitals. It is

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<https://observers.france24.com/en/20180813-cameroon-hospital-mothers-babies-detained-fees..>

(accessed on the 24th day of October 2020)

<sup>69</sup>*Ibid*

<sup>70</sup>S. Andzongo, “Cameroonian Health Ministry Forbids Public Hospital Services from Confining Indigent Patients due to their Inability to Pay Bills” Business in Cameroon, 26 March 2019. at [https://www.businessincameroon.com/health/2603-8977-cameroonian-health-ministry-forbids-public-hospital-services-from-confining-indigent-patients-due-to-their-inability-to-pay-bills.\(accessed on the 27th day of October 2020\)](https://www.businessincameroon.com/health/2603-8977-cameroonian-health-ministry-forbids-public-hospital-services-from-confining-indigent-patients-due-to-their-inability-to-pay-bills.(accessed on the 27th day of October 2020)) “I have the honor to prohibit, as from the date of signature of this letter, the confinement of indigent patients in public health facilities,” said the Health Minister, Malachie Manaouda. Mr. Manaouda said he noted, during visits, that patients were being kept by force for failure to pay their hospitalization and care bills in total. “I would ask you to liberate all patients who may be held in your respective health facilities due to failure to pay bills, and let me know the costs involved,” the official said.

<sup>71</sup>*Ibid*

<sup>72</sup>Ndi and Tata, (2020) “Medical Errors in Health Care Institutions in Cameroon: Setting the Platform for Legal Intervention”, *Indian Journal of Health & Medical Law*, ,3:1 p.28.

<sup>73</sup>*Ibid*



heartbreaking to hear that Quadruplets born prematurely at the Yaoundé central hospital on May 11, 2020, had to die due to insufficient incubators at the state-owned hospital<sup>74</sup>.

The Covid- 19 pandemic exposed the under-regulated medical practices in Cameroon. In the wake of this pandemic, patients presenting with episodes of cough and/or fever were easily suspected of having Covid-19 without a proper clinical examination. As a result, many were kept for long periods in the pre-isolation unit while awaiting the results of the diagnostic test, a situation which can lead to all-round psychological stress for these suspects<sup>75</sup>. Moreover, the merging of potentially real Covid-19 cases and non-case in these units, which are generally poorly constructed and overcrowded for prolonged periods, lead to the spread of the disease to non-Covid-19 cases.

### **Absence of Government Assistance**

Patients have also had to rely on out-of-pocket payments to cover healthcare costs related to Covid-19. One of the Media in Cameroon, Equinox Television<sup>76</sup> has reported cases of some public health institutions in Douala demanding COVID-19 patients to personally cover their health care costs. The news agency interviewed the spouse of a COVID-19 patient who, after spending approximately 200,000FCFA on tests and prescription drugs, turned to the use of free herbal medicine provided by the Archbishop of the Douala Metropolitan Archdiocese, His Lordship Samuel Kleda<sup>77</sup>. The country's Minister of Public Health, Dr. Malachie Manaouda declared a ban on hospitalisations, systematic billing for screening tests, and the administration of prescription drugs in a press release published on 16 April 2020. However, two weeks after the minister's press statement, patients in Douala, for example, were still relying on out-of-

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<sup>74</sup>Pittsburgh Courier, "Quadruplets Die in Government-run Hospital", July 8, 2020. online at <http://newspittsburghcourier.com/020/07/08/quadruplets-die-in-government-run-hospital/>. (accessed on the 2<sup>nd</sup> day of November 2020)

<sup>75</sup> E. Ngeh Ngeh et al, "COVID-19: "Challenges and the Impact on Care in Clinical Settings in Cameroon", (2020), 35(2), *Pan African Medical Journal*, pp.122.

<sup>76</sup> Équinoxe TV—Journal 20H du Lundi, 27 April 2020, at: <https://www.youtube.com/watch?v=GqUGY4i0RT8>. (accessed on the 30<sup>th</sup> day of October 2020)

<sup>77</sup> *Ibid.*

pocket payments for COVID-19-related medical expenses<sup>78</sup>. This confirms the inefficiency of the Cameroon regulatory system, which has dire consequences on the patients and their families, the community, and the entire nation.

### **Conclusion and Recommendation**

In a country like Cameroon whose institutions are known for their failure of performance, effective regulation of medical malpractices is a long way off, reasons why deviant behaviours among health personnel persist in spite of numerous measures set up to fight the illness. The importance of these malpractices is a source of restriction on the regulatory mechanisms put in place to censor these behaviours. Medical practitioners have somewhat become untouchables in Cameroon, they are able to commit a wrong and get away with it. One might be tempted to say it's because victims of these wrongdoings are not reporting, but this is not wholly the case. These victims are tired of a system where even the laws put in place are unenforced. Hospitals have become lion dens where only financial prowess can liberate patients. Government assistance to hospitals is not felt. Indeed, it is reported that most of the funds made available for the management of the COVID-19 pandemic were diverted by top government officials, including money meant to purchase rapid COVID-19 test kits<sup>79</sup>. It is therefore not surprising that patients had to bear the cost of their treatment.

Monique Koumetake's event highlighted the ineffectiveness of the Cameroon Medical Council and the Ministry of Public Health as regulatory bodies. When administrative and financial bureaucracy takes preeminence over the lifesaving mission of hospitals and doctors, they lost their fundamental value and the effect is disastrous.

The fight against medical malpractices through regulation can best be achieved where the regulatory mechanisms are well-structured, stringent, and effective. The Regulatory bodies in Cameroon should be empowered to compel doctors to put up their best practices and to consider patient safety as primordial. Confidence in the integrity of the judicial system needs to be instilled by making justice accessible and guaranteed to all segments of the population and

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<sup>78</sup> Cameroun Web. at: <https://www.camerounweb.com/CameroonHomePage/NewsArchive/Covid-19-les-mensonges-de-Manaouda-Malachie-sur-la-prise-en-charge-des-patients-508861>.

(accessed on the 29<sup>th</sup> day of October 2020)

<sup>79</sup> M. Songne," Cameroon: IMF Awaits New Audit of Covid-19 Fund Management", *The Africa Report*, March 2022.

eliminating substantive and procedural obstacles which are deeply embedded in the system. The fight against corruption should be intensified, and the working condition of medical practitioners should be improved.

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