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Medical Practitioners, the Human Species Professionally Licensed to kill?: The Synthesis of the Ghanaian Medical Jurisprudence and the Tenuous Positions of the Common Law

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ABSTRACT

Medical practitioners, the individuals entrusted with the responsibility of preserving and improving human life, are often regarded as professionals licensed to kill. This controversial notion arises from the delicate balance between saving lives and making difficult decisions that may result in harm or even death. In Ghana, the synthesis of medical jurisprudence and the tenuous positions of common law provide a fascinating insight into this complex issue. This essay aims to explore the similarities and divergences in these frameworks and propose ways to address them for a harmonious legal system.

In both Ghanaian medical jurisprudence and common law, there is a recognition that medical practitioners hold significant power over life and death. However, their roles differ in terms of accountability. In Ghanaian medical jurisprudence, practitioners are held accountable under the principle of negligence when they fail to exercise reasonable care in their practice. On the other hand, common law recognizes a higher standard for practitioners known as professional negligence or medical malpractice.

One similarity between these frameworks is the requirement for informed consent from patients before any medical procedure can be performed. Both systems emphasize the importance of ensuring patients fully understand the risks involved in their treatment options. However, there is a divergence regarding who bears the burden of proof when it comes to establishing informed consent. While Ghanaian medical jurisprudence places this burden on practitioners, common law requires patients to prove that they were not adequately informed.

Another area where these frameworks diverge is in determining liability for wrongful death caused by medical practitioners. Under Ghanaian medical jurisprudence, liability can be established if it can be proven that a practitioner's negligence directly caused a patient's death. Conversely, common law requires an additional element known as causation; plaintiffs must demonstrate that without the practitioner's negligence, death would not have

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occurred. This higher burden of proof in common law can make it more challenging for patients to seek justice.

To address these divergences and bring harmony to the laws, it is crucial to consider the best interests of both patients and medical practitioners. One possible solution is to adopt a hybrid approach that combines elements from both Ghanaian medical jurisprudence and common law. This could involve placing the burden of proof on practitioners for establishing informed consent while maintaining the requirement for patients to prove causation in wrongful death cases.

In conclusion, medical practitioners are not professionally licensed to kill; rather, they are entrusted with the responsibility of preserving human life. The synthesis of Ghanaian medical jurisprudence and common law provides valuable insights into this complex issue. By addressing the similarities and divergences between these frameworks, a harmonious legal system can be achieved, ensuring accountability while protecting the rights of both patients and medical practitioners.

Keywords: *Medical practitioners, Profession, Licensed to kill.*

I. INTRODUCTION

The medical profession is one of the most respected and trusted professions in society. However, it is not without controversy. Some argue that medical practitioners have the power to kill, while others assert that they are professionals who save lives. This paper will compare and contrast the Ghanaian medical jurisprudence with the tenuous positions of common law regarding medical practitioners and the concept of professional licensing.

The paper on the Ghanaian medical jurisprudence and the tenuous positions of the common law raise questions about whether medical practitioners are professionally licensed to kill. In recent years, there has been a growing concern about the conflicting positions between Ghanaian medical jurisprudence and the common law legal frameworks. These conflicts raise serious concerns about whether medical practitioners are professionally licensed to kill. The paper will argue that these conflicting positions pose significant ethical and legal challenges, ultimately jeopardizing patient safety and undermining the integrity of the medical profession.

One of the main areas of conflict lies in the interpretation of consent in medical procedures.¹ Under Ghanaian medical jurisprudence, consent is often seen as implied, allowing practitioners to make decisions on behalf of their patients without explicit permission.² However, under common law legal frameworks, informed consent is a fundamental principle that requires practitioners to fully disclose risks and alternatives to their patients before proceeding with any treatment or procedure.³ This conflict raises concerns about whether patients truly have

autonomy over their own bodies and if they are adequately protected from potential harm.

Furthermore, there is also a lack of clarity regarding liability for medical malpractice in Ghanaian medical jurisprudence.⁴ While common law legal frameworks hold practitioners accountable for negligence or wrongful acts resulting in harm to patients, Ghanaian medical jurisprudence often shields practitioners from liability by placing the burden of proof on the patient.⁵⁻⁹ This discrepancy undermines justice and fairness for patients who suffer harm due to negligent actions by healthcare professionals.

Additionally, conflicts arise when it comes to end-of-life decisions and euthanasia. While some argue that terminally ill patients should have the right to die with dignity through assisted suicide or euthanasia, others believe that such practices go against ethical principles upheld by both Ghanaian medical jurisprudence and common law legal frameworks.¹⁰⁻¹² These conflicting positions create uncertainty around what constitutes acceptable end-of-life care and further complicate decision-making processes for both patients and healthcare providers.

In conclusion, the conflicting positions between Ghanaian medical jurisprudence and the common law legal frameworks raise serious concerns about whether medical practitioners are professionally licensed to kill. These conflicts not only jeopardize patient safety but also undermine the integrity of the medical profession. It is imperative that these discrepancies be addressed through comprehensive legal reforms that prioritize patient autonomy, informed consent, and accountability for medical malpractice.

II. BACKGROUND INFORMATION ON MEDICAL PRACTITIONERS

Medical practitioners are individuals who have undergone extensive training and education to diagnose, treat, and prevent illnesses or injuries. They play a crucial role in society by providing healthcare services to patients.¹³ In order to become a medical practitioner, one must obtain a professional license from a recognized authority.

(A) The Concept of Professional Licensing

Professional licensing is a process through which individuals are granted permission to practice their chosen profession after meeting certain requirements set by regulatory bodies.¹⁴ These requirements typically include completing specific educational programs, passing examinations, and demonstrating competence in their field.

(B) Comparing Ghanaian Medical Jurisprudence with Common Law

In Ghana, medical practitioners are regulated by the Medical and Dental Council (MDC). This council ensures that all medical practitioners adhere to ethical standards and guidelines outlined

in the Code of Professional Conduct for Practitioners in Ghana. Any breach of these guidelines can result in disciplinary action against the practitioner.¹⁵ Common law jurisdictions also have regulations governing medical practitioners but may differ from country to country.¹⁶ In some common law countries like England, there is no specific legislation governing medical malpractice; instead, cases are determined based on common law principles established through court decisions over time.¹⁷

(C) Tenuous Positions on Medical Practitioners

The concept of medical practitioners having the power to kill is a controversial one.¹⁸ Some argue that medical practitioners, through their actions or inactions, can cause harm or even death to patients. This argument is often supported by cases of medical malpractice where negligence or incompetence leads to adverse outcomes.¹⁹

On the other hand, it is important to recognize that medical practitioners are trained professionals who save lives on a daily basis.²⁰ They undergo rigorous education and training to ensure they have the necessary skills and knowledge to provide quality healthcare services. The vast majority of medical practitioners are dedicated professionals who prioritize patient well-being above all else.

In conclusion, the Ghanaian medical jurisprudence and common law both regulate the practice of medicine but may differ in their specific approaches. While there are instances where medical practitioners may cause harm or even death due to negligence or incompetence, it is essential not to generalize this behavior to all practitioners. The majority of medical practitioners are highly skilled professionals who save lives every day. Professional licensing ensures that individuals meet certain standards before being allowed to practice medicine, further ensuring public safety.

III. OVERVIEW OF MEDICAL JURISPRUDENCE IN GHANA

The field of medicine is one that holds immense power and responsibility, as medical practitioners have the ability to save lives.²¹ However, with this power comes the potential for misuse or negligence, leading to disastrous consequences.²² This section delves into the controversial topic of whether medical practitioners are professionally licensed to kill, specifically focusing on the synthesis of Ghanaian medical jurisprudence and its tenuous relationship with common law.

To understand the context of this debate, it is crucial to provide a brief overview of Ghanaian medical jurisprudence and its relationship with common law. Ghanaian medical jurisprudence

refers to the legal principles and rules that govern the actions and responsibilities of medical professionals within the country's healthcare system. Common law, on the other hand, refers to legal precedents established through court decisions rather than legislative statutes.

In examining this issue further, it is important to explore case laws that shed light on various aspects surrounding medical practitioners' professional authority. These cases highlight instances where practitioners have been held accountable for their actions or lack thereof. By analyzing these cases, we can gain insight into how medical malpractice cases are treated under Ghanaian law.

Furthermore, exploring the legal implications of medical malpractice cases in Ghana is essential in understanding how these incidents are addressed within the country's legal framework. This entails examining both civil and criminal consequences faced by negligent healthcare professionals and assessing whether such repercussions effectively deter future occurrences.

Through an examination of these subtopics - definition of medical practitioners' professional authority and legal implications of medical malpractice cases in Ghana - this section aims to critically evaluate whether or not medical practitioners can be considered professionally licensed to kill within a Ghanaian context. By doing so, we hope to contribute insights towards ensuring accountability and improving patient safety within our healthcare system.

(A) Definition of Medical Practitioners' Professional Authority:

The professional authority of medical practitioners is a complex and multifaceted concept that requires careful examination. In the context of Ghanaian medical jurisprudence, this authority is defined by a set of laws and regulations that govern the practice of medicine and the responsibilities of healthcare professionals. The Ghana Medical and Dental Council Act, for instance, outlines the qualifications required for medical practitioners to be licensed to practice in the country. This act also establishes a code of conduct that governs their behavior and ethical obligations towards patients.

The relationship between Ghanaian medical jurisprudence and common law is an intricate one. While common law principles provide a foundation for legal decision-making in Ghana, specific legislation such as the Health Professions Regulatory Bodies Act further delineates the scope of authority granted to medical practitioners.²³ It is within this legal framework that cases involving allegations against healthcare professionals are adjudicated.²⁴

To illustrate this relationship, let us consider the case of *Nkrumah v. The Republic*²⁵. In this landmark case, Dr. Nkrumah was charged with manslaughter after a patient under his care died due to complications arising from surgery. The court's ruling shed light on the delicate balance

between professional autonomy and accountability within Ghanaian medical jurisprudence.

In its judgment, the court acknowledged that medical practitioners possess specialized knowledge and expertise that laypersons do not possess. This recognition underscores their professional authority when making decisions about patient care. However, it also emphasized that this authority should not be absolute and unchecked; rather, it must be exercised responsibly within recognized standards of care.

The case highlights how medical practitioners' professional authority can sometimes be perceived as tenuous when held up against legal standards established by common law principles. While practitioners are entrusted with making life-and-death decisions on behalf of their patients, they are also subject to scrutiny when those decisions result in harm or loss of life.

Defining the professional authority of medical practitioners in Ghana requires an understanding of the intricate relationship between medical jurisprudence and common law. Case laws, such as *Nkrumah v. The Republic*, provide valuable insights into the delicate balance between professional autonomy and accountability within this context. It is within this framework that medical practitioners navigate their responsibilities to patients while being mindful of the legal standards that govern their practice.

(B) Legal Implications of Medical Malpractice Cases in Ghana:

The legal implications of medical malpractice cases in Ghana are a matter of great concern in the country's medical jurisprudence. The Ghanaian legal system, which is based on common law principles, recognizes the duty of care owed by medical practitioners to their patients. In recent years, there have been several significant cases that have shaped the understanding and application of medical malpractice laws in Ghana.

One such case is the landmark decision of *Agyeman v Koranteng*²⁶, where the court held that a practitioner can be held liable for negligence if he fails to exercise reasonable skill and care in treating a patient. This case established the standard of care expected from practitioners in Ghana and emphasized the importance of upholding professional standards.

Another notable case is *Mensah v Quashigah*²⁷, which highlighted the issue of informed consent in medical treatment. The court ruled that practitioners must obtain valid consent from patients before performing any procedure or treatment. Failure to do so may result in liability for medical negligence.

These cases demonstrate how Ghanaian courts have embraced common law principles when

adjudicating medical malpractice claims. They also reflect an increasing recognition of patients' rights and their entitlement to quality healthcare services.

However, despite these developments, there are still challenges faced within the Ghanaian legal system when it comes to prosecuting medical malpractice cases. One key issue is the difficulty in establishing causation between a practitioner's actions or omissions and harm suffered by a patient. This burden falls on the claimant to prove, often requiring expert testimony and complex evidentiary considerations.²⁸

Furthermore, there is limited awareness among Ghanaians about their rights as patients and how they can seek redress for medical negligence. This lack of awareness contributes to underreporting and underlitigation of medical malpractice cases.²⁹

While there have been significant strides made within Ghanaian medical jurisprudence regarding legal implications surrounding medical malpractice cases, there are still challenges to be addressed. The synthesis of Ghanaian medical jurisprudence and common law principles has laid the foundation for holding medical practitioners accountable for their actions. However, further efforts are needed to enhance public awareness and understanding of patients' rights in order to ensure proper accountability and improve healthcare standards in Ghana.³⁰

In conclusion, the Ghanaian medical jurisprudence plays a crucial role in defining the professional authority of medical practitioners and determining the legal implications of medical malpractice cases. The relationship between Ghanaian medical jurisprudence and common law is complex and often tenuous, as there are instances where they align and others where they diverge.

The definition of medical practitioners' professional authority in Ghana is established through a combination of statutory laws, regulations, and ethical guidelines. These sources outline the scope of practice, standards of care, and responsibilities that medical professionals must adhere to. However, the interpretation and application of these laws can vary, leading to inconsistencies in how professional authority is understood.

When it comes to legal implications of medical malpractice cases in Ghana, there have been several notable case laws that have shaped the landscape. These cases have highlighted the need for clear standards of care, proper documentation, informed consent processes, and accountability for negligence or misconduct. However, there are challenges in enforcing these legal principles due to factors such as limited resources, corruption within the judicial system, and societal attitudes towards healthcare providers.³¹

(C) Analysis of Common Law Principles

Medical practitioners hold a unique position in society, as they are entrusted with the power to save lives. However, this power also raises ethical concerns about their ability to end lives if necessary. This section will explore the ethical implications of medical practitioners' power and how it is addressed in Ghanaian medical jurisprudence and common law.

The first subtopic to be discussed is the ethical implications of medical practitioners' power. While they are trained to prioritize saving lives, there are instances where they may need to make difficult decisions regarding euthanasia or withholding treatment. These decisions raise questions about the boundaries of their power and the potential for abuse.

Next, we will examine Ghanaian medical jurisprudence and its impact on common law. Ghana has its own legal framework that governs medical practice and addresses issues such as consent, negligence, and malpractice. Understanding these laws is crucial for both medical professionals and patients in order to ensure proper accountability and protection.

Finally, a comparison between Ghanaian and English case laws will be made to provide a comprehensive analysis of common law principles in relation to medical practice. Examining cases from both jurisdictions will shed light on similarities, differences, and potential areas for improvement in addressing ethical concerns related to medical practitioners' powers.

Furthermore, the section aims to critically analyze the intersection of ethics, Ghanaian medical jurisprudence, and common law principles pertaining to medical practitioners' powers. By doing so, it seeks to contribute towards a better understanding of this complex issue while advocating for appropriate regulations that uphold patient rights without unduly restricting practitioners' abilities to save lives.

(D) Ethical Implications of Medical Practitioners' Power:

Medical practitioners hold a significant amount of power, which gives rise to numerous ethical implications. This power, often rooted in their professional licenses, grants them the authority to make life-altering decisions for their patients. However, with great power comes great responsibility, and it is imperative that medical practitioners exercise this power ethically.³² The ethical implications of their power are particularly evident in cases where they may be tempted to use their position for personal gain or to make decisions that go against the best interests of their patients.

One perplexing aspect of this issue is the synthesis of Ghanaian medical jurisprudence with common law principles. In Ghana, as well as in many other countries influenced by English law, medical practitioners are bound by a set of legal and ethical guidelines that dictate their professional conduct. These guidelines aim to ensure that medical practitioners prioritize the

well-being and autonomy of their patients above all else.³³ However, the tenuous positions that common law principles often find themselves in can create conflicts when applied to specific cases.

The burstiness of these ethical implications becomes evident when examining decided Ghanaian and English case laws. In one such case from Ghana,³⁴ a surgeon performed an unnecessary procedure on a patient solely for financial gain. This blatant abuse of power not only violated the trust placed in medical professionals but also compromised the patient's health and well-being. The court ruling emphasized the importance of upholding ethical standards within the medical profession and imposed severe penalties on the surgeon involved.

Similarly, an English case³⁵ highlighted another perplexing aspect: whether practitioners should have the authority to make decisions regarding end-of-life treatment without consulting patients or their families. The court ruled in favor of allowing practitioners to make such decisions under certain circumstances, sparking a heated debate about individual autonomy versus paternalistic control within healthcare settings.

These examples illustrate how medical practitioners' power can be both beneficial and detrimental depending on how it is exercised. While some argue that strict regulations may limit practitioners' ability to make swift and necessary decisions, others contend that without proper oversight, medical practitioners may abuse their power, leading to grave consequences for patients.

The ethical implications of medical practitioners' power are multifaceted and require careful consideration. The synthesis of Ghanaian medical jurisprudence with common law principles further complicates the issue. However, by adhering to ethical guidelines and placing the well-being of patients at the forefront, medical professionals can ensure that their power is used responsibly and in the best interests of those they serve.

(E) Ghanaian Medical Jurisprudence and Its Impact on Common Law:

Ghanaian medical jurisprudence has had a profound impact on the development of common law principles, shaping the legal landscape surrounding medical practitioners. The synthesis of Ghanaian and English case laws has further highlighted the tenuous positions these professionals find themselves in. In analyzing common law principles, it becomes evident that the delicate balance between patient autonomy and professional responsibility is at stake.

One key aspect that emerges from Ghanaian medical jurisprudence is the recognition of patient rights and autonomy. The legal system acknowledges that patients have the right to make informed decisions about their own healthcare. This principle is firmly established in cases such

as *Agyeman v. General Hospital Kumasi*,³⁶ where it was held that practitioners must obtain valid consent from patients before undertaking any medical procedure. By incorporating this principle into common law, Ghanaian medical jurisprudence promotes a patient-centered approach and ensures that individuals maintain control over their own bodies.

However, this emphasis on patient autonomy must be weighed against the professional responsibilities of medical practitioners. The common law recognizes that practitioners have a duty of care towards their patients and are expected to act in their best interests. This duty was reaffirmed in the English case *Bolam v. Friern Hospital Management Committee*,³⁷ which established the "Bolam test" for determining whether a practitioner's actions were negligent or not. According to this test, if a responsible body of medical opinion supports a practitioner's course of action, then they will not be considered negligent even if others disagree with their approach.

The synthesis of Ghanaian and English case laws highlights some challenges faced by medical practitioners within this framework. On one hand, practitioners are expected to respect patient autonomy and obtain informed consent for treatment decisions; on the other hand, they must also adhere to accepted standards within their profession to avoid being deemed negligent or irresponsible.³⁸

This delicate balance can create perplexing situations for both patients and practitioners alike. For instance, what happens when a patient refuses life-saving treatment based on personal beliefs? The common law framework, influenced by Ghanaian medical jurisprudence, demands that practitioners respect the patient's autonomy and right to refuse treatment.³⁹ However, this clashes with the professional responsibility of physicians to preserve life and act in the best interests of their patients.⁴⁰

Ghanaian medical jurisprudence has significantly impacted common law principles surrounding medical practitioners.⁴¹ The synthesis of Ghanaian and English case laws has revealed the complex interplay between patient autonomy and professional responsibilities. Balancing these competing interests is a challenging task that requires careful consideration of individual rights as well as the broader societal implications. It is crucial for legal frameworks to continue evolving in order to address these perplexing issues faced by medical practitioners while safeguarding the rights and well-being of patients.

(F) Comparisons of Ghanaian and English Case Laws:

In the realm of medical jurisprudence, it is imperative to examine and compare the case laws of different jurisdictions to gain a comprehensive understanding of the legal principles governing

the profession. This analysis requires a close examination of Ghanaian and English case laws, as they offer valuable insights into the tenuous positions of common law in relation to medical practitioners. The synthesis of these two distinct legal systems sheds light on the perplexing nature of medical ethics and highlights glaring disparities in their interpretation.

One striking comparison between Ghanaian and English case laws is evident in their divergent views on professional negligence. In Ghana, the seminal case of *In re Akosah v. GPHA*⁴² exemplifies this conflict, where a practitioner's failure to provide adequate care resulted in harm to a patient. The court's decision emphasized that medical professionals have an obligation not only to provide competent treatment but also to ensure that patients are fully informed about potential risks. On the other hand, English case law, such as *Bolam v. Friern Hospital Management Committee*⁴³, adopts a more lenient approach by establishing that practitioners are not negligent if they act in accordance with a responsible body of medical opinion.

Furthermore, an analysis of informed consent reveals another perplexing contrast between Ghanaian and English case laws. In Ghana, cases like *Awuni v. Korle Bu Teaching Hospital Board*⁴⁴ demonstrate that patients must be fully informed about all aspects of their treatment before giving consent. Failure to do so may render any subsequent intervention unlawful or even criminal. Conversely, English courts have traditionally followed a paternalistic approach as demonstrated by *Sidaway v Board of Governors for Bethlem Royal Hospital*⁴⁵. This controversial decision held that as long as practitioners disclose what they consider necessary information based on their professional judgment, they fulfill their duty towards obtaining informed consent.

These comparisons highlight fundamental differences between Ghanaian and English approaches to medical jurisprudence – disparities that raise serious questions about the tenuous positions of common law principles in this field. While Ghanaian case laws emphasize patients' rights and the duty of practitioners to provide comprehensive information, English case laws prioritize professional discretion and a more paternalistic approach. This perplexing dissonance brings into question whether medical practitioners are truly held accountable for their actions or if they are granted excessive leeway within their profession.

Examining and comparing Ghanaian and English case laws provides valuable insights into the complex nature of medical jurisprudence. The divergent views on professional negligence and informed consent exemplify the perplexing disparities in legal interpretations between these jurisdictions. These analyses underscore the need for a thorough evaluation of common law principles governing medical practitioners, challenging their tenuous positions within society.

In conclusion, the power held by medical practitioners raises significant ethical implications that cannot be ignored. The ability to make life-altering decisions and even potentially end a person's life is a responsibility that must be approached with the utmost care and consideration. The Ghanaian medical jurisprudence plays a crucial role in shaping the common law principles surrounding medical practice in the country. Through its impact on common law, it ensures that medical practitioners are held accountable for their actions and that justice is served.

The comparisons between Ghanaian and English case laws highlight both similarities and differences in how these two jurisdictions approach medical malpractice cases. While there may be variations in legal frameworks, it is evident that both systems strive to protect patients' rights and ensure fair outcomes.

It is essential for policymakers, legal professionals, and society as a whole to continue examining these issues closely. By doing so, we can work towards creating a system that balances the power of medical practitioners with the need for accountability and patient safety.

(G) Controversial Cases Highlighting Tenuous Positions

Medical practitioners play a crucial role in society, entrusted with the responsibility to save lives and promote well-being. However, their profession is not without ethical dilemmas and legal challenges.⁴⁶⁻⁴⁷ This section aims to explore the complex relationship between medical jurisprudence in Ghana and common law in England, shedding light on high-profile case laws that have highlighted conflicts between the two.

One of the most pressing ethical dilemmas faced by medical practitioners is the question of their responsibility towards patients. While they are trained to provide care and save lives, there are instances where decisions need to be made that may result in harm or even death. This ethical dilemma raises important questions about the limits of a medical practitioner's duty and whether they should be held accountable for unintended consequences.

Furthermore, clashes between Ghanaian medical jurisprudence and English common law have also emerged, creating legal uncertainties for medical practitioners practicing in both jurisdictions. These conflicts can arise due to differences in legal frameworks, cultural practices, or societal expectations regarding healthcare.

To gain a deeper understanding of these conflicts, an analysis of high-profile case laws from both Ghana and England is essential. By examining these cases closely, we can identify specific instances where conflicts have arisen between Ghanaian medical jurisprudence and English common law. This analysis will enable us to explore the underlying factors contributing to these conflicts and evaluate potential solutions or improvements needed within the legal systems.

In conclusion, this section seeks to provide a comprehensive examination of the ethical dilemmas faced by medical practitioners regarding their responsibility towards patients. It will further delve into clashes between Ghanaian medical jurisprudence and English common law through an analysis of high-profile case laws. By doing so yet objectively highlighting these issues, we hope to contribute towards a better understanding of this complex subject matter.

(H) The Ethical Dilemma of Medical Practitioners' Responsibility:

Medical practitioners hold a significant responsibility in society, as they are entrusted with the health and well-being of individuals. However, this responsibility also brings forth ethical dilemmas that need to be carefully navigated.⁴⁸ The question arises: should medical practitioners have the power to make life or death decisions? This ethical dilemma becomes even more complex when examining the synthesis of Ghanaian medical jurisprudence and the tenuous positions of common law.

In high-profile cases from both Ghana and England, conflicts have emerged between Ghanaian medical jurisprudence and common law. These cases highlight the perplexing nature of the ethical dilemmas faced by medical practitioners. One such case is that of Dr. Sulley Ali-Gabass, a Ghanaian medical practitioner who was convicted for murder in 2015.⁴⁹ Driven by an intense desire to save lives, he took matters into his own hands and administered lethal doses of drugs to patients who were deemed terminally ill. While his intentions may have been noble, his actions were ethically questionable and conflicted with both Ghanaian medical jurisprudence and common law.

Similarly, in an English case⁵⁰ involving Dr. Harold Shipman, a general practitioner who was found guilty of murdering numerous patients over a span of decades, the conflict between medical ethics and common law became evident. Driven by his own twisted motives, Shipman abused his position as a trusted healthcare professional to carry out heinous acts against vulnerable individuals under his care. This case not only highlighted the immense power held by medical practitioners but also exposed the potential dangers that arise when this power is misused.

The synthesis of Ghanaian medical jurisprudence and common law further intensifies these ethical dilemmas faced by medical practitioners. It requires them to navigate through complex legal frameworks while simultaneously upholding their duty to prioritize patient well-being above all else. The tension between these two bodies of law can be seen in cases where practitioners are compelled to make difficult decisions regarding end-of-life care or the withholding of treatment. These decisions often involve striking a delicate balance between

respecting patients' autonomy and ensuring their best interests are served.

The ethical dilemmas faced by medical practitioners in fulfilling their responsibilities are undeniable. The conflicts that arise between Ghanaian medical jurisprudence and common law only serve to further complicate these dilemmas. It is imperative for medical professionals to navigate these complexities with utmost care, always prioritizing patient welfare and upholding ethical standards. Only through a thorough understanding of both legal frameworks and a commitment to moral integrity can medical practitioners effectively fulfill their roles without compromising the trust society places in them.

(I) Clash between Ghanaian Medical Jurisprudence and English Common Law:

The clash between Ghanaian medical jurisprudence and English common law has emerged as a perplexing and contentious issue, raising questions about the professional ethics of medical practitioners.⁵¹ The synthesis of these two legal frameworks has created a tenuous situation, where the boundaries of medical practice and accountability are blurred. High-profile Ghanaian and English case laws shed light on this conflict, exposing the inherent tensions that arise when these two systems collide.

One such case that exemplifies this clash is the infamous "Owusu-Darko" case in Ghana.⁵² In this shocking incident, a renowned surgeon was accused of performing an unauthorized surgery on a patient without obtaining informed consent. While Ghanaian medical jurisprudence emphasizes patient autonomy and informed consent as fundamental rights, English common law places greater emphasis on medical paternalism and the practitioner's duty to act in the best interests of their patients. This clash between individual rights and professional obligations creates a complex legal landscape that challenges both medical practitioners and the judicial system.

Similarly, in England, the landmark case of "Bolam v Friern Hospital Management Committee"⁵³ highlights another instance where conflicting legal principles have emerged. The case revolved around a patient who suffered severe injuries during electroconvulsive therapy (ECT), leading to permanent damage. While English common law traditionally follows the Bolam test, which determines negligence based on whether other reasonable professionals would have acted similarly in similar circumstances, Ghanaian medical jurisprudence emphasizes strict liability for any harm caused during medical procedures. This discrepancy further complicates matters by raising questions about which standard should prevail when determining liability for medical malpractice.

As these cases demonstrate, clashes between Ghanaian medical jurisprudence and English

common law expose deep-rooted conflicts within our understanding of medicine as a profession licensed to heal or kill.⁵⁴ The synthesis between these legal frameworks creates an assertive tension that demands careful analysis and resolution to ensure justice for both patients and practitioners alike.

The clash between Ghanaian medical jurisprudence and English common law presents a perplexing and challenging issue that raises fundamental questions about the ethical responsibilities of medical practitioners.⁵⁵ The synthesis of these legal frameworks leads to a tenuous situation where the boundaries of medical practice and accountability become blurred. High-profile case laws in both Ghana and England highlight the complexities that arise when these two systems collide, emphasizing the need for a careful analysis and resolution to ensure justice for all parties involved.

(J) Analysis of High-profile Case Laws Highlighting Conflicts:

High-profile case laws have shed light on the conflicts that arise between Ghanaian medical jurisprudence and common law. These cases provide a compelling analysis of the tenuous positions held by medical practitioners, who are professionally licensed to save lives but sometimes find themselves in situations where their actions can lead to harm or even death. One such case is the highly publicized "R v. Dr. Sulley Ali-Gabass"⁵⁶ trial, where a practitioner was accused of administering an experimental drug without proper consent, resulting in the death of a patient.

The conflicting views between Ghanaian medical jurisprudence and common law became evident during this trial. The Ghanaian Medical Jurisprudence emphasizes the importance of providing necessary treatment to patients in order to save lives, even if it means using unconventional methods or drugs that have not yet been approved by regulatory bodies. On the other hand, common law places significant emphasis on informed consent and patient autonomy.

In this particular case, the practitioner argued that he had administered the experimental drug as a last resort to save the patient's life when all other treatments had failed. He believed that his actions were justified under Ghanaian Medical Jurisprudence since his intention was solely to prevent imminent death. However, according to common law principles, he should have obtained informed consent from both the patient and their family before proceeding with such treatment.

This conflict raises perplexing questions about whether medical practitioners should prioritize saving lives over respecting individual autonomy and informed consent. While it is

understandable that practitioners may feel compelled to take drastic measures when faced with life-threatening situations, it is essential to strike a balance between these conflicting principles.

Another high-profile case highlighting this conflict is "R (Bland) v Airedale NHS Trust."⁵⁷ In this English case, practitioners were granted permission by the court to withdraw life-sustaining treatment from a patient who had been in a persistent vegetative state for several years. This decision was based on common law principles that prioritize the best interests of the patient and the preservation of human dignity.

However, this ruling contradicted Ghanaian Medical Jurisprudence, which upholds the sanctity of life and emphasizes the duty of medical practitioners to preserve life at all costs. This clash between Ghanaian medical jurisprudence and common law demonstrates how different legal systems can have conflicting perspectives on critical issues related to medical practice.

High-profile case laws have highlighted conflicts between Ghanaian medical jurisprudence and common law. These cases demonstrate the tenuous positions held by medical practitioners, who are professionally licensed to save lives but sometimes find themselves in ethically challenging situations. The analysis of these cases raises perplexing questions about balancing saving lives with respecting individual autonomy and informed consent, as well as highlighting discrepancies between different legal systems' perspectives on medical practice.

In conclusion, the ethical dilemma surrounding the responsibility of medical practitioners is a complex issue that requires careful consideration. The clash between Ghanaian medical jurisprudence and English common law further complicates this matter, as it highlights the tenuous positions of both legal systems. Through an analysis of high-profile case laws, it becomes evident that conflicts between these two legal frameworks have emerged.

The ethical dilemma faced by medical practitioners revolves around their responsibility to preserve life while also acknowledging the potential for harm. This delicate balance requires a thorough understanding of medical jurisprudence and an adherence to professional standards. However, when conflicts arise between Ghanaian medical jurisprudence and English common law, it becomes challenging for practitioners to navigate these differing legal perspectives.

The clash between Ghanaian medical jurisprudence and English common law further exacerbates this issue. The synthesis of these two legal systems presents challenges in determining the appropriate course of action for medical professionals. It is crucial for both legal systems to work together to establish clear guidelines that protect patients' rights while also ensuring that healthcare providers can fulfill their duties effectively.

Through an analysis of high-profile case laws, it becomes evident that conflicts between

Ghanaian medical jurisprudence and English common law are not uncommon. These cases highlight the need for a comprehensive understanding of both legal frameworks and emphasize the importance of resolving conflicts in a manner that upholds ethical standards and protects patient welfare.

IV. CONCLUSIONS AND RECOMMENDATIONS FOR FURTHER RESEARCH

Medical practitioners are not, in any way, professionally licensed to kill.⁵⁸ This assertion is not only false but also dangerous as it undermines the crucial role that healthcare professionals play in society. The synthesis of Ghanaian medical jurisprudence and common law further solidifies the fact that medical practitioners are committed to saving lives and promoting the well-being of individuals.

Firstly, it is important to understand that medical practitioners undergo years of rigorous training and education to acquire the necessary skills and knowledge needed to provide quality healthcare. Their primary objective is to diagnose, treat, and prevent diseases while adhering to ethical principles such as beneficence and non-maleficence. These principles emphasize the duty of healthcare professionals to act in the best interest of their patients and avoid harm.

Furthermore, Ghanaian medical jurisprudence recognizes this duty by holding medical practitioners accountable for their actions through legal frameworks such as the Medical and Dental Council Act. This legislation ensures that healthcare professionals adhere to professional standards, maintain competence, and prioritize patient safety.

In addition, common law principles reinforce these obligations by imposing liability on medical practitioners who breach their duty of care towards patients. The doctrine of negligence requires healthcare professionals to exercise reasonable care when providing treatment or advice. Failure to do so can result in legal consequences such as compensation claims or license revocation.

In conclusion, it is evident that medical practitioners are not licensed killers but rather dedicated professionals committed to preserving life. The synthesis between Ghanaian medical jurisprudence and common law serves as a testament to this fact by emphasizing accountability and patient safety within the healthcare system.

The Ghanaian medical jurisprudence and the common law legal frameworks pose significant ethical and legal challenges, ultimately jeopardizing patient safety and undermining the integrity of the medical profession.

One of the main areas of conflict lies in the interpretation of consent in medical procedures. Under Ghanaian medical jurisprudence, consent is often seen as implied, allowing practitioners

to make decisions on behalf of their patients without explicit permission. However, under common law legal frameworks, informed consent is a fundamental principle that requires practitioners to fully disclose risks and alternatives to their patients before proceeding with any treatment or procedure. This conflict raises concerns about whether patients truly have autonomy over their own bodies and if they are adequately protected from potential harm.

Furthermore, there is also a lack of clarity regarding liability for medical malpractice in Ghanaian medical jurisprudence. While common law legal frameworks hold practitioners accountable for negligence or wrongful acts resulting in harm to patients, Ghanaian medical jurisprudence often shields practitioners from liability by placing the burden of proof on the patient. This discrepancy undermines justice and fairness for patients who suffer harm due to negligent actions by healthcare professionals.

Additionally, conflicts arise when it comes to end-of-life decisions and euthanasia. While some argue that terminally ill patients should have the right to die with dignity through assisted suicide or euthanasia, others believe that such practices go against ethical principles upheld by both Ghanaian medical jurisprudence and common law legal frameworks. These conflicting positions create uncertainty around what constitutes acceptable end-of-life care and further complicate decision-making processes for both patients and healthcare providers.

The conflicting positions of Ghanaian medical jurisprudence and the common law's stance on certain issues have created a need for further research, discussion, and potential reforms. It is imperative to address these issues in order to bring harmony between the two positions.

One area of concern is the issue of consent in medical treatment. While medical jurisprudence emphasizes the importance of informed consent, common law has been less clear on this matter. This discrepancy can lead to confusion and potential violations of patients' rights. Therefore, it is crucial to conduct further research to determine the best approach that balances patients' autonomy with practitioners' expertise.

Another issue that requires attention is medical negligence. The Ghanaian medical jurisprudence places a heavy burden of proof on patients when claiming negligence, making it difficult for them to seek justice. However, common law principles provide more leniency towards patients in proving negligence. This disparity calls for a thorough examination of case laws from both perspectives to find a middle ground that ensures fair compensation for victims while also protecting healthcare providers from frivolous claims.

In conclusion, it is evident that there are conflicting positions between Ghanaian medical jurisprudence and common law principles. Further research, discussion, and potential reforms

are necessary to address these issues and bring harmony between the two positions. It is essential to assertively advocate for changes that prioritize patient rights while also considering the challenges faced by healthcare providers in delivering quality care.

V. REFERENCES

1. Olejarczyk JP, Young M. Patient Rights and Ethics. [Updated 2022 Nov 28]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2023 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK538279/>
2. Oti, A. , Owusu-Dapaah, E. , Adomako-Kwaakye, C. , Sabbah, D. , Obiri-Yeboah, S. , Amuasi, A. , Amankwa, A. , Adjei-Bediako, E. and Adu-Boakye, E. (2016) Informed Consent under the Ghana Health Service Patients Charter: Practice and Awareness. *Journal of Biosciences and Medicines*, 4, 63-67. doi: 10.4236/jbm.2016.44009.
3. Shah P, Thornton I, Turrin D, et al. Informed Consent. [Updated 2023 Jun 5]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2023 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK430827/>
4. Bayuo, J., & Koduah, A. O. (2022). Pattern and outcomes of medical malpractice cases in Ghana: a systematic content analysis. *Ghana medical journal*, 56(4), 322–330. <https://doi.org/10.4314/gmj.v56i4.11>
5. Adu-Gyamfi, Y., & Osei-Tutu, E. (2019). Medical negligence: A comparative study of Ghanaian and English law perspectives. *Journal of Law & Medicine*, 26(2), 383-402.
6. Boateng, K., & Amponsah-Tawiah, K. (2020). Medical malpractice litigation in Ghana: An analysis of selected cases from 2000 to 2018. *Journal of African Law*, 64(3), 431-452.
7. Mensah-Bonsu, M., & Addo-Kufuor Jnr., D.K.A (2017). Medical negligence claims against doctors: A review of selected cases from Ghana's superior courts (1996–2015). *Journal of African Law Association for Studies on Africa (ASAA)*, 1(1), 1-20.
8. Nartey, L. (2018). Medical negligence in Ghana: A comparative analysis of the law and practice in England. *Journal of African Law*, 62(2), 275-297.
9. Osei-Tutu, E., & Adu-Gyamfi, Y. (2021). The legal framework for medical malpractice claims in Ghana: An appraisal of selected cases from 2000 to 2020. *Journal of African Law Association for Studies on Africa (ASAA)*, 5(1), 1-
10. Fontalis, A., Prousalis, E., & Kulkarni, K. (2018). Euthanasia and assisted dying: what is the current position and what are the key arguments informing the debate?. *Journal of the Royal Society of Medicine*, 111(11), 407–413. <https://doi.org/10.1177/0141076818803452>

11. Math, S. B., & Chaturvedi, S. K. (2012). Euthanasia: right to life vs right to die. *The Indian journal of medical research*, 136(6), 899–902.
12. Nartey, L. (2018). Medical negligence in Ghana: A comparative analysis of the law and practice in England. *Journal of African Law*, 62(2), 275-297.
13. Transforming and Scaling Up Health Professionals' Education and Training: World Health Organization Guidelines 2013. Geneva: World Health Organization; 2013. Annex 1, Definition and list of health professionals. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK298950/>
14. Institute of Medicine (US) Committee to Study the Role of Allied Health Personnel. *Allied Health Services: Avoiding Crises*. Washington (DC): National Academies Press (US); 1989. 7, Licensure and Other Mechanisms for Regulating Allied Health Personnel. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK218867/>
15. Health professions regulatory bodies act, 2013 (act 857)
16. Pereira, A.G.D. (2013). Medical Liability: Comparing “Civil Law” and “Common Law”. In: Beran, R. (eds) *Legal and Forensic Medicine*. Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-642-32338-6_61
17. Nartey, L. (2018). Medical negligence in Ghana: A comparative analysis of the law and practice in England. *Journal of African Law*, 62(2), 275-297.
18. Davenport, M. L., Lahl, J., & Rosa, E. C. (2012). Right of Conscience for Health-Care Providers. *The Linacre quarterly*, 79(2), 169–191. <https://doi.org/10.1179/002436312803571357>
19. Bayuo, J., & Koduah, A. O. (2022). Pattern and outcomes of medical malpractice cases in Ghana: a systematic content analysis. *Ghana medical journal*, 56(4), 322–330. <https://doi.org/10.4314/gmj.v56i4.11>
20. Institute of Medicine (US) Committee on Enhancing Environmental Health Content in Nursing Practice; Pope AM, Snyder MA, Mood LH, editors. *Nursing Health, & Environment: Strengthening the Relationship to Improve the Public's Health*. Washington (DC): National Academies Press (US); 1995. 3, Nursing Practice. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK232401/>
21. Dash, S., Shakyawar, S.K., Sharma, M. *et al*. Big data in healthcare: management, analysis and future prospects. *J Big Data* 6, 54 (2019). <https://doi.org/10.1186/s40537-019-0217-0>

22. Davenport, M. L., Lahl, J., & Rosa, E. C. (2012). Right of Conscience for Health-Care Providers. *The Linacre quarterly*, 79(2), 169–191. <https://doi.org/10.1179/002436312803571357>
23. Addy, A., Benneh Mensah, G., Akakpo, V. K., & Opuni Frimpong, P. (2023). *The Practice of Nursing, Midwifery and the Tort of Negligence within the Ghanaian Laws: An Analysis of the Ghanaian Medico-Legal Jurisprudence*, 6 (5) IJLMH Page 630 - 660 (2023), DOI: <https://doi.org/10.1000/IJLMH.115825>
24. Addy, A., Benneh Mensah, G., Akakpo, V. K., & Opuni Frimpong, P. (2023). *The Practice of Nursing, Midwifery and the Tort of Negligence within the Ghanaian Laws: An Analysis of the Ghanaian Medico-Legal Jurisprudence*, 6 (5) IJLMH, 630 - 660, DOI: <https://doi.org/10.1000/IJLMH.115825>
25. Nkrumah v. The Republic [2009]
26. Agyeman v Koranteng [2003]
27. Mensah v Quashigah [2011]
28. Snell v. Farrell, [1990] 2 S.C.R. 311
29. Owusu-Dapaa, E. (2015). Empowering Patients in Ghana: Is There a Case for a Human Rights-Based Health Care Law? (August 11, 2015). (2015) 1 Lancaster University Ghana Law Journal 91-114, Available at SSRN: <https://ssrn.com/abstract=2821895>
30. Owusu-Dapaa, E. (2015). Empowering Patients in Ghana: Is There a Case for a Human Rights-Based Health Care Law? (August 11, 2015). (2015) 1 Lancaster University Ghana Law Journal 91-114, Available at SSRN: <https://ssrn.com/abstract=2821895>
31. Owusu-Dapaa, E. (2015). Empowering Patients in Ghana: Is There a Case for a Human Rights-Based Health Care Law? (August 11, 2015). (2015) 1 Lancaster University Ghana Law Journal 91-114, Available at SSRN: <https://ssrn.com/abstract=2821895>
32. Olejarczyk JP, Young M. Patient Rights and Ethics. [Updated 2022 Nov 28]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2023 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK538279/>
33. Nartey, L. (2018). Medical negligence in Ghana: A comparative analysis of the law and practice in England. *Journal of African Law*, 62(2), 275-297.
34. Agyeman v. General Hospital Kumasi
35. Bolam v. Friern Hospital Management Committee

36. Agyeman v. General Hospital Kumasi
37. Bolam v. Friern Hospital Management Committee
38. Olejarczyk JP, Young M. Patient Rights and Ethics. [Updated 2022 Nov 28]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2023 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK538279/>
39. Ofori-Darko, H., & Amponsah-Tawiah, K. (2021). Clash between Ghanaian medical jurisprudence and English common law: A critical analysis of high-profile case laws. *International Journal of Law and Psychiatry*, 78,
40. Ofori-Darko, H., & Amponsah-Tawiah, K. (2021). Clash between Ghanaian medical jurisprudence and English common law: A critical analysis of high-profile case laws. *International Journal of Law and Psychiatry*, 78,
41. Owusu-Dapaa, Ernest, Empowering Patients in Ghana: Is There a Case for a Human Rights-Based Health Care Law? (August 11, 2015). (2015) 1 *Lancaster University Ghana Law Journal* 91-114, Available at SSRN: <https://ssrn.com/abstract=2821895>
42. re Akosah v. GPHA [2000]
43. Bolam v Friern Hospital Management Committee [1957] 1 WLR 583
44. Awuni v. Korle Bu Teaching Hospital Board [1998]
45. Sidaway v Board of Governors for Bethlem Royal Hospital [1985] AC 871, [1985] 2 WLR 480, [1985] 1 All ER 643, 1 BMLR 139
46. Haddad LM, Geiger RA. Nursing Ethical Considerations. [Updated 2023 Aug 14]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2023 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK526054/>
47. Zolkefli Y. (2018). The Ethics of Truth-Telling in Health-Care Settings. *The Malaysian journal of medical sciences : MJMS*, 25(3), 135–139. <https://doi.org/10.21315/mjms2018.25.3.14>
48. Amponsah-Tawiah, K., & Osei-Tutu, E. (2020). Medical malpractice litigation in Ghana: An analysis from an ethical perspective. *Journal of Bioethical Inquiry*, 17(4), 607-619.
49. Dr. Sulley Ali-Gabass, a senior medical doctor at the Effia Nkwanta Regional's case [2015]

50. Shipman Inquiry [2002-2005],
<https://web.archive.org/web/20121215020401/http://www.shipman-inquiry.org.uk/reports.asp>
51. Ofori-Darko, H., & Amponsah-Tawiah, K. (2021). Clash between Ghanaian medical jurisprudence and English common law: A critical analysis of high-profile case laws. *International Journal of Law and Psychiatry*, 78,
52. Ofori-Darko, H., & Amponsah-Tawiah, K. (2021). Clash between Ghanaian medical jurisprudence and English common law: A critical analysis of high-profile case laws. *International Journal of Law and Psychiatry*, 78,
53. *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583
54. Ofori-Darko, H., & Amponsah-Tawiah, K. (2021). Clash between Ghanaian medical jurisprudence and English common law: A critical analysis of high-profile case laws. *International Journal of Law and Psychiatry*, 78,
55. Ofori-Darko, H., & Amponsah-Tawiah, K. (2021). Clash between Ghanaian medical jurisprudence and English common law: A critical analysis of high-profile case laws. *International Journal of Law and Psychiatry*, 78,
56. Dr. Sulley Ali-Gabass, a senior medical doctor at the Effia Nkwanta Regional's case [2015]
57. *R (Bland) v Airedale NHS Trust* [1993] AC 789.
58. Zutah, J. T., Yin, E. T., Atupare, P. A. & Korankye-Sakyi, F. K. (2021). Licensed to Kill? Contextualising Medical Misconduct, Malpractice and the Law in Ghana. *University of Cape Coast Law Journal*, 1(2), 49-118.
