MEDICAL PRACTICE AND LAW IN NIGERIA: THE CHALLENGES IN THE MILLIENIUM: BY YUSUF O. ALI ESO: SAN.

INTRODUCTION:

Law and Medicine are the oldest professions in the world after Philosophy which was the progenitor of all disciplines. The regulation of the various professions did not come suddenly nor overnight. At the beginning of the practice of medicine, it was not regulated nor organized. Like in most cases of old, families monopolized the practice very much like the way traditional African healers pass their skill from generation to generation within the family.

As to be expected, when man started to live in larger societies, it became imperative for division of labour to be institutionalized and afortiort the practice of medicine became formalised. It was not until much later that basic qualifications to practice medicine were introduced

In this paper, we shall briefly examine the sources of law that guide the practice of medicine in Nigeria, the legal challenges facing a medical practitioner, the consequences that could be faced in case of breaches, identifiable shortcomings in medical practice, recommendations and or suggestions for more efficient medical practice and conclusion based on all the above.

SOURCES OF LAW THAT GUIDE MEDICAL PRACTICE IN NIGERIA

Broadly speaking medical practice in Nigeria owes its legal backing to three sources which we shall briefly examine anon.

COMMON LAW:

The common law is the inherited law of England made applicable to Nigeria's jurisprudence vide the statutory provisions especially the various High Court laws of the states for short, common law is the aggregate of law in England which developed through usages and conventions

They are recognized, practiced and sanctioned by the courts in England. Most of the rules of professional ethics guiding the practice of various professions initially developed through this system and were adapted into the country upon the introduction of modern practice of medicine.

STATUTES

Upon the attainment of independence in 1960, the legislature of Nigeria promulgated the **Medical and Dental Practitioners Act No 9 of 1963**. This Act was made to regulate the practice of medicine and Dental surgery in Nigeria This 1963 Act was amended subsequently through Decree No. 73 of 1966, Decree No 44 of 1969 and Decree No. 68 of 1979.

However, in 1988 a new Act known as Medical and **Dental Practitioners Act Cap 221** was promulgated and it expressly repealed Act Ne 9 of 1963 This new Law in twenty-two sections makes copious provisions for the establishment of the Medical and Dental Council of Nigeria, composition of the Council, powers of the Council, control of the Council by the Minister responsible for Health matters, financial provisions of the Council, appointment of a Registrar for the Council, publication of the register of practitioners, the types of training or qualification to entitle one to be registered as a practitioner and so on.

The sections of the law which are very important to medical practitioners are section 15 which deals with the establishment of a disciplinary tribunal and investigating panel, section 16 that deals with the penalty for a professional misconduct of a medical practitioner and section 17 that creates offences and penalties for anyone who is not a medical practitioner or Dental surgeon to hold himself out as one.

INTERNATIONAL CONVENTIONS

By virtue of Nigeria's membership of United Nations Organisation and its agencies like UNESCO and UNICEF, there are some international conventions that regulate medical practice. Most of these conventions deal with the ethical practice of medicine.

In this regard mention could be made of the following

The Helsinki Declaration of 1964, the Sydney Declaration of 1968, the Oslo Declaration 1970 and the Tokyo Declaration of 1975 among others

In various ways, these, Declarations define and enlarge the various ethical issues that go with the practice of medicine in the modern world.

OVER-VIEW OF THE MEDICAL AND DENTAL PRACTITIONERS ACT

The importance of this Law to medical practice in Nigeria is very profound as to necessitate a brief excursion into its provisions albeit in a summary form.

Section 1 makes provisions for the establishment and functions of the Medical and Dental Council of Nigeria. The body so created is a body corporate with perpectual succession and a common seal, it can sue and be sued in its corporate name.

The significance of this lies in the fact that anyone that has course to file a suit against the body will not need to bother about the issue of juristic personality of the body.

Section 2 deals with the composition of the membership of the body or the Council who are to be appointed by the President, Commander-in-chief.

The general powers of the Council is provided for in section 3 of the Act.

Section 4 gives the superintending power over the Council to the Minister of Health.
The financial activities of the Council is provided for in section 5.
Section 6 provides for the provision of two separate registers into which the particulars of a registered medical practitioner or Dental Surgeon shall be entered upon registration.

Section 6 also provides for the appointment of a Registrar who shall be a medical practitioner or Dental Surgeon.

The duties of the Registrar are amply provided for in section 7 Eligibility for registration as a medical practitioner or Dental Surgeon is provided for in section 8 of the Act and this includes the registration of any post graduate or specialist qualification of a person whose name is on the register.

Section 9 makes copious provisions for the powers of the Council to approve courses and institutions whose certificate can be tendered for registration and section 10 gives the Council the powers of supervision over such institutions where medical training is being undertaking.
In section 11, a person who has obtained a Medical or Dental qualification and who has been employed at any institution for a period to be fixed by the Council is entitled after the conclusion of such period to be issued a "Certificate of Experience" This is what in common palarnce is called House Job.

Section 12 allows the provisional registration of a Medical Practitioner or Dental Surgeon. This section was designed to enable a fresh graduate from.

medical school to practice in such capacity during the period of Houseman-ship, the conclusion of which will entitle him to a Certificate of Experience.

Section 13 gives the Council the power to give limited registration to a practitioner to enable hum practice in any hospital in Nigeria. This section essentially allows foreigners who are Medical Practitioners or Dental Surgeons to practice in Nigeria for a period of time

The scale of practicing fee payable by Medical Practitioners or Dental Surgeons is provided for in section 14 of the Act.

Section 15 deals with the establishment of the Investigating Panel and Disciplinary Tribunal for purposes of investigation and trial of any allegation of professional misbehaviour or misconduct against a Medical Practitioner or Dental Surgeon.

The sanctions and penalties that could be visited on a practitioner found liable under section 15 are clearly spelt out under Section 16.

Section 17 creates certain offences and penalties for a person whose name is not on the register but who holds himself out as a Medical Practitioner or Dental surgeon Miscellaneous and supplementary provisions are made under section 18, while Section 19 deals with regulations, rules and orders of the Council.

Section 20 repeals the 1963 Act and goes on to safe everything done under that Act as well as transfer all the Assets and liabilities under the Act in favour of the Council.

Section 21 is the interpretation section, while section 22 is the short title of the Act. It needs be mentioned that the Act contains two schedules.

THE LEGAL ASPECT OF CHALLENGES OF MEDICAL PRACTICE IN NIGERIA

For a better appreciation of this area of this paper, the challenges will the reduced to the form of duties owed by the practitioners It is our hope thereby to bring to the fore the duties expected of a practitioner that has legal implication for his practice.

DUTY TO THE PROFESSION

A Medical practitioner or Dental Surgeon has a duty of loyalty to his profession This does not mean that he must protect his colleagues even when they are doing an illegal thing. It means that they have to be truthful to the Hippocratic oath in all its ramification.

A corollary to the above is that the Medical Practitioner or Dental Surgeon should have a good satorial taste, in other words, his appearance must be impeccable He must be well groomed and presentable

DUTY TO THE PATIENT

The Medical Practitioner or Dental Surgeon has a duty to promptly attend to a patient, to be courteous and helpful. Except in a judicial proceeding, he owes an absolute duty of secrecy to the patient Even if for the purposes of research, he has to use the patient as a case study, he must seek the consent of the patient in advance or that of his guardian if he is an infant or a person of unsound mind.

DUTY TO HIS EMPLOYER

If a Medical Practitioner or Dental Surgeon finds himself in a paying employment, he must ensure that he does his job in such a way as not to incure tortiuous liability for which his employer could be vicariously liable.

Where he finds himself dealing with his employer's money a fiduciary relationship is thereby created and all the incidents of such a relationship will follow.

DUTY TO THE NATION

Like any other professional, a Medical Practitioner or Dental Surgeon has an abiding duty to the father land. His patriotic instinct must override his personal consideration.

CONSEQUENCES OF THE BREACH OF DUTIES

The individual is an aggregate of duties, obligations and rights in the day to day interaction of man.

A Medical Practitioner or Dental Surgeon that fails to scrupulously observe the ethics and moral value of his calling, lays himself open to various consequences some of which will be examined presently.

NEGLIGENCE

In the performance of his duty as a Medical Practitioner or Dental Surgeon, the law presumes that the practitioner possesses the degree and level of competence expected of a professional of his standing.

Furthermore, by holding himself out as a Medical Practitioner or Dental Surgeon, the law holds him to the standard of such practitioner elsewhere.

At anytime he attends to or treats a patient, he owes the patient a duty of care commensurate to the level of his training and experience. If he therefore fails to do what he ought to do or does it carelessly or recklessly and the patient hereby suffers an injury to his person, he will be liable at the suit of the patient for negligence.

PROFESSIONAL DISCIPLINE

Where there is a complaint against a Medical Practitioner or Dental Surgeon that he has misbehaved in his capacity as a Medical Practitioner or Dental Surgeon as such under the provisions of section 15 of the Medical and Dental Practitioner Act, such a practitioner will be subject to any of the sanctions set out in Section 16(2) of the Act. Such a practitioner could suffer one of the following reprisals.

(a) his name could be struck off the register,

(b) he could be suspended from practice for some time not exceeding six months,

(c) he could be admonished and or warned.

It should be noted as well that a conviction in a regular court for an offence which the Council believes is incompatible with the status of a Medical Practitioner or Dental Surgeon will also attract any of the sanctions listed earlier.

The case of **DOCTOR E.O.A. DENLOYE VS THE MEDICAL AND DENTAL PRACTITONER DISCIPLINARY COMMITTEE** provide a vivid illustration of the above point.

CRIMINAL PROSECUTION

A Medical Practitioner or Dental Surgeon cannot hide under the cloak of his expertise to commit an offence under the penal laws of the land Like any other person, if a crime is committed, the law will normally take its course Therefore the possibility of criminal prosecution should be borne in mind by a Medical or Dental Practitioner.

CLAIM IN ASSAULT AND BATTERY

It is now settled that except in case of extreme emergency, a Medical Practitioner or Dental Surgeon must seek and obtain the consent of a patient before embarking on the treatment of the patient.

The only exception relates to children and people of unsound mind. Even at that, consent must be given by the guardian or person having custody of such patient.

Consent as required in law must be freely given and not induced It must not also be extrated by threat of bodily harm, it must not also be obtained by trick or fraud

It is now clear that a Medical Practitioner or Dental Surgeon that proceeds upon the treatment of a patient without the patient's consent, will find himself embroiled in an action for assault and battery.

It should also be emphasized that a patient has a right to be told in simple language by the Medical Practitioner or Dental Surgeon the type of treatment to which he will be subject to, he should also be told the type of drugs that will be administered. If there is going to be a bodily examination, the procedure must be explained to the patient.

THE SHORTCOMINGS

FALL IN ETHICAL STANDARD

There is a glaring fall in the ethical standard of many Medical Practitioners and Dental Surgeons Most of the rules put in place by the profession to promote a healthy doctor/patient relationship are observed more in the breach than observance for example how many doctors observe the rule that if a female patient is to be examined by a male doctor, it should be in the presence of at least a female nurse.

It is not unusual nowadays to hear of Medical Practitioners attempting to rape their female patients.

FALL IN PROFESSIONAL STANDARD

Like in other professions in this country, there is a free fall in the intellectual standard of medical practice.

Inadequate funding, lack of basic equipment and a fall in the standard of teaching, all have contributed to the fall in standard.

ENABLING ENVIRONMENT

Our hospitals, which is the primary area of the work of the Medical Practitioner and Dental Surgeon, are worst than mere consulting clinics. The apathetic attitude of people in government to the welfare of Medical Practitioners and Dental Surgeons has engendered an endemic industrial crisis.

SUGGESTIONS

In other to bring the level of practice of medicine in Nigeria to the standard obtainable elsewhere, the following suggestions could form a working tool.

1. The healthcare delivery system should be overhauled and re-vitalised.
2. There should be improvement in the training and re-training of Medical Practitioners and Dental Surgeons.
3. More emphasis should be placed on observance of ethical rules and the sanctions prescribed for the infringement should be strictly applied.
4. Patients should be enlightened about their rights.
5. A conducive working environment should be provided.
6. The Medical Council should take serious steps to enforce standards in private health facilities all over the country.

CONCLUSION

In this paper we have tried to call attention to the salient areas of our law that regulate practice of medicine in Nigeria. We have highlighted the duties and obligations of a Medical Practitioner and Dental Surgeon, we have also shown the consequences attendant to the breach of these duties.

Equally, we highlighted a few short comings that are discernable. We have also endeavoured to give some suggestions.

REFERENCES

1 Laws of the Federation 1990 vol xii.

2 Jackson & Powell on Professional Neglience 3rd Edition.

3 All Nigeria Law Reports 1968.

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