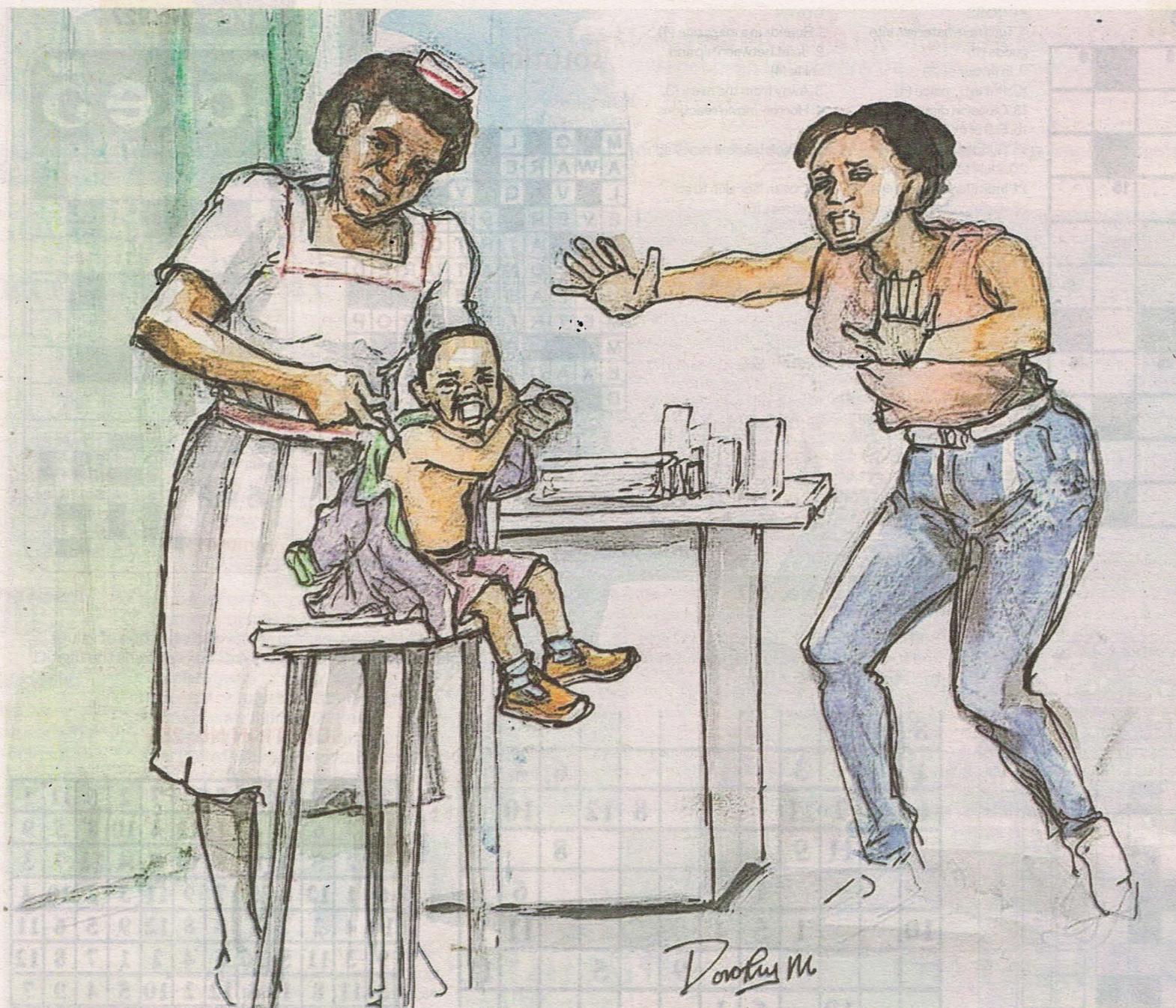


## Medicine & the Law



# Court faults nurse for maliciously injecting a child

In the instant case, court observed that when the nurse gave the child the injection, it was not to treat her. The child had already undergone laboratory tests by a laboratory technician. She was yet to be professionally attended to by the next officer in the line of duty.

BY SYLVESTER ONZIVUA

**I**n April 17, 2019, a police a nurse stealthily administered an unauthorised injection on the left arm of a two-year child, who had been brought for treatment. The nurse administered the injection when alone with the child even when the mother of the child was close by.

The nurse was subsequently sued for battery. Battery, in law, is defined as the intentional and unlawful action of physically touching another person's body to which that person has not consented.

Court ruled that the action of the

nurse of administering an injection that was not prescribed to the child amounted to an unauthorised treatment and that immediately throwing away the needle and syringe before the child's mother could intervene was unethical and unacceptable.

The nurse did not refute the allegation but told court that the purpose of the injection was to scare the child who had become a nuisance at the health facility. To court, the action of the nurse was not reasonable at all but was cruel and degrading and amounted to the tort of battery on the child.

The case against the nurse was also premised on medical negligence. In law, for a case of medical negligence to suc-

ceed it must be established that there exists a relation of care between the patient and the health-care provider and once this relationship is established then the health-care provider then owes the patient a duty of care.

Thus a party who holds himself or herself ready to give medical advice or treatment impliedly undertakes that he or she is possessed of skills and knowledge for the purpose and such a person, whether he or she is a registered medical practitioner or not, once consulted by a patient, owes that patient certain duties, namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give and a duty of care to administer that treatment.

In the instant case court observed that when the nurse gave the child the injection, it was not to treat her. The child had already undergone laboratory tests by a laboratory technician. She was yet to be professionally attended to by the next officer in the line of duty.

It was not yet clear to the mother of

the child that the nurse was to attend to the child. Even if the nurse was the person to administer any treatment to the child, the mother's consent had not yet been sought, as no medicines had been prescribed at that point. The nurse did not prove to court that an injection had been prescribed for the child.

That the mother of the child was not consulted when the child was given the injection was not in doubt. The nurse gave the injection when the mother of the child was not aware. To court, although medical consent need not be express, and consent could be by conduct, the actions amounting to valid consent depend on the circumstances of each case.

A mother could, for example, consent to a child's injection, by allowing part of the body where the injection is to be administered, to be sanitized prior to the prick or by removing the infant's cloth from the part to be injected, or by holding the child firmly for safe injection, among others. This is known as implied consent.

### Was there valid consent?

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**What was not in doubt.** That the mother of the child was not consulted when the child was given the injection was not in doubt. The nurse gave the injection when the mother of the child was not aware. To court, although medical consent need not be express, and consent could be by conduct, the actions amounting to valid consent depend on the circumstances of each case.

**Explanation to patients or caretakers is key in medicine**

In this case, the nurse merely gave an injection to the child on her left shoulder. The nurse made it seem like the child was there for immunization whereas not. The nurse told court that a tetanus toxoid syringe was used to inject the child.

The mother of the child did not refute this but added that the nurse, in the process, also administered a leftover of a tetanus toxoid vaccine that had been administered to a pregnant woman. This claim was, however, denied by the nurse.

The evidence remained scanty as to whether or not any vaccine was administered to the child as no tests were carried out to confirm or rule out the possibility of a vaccine being administered. The nurse admitted to having discarded the needle and syringe immediately, although the reason given for this action was safety concerns. The nurse claims that this was misunderstood by the mother of the child.

The nurse, in court, admitted to giving the child the said injection and offered an apology to the mother of the child. The nurse, however, claimed that the incidence was accidental as the child ran into the syringe.

Court found this explanation devoid of truth and an afterthought and contradictory as the nurse had earlier claimed that the injection was meant to scare the child who was becoming a nuisance.

Even if the child ran towards the needle and syringe, court wondered why the nurse did not turn the needle and syringe away from the child or stopped the child from drawing closer.

It is settled in law that any medical personnel can be liable for medical negligence if that person falls short of the standard of a reasonable medical care. Medical personnel, however, cannot be found negligent merely because in a matter of opinion, he or she has made an error of judgment.

When there are genuinely two responsible schools of thought about management of a clinical condition, court could do no greater disservice to the community or advancement of medical science than to place the hallmark of legality upon one form of treatment.

The test for negligence is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill of an ordinary competent man exercising that particular art.

In the case of medical men, negligence means failure to act in accordance with the standards of reasonably competent men at that time. There may be one or more perfectly proper standards, and if he conforms to one of these proper standards, then he is not negligent.

Court also ruled that the breach of duty is one equal to the level of a reasonable and competent health worker. To show deviation from duty, one must prove that there was a usual and normal practice that the health worker did not adopt but instead adopted a practice that no professional or ordinary skilled person would have taken.

Negligence, therefore, is the act of doing something or an omission by a reasonable man guided on considerations which regulate the conduct of human affairs.

These tests apply to, but are not limited to, liability in respect of wrong diagnosis, treatment and risks inherent in it, liability in respect of operating on or giving treatment involving physical force on a patient who is unable to give consent.

To be concluded