

AN APPRAISAL OF MEDICAL ETHICS IN CONTEMPORARY NIGERIA*

Abstract

The quest to remain in relatively good health condition is branded the fourth necessity of man after food, shelter, and clothing. The practice of medicine over the years has unfolded a series of issues including the ethical and human rights questions, especially in third world countries including Nigeria. Most often, patients suffer in the hands of health officials much as doctors are often trapped in a fix over conflict of duties on one hand and conflicts of interests and duties on the other. It is given the foregoing that, with the aid of the doctrinal legal research methodology, this article appraises medical ethics in Nigeria. This article aims to ascertain the place of medical ethics in the practice of modern medicine in Nigeria; explore the legal and institutional framework for the enforcement of medical ethics in Nigeria; and determine the challenges of medical ethics in Nigeria, determine the extent to which medical practitioners comply with the law and ethical standards regulating their profession in Nigeria; ascertain the rights of patients in modern medicine in Nigeria; and find out the extent to which these rights are protected and enforced in Nigerian Medical Practice. It was found that medical ethics found their roots in the Nigerian human rights jurisprudence; and that the medical ethics system in Nigeria is lacking in many respects despite the various regulatory frameworks. It was, therefore, recommended, among other things, that there should be an increased awareness for health practitioners and patients on the subject of medical ethics; there should be employed the most suitably qualified medical personnel into the healthcare system to improve the Nigerian health sector.

Keywords: Medical ethics, Human rights, Nigeria, Health sector.

1. Introduction

Medical ethics, broadly speaking, refers to the medical oaths and codes that prescribe a physician's character, motives, and duties which are expected to produce the right conduct and this should guide the members of the medical profession in their dealings with one another, their patients and with their states.¹ This concept is entrenched in the Hippocratic injunction: 'Strive to help but above all, do no harm'.² Medical ethics is primarily a field of applied ethics; the study of moral values and judgment as they apply to medicine. Medical ethics encompasses its practical application in clinical settings as well as work on its history, philosophy, theology, and sociology.³ Several subject areas are covered in medical ethics and these include physician's paternalistic deceptions and violation of patients' confidentiality, the rights of the patient or their surrogates to refuse life-sustaining treatments or require assistance in dying. It also touches on subjects such as organ transplantation; surrogacy; euthanasia; patients' right to medical records; and drug experiments on children, demented or dying patients, and other incompetent patients. Also covered are subjects like the definition of health, death, disease, futility of treatment, removal of viable organs from patients who are brain dead or in cardiac arrest, grounds for fetal testing, selection, and abortion, involuntary hospitalization, and treatment of mentally disturbed people. Another aspect of medical ethics is the conflict of interest between physicians and their employers and third-party players – public or private.⁴ This article, therefore, appraises the framework of medical ethics in Nigeria, the applicable laws and ended with relevant recommendations.

2. Meaning of Medical Ethics

Injecting the gamut of the concept of ethics in the medical field, Johnson, Siegler and Windslade believe that medical ethics is the set of codes, rules, and regulations that govern medical officers' character, motives and duties which are expected to produce a right conduct in pursuance of their oaths.⁵ They emphasize that ethical codes should guide the members of the medical profession in their dealings *inter se*, their relationships with patients, the health institution, and with their states. Medical ethics positions a medical official as devoted to his duties, the welfare of the patient, and the advancement of the medical profession and medical knowledge.⁶ As Dunn opines, the relationship between a doctor and a patient is taken to be one of the most ethically significant dimensions of good medical care.⁷ Similarly, Izunwa posits that ethics directly relates to the philosophical study of morality; they are oftentimes interchangeable.⁸ For him, the main business of ethics is the general study of goodness and the general study of right action.⁹ Medical ethics positions a medical official as devoted to his duties, the welfare of the patient, and the advancement of the medical profession and medical knowledge. It similarly

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¹ A.R. Johnson, M Siegler and W.J. Winslade, *Clinical Ethics; Cases in Medical Ethics* (2nd edn, Oxford Univeirsty Press 2001) 3.

² L. N. Magner, *A History of Medicine* (2ndedn., Taylor & Francis Group, 2005) 10.

³ C. Junkerman, D. L. Schiedermayer, *Practical Ethics for Students, Interns and Residents: Ashort Reference Manual* (2ndedn., Frederick Mcl University Publishing Group, 1998) 21.

⁴ R. M. Yeatch, *The Basics of Bioethics* (2ndedn., Prentice Hall, 2003) 12.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ M Dunn, 'At the Moral Margins of the Doctor-Patient Relationship' *Journal of Medical Ethics* [2019] (45) (3) 149.

⁸ M O Izunwa, 'A Critique of the Notions of Law and Ethics as Regulatory Systems for Healthcare' in M O Izunwa and D R Izunwa (eds.), *Law and Ethics of Healthcare: Interventions for Improved Healthcare in Nigeria* (Great-M Prints & Ideas 2016) 18.

⁹ *Ibid.*

prescribes such qualities and virtues expected of a medical worker, to wit: show compassion on the patient, but be humble enough to understand the limits of his curative powers and the harm he unintentionally causes.¹⁰

Medical ethics is, therefore, a *sine qua non*, for good medical practice. It forms a fundamental aspect of medicine. The choices we make and our actions concerning those choices come within the ambience of ethics. Medical ethics similarly deals with the choices of both the clinicians and patients, especially in light of the duties and obligations of such clinicians to their patients. Medical ethics is also preoccupied with the choices made by society - the distribution of resources, accessibility of healthcare facilities, and the impasse arising there from.

3. Medical Ethics in Nigeria

Nigerian medical ethics demands that a medical practitioner must be versed not only in his medical field or specialty but also must be alert to his duties and responsibilities in practice. He or she must be conversant with the laws and the ethics of the profession to avoid liability suits. Also, the practitioner must be aware of the need for defensive practice and the need to anticipate legal issues before they occur. The practitioner should also be prepared to defend himself or herself in a court of law or before a professional disciplinary tribunal.¹¹ The doctor-patient relationship is critical for vulnerable patients and this is usually because patients do overly rely on the physician's competence, skills, and goodwill for their medical treatment.¹² Also, the doctor-patient relationship is noted for its centrality in the patient's life-altering treatments, births, deaths and severe illnesses.¹³

Codes of ethics remains the professional control of the behaviour of doctors as it represents a commitment to act with integrity even in extreme circumstances.¹⁴ Ethical codes of conduct have offered both patients and doctors some tangible protection in some circumstances.¹⁵ Most ethical codes are concerned with attitudes and expected forms of conduct, for example, providers are expected to act in the best interest of their patients and deliver bad news with understanding and sympathy.¹⁶ In Nigeria, there is a plethora of laws and bodies regulating medical ethics. However, the Medical and Dental Council of Nigeria (MDCN) is the apex regulator of medical practice. This code is revised periodically to meet new ethical challenges.¹⁷ A breach of ethics may lead to a disciplinary procedure that has the powers of a federal high court. The cases brought before the tribunal are usually investigated by an investigative panel consisting of medical and dental practitioners and a legal adviser.¹⁸

4. Legal Framework for Medical Ethics and Human Rights in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) is the *grundnorm* and occupies the highest echelon in the Nigerian normative hierarchy. Its provisions are supreme and have a binding force and any law that is inconsistent with its provisions is rendered nugatory to the extent of its inconsistency.¹⁹ The Constitution spells out the underlying and unifying values of society and the basic rights of the citizens.²⁰ The provisions of chapter IV are entrenched as Fundamental Rights and include the right to life, dignity of the human person, personal liberty, fair hearing, private and family life, freedom of thought, conscience and religion, freedom of expression and the press, peaceful assembly and association, freedom of movement, discrimination and right to acquire and own property, moveable or immovable in Nigeria.²¹

Medical and Dental Practitioners Act, 2004²²

This Act was promulgated to regulate the practice of medical and dental practitioners in Nigeria in 1963. The Act established the Medical and Dental Practitioners Council.²³ Exercising the powers invested on it under the Act, the Council established the Medical and Dental Practitioners Code of Medical Ethics (Code of Medical Ethics). The Code of Medical Ethics among other things requires medical doctors to preserve life whenever possible, to hold in confidence communications with patients, to be honest with patients, to put professionalism above profit making. However, the Code of Medical Ethics deals specifically with professional misconduct and not rights of the citizens to health care. It addresses issues more from the perspective of those professions which it regulates rather than from a citizens' rights perspective. For example, a person

¹⁰*Ibid.*

¹¹ O. G. Ochonma and others, 'Medical Ethics and Compliance amongst Physician Groups: A Self-Assessed Survey in a Hospital in Southeast Nigeria' [2023] *African Health Sciences* (23) (3) 732.

¹²*Ibid.*

¹³ A. E. Limentani, 'The Role of Ethical Principles in Health Care and the Implications for Ethical Codes' [1999] *Journal of Medical Ethics* (25) 394-398.

¹⁴*Ibid.*

¹⁵ R. Arnold, L. Farrow and L. R. Barker, 'Medical Ethics and Doctor/Patient Communication' in M. Lipkin, S. M. Putnam and A. La zare (eds.), *The Medical Interview: Clinical Care, Education, and Research* (Springer-Verlag, 1995) 345-367.

¹⁶ L. T. Niebroj, D. Jadamus-Niebroj and J. Giordano, 'Toward a Moral Grounding of Pain Medicine: Consideration of Neuroscience, Reverence, Beneficence and Autonomy' [2008] *Pain Physician* (11) (7) 12.

¹⁷ O. J. Odi and A. R. George, *Law and Ethics of Medical Practice in Nigeria* (2nd edn., Danbru Digital Press, 2015) 3.

¹⁸*Ibid.*

¹⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 1(1) and (3).

²⁰*Ibid.* Chapters II and IV.

²¹*Ibid.*, ss. 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 respectively.

²² Cap M8 LFN 2004

²³Nigerian Medical and Dental Practitioners Act Cap M8 LFN 2004, s. 1.

found guilty of professional medical negligence which resulted in permanent disability or even death would only face the Medical Tribunal for medical negligence and if found guilty would either have his name struck off the register or suspended for a period not exceeding six months. The victim is not covered by the Act and would have to fall back to civil action under torts of negligence to remedy the injuries arising from the activities of the negligent medical doctor.

Compulsory Treatment and Care for Victims of Gunshot Act 2017

The Act provides for compulsory treatment and care for victims of gunshots by hospitals in Nigeria. It further imposes a civic duty on every citizen to render every form of assistance as shall be possible to any person with gunshot wounds by ensuring that the person is taken to the nearest hospital for immediate treatment. *The Act has 16 sections.* By virtue of sections 1, 2 and 3 of this Act, every hospital is to receive and treat victims of gunshot wounds *with or without police clearance and/or payment of an initial deposit.* Such hospital authority is however mandated to report to the nearest police station within two hours of commencing treatment on the victim.²⁴ Any person with a gunshot wound is not to be subjected to torture or any inhuman or degrading treatment by any person or authority including the police or any security agency.²⁵ The High Court may order a person convicted under this Act to pay damages to the victim as restitution for injuries or loss sustained, in addition to other penalties the court may deem fit to impose on the convict and such order shall be enforced by the victim or by the prosecutor on behalf of the victim.²⁶ Every hospital is, by section 12 of the Act, mandated to keep adequate record of the treatment of all victims of bullet wound and is further required to notify the family members or relations of the victim as far as they may ascertain within 24 hours of becoming aware of the victim's identity. Section 11 of the Act imposes on any authority or person, whose act or omission results in unnecessary death of a gunshot victim, a term of imprisonment for 5 years or a fine of five hundred thousand naira or both. Where the offence does not lead to the death of the victim but to substantial physical, mental, emotional, and psychological damage, such person or authority shall be liable on conviction to imprisonment for a term of not more than 15 years and not less than 5 years without the option of fine. Where an offence under the Act is committed by a body corporate, the corporate head shall be prosecuted.²⁷

Nursing and Midwifery (Registration, Etc) Act 1979

The nursing and midwifery profession is regulated by the Nursing and Midwifery (Registration, etc.) Act, 1979. The Act made provisions for the registration and discipline of nurses and midwives in Nigeria. Section 8 provides for registration as prerequisite for practice for nurses and midwives while section 17 of the Act provides for disciplinary measures available to nurses and midwives in events of malpractice in Nigeria.

Code of Medical Ethics in Nigeria²⁸

In pursuance of the statutory functions of the Medical and Dental Council of Nigeria provided for in section 1(2) (c) of the *Medical and Dental Practitioners Act*, that is, '[R]eviewing 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', the Council made this Code to regulate the practices of medicine in Nigeria. Since the coming into effect of the law and the constitution of the Medical and Dental Council of Nigeria by the provisions of the law; a statement as to the Code of Conduct considered desirable by the Council for the practice of the professions in Nigeria has been periodically prepared and reviewed.²⁹

5. Institutional Framework for Medical Ethics and Human Rights in Nigeria

Federal Ministry of Health (FMOH)

The Federal Ministry of Health is the apex federal government institution vested with the responsibility to develop and implement health policies and programs and also undertake action to deliver effective efficient quality and affordable health services in Nigeria. The FMOH has five departments and is the main layer for policy making, strategic planning, regulating international relations, and a central source for technical support and guidance for states. The FMOH is linked to thirty-six states, the Federal Capital 101 Territory (FCT) and the 774 local governments of Nigeria by providing them with technical support and guidance.

National Human Rights Commission

This Commission was established by virtue of section 1(1) of the *National Human Rights Commission Act (as amended), 2010*.³⁰ The Act also established a Governing Council charged with the responsibility of discharging the functions of the Commission.³¹ The statutory functions of the Commission include the following:

- a. Deal with all matters relating to the protection of human rights as guaranteed by the *Constitution of the Federal Republic of Nigeria*, the *African Charter*, the *United Nations Charter*, the *Universal Declaration on Human Rights*, and other international treaties on human rights to which Nigeria is a party;

²⁴Interestingly, under the Robbery and Firearms Act as well as the Police Act, there is no mention of the police report as a requirement, before a gunshot victim may be attended to at a Nigerian Hospital. Therefore, we do not see the basis for this previous requirement.

²⁵CTCVG, s. 2(2). This provision reaffirms the constitutional right of every citizen to dignity of human person enshrined in section 34 of the Constitution of the Federal Public of Nigeria 1999 (as amended).

²⁶CTCVG, s. 14.

²⁷CTCVG, s. 13.

²⁸*Medical and Dental Practitioners Act of Cap. M8 LFN 2004*, s. 1(2)(c).

²⁹*Ibid.*

³⁰*S. 1(1), National Human Rights Commission Act (as amended), 2010.*

³¹*Ibid.*, s. 2(1).

- b. Monitor and investigate all alleged cases of human rights violation in Nigeria and make recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance;
- c. Assist victims of human rights violation and seek appropriate redress and remedies on their behalf; and
- d. Undertake studies on all matters relating to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights.

With the Amendment Act 2010, all recommendations or award of the commission are binding on parties upon application in writing to the court to be enforced by the court.³²

Medical and Dental Practitioners Disciplinary Tribunal

The Medical and Dental Practitioners Disciplinary Tribunal has the status of a high court of the Federal Republic of Nigeria and practitioners who appear before it whether as complainants, defendants or witnesses, whether or not they are also represented by a lawyer, must conduct themselves as they would before a high court. This code of behavior is equally applicable to counsel who appear at the Tribunal. Practitioners who make public comments on cases pending before the Medical and Dental Practitioners Investigating Panel or Disciplinary Tribunal, or cases where the time for appeal has not expired, shall be guilty of contempt of the Panel or the Tribunal, as the case may be, and shall be liable to appropriate disciplinary action.³³ Any doctor who may wish to contest the judgment can only go to the Appeal Court.³⁴

Nursing and Midwifery Council

The Nursing and Midwifery Council of Nigeria (NMCN), is the sole governing body that regulates all cadres of nurses and midwives in Nigeria. It was established by government decree in 1979, and re-established as a parastatal by the government of Nigeria by Act Cap. No 143 Laws of the Federation of Nigeria, 2004. The Council maintains standards of practice, and enforces discipline within the Nigerian nursing profession. It also accredits education in nursing and midwifery, awarding certificates and a diploma in midwifery and nursing after a three years programme. The Council is headed by Secretary-General/Registrar, who is helped by other professional and non-professional staff. They are responsible to a board reporting to the Federal Ministry of Health.³⁵

The Judiciary

The Constitution of the Federal Republic of Nigeria (as amended) 1999 established courts under Chapter VII and made them custodian of fundamental rights.³⁶ Being protectors of fundamental rights, the court has a constitutional responsibility under section 13 to see to the observance of the fundamental objectives in the constitution³⁷ and also the rights contained in the African Charter on Human and People's Rights.³⁸ Where constitutional obligations do not explicitly protect the right to health, case law or court decisions have the potentials of implementing and enforcing commitment made at international tribunals, regional and international conventions.³⁹ To this end, 'the courts have occasionally drawn from the constitutional recognition of health care entitlement in translating and applying constitutionally enforceable right or apply the provisions of the African Charter.'⁴⁰ In the case of *Jonah Ghambre v Shell BP*,⁴¹ the applicants instituted an action against the respondents over the effects of gas flaring in their environment and on their health which violated section 33 (1) and section 34 (1) of the Constitution and also articles 4, 16 and 24 of the African Charter on Human and People's Rights. This is a landmark case in the country where there is no constitutionally entrenched right to a healthy environment which is a determinant of the right to health.

6. Challenges of Medical Ethics in Nigeria

The major challenges faced by medical practice in Nigeria that have dented the image of the profession and caused it to record abysmal performance among its contemporaries include weak, inadequate, and insufficient legislation as well as weak and poor institutional basis for the enforcement of patients' rights and the discipline of healthcare providers.⁴² The standard of medical practice; discipline in the medical profession; respect for patients' rights and dignity cannot be enhanced if there is no solid legislative framework for medical practice with strict mechanisms for the discipline of erring medical practitioners. Some of the evolving issues in Nigerian medical ethics are cloning, embryo research, stem cells, clinical trials,

³²S. 22 (2), *Amendment Act 2010*. The *Amendment Act 2010* defined Court to mean Federal High Court, or High Court of Federal Capital Territory (FCT) or High Court of a state. See S 22 of the *Amendment Act 2010*.

³³ Medical and Dental Council of Nigeria <<https://www.mdcnigeria.org/disciplinetrib.htm>> accessed 10th November, 2024.

³⁴*Ibid*.

³⁵ Nursing and Midwifery Council of Nigeria, 'About' <<https://nmcn.gov.ng/>> accessed 18th November, 2024.

³⁶ CFRN, s. 46(1).

³⁷ Apart from the Judiciary, other organs of the government i.e. the legislative and the executive have the responsibility under S 13 to pursue health objectives.

³⁸ *Gani v Abacha* (2006) *supra*. See also section 16 of the *African Charter on Human and Peoples' Rights*, 1981.

³⁹ N I Aniekwu, 'Gender and Reproductive Health: Towards Advancing Judicial Reforms in Nigerian Law' in C J Uneke and others, 'Research Priority Setting for Health Policy and Health Systems Strengthening in Nigeria: The Policymakers' and Stakeholders' Perspective and Involvement' *Pan African Medical Journal* [2013] (16) 10.

⁴⁰ See the case of *Festus Odafe and 3 Ors v A.G. Federation and 3 Ors* Unreported, Suit No. FHC/PH/CS/680/2003, Judgment of Honorable Justice R.O. Nwodo of February 23, 2004 particularly p. 11 See also the case of *Ishmael Azubuikwe and 3 Ors v A.G. of the Federation* Unreported Suit No. FHC/PH/CS/679 per Nwodo, J at 19.

⁴¹ (2005) Unreported Suit No. FHC/B/CS/53/05 per Nwokorie, J.

⁴² G. C. Nwafor and A. O. Nwafor, 'The Healthcare Providers – Patients Relationship and State Obligations in Times of Public Health Emergency' [2016] *African Journal of Legal Studies* (9) 273.

the notions of euthanasia and physician-assisted suicide, organ harvesting/commercialization and transplant, scientific research with human participants, medical futility, withdrawal and withholding of treatments, palliative care for a dignified end-of-life, genetics, the concept of death and dying, etc. These issues keep rising, but the Nigerian Health System and Bioethics challenges limit development and success.⁴³ Some of these challenges are: substandard educational system, inadequate human resources and equipment/instruments, unqualified healthcare workers, ineffective administration and management, poor healthcare financing, ineffective administration and management, the problem of ethnicity, and language barriers, amongst others.⁴⁴

7. Conclusion and Recommendations

The healthcare system in Nigeria has recorded unimaginable and unsatisfactory performance in quality delivery for a very long time. Patients can hardly access medical services in Nigeria. Those who manage to receive second-rate care in many public and private health institutions due to medical officials' obstinate paternalist ideology which breeds negligence, degrading, and ill-treatment in most cases. The economic woes bedeviling the citizens of Nigeria has also encouraged citizens who cannot afford the services of medical professionals to resort to patronizing quacks, who provide cheaper services at cheaper rates. These quacks nonetheless pose as professionals and cause greater harm or damage to the patients and their families. What is more, even the professionals flout the ethics of the profession and engage in shoddy dealing either to cut corners or for personal gains. Patients are abandoned to suffer and die, accident victims and victims of gunshots are refused treatments, patients are denied access to their medical information, diagnoses are not communicated to the patients before treatment, conflicts of interests are rife in daily practice, etc. This is without due regard to the legal regime regulating the practice of their profession in Nigeria.

Following the above analysis, the following recommendations are critical to repositioning medical ethics and practice in Nigeria:

- a. The Patients' Bill of Rights should be amended to incorporate more rights to medication as against the twelve rights it enshrined. The Constitution should also be amended to include the right to access medical information within the precinct of the right to freedom of information.
- b. The judiciary should widen the scope of the interpretation given to section 33 of the Constitution to incorporate health/medical incidences that could lead to loss of life such as refusal to accept for treatment, refusal to treat or paying less or no attention to patients as a result of nonpayment of deposit, conflict of interest by medical officials, failure or refusal to make referrals, etc.
- c. The Patients' Bill of Right should be made enforceable in law. It should just list certain rights. Enforcement procedure should be entrenched therein as is usually the case with all laws. Procedure for enforcing remedies under the Bill of Rights should also be incorporated therein.
- d. There should be adequate punishment for medical malpractice. The Medical Practitioners Code prescribes admonition, suspension for six months, or striking off name of the negligent medical or dental officer concerned. This is not enough especially in cases where death or permanent disability results from such negligence. The law should provide stiffer punishment for gross negligence to deter quacks from toying with the lives of the vulnerable who consult them for medical treatment.
- e. Public awareness should be created such that citizens should be educated on their rights and the benefits each of these rights confer unto them concerning their medical officers. Citizens should also know the legal remedies available to them or their wards in the event of medical malpractice or negligence.

⁴³ P. Akabunwa, 'Bioethics in Nigeria' (3 June 2024) <<https://mondaq.com/nigeria/healthcare/1326662/bioethics-in-nigeria>> accessed 26 November 2024.

⁴⁴Ochonma (n 11) 735.