



**B&P**  
ASSOCIATES  
Lawyers & Consultants

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## 'TIS NOT THE SEASON FOR HOSPITALS, OR IS IT?

Studies have shown that during the holidays, there is an increase in medical cases.<sup>1</sup> In the thick of celebrating, where a person becomes unwell, the question arises- would you rather visit a medical facility for care or call a friend who is a medical professional for a quick consult? As a medical professional, are you predisposed to independent consultations as opposed to pointing friends and family who are unwell in the direction of a medical facility? If something goes wrong who is responsible? In this article, we consider the legal regime of medical negligence in Ghana.

Medical negligence is "the failure to provide

*medical, dental, or psychiatric care that is necessary to prevent or to treat serious physical or emotional injury or illness*".<sup>2</sup> This definition however only scratches the surface in assessing and proving that a medical professional has been truly negligent.

Where something goes wrong either at the medical facility or during an independent consult, the guiding elements of the courts of Ghana will assist in determining whether the medical professional has indeed been medically negligent and whether the professional in question can be held liable.

The litmus test for medical negligence is

popularly referred to as the Bolam Test.<sup>3</sup>

### The Bolam Test asks three questions:

1. Was there a duty of care between the medical professional and patient?
2. Did the medical professional breach that duty of care?
3. Did that breach lead to the patient's injury?

## Existence of a Duty of Care

First, a duty of care must be established between the medical professional and the patient. The case of **Edward Nasser & Co Ltd v McVroom and Another**,<sup>4</sup> was to the effect that in proving negligence in tort, the Plaintiff must establish a duty of care owed by the Defendant towards the Plaintiff, which duty must arise from the nature of the relationship between the parties.

In **Dr. E. L. A. Chinbuah and Captain J. K. Nyamekye v The Attorney General**,<sup>5</sup> the Court indicated that a physician-patient relationship commences when a physician accepts responsibility for the care of a patient.<sup>6</sup> In **Somi v Tema General Hospital**,<sup>7</sup> CHRAJ held that a hospital had a duty to ensure that healthcare professionals attended to patients who had been rushed there in an emergency condition.

Therefore, once a medical professional assumes the care and treatment of a patient for any ailment, a duty of care is established, and the duty is imposed on that medical professional to discharge his duties with utmost diligence. The physician's duty of care may cover consultation, diagnosis, medical advice as well as treatment.

Impliedly, if a medical professional opts to offer independent consultations to family and friends, that professional may be held personally liable in the case of medical negligence as the duty of care is established once responsibility for care is accepted. Practically, where the medical professional acted in the capacity of an employee of a medical facility, the medical facility is equally responsible and is often included as a party in the suit of medical negligence. Effectively, employers of medical professionals may also be held vicariously liable for the negligent actions of the employee.<sup>8</sup>

## Breach of the Duty of Care

A breach of the duty can be established through the actions or inactions of the physician. The physician's conduct must have fallen below the acceptable standard of care required of the ordinary skilled medical professional exercising and professing to have that special skill, under the circumstance.<sup>9</sup> This implies that a person need not possess the highest expert skill. It is sufficient if the person exercises the ordinary skill of an ordinary competent person in medical practice exercising that particular art. An error of judgment would

amount to medical negligence only if such error would not have been made by a reasonably competent medical practitioner exercising the ordinary skill and standard required.<sup>10</sup>

These principles have been affirmed in several Ghanaian cases including **Gyan v Ashanti Goldfields Corporation (AGC)**<sup>11</sup>, where a senior nurse at the outpatient department of AGC's hospital mistakenly administered a chloroquine injection to the Plaintiff's child, being under the impression that the child was suffering from malaria. This was done without any prior test or reference to the doctor on duty. The injection caused paralysis in the child's right leg. The child's father subsequently sued the Defendant company, vicariously for negligence which was dismissed.

On appeal, the Court of Appeal, in dismissing the action held that "The true test for establishing negligence in diagnosis or treatment on the part of a doctor was whether he had been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care. The Court found that the nurse who treated the child did what most if not all, medical professionals would have done in the circumstances and thus, the nurse was not negligent.

This was based on the evidence of a specialist that it was standard practice for medical professionals to administer chloroquine injections without prior testing.

Essentially, in determining whether or not a medical professional has acted in breach of the duty of care owed to a patient, the Court assesses whether the medical professional acted with the requisite skill and care ordinarily required in the peculiar circumstances. The Court determines whether any competent medical practitioner under the circumstance would have acted the same or in a similar manner as the Defendant had done.

### **Injury to the Patient**

Finally, a Claimant must establish that he or she has suffered some damage or harm as a result of the defendant's breach of duty. There must be a nexus between the Defendant's negligent action or omission of the Defendant and the Plaintiff's injury. To establish this, the court generally employs the But for test, which implies that the Claimant must establish that, but

for the negligent conduct of the Defendant, the Plaintiff would not have suffered the injury complained of.<sup>13</sup> If the injury would have happened in spite of the Defendant's conduct, then from the causal point of view, the Defendant's conduct is irrelevant.<sup>14</sup>

### **Conclusion**

Medical professionals, owe a duty of care to those who seek treatment from them. This is because once a medical professional agrees to treat a patient, there is a professional duty to provide competent care. Further, a patient claiming medical negligence must show some actual, compensable injury resulting from the alleged negligent care. Proof of injury can include the physical effects of the treatment performed by the physician.

A medical professional who acts negligently in delivering healthcare would be personally liable for his or her negligent actions. Moreover, the employers of the medical professional may also be held vicariously liable for the negligent actions of the employee professional.<sup>15</sup>

To mitigate their liability and reduce risk, medical professionals may obtain professional indemnity insurance against medical negligence claims. Additionally, medical facilities are by the Insurance Act, 2021 (Act 1061), required to obtain professional indemnity insurance for doctors employed in their service.<sup>16</sup> This will mitigate the financial impact of such medical negligence claims against the employer.

As the festive season approaches, medical emergencies may be inevitable. As a medical professional, it is important to be circumspect in delivering healthcare whether independently or under the auspices of a medical facility. In the event of an unforeseen blunder, however, professional indemnity insurance is useful. From the<sup>21</sup> patient's point of view, is it important to consider accountability of the selected healthcare provider in the worst case scenario, assisting in one's decision making process, in deciding whether to visit the hospital or to call your medical professional for a quick consult.

Happy holidays and stay safe!!



1. <https://pubmed.ncbi.nlm.nih.gov/15869557/>
2. *Black's Law Dictionary*
3. *Bolam v Friern Hospital Management Committee [1957]1 WLR 582*
4. *[1996-1997] SCGLR 468*
5. *Suit Number GJ/378/2016, delivered on 21st July 2021*
6. *Ibid*
7. *Case No. CHRAJ/2/98/1368, delivered on 16th August 2000 by Commissioner Emile Francis Short*
8. *Gyan v Ashanti Goldfields Corporation [1991] 1 GLR 466, Dr. E. L. A. Chinbuah and Captain J. K. Nyamekye v The Attorney General, Suit Number GJ/378/2016 delivered on 21st July 2021*
9. *Bolam v Friern Hospital Management Committee [1957]1 WLR 582*
10. *Whitehouse v Jordan [1981] 1 WLR 246*
11. *[1991] 1 GLR 466*
12. *Cork v Kirby MacLean Ltd [1952] 2 All ER 402*
13. *Ibid.*
14. *Ibid.*
15. *Gyan v Ashanti Goldfields Corporation [1991] 1 GLR 466, Dr. E. L. A. Chinbuah and Captain J. K. Nyamekye v The Attorney General, Suit Number GJ/378/2016 delivered on 21st July 2021*
16. *Insurance Act, 2021 (Act 1061), Section 216(1)*



# A TOURIST'S CORNER – LET'S GO TO THE MOTHERLAND!



## Overview

Ghana, known for its culture, history and natural beauty, is one of the most diverse and vibrant nations on the continent, with over 100 ethnic groups and 80 languages. The Nation is made up of 16 regions and has Accra as its capital. The country boasts of beautiful tourist attractions like, the Kwame Nkrumah Memorial Park (Mausoleum), the Elmina Castle, the Kakum National Park, Wli and Aburi Water Falls, and many others. The hospitality and beautiful culture of Ghanaians make each visit to the country a worthwhile experience. Before you board a flight to Ghana, here are some travel tips for you:

## Preliminary Requirements

**Passport:** A passport is a widely accepted form of identification that enables its holder to travel across countries. It contains details such as a person's name, date of birth, photo, sex and citizenship. In the absence of other kinds of identification, such as driver's licenses or state-issued ID cards, passports may also be used for identification.

Without a passport, a person cannot apply for a Visa to Ghana.

**Visa:** A Ghanaian visa allows a person to travel to and present oneself for entry into Ghana. A valid visa is required for all non-exempt travelers to Ghana. Although visa fees depend on the type of visa applied for,<sup>17</sup> they typically cost approximately USD 60.00 and takes about 15-20 Business Days to process.<sup>18</sup>

Citizens of ECOWAS member states and other countries with which the Government of Ghana has specific bilateral agreements do not need a visa to enter Ghana. These include nationals of Nigeria, Senegal, Gambia, Guinea, Guinea Bissau, Sierra Leone, Burkina Faso, Togo, Ivory Coast, Mali, Niger, Liberia, Benin and Cape Verde.

Also, citizens of other countries including Seychelles, South Africa, Eswatini (formally Swaziland), Botswana, Namibia, Malawi, Lesotho, Tanzania, Uganda, Zimbabwe, Kenya, Singapore, Trinidad and Tobago, Mauritius, Jamaica, Singapore, Rwanda, St. Vincent and the Grenadines, Guyana and Barbados do not require a visa to visit and remain in Ghana for a period not exceeding 60 days.

Citizens of all other African states may be granted a visa on arrival in Ghana for a period not exceeding 60 days.

**A Valid Yellow Fever Card:** All travelers above nine (9) months coming into or transiting through Ghana are required to have been vaccinated against Yellow Fever at least ten (10) days from the proposed date of departure from their home country and where already vaccinated, provide evidence/proof (certificate) of Yellow Fever vaccination.<sup>19</sup>

## Post-Arrival Tips.

**National Identification Authority (NIA) Non-Citizen Ghana Card:** Foreigners who intend to stay in Ghana for more than 90 days in



one year must register for a National Identification Non-Citizen Ghana card.<sup>20</sup> To register, a scratch card must first be purchased from any Cal Bank branch nationwide for the Cedi equivalent of USD 120.00.

Thereafter the applicant is required to complete the registration form and to visit the NIA office for the capturing of their photograph and biometrics. When all this is done, the applicant is instantly issued a non-citizen card.

**Driving**

Foreign drivers must always carry an International Driving Permit (IDP) whenever they are driving in Ghana. When driving across international borders, you may be required to show both your domestic license and the IDP. Considering that neighbouring African countries are a drive away, possessing an IDP is essential. However, if you are an international visitor, you should only apply for an IDP if you intend to drive to Ghana as it is illegal to drive unlicensed.<sup>21</sup> The International Driving Permit for Ghana is simple to obtain and the documents required for application are your native driver's license and two passport pictures.

**Money**

The local currency is the Ghanaian Cedi (GHS) and pesewas. At the time of this compilation, the foreign exchange rates in Ghana are as follows:

Currency Code	Rates
1 United States Dollar	GHC 11.87
1 South African Rand	GHC 0.63
1 Great Britain Pound	GHC 14.42
1 EUR	GHC 12.58

1 Chinese Yuan                      GHC 1.62

Any person arriving in or departing from Ghana is permitted to carry up to a maximum of \$10,000.00 or its equivalent in any other monetary instruments without declaration.

However, where the amount is in excess of \$10,000.00, the whole amount shall be declared using the Currency Declaration Form (CDF) indicating the source and purpose for carrying such an amount.<sup>22</sup>

**Visiting places**

There are a lot of beautiful places to visit in Ghana. Tourists sites such as the Wli water falls, the Volta lake, the Cape Coast Castle, the Mole National Park to mention but a few are very interesting places to visit. There are also beautiful galleries, beaches and resorts that are a sight for sore eyes. Night life in the capitals of the various regions are exciting times to have fun as well.

Unlike in other countries, tipping in restaurants and bars in Ghana is relatively common, especially in smaller eating establishments such as chop bars, and street food vendors. In some restaurants a 10% service charge is sometimes added to the bill: be sure to look for any additional

charges and keep in mind, this amount never makes it to the wait staff, so tipping is massively appreciated.

## Laws

Keep abreast of relevant laws to understand your rights and responsibilities during your stay in Ghana. Primarily, the Constitution of Ghana 1992 is the fundamental law of Ghana. Chapter five (5) of the Constitution presents the Fundamental rights and freedoms applicable to all persons in Ghana. The Criminal Offences Act, 1960 (Act 29) provides offences and accompanying punishments that persons must be aware of to avoid being caught on the wrong side of the law.

## Departure

International travel Check-in counters are located in the Terminal 3 departure lounge. While most of the airlines offer online check in, depending on the airline, check-in counters open at least 2 to 3 hours before flight take-off. We advise that you to check-in about 3 hours before your departure time.

17. Ghana immigration service, Permits and Visas available at <https://home.gis.gov.gh/permits-and-visas/>

18. Ghana Visa Requirements And Visa Application Process available at <https://www.atlys.com/post/how-to-apply-for-a-visa-to-ghana>

19. *ibid*

20. National Identification Authority frequently asked questions available at <https://www.vfsglobal.com/nia/ghana/faqs.html>

21. *ibid*

22. Bank of Ghana NOTICE NO. BG/GOV/SEC/2019/05 available at <https://shorturl.at/bopJK>

*Conversion rates are subject to confirmation at the time of conversion*

# BUSINESS UPDATES



## Visa Waiver Agreement Between Ghana and South Africa for Ordinary Passport Holders.

The governments of Ghana and South Africa have reached an agreement for the waiver of visas for Ghanaians wishing to travel to South Africa. Effective 1st November 2023, all Ghanaians holding ordinary passports can travel to South Africa for up to 90 days per year without a visa.

## Get Your Smart Card Licences Now!

The Driver and Vehicle Licensing Authority

(DVLA) has issued a press release informing all holders of Polyvinyl Chloride (PVC) Card driver's license to present them to any DVLA office for verification and replacement for a smart card driver's licence.

The replacement exercise is scheduled to end by 31st March 2024.

At the close of this exercise, PVC card driver's licences will be rendered invalid and holders of PVC card driver's licenses who fail to replace their licences by the end of the period will have to reapply for a new driver's licence.



## **Narcotics Control Commission (Amendment) Bill, 2023**

This Bill was passed on 12th July 2023 to amend the Narcotics Control Commission Act, 2020 (Act 1019). This Bill amended or reinserted Section 43 following the Supreme Court decision in *Ezuame v Attorney General* that declared the provision as unconstitutional on grounds that parliament did not have a debate on the provision before passing it into law.

Following this amendment, the Minister for the Interior is empowered upon the recommendation of the Narcotics Control Commission to grant a license for the cultivation of cannabis. This discretion to grant a license is subject to two conditions. First, the cannabis must not have more than 0.3% tetrahydrocannabinol (THC) content on a dry weight basis. Secondly, the cultivation must be for industrial purposes for obtaining fiber, seed, or for medicinal purposes only and not for recreational use.

## **Contract (Amendment) Bill 2022**

In July 2023, Parliament passed the



Contract (Amendment) Bill 2022 to amend the Contracts Act, 1960 (Act 25). This law sought to fill the lacuna in the law in respect of authorized persons to enter into contracts or transactions on behalf of the state. It also sought to regulate the imposition or charge of interest payments in contracts that involve the state.

The Contract Act as amended now provides that only ministers of state or persons authorised by ministers shall enter into contracts on behalf of the state. In effect,

any person who willfully enters into a contract on behalf of the state without authorization from the minister commits an offense punishable by fine and/or term of imprisonment.

The Act has also provided for a mode of calculating interest payments due parties in a contract involving the state.

### **Criminal Offences (Amendment) Act, 2023 and Armed Forces (Amendment) Act, 2023**

These Acts amend the Criminal Offences Act, 1960 (Act 29) and the Armed Forces Act 1962 (Act 105). The death penalty has been substituted for the punishment of life imprisonment. In effect, effective 2nd August 2023, no crime is punishable by death. The capital punishment is therefore abolished from the laws of Ghana.

### **Wildlife Resources Management Bill, 2022**

In July 2023, the Parliament of Ghana passed the Wildlife Resources Management Bill into law. This law consolidates all legislations that govern wildlife and protected areas into a single Act and incorporates relevant provisions of the Convention on Biological Diversity and other international treaties that have been ratified by Ghana.

The government seeks to keep wildlife administration abreast with best practices and contemporary management. The implementation of this law has been entrusted in the lands of the Forestry Commission acting through its Wildlife

Division.

The passage of this law is expected to mark the beginning of proper management and provision of a support system for protecting major ecological communities and promoting the sustainable use of wildlife in the country.

### **Whistleblower (Amendment) Bill, 2023**

The Whistleblower (Amendment) Bill has been passed by parliament to amend the Whistleblower Act 2006 (Act 720. One of the standout provisions of this bill is Clause 3 which has amended Section 24 of Act 720) to the effect that where a whistleblower's disclosure results in the recovery of any amount of money paid into the Whistleblower Reward Fund ("the Fund"), that whistleblower shall be entitled to 10% of the amount paid into the Fund. In that regard, the law requires such payment to be made within 14 days after the money is paid into the Fund.

In the same vein, where a whistleblower's disclosure results in a successful collaboration without necessarily leading to the recovery of money, that whistleblower

shall be rewarded in cash from the Fund within 30 days after the successful collaboration. The policy behind these amendments is to incentivize people to expose wrongdoing in the system.

# JUDICIAL CORNER



## The Bar Welcomes New Lawyers

On 20th October 2023, the General Legal Council enrolled 1,092 newly qualified lawyers at a ceremony held at the Accra International Conference Centre. This is the highest number of lawyers ever to be called to the Ghana Bar after a total of 1075 were called in 2022.

We wish them a fruitful career at the bar and beyond.

## President Swears-in Two New High Court Justices



On 28th August 2023, President Nana Addo Dankwa Akuffo-Addo swore into office two new Justices of the High Court at a short ceremony in Accra.

The new judges are Justices Dorothy Ayodele Kingsley-Nyinah and Ama Sefenya Ayithey, both private legal practitioners before their elevation to the bench.

During the short induction ceremony, the President admonished them to be sensitive to delays in trials, while also urging them to harness the power of technology to advance the rule of law.

## Chief Justice Commissions New District and Circuit Courts

Her Ladyship Gertrude Araba Esaaba Torkonoo, the Chief Justice of the Republic of Ghana has inaugurated four (4) new courts; two (2) District Courts and two (2) Circuit Courts in the Eastern and Greater Accra Regions.

These encompass one District Court in Akwatia, another in Coaltar, and a Circuit Court at Abirem, all in the Eastern Region. She also inaugurated a Circuit Court in Kwabenya in the Greater Accra Region. All cases emanating from these areas and their environs will now be heard in these courts.

These developments will go a long way to promote access to justice in Ghana and improve public confidence in the judiciary.



# FIRM NEWS



## **Breasts Cancer Fundraiser**

In honour of Breast Cancer Awareness Month, B&P Associates organised a breast cancer fundraising cocktail dubbed, "Painting in Pink" on 26th October 2023.

The aim of the fundraising campaign is to

create awareness and to raise funds, making a donation to Korle-Bu Teaching Hospital, as our collective contribution to the fight against breast cancer. Funds will be targeted at healthcare provision to young women between the ages of 25 years and 40 years battling breast cancer.

Key Sponsors of the event were Turkish Airlines (Ghana), Reflo Ghana Limited and SPIE Oil and Gas Services Limited.



## **Adelaide Benneh Prempeh named a Mentor for the Ghana Netherlands Business & Culture Council (GNBCC) Women in Business Program for 2023- 2024.**

The GNBCC Women in Business Program, supported by the Royal Embassy of the Netherlands is a mentoring program that aims to support women entrepreneurs who are active in horticulture and/ or cocoa and its supporting value chain.

It is a transformative initiative designed to nurture and cultivate the talents of young Ghanaian women who have ventured into the world of horticulture and cocoa business.

The program, which will run for 6 months, is built on the firm premise that mentorship is a powerful tool for

advancing careers, enhancing skills, and building strong professional networks. During this period, mentors and mentees will have the opportunity to work together, set and achieve goals, and experience substantial growth and development throughout their mentorship journey.



### **Mondaq Publication**

B&P ASSOCIATES, Lawyers & Consultants was the proud contributor of the Mondaq Private Mergers and Acquisitions Comparative Guide (Ghana Chapter).

The guide provides a comprehensive overview of some of the key points of law and relevant practical issues that must be considered within the Ghanaian M&A legal framework.

Read the full article [here](#).

### **CONTRIBUTORS**

[Michelle Nana Yaa Essuman](#)  
[Prince Benson Mankotam](#)  
[Priscilla Wepia Ametame](#)  
[Audrey Nana Oye Addy](#)

# B & P ASSOCIATES

## About B & P ASSOCIATES

B&P ASSOCIATES is ranked as a Legal 500 Europe, Middle East & Africa (EMEA) and a Chambers & Partners Global Leading Law firm. We are a Corporate and Commercial legal practice and consultancy, with an excellent reputation, based in heart of Accra. The Team is highly regarded for its cross-border legal expertise, responsiveness and commitment. We provide business oriented legal advice across a range of sectors, to both local and international clients. For more information, visit us at <https://www.bpaghana.com> to learn more about what we do.

## BPA COMMUNITY FIRST PODCAST



The Firm launched its Podcast at the beginning of this year - "Community FIRST; A BPA Podcast - Legal and Social Conversations with the Community".

The focus of the Podcast is to have riveting legal and social conversations with team members of the Firm, various organizations, and a cross-section of experts and practitioners. Invited guests will be encouraged to share their respective views on various legal issues

that matter most to our community. We are excited about building effective partnerships and collaborations to enrich the quality of our discussions. We look forward to playing a positive role in empowering individuals with the knowledge of the law as a tool for creating lasting, positive change.

Click the links below to listen to our latest Episodes on the following topics:

· Risk and Vulnerability of Children Online.  
<https://lnkd.in/grzHjDSe>

· I Do, But How Do I?  
<https://lnkd.in/e-DAxwXA>

· Cutting Loose...Ending Things. When They Break Down Beyond Reconciliation.  
<https://lnkd.in/eJv9AGr>