

**LAW AND MEDICINE IN NIGERIA: LEGAL CUM
INSTITUTIONAL FRAMEWORKS IN FOCUS**

CLETUS OJUMU* ,ADUKU ABDUL AINOKO &
AKANDE ABIODUN OLUWAKOREDE*****

Abstract

Medical law is primarily concerned with the relationship between health care professionals, especially doctors, other health care providers, hospitals or health care institutions and patients. Medical practice in Nigeria is regulated and governed by a good number of statutes and institutions that take care of the increasingly high rate of medical malpractices and other allied medical cases. This paper examines the existing statutory and institutional frameworks for medical law in Nigeria, to wit; the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Medical and Dental Practitioners Act, National Health Act, Code of Medical Ethics, Compulsory Treatment and Care for Victims of Gunshots Act to mention but these, and institutions such as Medical and Dental Council of Nigeria, Medical and Dental Disciplinary Tribunal, National Health System and Council. The paper exposes the non-justiciability of the constitutional provisions on health in Nigeria. It further finds that the regulatory legal and institutional frameworks for medical and practice in Nigeria seems not to be up to date with emerging

* LL.B (Hons), (UNIZIK), BL, LL.M (OAU Ile-Ife), Lecturer Salem University, Lokoja, Kogi State and a Doctoral Student, University of Nigeria, Nsukka, Enugu Campus. Email Address: ojumucletus82@gmail.com

** LLB (KSU), BL, LL.M (Liverpool), Lecturer Salem University, Lokoja, Kogi State. Email Address: adukuaunoko@gmail.com

*** LL.B (Hons), (UNIJOS), BL, LL.M (UI), Lecturer Salem University, Lokoja, Kogi State and a Doctoral Candidate at Prince Abubakar Audu University, Anyigba, Kogi State. Salem University, Lokoja, Kogi State. Email: abiodunkorede@gmail.com

trends in the health sectors and recommends among other things, that the constitution be amended to take away the rights to health under chapter two of the Constitution which is unenforceable in our courts and be incorporated into chapter four of Constitution which contains enforceable rights and the enactment of all-encompassing legislation that provides for human cloning, surrogacy, euthanasia, reproductive health, and other fledgling areas of medical practice.

Keywords: Law and Medicine, Legal and Institutional Frameworks

1.0. Introduction

Medical Law is the body of law governing the rights and responsibilities of medical professionals and their patients. It focuses on issues like confidentiality, negligence, criminal law, ethical issues, cloning, surrogacy, and drug maintenance, to mention only a few.¹ This aspect of law regulates the health sectors, responsibilities of the medical professionals as well as the rights of the patients. In fact, if the rights of the patients, duties of medical professionals and health institutions in Nigeria are to be protected, enhanced and developed, attention must be paid to the Nigerian's Medical Law.² This attention is in the form and nature of established legal and institutional frameworks for the regulation and enforcement of medical law issues, given the spate of medical negligence and malpractices and other medical related cases in Nigeria. Nigeria medical practice is regulated and governed by a number of statutes and institutions. Albeit, Nigeria seems to have got a number of legal and institutional frameworks for health sector, they seem not to be up to date with the emerging trends in the health sectors. This is because advanced countries of the worlds have made far reaching innovations and

¹ Kennedy & Grubb, *Medical Law* (Third edition, London: Butterworths 2000) 3

² Olabanjo Ayenakin, Temidayo Aindejoye, Itunu Kolade-Faseyi, Examination of the Legal and Institutional Frameworks of Medical Law in Nigeria, *Global Journal of Politics and Law Research* 9 (6) (2021) 13

have provided legislative bases for emerging practice areas like fertility, cloning, euthanasia and genetic materials.³ This work shall therefore expose the existing legal and institutional frameworks for medical Law in Nigeria.

2.0. Legal Framework For Regulation of Law and Medicine in Nigeria

2.1. Constitution of the Federal Republic of Nigeria, 1999

The Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right to health and provides that, ‘the state shall direct its policy towards ensuring that... (c) health, safety and welfare of all persons in employment are safeguarded and not endangered or abused, (d) there are adequate medical and health facilities for all persons.’⁴ Though Chapter two of the Constitution where the right to health is derived is generally non-justiciable, yet the constitution at the same time provided a way out of the provision on the ‘non-justiciability’ by empowering the legislators to make laws on the matters included on Exclusive Legislative list set out in part 1 of the Second Schedule to the constitution.⁵ Under item 60(a),⁶ the legislators are authorised ‘to enforce the observance of the fundamental Objectives and Directive Principles contained in this Constitution.’ This power given to the National Assembly can be exercised either by enacting laws that will declare chapter II of the constitution legally enforceable and justiciable or repeal s 6(6) (c) so as to give the court jurisdiction.⁷ In adhering to the power of enacting new laws, the legislature can enact a new law through the legislative process or

³D Michael, *Textbook on Law* (2nd Edition, Hants 1998) 29

⁴The Constitution of the Federal Republic of Nigeria 1999(as Amended) (CFRN), s 17(3), Cap C LFN 2004.

⁵CFRN 1999, s 4(2).

⁶CFRN 1999, Second Schedule, Legislative Powers, Exclusive Legislative list, Part.1.

⁷O Nnamuchi, ‘Kleptocracy and Its Many Faces: The Challenges of Justiciability of the Right of Healthcare in Nigeria’ *JAFRL*(52) (1) (2008) 3.

by domesticating a treaty to which Nigeria is a party.⁸ Application of any three options above will arm chapter two of the constitution with the force of justiciability. The National Assembly in line with the constitutional mandate enacted the first health law in Nigeria, in the year 2014.⁹

Admirably, the length and breath of the provisions relating to health also touch the provisions of chapter four of the Constitution. Medical negligence has often times led to the death of patients, depriving them of their right to life. Section 33 of the Constitution specifically guarantees the right of every person to live. The provision provides for the instances where a person's life may be deprived. These include a) for the defence of any person from unlawful violence or for the defence of property b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained c) for the purpose of suppressing a riot, insurrection or mutiny.¹⁰ None of these exceptions permit healthcare givers to take the life of any person. Also, section 34 of the Constitution,¹¹ provides that every individual is entitled to respect for the dignity of his person, and accordingly, no person shall be subject to torture or to inhuman or degrading treatment.¹² The protection of dignity of every patient as a human being as well as the legal and moral obligation of the physician to treat the patient with respect is one the cardinal principle of informed consent.¹³

Another provision of the constitution in relationship to medicine which has come under constant judicial interpretation is section 38 of the Constitution which guarantees right to conscience, thought and religion. Specifically, the section provides:

⁸ Ibid, p19.

⁹ H C Okeke, Critical Review of Nigerian Health Laws: Making a Case for Legal Framework on Patient Safety in Nigeria, *Cavendish University Law Journal (CULJ)*2 (1) (2023)9

¹⁰ Ibid, s. 33(2) (a)-(c)

¹¹ 1999 (as amended)

¹² Ibid, section 34 (1) (a)

¹³ See also section 37 which guarantees right to privacy.

- (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

This particular provision has been interpreted most of the times in relation to medical consent. The law is trite that where a person is capable of making a decision, such person's decision, if made, must be respected, especially when made in line with the person's right to religion, thought or conscience. The Court in the case of *Airedale NHS Trust v Bland*¹⁴ held thus:

If the patient is capable of making a decision on whether to permit treatment and decide not to permit it, his choice must be obeyed, even if on any objective view it is contrary to his best interest... Thus it is that the patient who is undergoing life maintaining treatment and decides that it will be preferable to die must be allowed to die, provided that all necessary steps have been taken to be sure that it is what he or she really desires

2.2. Medical and Dental Practitioners Act 1988

The first and major statute that regulates the activities of the medical and dental profession in Nigeria is the Medical and Dental Practitioners Act.¹⁵ This is the principal law regulating the medical and dental profession in Nigeria. This Act, first, came into being in 1963.¹⁶ It was later amended by the Medical and Dental Practitioners Act 1969¹⁷ to make provisions for temporary registration of foreign doctors who might want to work in Nigeria, increase the composition of the Council to accommodate the

¹⁴ (1993) 1 All ER 821. This decision was followed in the case of *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal* (2001) All NLR P. 306 SC

¹⁵ CAP M8, LFN 2004

¹⁶ No. 9 of 1963

¹⁷ Decree No. 44 of 1969

newly-created 12 States of the Federation.¹⁸ After the creation of 7 additional States in Nigeria in 1976, the Act, again, was further amended by Decree No. 68 of 1979 to accommodate one representative each from the 19 States and to enable the Council to maintain a separate register for consultant.¹⁹ It also enlarged the disciplinary powers of the Medical and Dental Practitioners Disciplinary Tribunal to include power to suspend or admonish an erring medical and dental practitioner.²⁰ The regulation of medical practice today is as contained in the Medical and Dental Practitioners Act, 1988.²¹ The Act was further amended in 1992 for the sole aim of extending the jurisdiction of the Council to regulating the practice of alternative medicine which is defined in the Act as naturopathy, acupuncture and osteopathy.²² Section 1 of the Act establishes the Medical and Dental Council of Nigeria (MDCN) as the regulatory body for medical and dental practitioners in Nigeria. Section 8 of the Act provides for the registration of medical and dental personnel under the Act. Section 15(3) of the same Act establishes the Medical and Dental Practitioners Investigation Panel for the purpose of conducting preliminary investigations into disciplinary matters.

2. 3. National Health Act 2014

The National Health Act 2014 is also legislation in Nigeria that contains regulatory provisions for healthcare givers and protects the rights of patients. The Act vests regulatory powers over the National Health System²³ in the Federal Ministry of Health, which shall define and

¹⁸Uwakwe Abugu, *Principles and Practice of Medical Law and Ethics* (Pagelink Nigeria Limited, 2018) 56

¹⁹ Ibid

²⁰ Ibid

²¹ Cap. M8, Laws of the Federation of Nigeria 2004.

²² Ibid, note 8 at 56

²³The National Health System shall include: the Federal Ministry of Health, the Ministry of Health in every State and the Federal Capital Territory Department responsible for Health; all local government health authorities; the ward health committees; the village

provide a framework for standards and regulation of health services, without prejudice to extant professional regulatory laws²⁴, encouraging collaboration with state and local government health sectors to ensure that appropriate mechanisms are set up for the implementation of national health policy²⁵ together with health departments.²⁶ It also establishes the National Council on Health and named the Council as the highest policy making body in the health sector,²⁷ which shall, among other things, have responsibility for the protection, promotion, improvement and maintenance of the health of citizens of Nigeria, and the formulation of policies and prescription of measures necessary for achieving the responsibilities as specified by the Act.²⁸ Section 17 of the Act affirms the right of patients to be referred from one hospital to another, in so far as the receiving hospital has the facilities to treat the patient.

2. 4. Code of Medical Ethics

One of the statutory functions of the Medical and Dental Council of Nigeria, as contained in Section 1 (2) (c) of the Medical and Dental Practitioners Act²⁹ is reviewing and preparing from time to time a statement as to the code of conduct which the Council considers desirable for the practice of the professions in Nigeria. Since that law came into effect, and the Medical and Dental Council of Nigeria was constituted in accordance with the provisions of the law, Statement as to the code of Conduct which the Council considers desirable for the practice of the profession in Nigeria has been prepared and reviewed from time to time.

health committees; the private health care providers; traditional health care providers; and alternative healthcare providers. See section 1 (2) (a)-(i).

²⁴National Health Act 2014, section 1

²⁵Ibid, section 2 (1) (a).

²⁶Ibid, section 2.

²⁷Ibid, section 4

²⁸ Ibid, section 5 (1) (a)

²⁹ Cap 221, Laws of the Federal Republic of Nigeria 1990 (Decree No. 23 of 1988

The last revision in January 1995 was titled 'Rules of Professional Conduct for Medical and Dental Practitioners in Nigeria.'³⁰

This particular edition has undergone some major modifications, informed by the experience of Council in the course of Preliminary Investigations by the Medical and Dental Practitioners Investigating Panel, sittings of Medical and Dental Practitioners Disciplinary Tribunal, and rulings of the Court of Appeal, in the professional disciplinary matters that have been to the Council. This revised edition of the 'Rules of Professional Conduct' has been appropriately re-titled a 'CODE' in consonance with its legal status.³¹ This gave birth to the Code of Medical Ethics in Nigeria 2008.

The Code is divided into parts A-H. Part A covers the preamble and general guidelines; Professional Conduct is contained in Part B; Part C houses Malpractice; Part D accommodates Improper Relationship with Colleagues or Patients; Part E covers Aspects of Private Medical or Dental Practice; Part F centers on Self-Advertisement and Related Offences; Part G contains Conviction for Criminal Offences and Part H contains Miscellaneous.

2.5. Treatment and Care for Victims of Gunshots Act. 2017

A bill for an Act to make provisions for the compulsory treatment and care for the victims of the gunshots and other matters connected therewith was passed in 2017. As from the commencement of this Act, every hospital in Nigeria whether public or private shall accept or receive, for

³⁰ *Ibid*

³¹ Council's desire is that every medical and dental practitioner should familiarise himself or herself with the provisions of this Code, so that he or she would practice the profession with consonance and dignity, within the limits of the provisions of the Code, thus bringing the incidence of ethical violations-to the bearest minimum, as ignorance of law will not be an excuse for any ethical violation. The Code will enhance the image of the profession, increase the confidence of the public in the practitioners and offer protection to the conscientious practitioner.

immediate and adequate treatment with or without police clearance, any person with a gunshot wound.³²The Act also provides for duty to render assistance to person with gunshot injury. Pursuant to the Act, every person, including security agents, shall render every possible assistance to any person with gunshot wounds and ensure that the person is taken to the nearest hospital for immediate treatment.³³ Accordingly, a person with a gunshot wound shall be received for immediate and adequate treatment by any hospital in Nigeria with or without monetary deposit,³⁴ a person with a gunshot wound shall not be subjected to inhuman and degrading treatment or torture by any person or authority including the police or other security agencies.³⁵ The hospital upon receipt, shall make report to the police.³⁶The Act criminalises and prescribes punishment, where the hospital fails to make report of reception or acceptance of a victim of gunshot wound. A hospital that fails to make report commits an offence and is liable on conviction to a fine of N100, 000.00 and every doctor directly concerned with the treatment is equally liable on conviction to a term of six months or a fine of N100, 000.00 or imprisonment or both.³⁷

Similarly, it is an inviolable prescription of the Act that any person or authority, including any police officer, other security agent or hospital who stands by and fails to perform his duty under this Act which results in

³²Compulsory Treatment and Care for Victims of Gunshots Act, 2017, section 1

³³Ibid, section 2

³⁴ Ibid, section 2 (a)

³⁵ Ibid, section 2 (b). The Act further enjoins a hospital that receives or accept any person with a gunshot wound for treatment to report the fact to the nearest police station within two hours of the commencement of treatment and upon receipt of the report, the police shall immediately commence investigation with a view to determining the circumstances under which the person was shot. See Compulsory Treatment and Care for Victims of Gunshots Act, section 3 (1) and 3 (2). The Police in the course of their investigation, shall not invite any person with gunshot wound from the hospital unless the Chief Medical Director of the hospital certifies him fit and no longer in dire need of medicare. See section 4.

³⁶ Ibid, section 3

³⁷ Ibid, section 5

the unnecessary death of any person with gunshot wounds commits an offence and is liable on conviction to a fine of N500,000.00 or imprisonment for a term of five years or both.³⁸

The emergency of this Act, indeed, is a welcome development into our medical jurisprudence as it not only criminalises a much talk about instances where doctors and other health care workers abandon victims of gunshot wounds or injury on the account of no police report or no monetary deposit, but also statutorily recognises the common law defence of Good Samaritan as a defence under medical malpractice in Nigeria.

2.6. National Health Insurance Authority Act, 2021

National Health Insurance Authority Act (NHIAA) was enacted in 2021 to repeal National Health Insurance Act, Cap. N42, LFN. Section 2 of the Act provides the objects of the NHIAA as follows: (a) to promote, regulate, and integrate health insurances; (b) improve and harness private sector participation in the provision of health care services; and (c) do such other thing that will assist the authority in achieving Universal Health Coverage to all Nigerians. In its bid to promote quality healthcare in Nigeria, the 'Authority' made it mandatory for every resident in Nigeria to participate in health insurance schemes.³⁹ Another patient safety drive achieved by this Act, is the provision of coverage for vulnerable persons under the state health insurance and contributory scheme through the health care provision fund as established by National Health Insurance scheme.⁴⁰ The Act without equivocation, restricted the freedom of every resident in their choice of whether to register in the state health scheme or not. Once an individual is resident in a state, it is mandatory to enroll in the health scheme.⁴¹

In order to ensure equity in access to healthcare, the Act established Vulnerable Group Fund to help reduce financial burden on the vulnerable

³⁸Ibid, section 11

³⁹Ibid, note 10 at 11

⁴⁰Ibid

⁴¹ Ibid

persons. The contribution from the government for vulnerable persons shall be made by the government (from the Basic Health care Provision fund), development partners or NGO's where not covered by other schemes. Generally, this legislation is an effort to ensure that Universal Health Coverage is guaranteed in Nigeria. Accessibility, affordability and equity in healthcare services remain the intent of NHIAA. The Act implicitly promotes patient safety in the Nigeria healthcare system.⁴²

2. 7. Child's Rights Act 2003

The Child' Right Act⁴³ guarantees for every child, the right to enjoy the best attainable state of mental and physical health.⁴⁴ This duty to enjoy the best attainable state of health by the child is a duty imposed by the Act on every government, parents, guardian, institution, service, agency, or organisation, or body responsible for the care of the child.⁴⁵ The operative term is 'shall'⁴⁶ which makes it mandatory on the part of the bodies listed above to ensure that the health of the child is attained. The Act also criminalises breach of this section by any parent, or any of the bodies listed above, and will be penalised with fine or imprisonment.⁴⁷ Achievement of safe quality healthcare as it relates to 'the child' is the essence of the Child's Rights Act. In this respect, it left a mandatory duty for government at all levels, to endeavour to reduce infant and child mortality rate; ensure the provision of all necessary medical assistance and health care services to all children with emphasis on the development of primary healthcare; ensure the provision of adequate nutrition and safe drinking water; ensure the provision of good hygiene and environmental sanitation; combat disease and malnutrition within the framework of primary healthcare through the application of

⁴² Ibid, note 7

⁴³ 2003

⁴⁴ Child's Rights Act (CRA) 2003, s 13 (1).

⁴⁵ CRA 2003, s 13 (2).

⁴⁶ CRA 2003, s 13 (2).

⁴⁷ CRA 2003, s 13 (5).

appropriate technology; ensure appropriate healthcare for expectant and nursing mothers and support, through technical and financial means, the mobilisation of national and local community resources in the development of primary healthcare for children.⁴⁸ The Child's Rights Act, is a Nigerian legislation, and therefore promotes healthcare services in the country. It regulates the health services as it relates to the children in Nigeria. Physicians and allied medical professionals in Nigeria are bound by the provisions of this Act. Implementation of the provisions of the Act, will result to safe quality healthcare for the Nigerian children.⁴⁹

Other Laws are: the Nursing and Midwifery (Registration etc.) Act,⁵⁰ 2014; the Medical Oath; the Patients' Bill of Rights,⁵¹ the Pharmacy Act,⁵² and the Criminal Code Act⁵³

3.0. Institutional Frameworks For Regulation of Law and Medicine in Nigeria

3.1. Medical and Dental Council of Nigeria

Section 1 of the Medical and Dental Practitioners Act establishes the Medical and Dental Council of Nigeria. The Act empowers the Medical and Dental Council of Nigeria to determine the standards of knowledge and skills to be attained by persons seeking to become members of the medical or dental profession and also to review these standards from time to time as circumstances may permit.⁵⁴

The Council, through the Registrar, is empowered to maintain registers of the names, addresses, qualifications and such other particulars of persons

⁴⁸ CRA 2003, s 13(3).

⁴⁹ Ibid, note 10 at 11

⁵⁰ No. 89, 1979.

⁵¹ Patients' Bill of Right Act 2018

⁵² Pharmacy Act of Nigeria 1992 No. 91 P17 – 2

⁵³ Criminal Code Act 1965 CAP C38

⁵⁴ Medical and Dental Practitioners Act, Section s. 1(2), (9), 9 and 10 of the Act

who are entitled to practice medicine and dental.⁵⁵ One of the roles of the Medical and Dental Council of Nigeria is the power to discipline erring medical practitioner or dental surgeon. These are three broad instances in which the Council can invoke its disciplinary power; to wit:

- a. Where a registered practitioner is adjudged by the disciplinary tribunal to be guilty of infamous conduct in a professional respect;⁵⁶
- b. Where a registered person is convicted by a court of law or tribunal in Nigeria or elsewhere;⁵⁷
- c. Where a person has been fraudulently registered.⁵⁸

3.1.1. Functions of the Medical and Dental Council of Nigeria

The Medical and Dental Council of Nigeria (otherwise called “the Council”) is a body corporate with perpetual succession and a common seal which may sue or be sued in its corporate name. The Council shall have responsibility for-

- a. determining the standards of knowledge and skill to be attained by persons seeking to become members of the medical or dental profession and reviewing those standards from time to time as circumstances may permit;
- b. securing in accordance with the provisions of the Act, the establishment and maintenance of registers of persons entitled to

⁵⁵Ibid, S. 6 of the Act.

⁵⁶ In *Allison v. General Council of Medical Education and Registration* (1894) 1 QB 750; the Court of Appeal held inter alia that if it is shown that a medical man, in the pursuit of his profession has done something which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competence, then it is open to the General Medical Council to say he is guilty of “infamous conduct in a professional respect.” See S. 16 of the Medical and Dental Council Act.

⁵⁷Ibid, S. 16(1)(b) of the Act

⁵⁸Ibid, S. 16(1)(c) of the Act

- practice as members of the medical or dental profession and the publication from time to time of lists of those persons;
- c. reviewing and preparing from time to time, a statement as to the code of conduct which the Council considers desirable for the practice of the professions in Nigeria;
 - d. supervising and controlling the practice of homeopathy and other forms of alternative medicine;
 - e. making regulations for the operation of clinical laboratory practical in the field of Pathology which includes Histopathology, Forensic Pathology, Autopsy and Cytology, Clinical Cytogenetics, Haematology, Medical Micro-biology and Medical Parasitology, Chemical Pathology, Clinical Chemistry, Immunology and Medical Virology; and
 - f. performing the other functions conferred on the Council by the Act.

3.1.2. **Composition of the Council**

The Council shall consist of a Chairman to be appointed by the President, and the following other members, that is-

- a) Two representatives of the Federal Ministry of Health both of whom shall be fully registered medical practitioners or dental surgeons;
- b) The Chief Medical Officer (or however called) of the Ministry of Health of each State of the Federation;
- c) One representative of the Armed Forces Medical Services;
- d) One representative of the National Post-Graduate Medical College;
- e) Three representatives of Colleges or Faculties of Medicine of universities in the country to be appointed by the Minister in rotation from among the provosts or deans of such Colleges or Faculties, however so that no two of such persons shall be from the same university;

- f) Two representatives of the medical and dental professions to be appointed by the Minister;
- g) Eleven members of which nine shall be from the Nigerian Medical Association and two shall be from the Nigerian Dental Association;
- h) One representative of alternative medicine practitioners;
- i) Two pathologists to be appointed by the National Post-Graduate Medical College to represent the health zonal distributors, teaching and specialists hospitals in Nigeria.⁵⁹

3.2. Medical and Dental Practitioners Disciplinary Tribunal

The Medical and Dental Practitioners Disciplinary Tribunal is a similitude of a Court created under the Medical and Dental Practitioners Act and it is the body charged with responsibility of disciplining any erring medical and dental practitioners.⁶⁰ The body otherwise known as 'The Disciplinary Tribunal' is another body charged with the duty of considering and determining any case referred to it by the Panel established under section 15 (3) of the Medical and Dental Practitioners Act and any other case of which the Disciplinary Tribunal has cognizance of under the Act.

The Disciplinary Tribunal consist of the Chairman of the Council and ten other members of the Council appointed by the Council, who shall include not less than two persons who are fully registered dental surgeons.⁶¹

The Tribunal has the statutory power to award penalties against medical and dental practitioners where: a registered person is adjudged by the Disciplinary Tribunal to be guilty of infamous conduct in any professional respect; a registered person is convicted by any court of law or Tribunal in Nigeria or elsewhere having power to impose imprisonment for an offence which in the opinion of the Tribunal is incompatible with the status of a

⁵⁹Medical and Dental Practitioners Act, Section 2 (a)- (h) of the Act

⁶⁰Ibid, S. 15 of the Act

⁶¹Ibid, S. 15(2) of the Act

medical practitioner or dental surgeon and if the name of any person has been fraudulently registered.

The first stage in the commencement of disciplinary actions against a medical or dental practitioner begins at the Medical and Dental Practitioners Investigation Panel which shall be appointed by the Council. The Panel which consists of fifteen members (three, which must be registered dental surgeons),⁶² have the following powers:

- a. conducting a preliminary investigation into any case where it is alleged that a registered person has misbehaved in his capacity as a medical practitioner or dental surgeon, or should for any other reason be the subject of proceedings before the Disciplinary Tribunal;
- b. compelling any person by subpoena to give evidence before it;
- c. deciding, if satisfied that to do so is necessary for the protection of members of the public, to make an order for interim suspension from the medical or dental profession in respect of the person whose case they have decided to refer for inquiry; and for the case to be given accelerated hearing by the Disciplinary Tribunal within three months; or
- d. deciding, if satisfied that to do so is necessary for the protection of members of the public or is in his interest, to make an order for interim conditional registration in respect of that person, that is to say, an order that his registration shall be conditional on his compliance, during such period not exceeding two months as is specified, as the Panel may think fit to impose for the protection of members of the public or in his interest.⁶³

⁶²Medical and Dental Practitioners Act 15(1) of the Act

⁶³Medical and Dental Practitioners Act, s.15(3)(a) – (d)

A medical or dental practitioner who has been investigated by the Panel⁶⁴ may be referred to the Tribunal for trial. Where a practitioner has been brought before the Tribunal and found culpable of the charge, the Tribunal may give any of the following awards: order the Registrar to strike out the name of the erring person off the relevant register; suspend the person from practice or admonish the person.⁶⁵

Appeal against the decision of the Tribunal shall lie to the Court of Appeal. The person appealing may do so within 28 days from the date of service on him.⁶⁶

A person whose name is removed from a register in pursuance of a direction of the Disciplinary Tribunal decision shall not be entitled to be registered in that register again except in pursuance of a direction in that behalf given by the Tribunal on the application of the person.⁶⁷

3.2.1. Composition of the Tribunal

Whenever any case of professional misconduct against medical practitioner or a dental surgeon is referred to the Tribunal by the Panel such a case shall be heard by the chairman of the Council and ten other members of the Council appointed by the Council who shall include not less than two persons who are fully registered dental surgeons.⁶⁸ The chairman of the Medical and Dental Practitioners Council of Nigeria or in his absence anyone appointed in that behalf shall be the chairman of the Tribunal.⁶⁹ An assessor appointed by the Medical and Dental Practitioners

⁶⁴In any case where in pursuance of section 15 (3) of the Act, the Panel is of the opinion that a prima facie case is shown against a medical practitioner or a dental surgeon the Panel shall prepare a report of the case and formulate any appropriate charge or charges and forward them to the Registrar together with all the documents considered by the Panel. See Second Schedule to the Medical and Dental Practitioners Rules.

⁶⁵Ibid, S. 16(2)(a) – (c) of the Act

⁶⁶S. 16(6) of the Act

⁶⁷S. 16(8) of the Act

⁶⁸Paragraph 3 (1) of the Second Schedule to the Medical and Dental Practitioners Act

⁶⁹Paragraph 3 (2) of the Second Schedule to the Medical and Dental Practitioners Act

Council of Nigeria on the nomination of the Attorney-General of the Federation in accordance with paragraph 4 of the Second Schedule to the Act shall sit with the Tribunal and it shall be the duty of such assessor to advise the Tribunal on the questions or law arising in proceedings before it.⁷⁰

3.3. National Council on Health

There is established the National Council on Health (in this Act referred to as 'the National Council') which shall consist of-

- a) The Minister, who shall be the Chairman;
- b) The Minister of State for Health, if any;
- c) The Commissioner responsible for matters relating to Health in the States of the Federation; and
- d) The Secretary responsible for Health in the Federal Capital Territory, Abuja.⁷¹

The Permanent Secretary of the Federal Ministry of Health shall be the Secretary to the National Council⁷² which shall meet at least once in a year and shall have power to regulate its proceedings.⁷³

3.3.1. Functions of the Council

The National Council, which shall be the highest policy making body in Nigeria on matter relating to health, shall-

- a) Have responsibility for the protection, promotion, improvement and maintenance of the health of the citizens of Nigeria, and the formulation of policies and prescription of measures necessary for achieving the responsibilities specified under this paragraph;
- b) Offer advice to the Government of the Federation, through the Minister, on matters relating to the development of national

⁷⁰ Paragraph 3 (3) of the Second Schedule to the Medical and Dental Practitioners Act

⁷¹ National Health Act, section 4 (1) (a)-(d)

⁷² National Health Act, section 4 (2)

⁷³ National Health Act, section 4 (3) and (4)

- guidelines on health and implementation and administration of the National Health Policy;
- c) Ensure the delivery of basic health services to the people of Nigeria and prioritise other health services that may be provided within available resources;
 - d) Advise the Government of the Federation on technical matters relating to the organization, delivery and distribution of health services;
 - e) Issue, and promote adherence to, norms and standards, and provide guidelines on health matters, and any other matter that affects the health status of people;
 - f) Identify health goals and priorities for the nation as a whole and monitor the progress of their implementation;
 - g) Promote health and healthy lifestyles;
 - h) Facilitate and promote the provision of health services for the management, prevention and control of communicable and non-communicable diseases;
 - i) Ensure that children between the ages of zero and five years and pregnant women are immunised with vaccines against infectious diseases;
 - j) Co-ordinate health services rendered by the Federal Ministry with health services rendered by the States, Local Governments, Wards, and private health care providers and provide such additional health services as may be necessary to establish a comprehensive national health system;
 - k) Integrate the health plan of the Federal Ministry of Health and State Ministries of Health annually; and
 - l) Perform such other duties as may be assigned to the National Council by the Minister.

4.0. Conclusion and Recommendation

Health is wealth goes a popular saying, and a healthy nation, is a wealthy nation. The Nigerian health sector is regulated and governed by a number of statutes and institutions such as the Constitution of Federal Republic of

Nigeria 1999, Medical and Dental Practitioners Act, National Health Act, Code of Medical Ethics, National Health Insurance Authority Act, Compulsory Treatment and Care for Victims of Gunshots Act; Medical and Dental Practitioners Council, Medical and Dental Practitioners Tribunal, National Health System and Council established by National Health Act. The above regulatory legal and institutional frameworks for medical practice in Nigeria seems not to be up to date with emerging trends in the health sectors as there is no comprehensive statutes providing for surrogacy, fertility and reproductive health issues, cloning, organ transplant, euthanasia and other emerging areas of medical law like the advanced countries of the world. The paper recommends among other things, that the constitution be amended to take away the rights to health under chapter two of the Constitution which is unenforceable in our courts and to be incorporated into chapter four of Constitution which contains enforceable rights and the enactment of all-encompassing legislation that provides for human cloning, surrogacy, euthanasia, reproductive health, and other fledgling areas of medical practice.

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