CULJ

CRITICAL REVIEW OF NIGERIAN HEALTH LAWS: MAKING A CASE FOR LEGAL FRAMEWORK ON PATIENT SAFETY IN NIGERIA

ISSN 2957-8647

Henry C. Okeke Ph.D*
Nnamdi Azikiwe University, Nigeria

Vol. 2
pp. 1-18, March 2023
www.cavendish.ac.ug
email: secretaryculj@cavendish.ac.ug

How to cite this article:
Okeke, H. (2023). Critical Review Of Nigerian Health Laws: Making A Case For Legal Framework On Patient Safety In Nigeria CULJ Vol 2.

Abstract

National Health Act and other health related legislations regulate the healthcare system in Nigeria. However, the difficulty in the enforcement and the implementation of such laws has left Nigerian healthcare sector to operate below the international best practices. Sequel to the above, patients who are last consumers of health services have constantly experienced medical errors while seeking treatments in health care facilities. In an attempt to ensure that patients are prevented from medical errors and adverse effects, the doctrine of patient safety was birthed. Patient safety being an emerging discipline in Nigeria health care system is gradually taking root within the system, but still faces challenge of lack of legal framework to regulate its practices. This study analyzed the legal framework for Nigerian health care system and critiqued the extant healthcare laws regulating the health sector. The laws reviewed may be adopted to regulate the healthcare delivery, but may face difficulties in apportioning liabilities in cases like iatrogenic infections. It is therefore necessary to enact a special legal framework on patient safety, which will adequately be enforced to guarantee quality healthcare delivery in the Nigerian healthcare system.

Keywords: *Healthcare, Health laws, Legal framework, Patient safety, Nigeria*

*Lecturer, Department of International Law and Jurisprudence, Faculty of Law, NnamdiAzikiwe University, Awka, Anambra State, Nigeria.

Introduction

One of the essence of health law is to ensure that a patients' safety is optimally achieved in the Nigerian health institutions and to discourage avoidable medical errors and harms among medical professionals. Patients' safety being the act of reducing, ameliorating or avoidance of medial harm or error deserves to be regulated by a special enactment predicated on patient centered care. At the present, there exists no specific or exclusive enactment by either the National Assembly or the State Legislative Houses to regulate patient safety in Nigeria. Though, there are few Nigerian legislations on health, yet these laws may not adequately address avoidable medical errors as associated with iatrogenic events[1] or near misses. Though various health laws may on the interim be applied to patient's safety breaches, yet there is need for a specific legislation on patient safety, this will help to reduce breaches especially medical negligence and malpractice, which will guarantee patient centered care in Nigeria Health sector. This work will review Nigerian health related laws, analyse and critique the extant laws. This study will also make a case for the establishment of a special legislation on Patient Safety in Nigeria or amend the already existing laws to accommodate patient safety.[2]

Common Law Principles Regulating Nigeria Healthcare System

(a) Duty of Care to the Health Users

It is the duty of the health givers to ensure that the health needs of the health users are adequately provided. Duty of care is rooted in the 'neighborhood principle' established in the case of *Donoghue v Stevenson*,[3] wherein Lord Atkin stated in his judgment that "the rule that you are to love your neighbour becomes in law, you must not injure your neighbor."[4] However, the neighbour principle has extended the confines of duty of care not just to the neighbour but to the

[1] "Iatrogenic" comes from the Greek language. "*Iatros*" means doctor or healer and "*gennan*" means "as a result." Therefore, the word literally means "as a result of a doctor." Iatrogenic events can be caused by any number of medical oversights or mistakes. They may occur during a hospital stay or a routine healthcare provider's visit, and there is no single cause, medical condition, or circumstance linked to these occurrences. Iatrogenic events may lead to physical, mental, or emotional problems or, in some cases, even death. See Trisha Torrey, Patient Rights: Iatrogenic Events During Medical Treatments<https://www.verywellhealth.com/what-is-iatrogenic-2615180> accessed 12.03.2023

[2] By 'patient safety', the paper refers to physical/bodily safety.

[3](1932) A C 562.

[4]O.E. Obot, *The Snake is in the Court: Bringing a law suit Against a Doctor for Medical Negligence* (Uyo: Jubilee Chambers 2019) 71.

immediate party. The health providers are therefore under a duty to care and not to injure his/her patient in the administration of medical treatment/procedure. Breach of duty of care will result to negligence which is the "…failure of a health care provider to exercise the ordinary care and skill a reasonably prudent and qualified person would exercise under the same or similar circumstances."[5] Medical duty of care may be under contract or torts.[6] For a medical professional to be liable for medical negligence the patient must prove that the physician owed a duty of care to the relevant patient, that the physician was in breach of the appropriate standard of care imposed for such treatment and the breach caused harm to the patient, which has resulted to compensation.[7]

Duty of care can be by the operation of the law or ethical. It is ethical because the code of medical Ethics in Nigeria, 2008, has provided for duties the doctors owe their patients, which if physicians adhere to will surely help prevent or reduce medical negligence or malpractice claims against the physicians by the either patient victims or their family members. By operation of the law, the contract law and Law of Torts of various states in Nigeria provides for the principles that will assist the lawful citizens to avoid actionable wrongs.It is important to note, that duty of care cannot arise without doctor-patient relationship which is fiduciary in nature.[8] By fiduciary it means "…one who owes another duties of good faith, trust, confidence and candor."[9]The relationship between the doctor and the patient demands respect for the above duties. Doctor-patient relationship will be beneficial to both parties when the duty of care is respected by the physicians.

(b) Principle of Autonomy

Patient autonomy is one of the ethical principles that promotes patient centred care. It is the ability of the patient to voluntarily make a rational choice, when presented with a valid and informed options about his/her health.[10] Patient's autonomy therefore shifts the power of

[5]A Bell and C Macfarquhar, *Encyclopedia Britannica* (Vol 23, Edinburgh: Britanica Com Ltd 1989) 775.
[6]D Geisen, *International Medical Malpractice Law* (London: J C B Mohr 1988) 73.
[7]Obot (n44) 79.
[8]Abugu U, *Principle and Practice of Medical Law and Ethics* (Abuja: Pagelink Nigeria Limited 2018) 94.
[9] BA Garner(ed), *Black's Law Dictionary* (8thedn, Minnesota: Thomas West) 658.
[10]P.K. Kopar, 'The Transformation and Challenges of the Surgeon-Patient Relationship' in AR Ferreres, *Surgical Ethics: Principles and Practice* (Cham: Springer 2019) 185.

medical choice of treatment to the patients, thereby shifting away from the standard paternalistic approach "the-doctor-knows- the-best" type of decision making.[11]Autonomy is a medical principle that empowers the patients to exercise their right of choice over their healthcare decisions.[12] Besides, there are some limiting factors to this principle, which includes, patient lack of knowledge of the disease in question and inability of the physician to transfer his knowledge to the patient; inexperience on the part of the patient and patient's lack of medical insight.[13] Another constraint is where the patient is sick and does not have deep understanding of medical practice, which makes it unrealistic and difficult to take a reasonable decision on the medical options available to him/her.[14] The paradox of the principle of autonomy is that it is limited by the societal constraints that seek to protect it.[15]From the foregoing, the physician becomes helpless where the patient has opted for a wrong choice of treatment that may be harmful to him/herself, and it becomes impossible to transfer to the patient the knowledge and experience gained from medical school and years of medical practice. Hence, the physician or allied medical practitioners has a strict duty to respect the choices of their patients regardless of their own preferences"[16]

(c) Principle of Informed Consent

The principle of informed consent is "a medico-legal doctrine founded on patient's autonomy, a principle that reflects the patient's right to control decision about his or her body."[17] Consent can act as a waiver, thereby legitimizing actions that would otherwise count as wrongful.[18] It safeguards personal autonomy and acts as a vehicle by which respect for autonomy is translated into law.[19] For consent to be informed it must be voluntary, given by a competent adult, and has

[11] J Kleinig(ed), *Paternalism* (Manchester: Manchester University Press 1983)4.
[12]*Ibid*.
[13]Kopar (n104)185.
[14]*Ibid.*
[15]*Ibid.*
[16]L Doyal, *Bailey & Love's Short Practice of Surgery* (25th edn. Edward a Arnold Publishers Ltd, 2008) 119.
[17] IO Iyioha, 'Pathologies, Transplants and Indigenous Norms: An Introduction to Nigerian Health Law and Policy,' in IO Iyioha and RN Nwabueze(eds), *Comparative Health law and Policy: Critical Perspectives on Nigeria and Global Health Law* (Farmham Surrey: Ashgate Publishing Ltd. 2015)7.
[18] T. O'Shea, 'Consent in History, Theory and Practice' [2012] The Essex Autonomy Project 34' <https:// autonomy. essex.ac.uk/wp-content/uploads/2016/11/Consent-GPR-June-2012.pdf> accessed 22 August 2019.
[19] SAM McLean, *Autonomy, Consent and the Law* (Abingdon: Routledge-Cavendish 2010) 38.

the capacity to consent (mentally sound). An incompetent patient is protected by law, wherein his guardian or next of friend in the case of minors would stand in for them.[20]In 1957, Bolam's test[21] became the foremost landmark case that moved medical practice in the United Kingdom from paternalism to adoption of informed consent.[22] Some schools of thought preferred the phrase "informed consent" be replaced with "joint-decision making" between the physician and the patient, because it better represents the relationship as a mutual agreement.[23]Ethically, medical professionals are urged to ensure that they sufficiently disclose the material facts and risk involved in the procedure to the patient.[24] In the disclosure, prudent patient test and therapeutic privilege, whereby the doctor could withhold information which may be considered psychologically detrimental to the plaintiff[25] will be applied. Meanwhile, sufficient disclosure definitely will build trust in the doctor-patient relationship.

The necessary elements of disclosure of information to the patient as to amount to informed consent in medical practice for instance in surgery are as follows- the patient should know the condition and the reasons why surgery is necessary; the type of surgery proposed and how it might correct his present condition of health; the anticipated prognosis and expected side-effects of the proposed surgery; the unexpected hazards of the proposed surgery; any alternative and potentially successful treatments other than the proposed surgery; and the consequences of no treatment at all.[26]Any treatment administered to an adult patient without his/her consent is legally wrong, and if the body is touched without consent it is battery.[27]In the case where the surgeon touches the patient without his consent, the surgeon will be liable for not just the harm caused him but also for non-consensual treatment which amounts to legal injury.[28] Consent obtained for an illegal surgical procedure remains unenforceable in case there is any malpractice

[20]*Ibid.*
[21]Bolam v Friern Hospital Management Committee (1957) 2 All ER.
[22] S Prasher and others, 'The Evolution of Consent Law in the UK' [2015] (10) *Journal of Cardiothoracic Surgery* 1 <http://www.cardiothoracicsurgery.org/content/10/S1/A202> accessed 21 February 2020.
[23]*Ibid.*
[24]O'Shea (n58).
[25]Scholendorft*v* Society of New York Hospital 211NY 125 (1914), Sideway *v* Board of Governors of the Bethlem Royal Hospital (1983)1 All ER 643.
[26]Abugu (n48) 182.
[27] IE Anigbogu, 'The Legal Significance of Consent in Contemporary Medical Practice' [2012] (2) (2) *Frontiers of Nigeria Law Journal* 1.
[28]*Ibid.*

or negligence claim that arises from such an action. An example of the foregoing is consent to illegal termination of pregnancy.[29]It is very pertinent that the patient should have full information pertaining to his state of health and the necessary treatment in the language he/she would understand.[30] The surgeon/physician that fails to obtain an informed consent from the patient is liable for assault or negligence. It is therefore good to know that a consent gotten for a specific type of surgery is not a license to perform any other surgery, unless the consent is specifically sought and gotten.

Once the consent is obtained by the surgeon, consent form is signed by the patient and the treatment commences. Surgeons, should not limit themselves to consent form, it will be wiser to reduce into writing their discussions with the patients in the patient's clinical record/folder before signing of the consent form. This will protect the surgeons/physicians if the patient denies. There is difficulty in getting consent of a temporally unconscious patient, mentally incapacitated patients, and the children. It is the duty of the surgeons/physicians to distinguish necessary treatment and treatment for convenience and allow the next friend, guardian or parents to consent on their behalf.

(d) Principle of Confidentiality

Principle of confidentiality is one of the cornerstones of doctor- patient relationship, wherein the doctor owes the patient the duty to hold in confidence all information received from him or others during the course of the treatment.[31] It is therefore the duty of physicians and other health professionals to respect the privacy of the patient and ensure that he/she does not communicate information revealed in the course of treatment to anyone else without the patient's consent.[32]In *Hunter v Mann*[33], it was held that "the doctor is under a duty not to (voluntarily) disclose, without the consent of the patient information, which he, the doctor, has gained in his professional capacity." It is therefore pertinent that the physician should protect the privacy of the patient and never without explicit consent use the information gathered beyond the confines

[29]*Ibid* 2.
[30]NHA 2014, s 23(1) (2).
[31]Abugu (n48) 201.
[32]Doyal (n56) 122.
[33](1974) QB768 at 772; [1974] 2 All ER 414 at 417.

of doctor-patient relationship.[34]The Code of Medical Ethics in Nigeria, 2008[35] extensively provided that the information received from the patient in the course of doctor-patient relationship should be kept professionally secret. Breach of confidentiality is a betrayal of trust and abuse of the patient's human dignity, which gives the patient right of action against the doctor or allied health professional.Exceptions to the principle of confidentiality includes where the doctor communicates with his professional healthcare team members; where the information is a threat to the health and safety of others; where it is for overridden public interest; where information is disclosed in the interest of the patient; where there is a subsisting court orders; requirement of public health legislation; to prevent serious crime; where it is validly written; disclosed to close relatives, informing the patient's spouse or sexual partner, etc.[36]The remedies available to the patient in time of doctor's breach of duty of confidentiality either seek administrative recourse, file a suit in damages against the doctor, or seek for an injunction to restrain and prohibit further breach of confidentiality. Another option available to the patient is to petition Medical and Dental Council of Nigeria and complain to the hospital administration.

(f) Principles of Non-Maleficence and Beneficence

Principle of non-maleficence takes its root from the latin maxim *"primum non nocere,"* which means "first do no harm." *Primum non nocere*is one of the fundamental principles in the Hippocratic tradition of medical ethics that requires the physician to intentionally refrain from actions that would cause harm to their patients.[37] It is good to note that "the traditional duty to do good has been accompanied by the obligation to do no harm."[38] It will therefore be unethical for a medical practitioner to "deliberately contribute, participate, connive or otherwise become involved in any harm or torture of the patient or any act that detracts from the human dignity of

[34] GT Laurie and others, *Mason & McCall Smith's Law & Medical Ethics* (10thedn Oxford: Oxford University Press 2016) 179.
[35]Code of Medical Ethics in Nigeria 2008 (CME), r 44.
[36]Abugu (n48) 203.
[37] AR Ferreres 'Foundations and Principles of Surgical Ethics' in AR Ferreres(ed), *Surgical Ethics: Principles and Practice* (Springer 2019) 50.
[38] M Stauch and K Wheat, Text, Cases and Materials on Medical Law and Ethics, (New Yoyk: Routledge, 5th edn, 2015) 22.

the patient"[39]The principle of beneficence requires physicians to be merciful, kind, charitable to their patients and always act in the best interest of the patients.[40] The essence of the principle of beneficence is "to protect and defend the rights of others and to prevent harm from occurring to others."[41] The principle of beneficence requires the physician to have a single intention to do good to the patient.[42]The principle of "double effect" is the true test of beneficence, an instance is where a terminal cancer patient in his last stage of the illness is experiencing excruciating pain. A substantial dose of morphine will relieve the pain, but will also hasten his death. In the above scenario, legally and ethically, the physician applied the principle of beneficence, which is to do good.[43] At this point the intent of the action is relevant.

(e) Principles of Justice

In the words of Aristotle justice is "rendering to each individual what is due to him or her."[44]This principle is synonymous to equity, fairness and egalitarian state of affairs. Justice in healthcare is ensuring that there is equality in allocation of scarce resources which could be likened to safe quality healthcare. The Medical professionals are required to be just in their administration of treatments by ensuring that healthcare services to their patients are readily available, accessible, acceptable, affordable and qualitative. The doctor should not discriminate in treatment of patients as provided in the pledge of physicians oath of declaration which states as follows: "I will not permit considerations of "age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient."[45] State actors in healthcare should see that justice is done.

Nigerian Legislations Regulating Healthcare in Nigeria

[39]Abugu (n48) 407.
[40]Ferreres (n77) 49.
[41]*Ibid.*
[42]Stauch and Wheat (n78) 21.
[43]*Ibid.*
[44]Ferreres (n77) 51.
[45] Doctor's Solemn Pledge, The Declaration of Geneva (Physicians' Oath Declaration) Paragraph 8, in *The Code of Medical Ethics in Nigeria by Medical and Dental Council of Nigeria*, 2008 72.

(a) Constitution of Federal Republic of Nigeria, 1999 (as Amended)

The 1999 Constitution of the Federal Republic of Nigeria guarantees the right to health and provides that, "The state shall direct it's policy towards ensuring that…(c)the 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"[46] Though Chapter two of the Constitution where the right to health is derived is generally non-justiciable,[47] yet the constitution at the same time provided a lee 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.[48] Under item 60(a),[49] the legislators are authorized "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.[50] In adhering to the power of enacting new laws, the legislature can enact a new law through the legislative process or by domesticating a treaty to which Nigeria is a party.[51] 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.

(b) National Health Act, 2014

The National Health Act defined and provided a framework for standards and regulations of health services in Nigeria;[52] better still, to provide a framework for the regulation, development and management of National Health System.[53] The Act being the first legislation to regulate citizen's health in Nigeria, introduced the legal regime upon which quality healthcare delivery in Nigeria will be achieved. Right to health was provided by the Act in compliance with the

[46]The Constitution of the Federal Republic of Nigeria 1999(as Amended) (CFRN), s 17(3), Cap C LFN 2004.
[47]CFRN 1999, s 6(6).
[48]CFRN 1999, s 4(2).
[49]CFRN 1999, Second Schedule, Legislative Powers, Exclusive Legislative list, Part.1.
[50] O Nnamuchi, 'Kleptocracy and Its Many Faces: The Challenges of Justiciability of the Right of Healthcare in Nigeria' (2008) (52) (1) J AFRL 3. Nnamuchi (n6)19.
[51]Ibid, p19.
[52]NHA 2014, s 1 (1).
[53]Long Title to the National Health Act 2014.

obligations imposed on member states by the World Health Organisation as a fundamental right, and to ensure that citizens enjoy "the highest attainable standard of health."[54]The most significant provisions of the Act are the sections on the Rights and Obligations of the Health Users[55] and that of Health Providers.[56] By these provisions, both the patients and physician's health rights are guaranteed. In order to ensure optimal compliance to these rights and obligations, the Act also established National Health System, which includes Federal and State Ministries of Health,[57] and National Health Council, which is the highest policy making body in matters relating to health in Nigeria.[58] In order to see to the implementation of the Act, the National Tertiary Health Institutions Standards Committee was established by the Act to "establish minimum standards to be attained by the various tertiary health facilities in the nation and also to inspect and accredit such facilities."[59]

The Act therefore creates an operative space for Nigeria Health System to thrive, by providing both legal and institutional framework, demonstrated by its guidelines, to ensure growth and proper organisation.[60] The legal and institutional framework created by the National Health Act is just like a universal law in Nigeria healthcare which in no specific or particular provision addressed patient safety. However, the Act is set to ensure that essential elements of right to health, such as availability, accessibility, acceptability, affordability and quality of existing health services, are guaranteed. Put differently, the Act implicitly promotes patient safety agenda, but has no explicit provision on it.

(c) 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.[61] 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

[54]Preamble to the Constitution of the World Health Organisation which Nigeria is a member from 25/11/1960.
[55]NHA 2014, ss 20 and 23.
[56]NHA 2014, ss 21, 22 and 23.
[57]NHA 2014, ss 1 and 2.
[58]NHA 2014, ss 2, 4 and 5.
[59]NHA 2014, ss 9 and 10.
[60] Y Olomojobi, *Medical and Health Law* (Ikeja: Princeton & Associates Publishing Co. Ltd, 2019)62.
[61] National Health Insurance Authority Act (NHIAA), 2021, the Long title.

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.[62] 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.[63] 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.[64]

In order to ensure equity in access to healthcare, the Act established Vulnerable Group Fund to help reduce financial burden on the vulnerable persons.[65] 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[66]. 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.

(d) Child's Rights Act, 2003

The Child' Right Act[67] guarantees for every child, the right to enjoy the best attainable state of mental and physical health.[68] 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.[69] The operative term is "shall"[70] 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 criminalizes breach of this section by any parent, or any of the

[62]NHIAA ss. 14 (1) (2) (3) and s 3 (b)
[63]NHIAAs.13(7)
[64]NHIAA s. 14(3)
[65]NHIAAs.25
[66]NHIAAs.31 (2) (3)
[67] 2003.
[68]Child's Rights Act (CRA) 2003, s 13 (1).
[69]CRA 2003, s 13 (2).
[70]CRA 2003, s 13 (2).

bodies listed above, and will be penalized with fine or imprisonment.[71]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 appropriate technology; ensure appropriate healthcare for expectant and nursing mothers and support, through technical and financial means, the mobilization of national and local community resources in the development of primary healthcare for children.[72]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 child.

(e) Medical and Dental Practitioners Act, 1988

Medical and Dental Practitioner's Act[73] regulates the activities of medical doctors and dental practitioners in Nigeria. The primary object of this Act is to promote quality healthcare by ensuring that all practitioners adhere strictly with the guidelines of the Act. The Act in order to optimally achieve its aim, established the body known as Medical and Dental Council of Nigeria "for the registration of the Medical Practitioners and Dental Surgeons and to provide for a Disciplinary Tribunal for the discipline of members"[74]who may default in keeping to the rules of medical practice. The council is composed of reputable members of the profession,[75] who have deep interest in promoting quality healthcare in Nigeria. The Council ensures that it is only qualified persons who have undergone the requisite training and passed the approved courses in

[71]CRA 2003, s 13 (5).
[72]CRA 2003, s 13(3).
[73] Cap. M8, LFN 2004.
[74] Medical and Dental Practitioners Act (MDPA) cap. M8, LFN 2004 "Preamble".
[75]Ibid, s 2.

approved institutions are registered as members of the profession.[76]The Council does supervisory roles to ensure that the instructions and examination leading to approved qualifications are strictly adhered to.[77] After obtaining an approved medical and dental qualification, the individual shall work under the personal supervision and guidance of one or more fully registered practitioners in practice of surgery, midwifery, medicine or dental surgery for a specific period.[78] The Certificate of Experience which is to be issued by the boss of the individual is not automatic, it can be denied or delayed to show the value placed on human life and quality healthcare. The Certificate of experience is a pre-condition for Registration as a professional member.[79]

After registration, every member shall pay his/her practicing fee yearly as well as renew their practice license for the year.[80] Any member who defaults in the payment of the practicing fee shall be guilty of an offence and shall be liable on conviction to pay double or ten times the practicing fee.[81] All these are measures to ensure quality healthcare delivery to the health users.

In order to ensure that Patient's safety is maintained among medical practitioners, there was established a Disciplinary Tribunal and Investigation Panel.[82] This is in line with the promotion of the principles of Patient's safety and quality healthcare. The Disciplinary Tribunal can adjudge a registered practitioner for professional misconduct where the person is guilty of infamous conduct, convicted by any court of competent jurisdiction and fraudulent registration.[83]

The Act provided for punishment for a medical practitioner adjudged to have misconducted himself professionally, either by striking out of the name of the medical practitioner from the register of members, or he/she be suspended from medical practice, or admonished. All these punitive measures are to encourage the medical practitioners to have at the back of their minds safety of their patients[84]and to deter quacks from infiltrating the profession, the Act made it categorical that any person who is not a registered medical practitioner who holds himself out as

[76]Ibid, ss 8 and 9.
[77]Ibid, s 10.
[78]Ibid, s 11.
[79]Ibid, ss 12 and 13.
[80]Ibid, ss 14.
[81] Ibid, s 14(5)(a) (b).
[82]Ibid, s 15.
[83]Ibid, s 16(1) (a) (b) (c).
[84]Ibid, s 16 (2) (a) (b) (c).

such when discovered shall be punished.[85] Generally, the object of this Act is to guarantee effective and efficient medical practice on the side of the medical experts and to encourage them to be patient centred in their administration of their duties to the health users.

(f) Compulsory Treatment and Care for Victims of Gunshot Act, 2017

The Act provides that "every hospital in Nigeria whether public or private shall accept or receive, for immediate treatment with or without police clearance, any person with a gunshot wound."[86] This Act is keen to promote patient safety. It was enacted to cure the difficulties of rejection and bureaucratic bottlenecks that surround the victims of gunshot wounds in accessing treatment at the medical facilities in Nigeria. This Act came to cure the inefficiencies in Robbery and Firearms (Special Provision) Act, 1986,[87] which made it a crime for any medical facility or individual to admit or treat or administers any drug to any person suspected of having bullet wounds without first reporting the matter to the police and obtain clearance. Obtaining police clearance was a herculean task that most victims bled to death before the clearance would be ready. In order to save life, the Compulsory Treatment and Care for gunshot victims was enacted, so as to promote immediate access of victims to treatment. This Act promotes patient safety, but requires that the incident shall be reported to the police within 2 hours of commencing the treatment by the doctor.

A Critique of the Health Law Regulatory Regime

Nigeria is a registered member of the United Nations that established the World Health Organization (WHO), with the mandate[88] to ensure that the global health is promoted and that the universal health coverage is achieved. In line with the above, Nigeria being a signatory to the

[85] Ibid, s 17.
[86] Compulsory Treatment and Care for Victims of Gunshot Act 2017, s 1.
[87] Robbery and Firearms (Special Provision) Act, 1986, s 4.
[88] To prevent and eradicate epidemics and to improve the nutritional, sanitary, hygienic and environmental conditions of people around the world.<https://www.unhcr.org/world-health-organization-49fea7cd6.html#:~:text=Founded%20in%201948%2C%20World%20Health,of%20people%20around%20the%20world.> accessed 13 February,2023.

United Nations Conventions and other International conventions and regional conventions,[89] undertakes the obligations to protect, promote and fulfil the rights of the Nigerians to access quality healthcare. The Alma-Ata declaration categorically provided that right to health is a fundamental human rights, and the International law recognizes it as such. Nigeria by being a member of the United Nations and signatories to most of the conventions and Treaties on human rights has accepted to promote health as a human right. Nigeria seeks to key into the process of ensuring that her citizens achieve quality healthcare, by observing both international and municipal laws as well as ethical principles that regulate health care delivery so as to guarantee patient safety in Nigeria. In the constitution of Nigeria, right to health is guaranteed under the chapter 2 of 1999 Constitution of the federal Republic of Nigeria (CFRN), referred to as the Fundamental Objectives of Directive Principles of State Policy (FODPSP).[90] Unfortunately, the said chapter 2 of the constitution is declared non-justiciable.[91] In some other countries, the right to health is justiciable, like Ghana and Zimbabwe,[92] while in others nations like India, the constitution did not provide for right to health, but the supreme court of India in its land mark decision interpreted Article 21 of Indian's constitution on the protection of life and personal liberty to include access to healthcare.[93] It is good to note that same Nigerian constitution empowered legislators to make laws on matters included in the Exclusive Legislative lists.[94] Similarly, Item 60(a) of the second schedule, Exclusive legislative list empowers legislators to enact laws that will enforce the observance of the Fundamental Objectives and Directive Principles contained in the chapter 2 of the Constitution.

Based upon the above constitutional authority to the legislators, the first legislation on health known as the National Health Act was enacted in 2014. The constitution falls short of any provisions on the right to health in express terms, except by implications. However, theNational Health Act, as the first enactment by the National Federal Legislators, on health, provided for the

[89] International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of all Forms of Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),the Convention on the Rights of the Child (CRC),etc.

[90]CFRN s. 13-24

[91]CFRN, s 6 96) (c)

[92] Constitution of the Republic of Zimbabwe 2013, as amended to 2017, S.76

[93]Francis Coralie Mullin v The Administrator, Union Territory of Delhi AIR 1981 746).

[94]Part 1 of the second schedule to the Constitution of the Federal Republic of Nigeria.

Basic Health Care Provision Fund (BHCPF). Though it has suffered much set back in its implementation, except in 2018, when it was for the first time earmarked in the budget, but how far the money was utilized cannot be well stated. One of the visible drawback in the implementation of the BHCPF is in the case of emergency treatment of patients in health facilities, provided in section 11(3) (e) of the NHA, 5% provision for emergency treatment of citizens which is dependent on the BHCPF,[95] has never been deployed in line with the provision of the Act. Even the 50% of the BHCPF allotted for the health insurance has suffered lack of or slow implementation and neglect since the Act came into force.[96] The conflict of who manages the fund between the Ministry of Health and the National Primary Healthcare Development Agency has remained unresolved thereby delaying the implementation of the BHCPF,[97] which has led to the death of many Nigerians.

Taking a critical look at the statutory framework regulating the health care system in Nigeria, it is obvious that the regulatory regime does not lack statutes to regulate the sector, but the implementation of the extant laws has been the shortcoming. Lack of the will power to by the government of Nigeria has remained a barrier to the enforcement of such regulations. Meanwhile, laws that should guarantee patient safety when implemented, have failed to promote patient safety in Nigeria healthcare system. Notwithstanding, that most statutes provide for health rights and obligations of ensuring health safety by health providers, yet implementation of such regulation remained inadequate. Even the Child's Right Act (CRA) criminalizes the actions of a parent or a guardian that fails to ensure the best attainable state of physical, mental and spiritual health for his child is liable on conviction for a fine or imprisonment.[98] It is good to note that the intention of the Act is noble, but no offender has been convicted on the breach of section 13 CRA above nor even arrested on such grounds. Similarly, it is to be noted that most states in the country have domesticated the CRA, except two states, Kano and Zamfara,[99] but even the states that have domesticated the Act, implementation is yet to be noticed.

[95]NHA, s11 (3) (e)
[96]NHAs11(3) (a

[98] Child's Right Act, 2003, s 13.
[99] Steve Aya, [29/11/ 2022] <https://www.thisdaylive.com/index.php/2022/11/29/fg-34-states-have domesticated -childs-rights-act/> accessed, 23 February, 2023.

Imperative to Legislate on Patient Safety

To Err is Human is the landmark report published by the Institute of Medicine in USA, in 1999, wherein it was stated that about 98,000 people die yearly in the hospitals as a result of preventable medical errors.[100] Similarly, *An Organisation with a Memory*, which is the report of the UK Chief Medical Officer's Expert Group submitted to the UK government in the year 2000, was intended to understand the scale of medical errors in the UK National Health Service, and work towards minimizing the errors through system approach.[101] The above two landmark reports set the pace for the regulatory framework for the patient safety in both countries. In line with the above, most countries including USA,[102]UK,[103]Finland,[104] Australia,[105]etc., enacted specific patient safety legislations to minimise and prevent medical errors and adverse effects in healthcare delivery.

In Nigeria, notwithstanding that there are few legislations on health care delivery, yet no law has been specifically enacted by the legislature on patient safety like other climes. It is pertinent to note, that though there is a presumption that extant health laws can regulate all aspects of health, but Patient is a nouvelle area in the Nigeria medico-legal jurisprudence, and hence requires to be codified and as well be legislated upon by the Nigerian legislatures so as to effectively and efficiently regulate the specialised aspect of health known as patient safety. In order to set out liabilities of offenders in the medical errors, there is need to codify by enactment the patient safety legislation by the National assembly so as to improve quality healthcare delivery, prevent

[100] AM Palatnik, 'To Err is Human' [4 September, 2016] (11) (5) Nursing Critical Care, 4. <https://journals.lww.com /nursingcriticalcare/fulltext/2016/09000/to_err_is_human.1.aspx#:~:text=The%20Institute%20of%20Medicine%20(IOM, result%20of%20preventable%20medical%20errors> accessed 23 January, 2023.

[101] L Donaldson, 'An Organisation with a Memory: Report of an Expert Group on Learning from Adverse Events in the NHS Chaired by the Chief Medical Officer' [6 March, 2005] < https://psnet.ahrq.gov/issue/organisation-memory-report-expert-group-learning-adverse-events-nhs-chaired-chief-medical> accessed 23rd January,2023

[102] Patient Safety Quality Improvement Act, 2005

[103]The Health and Social Care Act, 2008.

[104] Patient Safety Act, Finland

[105] Aged Care Quality and Safety Commission Act, 2018

medical errors, *and adverse effects to patients associated with health care*.[106] This paper asserts that there is need for legislators to utilize the powers given to them by the constitution of the Federal republic of Nigeria to enact a specific law regulating patient safety in Nigeria. Where specific legislation is not tenable, in the alternative, the National Health of 2014, should be amended to include patient safety provisions.

Conclusion

Nigeria is a common law country and in that respect has adopted common law principles in its medico-legal considerations. It is true that there exist health regulatory framework and that such regulatory services can be extended to the administration of Patient safety related matters. Of course, any health law that promotes the wellbeing of the patient is considered as promoting patient safety, except that it may not optimally regulate liabilities arising out of patient safety related offences and matters. Therefore, it is imperative, that the Nigerian legislators borrow a leaf from other nations who have done so and legislate on Patient safety, for this will help in improving quality healthcare in Nigeria and the world at large.

[106] WHO <https://www.who.int/europe/health-topics/patient-safety#tab=tab_1> accessed 23 January, 2023.