# MEDICINE AND THE LAW: THE INTERFACE: BEING A GUEST PAPER PRESENTED AT THE ANNUAL HEALTH WEEK OF ILORIN UNIVERSITY MEDICAL STUDENTS'ASSOCIATION WEEK ON 8TH OCTOBER, 2003: BY YUSUF O. ALI ESQ; SAN

## INTRODUCTION

Law and Medicine no doubt are the oldest professions in the world after philosophy which was the progenitor of all disciplines.

There is no gainsaying the fact that there is hardly a profession or discipline in the world that has no relationship with law. This therefore goes to say that medicine being one of the highly respected professions or disciplines the world-over is not an exception. Various laws are put in place for the regulation of its practice. Therefore, law and medicine are inseparable professions.

In this paper, we shall briefly examine the sources of law that regulate the practice of medicine in Nigeria, the legal challenges facing a medical practitioner, under which the duties owed by a medical practitioner to his patient would be discussed, the consequences of the breach of these duties and by the time we conclude, it will be clear to all of us that the two disciplines or professions are inseparable.

## SOURCES OF LAW GUIDING MEDICAL PRACTICE IN NIGERIA

Legal backing in respect of medical practice in Nigeria is traceable to three sources which shall be examined briefly.

## COMMON LAW

The Common law is the aggregate of laws in England which developed through usages and conventions. They are recognized, practices, sanctioned by the courts in England.

This common law as far as Nigeria is concerned is the inherited law of England made applicable to Nigeria's jurisprudence vide statutory provisions especially the various High Court laws of the states.

It is to be noted that most of the rules of professional ethics guiding the practice of various professions initially developed through this system of common law and werc adapted into the country upon the introduction of modern practice of medicine.

## STATUTES

During the colonial era, medical practice in Nigeria was regulated by legislations, passed for the colony of Nigeria by the colonial parliament and later by the local parliament put in place by the colonial masters.

However, upon attainment of independence in 1960, the legislature of Nigeria promulgated the first statute to regulate medical practice in Nigeria, which was known as the Medical And Dental Practitioners Act No.9 of 1963. The purpose of this Act was to regulate the practice of the Medical and Dental professions, and for purposes connected therewith. The Act provides for the establishment of a Nigerian Medical Council whose functions include:

(i) determining what standards of knowledge and skill are to be obtained by persons seeking to become members of the Medical or Dental profession and raising those standards from time to time as circumstances may permit;
(ii) Securing in accordance with the provisions of this Act the establishment and maintenance of registers of persons entitled to practice as members of the Medical or Dental profession and the publication from time to time of lists of those persons;
(iii) Performing the other functions conferred on the Council by the Act which include the establishment of Disciplinary Tribunal and an investigating panel.

This Act was subsequently amended through Decree No. 73 of 1966. This Decree made a provision for the temporary registration of foreign doctors willing to work in Nigeria. Subsequent amendments to the Act were made through Decree No. 44 of the 1969 and Decree No.68 of 1979.

However, in 1988 the 1963 Act was expressly repealed by a new Act known as **Medical and Dental Practitioner Act Cap. 221**

This now Act has 22 sections and makes 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 Act which to our mind are the most important to medical practitioners are section 15 which deals with the establishment of a disciplinary tribunal and investigating panel, section 16 deals with the penalty for 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 but hold himself out as one.

## INTERNATIONAL CONVENTIONS

United Nations Organization and its agencies such as UNESCO, UNICEF have some international conventions that regulate medical practice and such conventions become applicable to Nigeria by virtue of her being a member of the United Nations Organisation. Most of these conventions deal with the ethical practice of medicine, thus the conventions are concerned with the dos and donts for a medical practitioner in his day to day practice of the profession. They also regulate medical practice in war situations.

In this regard mention could be made of the following:

The **Hesinki Declaration of 1964**, the **Sydney Declaration of 1968**, the **Oslo Declaration 1970** and the **Tokyo Declaration of 1975** among others. These declarations touched on ethical issues and provide ethical guidelines for medical practitioners. We shall have recourse to some of the ethical issues as we progress in this lecture.

## OVER-VIEW OF THE MEDICAL AND DENTAL PRACTITIONERSACT

The importance of this law to medical practice in Nigeria is quite much as to necessitate a brief examination of its provisions.

Section I of the Act makes provisions for the establishment and functions of the Medical and Dental Council of Nigeria. It also provides that the Council is a body corporate with perpetual succession and a common seal. This means that the Council can sue and be sued in its corporate name. The significance of this section is that anyone who wants to institute an action against the Council will not need to bother about the issue of juristic personality of the body.

Section 2 of the Act deals with the composition of the membership of the body or the Council who are to be appointed by the President, Commander-in-Chief, while section 3 provides for the general powers of the council.

Section 4 gives the superintending power over the Council to the Minister of Health, while the financial activities of the Council is provided for in section 5.

Section 6 on the other hand 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, while the same section 6 also provides for the appointment of a Registrar for the Council who shall be a medical practitioner or dental surgeon.

Section 7 on its own provides for the duties of the registrar appointed as stipulated in section 6 of the Act. 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 of the Act provides for the powers of the Council to approve courses and institutions whose certificate can be tendered for registration, while section 10 vests in the Council supervisory powers over such institutions where medical trainings are being undertaken.

Section 11 makes provisions for the issuance of "Certificate of Experience" to a person who has obtained a Medical or Dental qualification and who has been employed at any institution for a period fixed by the Council after the conclusion by the person of such period fixed by the Council. This is what is commonly known and called house job.

Section 12 permits the provisional registration of a Medical practitioner or Dental Surgeon. The main purpose of this section is to enable a fresh graduate from medical school to practice in such capacity during the period of houseman-ship upon completion, the person earlier given provisional registration will now be entitled to a certificate of experience.

Section 13 of the Act authorizes the Council to give limited registration to a practitioner to enable him practice in any hospital in Nigeria. The purport of this section is mainly to allow foreigners who are medical practitioners or Dental surgeons to practice in Nigeria for a period of time, while section 14 talks about the practising fees payable by medical practitioners or dental surgeons based on their year of standing in the profession.

Section 15 of the Act establishes a disciplinary tribunal and investigating panel. The reason behind this section is for the establishment of the bodies stated above and for purposes of investigation and trial of any allegation of professorial misconduct against a Medical practitioner or Dental surgeon.

Section 16 on its own provides for the sanctions and penalties that could be meted out to a practitioner found liable under section 15. These various sanctions are spelt out in the same section 16 of the Act.

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

Section 20 repeals the 1963 Act and goes ahead to save everything done under the 1963 Act. It does not stop there as it transfers all the Assets and liabilities under the Act in favour of the Council.

Section 21 the interpretation section, while section 22 is the short title of the Act. It is also important to let us know that the Act contains two schedules.

## THE ETHICAL DUTIES OF A DOCTOR

A medical practitioner like all other professionals has some duties to perform. These duties range from the duty to the patient, to that of the nation. Here these duties shall be briefly identified, and comments would be made on them. It is also important that the duties identified here are by no means exhaustive,

## DUTY TO THE PROFESSION

A medical practitioner no doubt has a duty of loyalty to his profession. However, the fact that a medical practitioner owes a duty of loyalty to his profession does not mean that such medical practitioner must protect his professional colleagues even when such colleagues are engaging illegal acts or things. He should expose quacks and unwholesome practices within the profession.

What this says is simply that he has to be truthful to his Hippocratic oath of which is also called the Declaration of Geneva. A medical practitioner must know that his duty, to the profession must transcend all other considerations. He must behave like a true stakeholder in the profession.

As a rider to the above is that a medical practitioner's appearance must be impeccable. He must be well groomed and presentable. A scruffy, dirty and badly attired medical practitioner cannot win the confidence of his patients.

## DUTY TO THE PATIENT

A medical practitioner has a duty to promptly attend to his patient, he has to be courtcous and helpful. He owes his patient the duty of secrecy except in judicial proceedings or where such medical practitioner discovers the practice of fraud or deception on the part of his patient.

Where a doctor even for the purposes of research, has to use the patient as a case study, he must seek and obtain the consent of the patient in advance or that of his guardian if the patient is an infant or a person of unsound mind. A medical practitioner should always remember that a male doctor is only permitted to examine a female patient in the presence of at least a staff nurse.

## DUTY TO HIS EMPLOYER

A medical practitioner who finds himself in a paying employment must ensure that he does his job assiduously and with utmost care so as not to incure tortious liability for which his employer could be vicariously liable. He should put it at the back of his mind that if he commits an act of negligence in the course of his duties and such negligence affects a patient negatively, his employer will be vicariously lid le. This is why it is advisable for a medical practitioner to take out insurance cover on his practice.

More-so, if he finds himself dealing with his employer's money, a fiduciary relationship is created and all the incidents of such a relationship will follow. There must be total disclosure and transparency.

## DUTY TO THE NATION

As it is applicable in other professions, a medical practitioner also has a duty to his fatherland. He must be patriotic and his patriotic instinct must override his personal consideration. He must know that without his country, it may be impossible for him to practise his profession. Where he treats a patient with gunshot wounds he should alert the security agencies

## CONSEQUENCES OF THE BREACH OF DUTIES

While lighting the Medical and Dental Practitioners Act above, we mentioned that a medical practitioner or dental surgeon has some duties to perform in the course of his professional calling and that there are stipulated sanctions or punishments to be meted out to any practitioner found guilty or liable of infraction of any of these duties.

Here are some of the consequences that await any medical practitioner that fails to scrupulously observe the ethics and moral value of his calling.

## NEGLIGENCE

There is a general belief and understanding that the law presumes that all qualified medical practitioners possess the degree and level of competence expected of a professional of their standing or calling.

Therefore, for a person holding himself out as a medical practitioner, the law holds him to the standard of such practitioner elsewhere. This then goes to say that any medical practitioner or dental surgeon owes his patient a duty of care which is commensurate to the level of his training and experience. If such practitioner however fails to do what he ought to do or does it carelessly or recklessly as a result of which the patient suffers injury from his action or inaction, he will be liable at the suit of the patient for negligence.

## PROFESSIONAL DISCIPLINE

As earlier alluded to, a medical practitioner or dental surgeon is expected to exhibit some personal attributes which are commensurate to his professional status in the society.

However, where a complaint is ma. against a medical practitioner or dental surgeon that he misbehaved or that he behaved in a manner that fall short of his professional standing which amount to a violation the provisions of section is of the Medical and Dental Practitioners Act, such a practitioner will be subjected to any of the sanctions set out under section 16 (2) of the Act. Where such practitioner is found guilty, he could suffer any of the following reprisals:

(i) his name could be struck off the register,
(ii) he could be suspended from practice for some time not exceeding six months:
(iii) he could be admonished or warned.

It is important to note here that where a medical practitioner or dental surgeon is tried and convicted by a law court for an offence which the Council believes is incompatible with the status

of a medical practitioner or dental surgeon, such a practitioner may also be sanctioned with any of the punishments highlighted above. For example, a conviction for the offence of rape or in descent assault on a person of the opposite sex.

To buttress this assertion, we may wish to sec the case of **Dr. E.O. Denloye vs Medical and Dental practitioner Disciplinary Committee (1968) 1 ALLNLR298** where it was held that,

> "Where the professional conduct of a practitioner amounts to a crime, it is a matter for the courts to deal with and once the court has found a practitioner guilty of an offence, if it comes within the type of cases referred to in section 13(1) (b), then the Tribunal may proceed to deal with him under the Act."

## CRIMINAL PROSECUTION

A medical practitioner or dental surgeon like other Nigerians is subject to criminal prosecution if he does or fails to do any act either in the course of his duty or ordinarily, the doing or failure to do of which will amount to crime. This however goes to say that the fact that a person is a medical practitioner or dental surgeon does not give such person immunity against prosecution. Therefore, where a medical practitioner commits a crime, the law will definitely take its course and such a practitioner will be tried accordingly.

## CLAIM IN ASSAULT AND BATTERY

It has now become clear that except in cases of extreme emergency, it is a duty on a medical practitioner or dental surgeon to seek and obtain the consent of a patient before embarking on the treatment of such patient.

The only exception to this is where the patient is a minor or of unsound mind. Even where the patient falls within either of the two categories, consent of his/her guardian must be sought and obtained. Such consent must be freely given and should not be the one induced or gotten or extracted by threat of bodily harm. It must not. be obtained fraudulently or in trickish manner.

It is now crystal clear that a medical practitioner or dental surgeon who proceeds upon the treatment of a patient without the consent of such patient, will find himself liable for assault and battery at the suit of the patient, if the patient decides to institute a court action against him.

At this juncture it is rewarding to refer to sections 303 and 305 of the criminal Code which provide as follows:

> 303. *It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.*
>
> 305. *When a person undertakes to do any act the omission to do which is or may. Be dangerous to human life or health, it is his duty to do that act, and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty."*

It is clear from the above that criminal liability attaches to a medical practitioner that runs foul of the above provisions.

The above provisions are complemented by sections 254, 255,256 and 257 of the Penal Code that deal with wrongful restraint and wrongful conferment. The provisions of the Penal Code dealing with criminal force and assault in sections 262, 263 and 264 of the same code are quite instructive.

The Constitution of the Federal Republic of Nigeria 1999 in section 39 appears to have rested the matter in favour of the privacy of the citizens. For emphasis the section provides thus:

> *"The Privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."*

The issue of consent in medical practice has attracted the attention of the courts. In the latest Nigerian case on the matter, it is clear that our courts place premium on consent of the patient before treatment.

In this regard the case of **Okonkwo vs Medical and Dental Practitioners Disciplinary Tribunal (1999) 9 NWLR (Pt. 617) 1 at8** is instructive where it was held that:

> *"If a patient refuses to give informed consent, the law is that the medical practitioner will not proceed to administer the medical measure or treatment. Otherwise, the practitioner will be liable for assaults or other forms, of trespass to the person and for any other mental or physical injury or damage which may occur."*

As a rider to the above, it was further held that:

> *Having regard to sections 35 (1) and 36 (1) of the constitution of the Federal Republic of Nigeria, 1979 (now sections 38 and 39 of the 1999constitution) and other persona, rights of the individual, an adult of sound mind has a right to choose what medical treatment made available to him to subject himself to and when to refuse. The courts should not allow medical opinion of what is best* ***for the patient to override the patient's*** *right to decide for himself whether he will submit to the treatment offered him."*

It is equally worthy to note that a patient has a right to be told the type of treatment he will be subjected to, the type of drugs to be administered to him and if there is going to be a bodily examination, the procedure to be followed must be made known to him.

## CONCLUSION

There is no doubt that a cursory reading of this paper will reveal that we have highlighted the duties and obligations of a medical practitioner and dental surgeon, we have equally shown the consequences attendant to the breach of these duties. Also, we have highlighted the salient areas

of our law that regulate medical practice in Nigeria. A careful reading and digest of the whole of this paper will convince the reader that all the aspects touched upon revolve round law and that they are aspects that are unavoidable by a medical practitioner or dental surgeon in his day to day practice of his profession. If the reader agrees with the assertion above, then it could therefore be, safely concluded that there is a very strong relationship between medicine and law and that the two professions no matter what are in separable, and the interface is undoubted.

## REFERENCES


1. 1999 Constitution of the Federal Republic of Nigeria
2. Laws of the Federation 1990 Vol. II
3. Criminal Code Cap 77 Laws of the Federation 1990.
4. All Nigeria Law Report Vol. 1 1968.
5. Nigerian Weekly Law Report 1999 (Pt. 617).
6. Medical Practice and the Law in Nigeria by B.C Umerah.
7. Penal Code Law of Northern Nigeria 1963.