

DEVELOPMENT OF HEALTH LAW IN NIGERIA –The Open Season Of Malpractice Suits

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The Open Season Of Malpractice Suits

- There is a steadily growing medicolegal environment in Nigeria, with a total of **190 judgments** of professional negligence against Doctors **between year 2000 and 2007** this represents a **200%** increase from the previous records of only **92 petitions** from **1963-1999**.
- This is because for several years the Nigerian Doctors appeared immune from liability.

SOME OF THE REASONS FOR THE “PERCEIVED IMMUNITY” OF NIGERIAN DOCTORS

- Patients’ ignorance due to a large illiterate population.
- The years of military dictatorship in Nigeria which restricted access to justice.
- Belief in “The Act of God”.
- Apathy for the courts leading to lack of faith in judicial process.
- The reverence Patients had for their doctors.

Existing Legislations Regulating Medical Practice in Nigeria.

- **Medical and Dental Practitioners Act, 2004.**
- **Code of Medical Ethics 2008**
- The Criminal and Penal Codes
- Other laws regulating other allied professions relevant to medical practice in Nigeria and
- **The Nigerian Constitution 1999 as amended.**
- **Regardless of these existing legislations regulating medical practice in Nigeria, there were a paucity of malpractice suits in contra-distinction to the plethora of allegations of malpractices by Doctors from patients.**

The New Medicolegal Environment

- In the past **15 years**, there has been a steady and consistent increase in litigations and petitions against Nigerian Doctors which has brought about a new medicolegal environment. Some of the reasons for this new trend include:

Some Reasons for Patients’ Awareness.

1. The **increase in literacy** level and the advent of internet into Nigeria.
2. Existence of **democratic dispensation** in the past 16 years and access to the courts .
3. **Medical Tourism**: About 30,000 Nigerians spend \$1 bn annually on medical Tourism into other countries.
4. **Pecuniary considerations** with respect to litigious patients.
5. Increase in the **living standards of Middle Class** Nigerians and their readiness to challenge infringements of their rights.

A Review of Some Malpractice Cases in Nigeria.

- **THE CASE OF NAVY CAPT/DR. OLOWU:** who failed to personally examine the patient having complications in pregnancy for 15 hours, he merely wrote a letter of referral when the situation had already become bad as she was already bleeding profusely from the vagina. She was later operated upon in another facility where it was discovered that the baby died about 24 hours with several complications and inability to further conceive. The Federal High Court, Lagos, awarded N100 million (\$900,000) damages against the Nigerian Navy and Captain C.T Olowu, for negligence.
- The court martial consequently demoted him from the rank of captain to commander; a four-year reduction in seniority.

The Case Of Dr. Samuel Wokoma:

- Who neglected to see and monitor the management of the patient who was in a severely ill condition, thus conducted yourself infamously in a professional respect contrary to Rules 29 and 43 of the Code of Medical Ethics in Nigeria 2008 he was subsequently suspended from practice for a period of three(3) months .
- **State v Ozegbe:** A nursing orderly who paraded himself as a doctor and proceeded to surgically excise a lump. The court convicted him for manslaughter

The Case of Dr. Robert Akintade:

- Who carried out a major surgery on a 65 year old patient who was obese without testing the patient for diabetes. The patient developed post operation complications arising from her diabetic status and died shortly afterwards. The Doctor was suspended from practice for displaying inadequate knowledge and skill.

The case of Dr. Vital Esehien Uhomoibhi

- Who in the process of attending to a female patient related indecently with the said patient in the consulting room and on several occasions in the Teaching Hospital had related indecently with other female patients. He was also reported to have conducted vaginal examination on several female patients in the same Teaching Hospital with ungloved fingers.
- *He was found guilty of professional misconduct and his name struck-off the register of Medical and Dental Practitioners in Nigeria.*

CASE of Dr. Afam Ezendiugwu

- Who did a caesarian section on a patient without the necessary consent form. The tribunal held amongst other things that payment of surgical fee and knowledge of operation are not enough evidence for consent. He was suspended from practice for 6 months.

The National Health Act 2014

- The open season of malpractice suits is one of the major factors that compelled the National Assembly of Nigeria to pass the National Health Bill which was assented by the President into an act of the Federal Republic of Nigeria as the National Health Act 2014 on the 8th of December 2014.

Objective of the National Health Act 2014

- (a) encompass public and private providers of health services;
- (b) promote a spirit of cooperation and shared responsibility among all providers of health services in the Federation and any part thereof;
- (c) provide for persons living in Nigeria the best possible health services within the limits of available resources;
- (d) Set out the rights and obligations of health care providers, health workers, health establishments and users; and
- (e) Protect, promote and fulfil the rights of the people of Nigeria to have access to health care services.

Some of the Provisions of the NHA

1. Compulsory annual **Certificate of Standards** for all health facilities.
2. Compulsory **emergency treatment** for Patients.
3. Promulgation of **rights of Health Care Providers**.
4. Informed **Consent and Confidentiality**.
5. Regulation on Research and **Experimentation**.
6. Establishment of **Ethics Committees** for Research Institutes.
7. National **Health Insurance** Scheme.
8. **Prohibition** of State Sponsored **Overseas Medical Treatments**.
9. Regulation and **control** of the use of Blood, Blood Products, Tissues and Gametes.
10. **Prohibition** of Human cloning & **commercial Organ donors**.

SANCTIONS WITHOUT DOUBLE JEOPARDY

- The Nigerian Doctors can be sanctioned severally without the defense of double jeopardy being applicable, ;
- a). Administrative Panels of Organizations
 - b). The civil courts can award compensation.
 - c). MDCN disciplinary organs can sanction practitioners.
 - d.) Criminal Prosecution.

Conclusion

- It is evident that there is a direct correlation between democratic governance and the increase in malpractice law suits.
- Nigerian Patients have become aware of their rights and they are willing to assert these rights and can easily become litigious particularly with the prospect of monetary compensation.
- The reality is that a whirlwind of petitions and litigations against Doctors are already existing in Nigeria.
- Consultants, Supervising Doctors, Hospital Administrators etc will always be called to question when allegations of negligence are made against them or any of their subordinates.

Recommendations

1. The **Medical Law Seminar series** has produced modules for training of Doctors in Medical Law as a C.M.E requirement for renewal of Doctors' annual practicing licenses, we also collaborate with Colleges of Medicines and Teaching Hospitals all over Nigeria with an effort to introduce Medical Laws as a course in our Medical Schools.
2. **COMPULSORY PROFESSIONAL INDEMNITY INSURANCE FOR HEALTH CARE PRACTITIONERS**

THE END
Thanks for coming .

