



# *Kathmandu School of Law Review*

ISSN 2091-2110  
Volume 4; Issue -1; 2014



**“QUALITY AND DIVERSITY”**

# A Legal Perspective of the Regulatory Framework for Trado-Medical Practice in Nigeria

Eric Ayemere<sup>1</sup> and Lucky Ehimen Enakemere<sup>2</sup>

## Abstract

*The authors are of the view that based on the good services provided by genuine trado-medical practitioners; this form of healing art should be encouraged under a strict regulatory regime in order to avoid the dangers prevalent where there is a lack of effective regulations. The article analyses the legal and institutional framework of trado-medical practice in Nigeria and examines the constitutionality of the extant National and some States legal regime if any and its impact in effectively and positively facilitating trado-medical practice in Nigeria. This article also contends that presently, there is no comprehensive regulation due to the absence of specific National legislations on the trado-medical practice. Governments all over the world are increasingly embracing and recognizing Trado-medical practice which been propelled by the fact that many diseases which have prove resistant to orthodox medicine requires attention from alternative therapy. The challenge of adopting trado-medical practice into the mainstream health care sector is that it is not backed with a specific legislation regulating its practice and practitioners. This paper finally conclude that unless there is an urgent and positive change in the attitude of Government coupled with a vigorous political will to strengthen the present legal and institutional framework, patronage of traditional medicine in Nigeria will not be guaranteed as to the safety of the patient and trado-medical practice which is rooted in our culture and heritage will be lost.*

---

<sup>1</sup> LLB, BL, LLM and PhD (Law); Senior Lecturer and Head of Department, Department of Business Law, Faculty of Law, University of Benin, Benin City, Nigeria; email: [ayemere.okojie@uniben.edu](mailto:ayemere.okojie@uniben.edu).

<sup>2</sup> LL.B and BL; A Benin based legal practitioner; email: [daddi2020@gmail.com](mailto:daddi2020@gmail.com).

## Introduction

There has been a rapid expansion of trado-medical practice in Nigeria over the last three decades, including an increase in the number of trado-medical practitioners. At the same time, because the majority of Nigerians use traditional medicine, the Government of Nigeria has shown appreciation for the importance of traditional medicine in the delivery of health care evidenced by some of its formulated policies. Though informal interaction between the Government and traditional medicine practitioners can be traced back to the 19<sup>th</sup> century, formal legislation promoting traditional medicine dates back to 1966 when the Ministry of Health authorized the University of Ibadan to conduct research into the medicinal properties of local herbs. Efforts to promote traditional medicine continued throughout the 1970s, in the form of conferences and training programmes. In the 1980s, policies were established to accredit and register traditional medicine practitioners and regulate the practice of traditional medicine due to the growing global interest in accessing traditional medicine as an alternative to orthodox medicine. Though without much success, it led to a greater urgency to have an established effective legal and institutional framework for regulating traditional medicine and trado-medical practice in Nigeria.

Traditional medicine or indigenous medicine is the total combination of knowledge and practices, whether explicable or not, used in diagnosing, preventing or eliminating a physical, mental or social disease and which may rely exclusively on past experience, anecdotes and observation handed down from generation to generation, verbally or in writing.<sup>3</sup> Traditional medicine is based on historical or cultural traditions, rather than on scientific findings and many countries in Africa, Asia as well as Latin America employ it informally to meet some of their primary health care needs, since over one-third of the population in these areas lack access to essential medicine<sup>4</sup>, and the provision

---

<sup>3</sup> WHO, *Traditional Medicine and its role in the development of health services in Africa*, 2006, Doc. no. FR/RC26/TD/1; Section 2 of the *Delta State Traditional Board Edict* further defines TM to include prescription, treatment, concoction or and drugs indigenous to the Nigerian Traditional Society intended for curing or preventing disease or any form of ill health and a traditional medicine practitioner to mean a provider or purveyor of traditional medicine and includes herbalists, bone setters, traditional birth attendants and midwives, healers, of psychological and allied illness, traditional surgery herbal healers and every other person whose beneficial practices fall within traditional medicine practice. See also *Ibodje v. Delta State Traditional Medicine Board*, Nigeria, (2011) 1 DLR 11, the dictum of Makwe J.

of safe and effective trado-medical therapy can only be guaranteed by a sustainable legal and institutional regulatory framework.

### **The Legal and Institutional Regulatory Framework in Nigeria**

The current regulatory framework in Nigeria is made up of legislations and agencies at both the National and State level and the major ones will be analysed in the preceding pages of this article.

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

Section 33(1)<sup>5</sup> of the *Nigerian Constitution* provides, *inter alia*, that every person has a right to life. This right is however not absolute because it can be taken away in execution of the sentence of a court in respect of a capital offence of which an individual has been found guilty in Nigeria. In other words, the section has not abolished the death penalty. Section 34(1) further provides that every individual is entitled to respect for the dignity of his person. This section accords every individual respect for the dignity of his person; therefore, no person should be subjected to torture or inhuman or degrading treatment or held in slavery or servitude or shall be required to perform forced or compulsory labour.<sup>6</sup> The Constitution is the supreme law of the land and our grundnorm. It is against this background that issues of right to life and respect for the dignity of life become germane. The fact that a patient has submitted or surrendered himself to trado-medical treatment should not entitle a Trado-Medical practitioner to give him counterfeit or incompetent treatment which is capable of or actually destroys his life. The principle of *volenti non fit injuria* will not apply as a defence if actual loss of life or avoidable physical injury is caused to a patient.

This is the safeguard guaranteed by the 1999 *Constitution*. But this, *per se*, is not enough. There should be justiciable Enactments, Rules and Regulations

---

<sup>4</sup> O. Awodele et al, 'Toward integrating traditional medicine(TM) into National Health Care Scheme towards integrating traditional medicine (NHCS): Assessment of TM Practitioners' disposition in Lagos, Nigeria', vol. I, *Journal of Herbal Medicine*, 2011, p. 90.

<sup>5</sup> *The Constitution of the Federal Republic of Nigeria*, Nigeria, 1999 (as amended) (hereinafter the 1999 *Constitution*).

<sup>6</sup> See N. A. Inegbedion & J. O. Odion, *Constitutional Law in Nigeria*, Lagos, Ameitop Books, 2000, p.171.

specifically applicable to Trado-Medical practitioners and practice. Trado-Medical practice is a parallel, but different, *modus* of general Medicare. Accordingly, it should have rules and regulations different from those applicable to the orthodox Medical and Dental Association or Council. Section 46 of the 1999 *Constitution* envisages redress in state High Courts. It provides that ‘any person, who alleges that any of the provisions of this chapter has been, is being or likely to be contracted in any state in relation to him may apply to a High Court in the state for redress’.

Viewed from the legal perspective, the above provision is anchored on the general law of Tort. It does not specifically relate to Trado-Medical Practice. It is, therefore, humbly advocated that there should be Rules and Regulations applicable specifically to Trado-Medical practice.

#### *National Health Bill 2008*<sup>7</sup>

There is the high incidence of suffering among millions of people in Nigeria, in the area of health sector mismanagement and lack of access to good medical health care system in Nigeria is not news. Recently, the UN rated Nigeria very high in terms of infant mortality and the low chances of women surviving during child labour. Numerous statistics say a great deal about the deplorable condition revealing that the average life expectancy in Nigeria has declined to 40-45 years<sup>8</sup>. To combat this menace, the regulation and management of a National Health System have set standards for rendering health services in form of a bill which was passed by the Nigerian National Assembly<sup>9</sup>.

The Bill provides a framework for the regulation and provision of National health services, defines the rights of health workers and users and stipulates guidelines for the formulation of a National health policy. The Bill allows users to hold Government to account for their rights to health including equitable access to care. Sections 1, 2 and 6 are relevant in this respect because they make provisions for the establishment of the National Health System and its

---

<sup>7</sup> *National Health Bill*, 2008, Senate, The Federal Republic of Nigeria available at [http://www.unicef.org/nigeria/ng\\_publications\\_national\\_health\\_bill\\_2008.pdf](http://www.unicef.org/nigeria/ng_publications_national_health_bill_2008.pdf), accessed on 20 October 2014.

<sup>8</sup> Chamlain Peterside, ‘what a health care system: Nigeria’s Medicine and the strain on human capital’, *Nigerian World* available at <http://Nigeriaworld.com/feature/publication/peterside/031907.html>, accessed on 25 October 2014.

<sup>9</sup> The President’s assent to the bill to become an Act is being awaited.

objectives,<sup>10</sup> functions of the supervisory Ministry<sup>11</sup> and composition of technical committee of the National Council on Health.

In addition to the powers conferred in section 2(1) (a) – (m) of the Bill, the Federal Ministry of Health is further empowered by section 2(2) (a) – (c) with the additional responsibilities to wit: prepare strategic, medium term health and human resources plans annually for the exercise of its powers and the performance of its duties under this Act; ensure that the national health plans referred to in paragraph (a) of this subsection shall form the basis of the annual budget, as required by the Federal Ministry of Finance; and

other governmental planning exercises as may be required by any other law; and ensure that the national health plans shall comply with national health policy. A Technical Committee of the National Council on Health is also

---

<sup>10</sup> Section 1 (1) (a) – (e) provides that ‘there shall be established for the Federation the National Health System which provide a framework for standards and regulations of health service which shall encompass public and private providers of health services, promote a spirit of cooperation and shared responsibility among all providers of health services in the Federation and any part thereof, provide for persons living in Nigeria the best possible health services within the limits of available resources, set out the rights and duties of health care providers, health care workers, health management and users and protect, promote and fulfill the rights of the Nigerian people to have access to health care services’. Section 1(2) (a) – (h) further provides that the National Health System shall comprised of the following; the Federal Ministry of Health, State Ministries of Health and the Federal Capital Territory, Parastatals under the Federal and State Ministries of Health, Local Government Health Authorities, Ward Health Committees, Village Health Committees, private health care providers and traditional and alternative health care providers. *National Health Bill* (n 7).

<sup>11</sup> Section 2 (1) (a) – (m) of the Bill provides that the Federal Ministry of Health shall ensure the development of a National health policy and issue guidelines for its implementation, ensure the implementation of the National health policy, collaborate with National health departments in other countries and international agencies, promote adherence to norms and standards for the training of human resources for health, ensure the continuous monitoring, evaluation and analysis of health status and performance of the functions of all aspects of the National Health System, co-ordinate health and medical services delivery during national disasters, participate in inter-sectoral and inter-ministerial collaboration, conduct and facilitate health systems research in the planning evaluation and management of health services, ensure and promote the provision of quarantine and port health services, determine the minimum requirement to monitor the status and use of the resources, promote the availability of good quality, safe and affordable essential drugs, medical commodities, hygienic food and water and issue guidelines and ensure the continuous monitoring, analysis and good use of drugs and poisons including medicines and medical devices. *Ibid.*

established under the Bill<sup>12</sup> with the mandate to advise the National Council on Health on its functions as enumerated in section 5(1)(a) – (b) of the Bill.

Although the Bill recognizes the Trado-Medical practitioner as part of the National Health System,<sup>13</sup> the mere fact that Trado-Medical practitioners and alternative health care providers are recognized is, however, not enough to regulate their practice because there is, presently, no recognized statutory body to regulate the activities of trado-medical and alternative health care practitioners. Secondly, from the provision of the Bill the Government seems to have deliberately relegated the relevance of traditional medicine and alternative health care. For instance, there is lack of representation of trado-medical and alternative health care practitioners in the National Health Ethics Committee which is responsible among other functions for adjudicating complaints about the functioning of health research ethic committees and hear any complaint by a researcher who believes that he/she has been discriminated against by any of the health research ethics committees, recommend to the appropriate regulatory body such disciplinary action as may be prescribed or permissible by law against any person found to be in violation of any norms and standards, or guidelines set for the conduct of research under the Bill<sup>14</sup> and also non representation in the Technical Committee.

Finally, there is presently the problem of enforceability of the Bill due to the fact of the refusal or continued delay by the President of Nigeria to assent the Bill into law. This is rather surprising considering the fact that the National Assembly passed the Bill after its third and final reading for the President's assent on the 14<sup>th</sup> of May 2008 and the National Assembly on its part has neglected to invoke its powers under Section 58(1) – (5) of the 1999 Constitution (as amended) which empowers it to pass a Bill into law 30 days after the President's refusal to assent such Bill. Consequently, the National Health Bill does not presently have the force of law and is, therefore, unenforceable.

### *Federal Ministry of Health*

Traditional medical care preceded the use of conventional medical knowledge and practice in all parts of the world, Nigeria inclusive. For decades, the

---

<sup>12</sup> *Ibid*, section. 6.

<sup>13</sup> *National Health Bill* (n 7), section 1(2)(h).

<sup>14</sup> See generally of the Bill functions of the Committee. *Ibid*, section 33(1) – (7).

Federal Government of Nigeria through the Federal Ministry of Health has intervened intermittently in the area of traditional medicine but such inconsistent attempts did not yield significant progress on the roadmap of the integration of traditional medicine into the formal National Health System. Therefore, in order to expedite the process towards this integration, the Federal Ministry of Health decided to follow some of the guidance and direction of the World Health Organisation (WHO). For decades, the Federal Ministry of Health has shown interest through various resolution, commissions and other initiatives in upgrade traditional medicine administratively.

The Nigerian Government, in realization of the indispensable role which traditional or alternative medicine could play in the country's health care delivery system, in 1977, sponsored four experts to India and China at different times to study alternative medicine as practiced in those countries. The report and recommendations given by the experts on their return among other things included the establishment of institution of learning where complementary and alternative medicine could be studied in Nigeria. It was also recommended that research documentation and retraining of existing practitioners should be given urgent attention. Such step would facilitate the eventual intervention of alternative medicine in the health care delivery system and thus enhance the quality and availability of healthcare to the Nigerian populace. As a result of the above mentioned recommendation, the Government in 1988 promulgated *Decree 38* establishing alternative medicine and recognizing the practitioners as members of the Medical Rehabilitation Board of Nigeria.

The Federal Ministry of Health has established a college for the same reason and purpose called the Federal College of Complementary and Alternative Medicine with its head quarters in FCT Abuja. The curriculum includes Certificate or Diploma in Alternative Medicine, Bachelor of Science in Alternative Medicine and a Master of Science in Alternative Medicine in the area of Acupuncture, Naturopathy, Homeopathy etc.

### **Traditional Medical Practitioners Commission**

The Commission is established by the Traditional Medical Practitioners Bill 2003 and shall consist of an Executive Chairman, a representative of the Federal Ministry of Health, the Nigeria Council of Physicians of National Medicine, Alternative Medicine Association, National Expert Commission on Research and Development in National Medicine and the geo-political zones of



Nigeria.<sup>15</sup> They shall hold office for a period of 5years and may be re-appointed for a further period of 5years.<sup>16</sup>

The functions of the commission as elaborately enumerated in section 4 of the Bill includes: to improve the efficacy of traditional medicinal plants and herbs, encourage the combination of traditional alternative medicine with its western counterparts, so as to use the latter's advanced technologies to improve, formulate and employ uniform cultivation and production standards of traditional medicine, so as to prevent pollution from pesticides and fertilizers, ensure the purity of traditional medicine, reconcile the impact of different geographical environments on herbal medicines and thus establish fixed manufacturing bases, validate through scientific research of the various claims of traditional medicine by the practitioners, improve and integrate traditional medicine in the National Health Care System, prepare or formulate a criteria for the registration and maintenance of a register of all nature medicine practitioners, herbalist, healers birth attendants etc throughout Nigeria, development and promotion of traditional medicine and pharmacy including drug manufacturing from Nigeria's local medicinal plant and herbs, other natural materials as it relates to practice in traditional medicine, and other specialists, homeopathic, osteopathic, naturopathic spiritual medicine, acupuncture and other forms of healing arts; establish training centers with approved syllabus for the practitioners of traditional medicine, increase public interest in the development and utilization of traditional medicine, educate practitioners of traditional medicine and improvement of the medicine services currently rendered by them, through improved level of hygiene and standard practices; improve training of specialists in traditional medicine, acupuncture, naturopathic, osteopathic, Homeopathic, Herbal Medicine and other forms of healing arts, explore the possibility of manufacturing units attached to some of the existing hospitals and also a model clinic of traditional medicine in all zones, states and local Governments in Nigeria, promotion of scientific research and clinical trials into medicinal plants, herbs and pharmacy, cultivate and plant medicinal plants make a proper identification of mineral substances used in traditional medical practice and the translation of relevant information into Nigerian languages, establish collaboration and co-operation with similar agencies, institutes within or outside Nigeria, collect, publish disseminate and exchange information on traditional medicine and the establishment of informative library, integrate benefits aspects of traditional medicine into the

---

<sup>15</sup> See *National Health Bill* (n 7), section 2(1) (a) (i) – (iv).

<sup>16</sup> *Ibid*, section 2 (3).

health care delivery system, develop, produce and supply applications required for diagnosis and treatment in traditional medicine, promote interaction between practitioners of traditional medicine, allopathic doctors and other health related workers, participate in conducting seminars, workshop and conferences in traditional medicine, validate through scientific research of the various claims of traditional medicine practitioners, collaborate with international research centers, NGO, Universities, Industries and other national and international agencies and authorities in the areas that are relevant to the traditional professional, promote active participation of Nigeria in the activities of the World Health Organization on the proper use of traditional medicine and other specialist and Agencies involved in traditional medicine applications and practices and carry out such other activities as are necessary or expedient for the actualization of the purpose of this Act.<sup>17</sup>

While the establishment of the commission is laudable as it is the regulatory body for the traditional medicine practice throughout Nigeria, this is only but a pipe, as the bill has not been passed into law.

#### *Complementary and Alternative Medical Council of Nigeria*

Another major regulatory body in Nigeria is the Complementary and Alternative Medical Council of Nigeria<sup>18</sup>, whose purpose is to promote the growth and regulate the practice of alternative medicine. Under the enabling law, the Council is primarily concerned with the alternative and complementary medicine to the exclusion of traditional medicine,<sup>19</sup> but an analysis of this agency as part of the regulatory framework becomes germane due to the fact that traditional medicine and complimentary/alternative medicine are used interchangeably in some countries.<sup>20</sup>

---

<sup>17</sup> *An Act to Establish the Complementary and Alternative Medical Council of Nigeria to Promote the Growth and Regulate the Practice of Alternative Medicine, and for the Other Matters Connected therewith Bill*, Nigeria, section 4(i) (a) – (z) (hereinafter Complementary and Alternative Medicine) available at

<http://www.nassnig.org/nass2/legislation.php?id=1433>, accessed on 25 October 2014

<sup>18</sup> *Complimentary and Alternative Medical Council of Nigeria Bill* (n 17).

<sup>19</sup> *Ibid*, section 14.

<sup>20</sup> See 'Legal Status of Traditional Medicine and Complimentary/Alternative Medicine: A worldwide review', *World Health Organization*, 2001 available at [www.who.int/medicinedocs/en/d/jh29](http://www.who.int/medicinedocs/en/d/jh29), accessed on 25 October 2014.

The *Complementary and Alternative Medicine* bill sets up the council and charges the council with the following responsibilities: prepare and formulate criteria and standards for the registration and maintenance of an e-register of complementary and alternative Medical Practitioners in Nigeria;<sup>21</sup> determine what standards of knowledge and skill are to be attained by persons seeking to become members of the relevant professions and raising those standards from time to time as circumstances may require;<sup>22</sup> secure in accordance with the provision of this Act the establishments and maintenance of an e-register of persons registered under this Act as members of the relevant profession and to publish from time to time the list of those members;<sup>23</sup> conduct assessment examinations in the relevant disciplines, register and /or issue practicing license to qualified candidates as appropriate, and for such purpose as the council shall prescribe fees in respect thereof;<sup>24</sup> create and regularly upgrade minimum standard required for the establishment of clinics, hospitals of complementary and alternative medicine;<sup>25</sup> register, de-register, expel, suspend, seal and apply any form of disciplinary measure that is deemed fit by the council for any erring practitioner, clinic, hospital, or private medical institution of complementary and alternative medicine;<sup>26</sup> validate through scientific research the various claims on complimentary an alternative medicine products by the manufacturers and practitioners;<sup>27</sup> promotion of scientific research and clinical trials in complimentary and alternative medicine;<sup>28</sup> collate, publish, disseminate and exchange information on complementary and alternative medicine research;<sup>29</sup> establish a data base management system/library on all forms of alternative complimentary medicine resources;<sup>30</sup> determine the standards required for academic and non-academic staff, offices, classrooms, structures, equipment and learning environment in respect of institution(s) established in Nigeria for the purpose of awarding certificates of diplomas and degrees in any discipline(s) of

---

<sup>21</sup> *Complimentary and Alternative Medical Council of Nigeria Bill* (n 17), section 4 (1) (a).

<sup>22</sup> *Ibid*, section 4 (1) (b).

<sup>23</sup> *Ibid*, section 4 (1) (c).

<sup>24</sup> *Ibid*, section 4 (1) (d).

<sup>25</sup> *Ibid*, section 4 (1) (e).

<sup>26</sup> *Ibid*, section 4 (1) (f).

<sup>27</sup> *Complementary and Alternative Medical Council of Nigeria Bill* (n 17), section 4 (1) (g).

<sup>28</sup> *Ibid*, section 4 (1) (h).

<sup>29</sup> *Ibid*, section 4 (1) (i).

<sup>30</sup> *Ibid*, section 4 (1) (j).

complementary and alternatives medicine;<sup>31</sup> evaluate foreign diplomas and degrees in any discipline(s) of complementary and alternatives medicine for purposes of registering the practitioner in Nigeria;<sup>32</sup> ensure the full integration of complementary and alternative medicine in the national healthcare delivery system;<sup>33</sup> promote integration between practitioner's o complementary and alternative and other health related workers;<sup>34</sup> and to carry out any other activity that would assist in achieving the objectives of the council.<sup>35</sup>

The council consists of an executive chairman,<sup>36</sup> a registrar who also doubles as the secretary to the council,<sup>37</sup> the national president, Deputy president and secretary of the complementary and Alternative Association of Nigeria,<sup>38</sup> a representative each from the six geopolitical zones in Nigeria who must be a registered member of complementary and Alternative Medical Association of Nigeria;<sup>39</sup> a representative from Federal Ministry of Health,<sup>40</sup> a representative from the armed forces alternative medical.<sup>41</sup> The Executive Chairman and registrar of the council shall be appointed by the president of the Federal Republic of Nigeria<sup>42</sup> and they shall together with other members of the council shall hold office for a period of 5 years and may be reappointed for a further period of 5 years on such terms and conditions as may be specified in their letters of appointment.<sup>43</sup>

Despite the elaborate functions and scope of the council as enumerated in the bill, the bill has not been passed into law therefore rendering the proposed regulation of alternative medicine via the bill impossible. We humbly contend that this provision therefore compromises the independence of the council. Our argument on this point is further justified by section 3 (3) (a) – (c) of the Bill

---

<sup>31</sup> *Ibid*, section 4 (1) (k).

<sup>32</sup> *Ibid*, section 4 (1) (l).

<sup>33</sup> *Ibid*, section 4 (1) (m).

<sup>34</sup> *Ibid*, section 4 (1) (n).

<sup>35</sup> *Ibid*, section 4 (1) (o).

<sup>36</sup> *Ibid*, section 2 (a).

<sup>37</sup> *Ibid*, section 2 (b).

<sup>38</sup> *Ibid*, section 2 (c).

<sup>39</sup> *Ibid*, section 2 (d).

<sup>40</sup> *Ibid*, section 2 (e).

<sup>41</sup> *Ibid*, section 2 (f).

<sup>42</sup> *Complementary and Alternative Medical Council of Nigeria Bill* (n 17).

<sup>43</sup> *Ibid*, section 3(2).

which empowers the president to remove a member of the council at any time for either the inability of that member to discharge the functions of the office (whether rising from infirmity of mind or any other cause) or for misconduct or if the president is satisfied it is not in the interest of the council that the member should continue in office.

*National Agency for Food and Drugs Administration Control (NAFDAC)*<sup>44</sup>

This Agency is the Government Agency in charge of the regulation of food, drugs and other consumer products. It is Nigeria's sole body that regulates and controls the manufacture, importation, exportation, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, chemical and locally produced pre-packaged water. National Agency for Food and Drug Administration and Control is a parastatal of the Federal Ministry of Health and it is under the direct control of the minister for health. Its functions are specified in section 5 of the Act as follows; regulate and control the importation, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals; conduct appropriate tests and ensure compliance with standard specification designated and approved by the council for the effective control of the quality of food, drugs, cosmetics medical devices bottled water chemicals and their raw materials as well as their production process in factories and other establishments; undertake appropriate investigation to the production premises and raw material for food, drugs, cosmetics, medical devices, bottled water, chemical and establish relevant assurance system including certification of the production sites and of regulated products; undertake inspection of imported food, drugs, cosmetics, medical devices bottled water; chemicals and establish relevant quality assurance systems, including certification of the production sites and of regulated products; compile standard specifications and guidelines for the production, importation, exportation, sale and distribution of food drugs, cosmetics, medical devices bottled water and chemicals; undertake the registration of food, drugs, cosmetics, medical devices, bottled water and chemicals; control the expectation and issue quality certification of food, drugs, cosmetics, medical devices, bottled water and chemicals intended for export; establish and maintain relevant laboratories or other institutions in strategic areas of Nigeria as may be necessary for the performance of its function under the Act;

---

<sup>44</sup> *An Act to establish the National Agency for Food and Drug Administration*, 1993, Nigeria, NAFDAC ACT CAP N1 LFN 2004, section 14(3).

pronounce on the quality and safety of food drugs, cosmetics, medical devices bottled water and chemical after appropriate analysis; undertake measures to ensure that the use of narcotic drugs and psychotropic substance are limited to medical and scientific purposes; grant authorization for the importation and export of narcotic drugs and psychotropic substances as well as other controlled substances; collaborate with the National Drug Law Enforcement Agency in measures to eradicate drug abuse in Nigeria; advice Federal, State and Local Government, the private sector and other interested bodies regarding the quality, safety and regulatory provisions on food, drugs, cosmetics, medical devices, bottled water and chemicals; undertake and coordinate research programmes on the storage, adulteration, distribution and rational use of food, drugs, cosmetics, medical devices, bottled water and chemicals; issue guidelines on approvals and monitor the advertisement of food, drugs, cosmetics, medical devices, bottled water and chemicals; compile and publish relevant data resulting from the performance of the function of the Agency under the Act from other sources; sponsor such National and International conferences as it may consider appropriate; liaise with relevant establishments within and outside Nigeria in pursuance of its functions; determine the suitability or otherwise of medicine, drugs, food products, cosmetics, medical devices or chemicals for human and animal use; carry out such activities as are necessary or expedient for the performance of its functions under the Act.<sup>45</sup>

The Agency is conferred with the power of prosecution under section 25(7) of the Act which provides among other things, that any officer of the Agency may, with the consent of the Attorney General of the Federation, conduct criminal proceedings in respect of offences under the Act or Regulation. The Federal High Court has exclusive jurisdiction to try offences under the Act. The Agency has formulated guidelines for regulating products for the protection of the interest of the public and food, drug and cosmetic manufacturers. Other guidelines of the agency include guidelines for registration and production of packaged water, processed food, drugs and cosmetics in Nigeria and registration and listing of herbal medicines and regulated products.<sup>46</sup>

---

<sup>45</sup> See generally *An Act to establish the National Agency for Food and Drug Administration* (n 44), See section 5 (a) – (t).

<sup>46</sup> The guidelines has as its main thrust and focus, the need to ensure quality and safety of herbal medicinal products which include large scale manufactured products, imported herbal medicinal products, homeopathic medicinal products. ‘The Role of NAFDAC’, no.

These guidelines are very important in the control of Trado-Medical practice, as they ensure that the herbal medicine produced locally is of set standard and also aimed at checking substandard herbal medicine and adulteration which are major challenges of Trado-Medical in Nigeria. Once the agency approves a new herbal medicine, the new herbal medicine becomes valid for Trado-Medical practitioners to use or prescribed it to their patient. The Trado-Medical practitioner must continue to submit every two years the same product for reassessment and also submit to the agency periodic report on any cases of adverse reaction.

#### *Nigeria Natural Medicine Development Agency (NNMDA)*

The Federal Ministry of Science and Technology (FMST) is conferred with the critical and strategic mandate of research and development activities in Nigeria. The Ministry charts the course of scientific and technological development of the Nation through Research and Development (R & D) in all areas, targeted at improving the quality of life of the citizens, national socio-economic growth and development, and positioning the country to be relevant and competitive in a growing global competitive knowledge based economy.

It executes its mandate through various targeted extra ministerial department agencies, institutions, programmes and centres and its mandate in research and development in Natural medicine is pursued through the *Nigeria Natural Medicine Development Agency (NNMDA)*. The Agency's R & D efforts are designed to fit in the overall improved healthcare delivery, job and wealth creation, improve quality of life and socio-economic growth development plans of the Nation.

The Nigeria Natural Medicine Development Agency (NNMDA) was established in 1997 by a Ministerial Order, in accordance with the National Science and Technology Act of 1980 which empowers the Honourable Minister of Science and Technology to establish Research Institutes where local materials are available.<sup>47</sup>

This is to ensure that Federal Ministry of Science and Technology (FMST) actualizes its critical and strategic mandate to research, develop, document,

---

9, *Paxherbals Magazine*, 2009 available at <http://magazine.paxherbals.net/paxherbal-magazine/issue-9-dec-2008-jan-2009.html>, accessed on 16 December 2013.

<sup>47</sup> Section 1(1) of the Act.

preserves, conserve and promote the Nation's Natural Medicine defined as 'Traditional (indigenous) Healthcare Systems, indigenous medication and non-medication healing arts, science and technologies' and assist facilitate their integration into the National Healthcare Delivery System, as well as contribute to the Nation's efforts towards improved healthcare delivery, wealth and job creation and national economic growth and development.

This was further reinforced by the Government White paper on the 199 Report of the Presidential Policy Advisory Committee (*The General Danjuma Report*) of the Federal Government, which, in its views and comments acknowledge the relevance of the Agency stating that:-

The Nigeria Natural Medicine Development Agency, a parastatal of the Federal Ministry of Science and Technology, which is responsible for the Promotion and Development of indigenous medicine, would be adequately funded to enable it step up its research and development activities". A draft bill to finalize the establishment of the Agency is awaiting Federal Executive Council consideration and subsequent onward transmission to the National Assembly for consideration.

The mandate of the Agency includes: research, collate, document, develop, promote and preserve knowledge, practice and products of Natural Medicine (Traditional Systems, Traditional Medication and non Medication Healing Arts, Science and Technology) with a view to facilitating its integration into the National Healthcare Delivery System; identify, document and maintain a comprehensive National Inventory of Nigeria's Medicinal, Aromatic and Pesticidal Plants (MAPPs), animal and animal parts and minerals and other natural products used for human and veterinary/livestock healthcare management, maintenance, care and support; promote the production of standardized extracts, nutraceuticals, health foods, dietary supplements, body care products and galenicals of Traditional remedies from local herbs and MAPPs through appropriate public-private partnership schemes, for further research and commercialization; develop a Digital Virtual Library, a dedicated focal reference centre for research and development of Traditional Medicine and Medicinal, Aromatic and Pesticidal Plants (MAPPs) of Nigeria; initiate appropriate mechanisms for the development of intellectual Property Right regime (IPR) for Traditional Medicine Knowledge and Practice (TMKP); facilitate the development of low cost and appropriate process and packaging technologies for small and medium scale industrial production and commercialization of Traditional Medicines; initiate policy that would enhance



the knowledge, attitude, practice, products, science and technology and potentials of Natural Medicine with a view to fully developing and integrating it into the National Healthcare Delivery System; facilitate the cultivation, preservation and conservation of MAPPs and maintain pilot and /or experimental medicinal farms, gardens and herbaria in the six geopolitical zone of Nigeria and promote sustainable use of natural medicine resources through the development of good Agro-techniques for the cultivation and conservation of medicinal plants; develop post-harvest and process technologies on collection, process and storage of Medicinal Aromatic and Pesticidal Plant materials to ensure good quality stock and proper value addition to end products and formulations; promote manpower development and training, public sensitization and awareness creation in all areas of Natural medicines (indigenous traditional health systems, medication and non-medication healing arts, sciences and technologies); develop and implement any other activities aimed at developing, improving and promoting natural medicine.

#### *Standard Organisation of Nigeria*<sup>48</sup>

This Organisation is primarily concerned with manufactured products, their marketing, exports, imports and industrial standards generally. Standard Organisation of Nigeria (SON) was established by an enabling Act.<sup>49</sup> The aims and objectives of the Organisation include preparation of standards relating to products, measurements, materials and processes, among others and their promotion at national, regional and international levels.

The Organization through the Nigeria Industrial Standard (NIS) ensures that a material, product or procedure is fit for the purpose for which it is intended. Under the laws industrial standards fall into six categories namely glossaries or definition of terminology, dimensional standards performance standards, standard method of tests codes of practice and measurement standards. To bring the advantages of standardization within the reach of all consumers, the organization operates a certification scheme manufacturers whose products meet the requirement of Nigerian Industrial Standards (NIS) are issued with permits to use the certification mark or the Nigerian “Mark of Quality. The significant of this mark is to convey to the consumer an assurance that the goods bearing the mark have been tested and certified by the organization to

<sup>48</sup> For detail, see *Standard Organisation of Nigeria Act, 1971*, Nigeria, Cap S1 Laws of the Federation 200.

<sup>49</sup> Act no.56 of 197.

have complied with the relevant Nigerian industrial standard and that they may therefore be purchased with reasonable assurance of quality.

The organization has three principle laboratories, of which food and chemical laboratory constitutes a part, and is relevant to this study. This laboratory performs physical chemical and microbiological test on foods and chemical samples.

The organization also carries out the registration of both locally manufactured and imported products. The registration programme is primarily designed to provide data or inventory of products and their specified quality parameters. It further provides information about the manufacturer and therefore affords trace ability of the especially when considering specific quality requirements and consumer protection.

There are some products termed life danger items which non-conformance to required specification pose potential danger to life and property and therefore must be not allowed to reach the consumer unless they have been tested and conformed suitable for example food products.

It is pertinent to say that the Organization has the mandate from the Act to examine all goods and seal up warehouse where substandard products are stored. Its activities are not aimed essentially at Trade-medical medicine.

### *Consumer Protection Council*

The *Consumer Protection Council Act 1992* provide for the establishment of Consumer Protection Council and the various State committees with the mandate to carrying out the function under section 2 as follows; provision of speedy redress to consumer's complaints through negotiations, mediation and conciliation; seek ways and means of removing or eliminating from the markets hazardous products and causing offenders to replace such products with safer and more appropriate alternatives.

In the exercise of the above functions, the council has power, amongst other things to: apply to court to prevent the circulation of any product which constitutes an imminent public hazard; compel manufacturers to certify that all safety standards are met by their products and cause as it deems necessary, quality tests to be conducted on consumer products.

Section 9(1) of the Act states that a manufacturer or distributor of a product, on becoming aware of any unforeseen hazard is under a duty to notify the public and withdraw the product from the market. In addition, Section 11 provides that any person who issues or aids in issuing a wrong advertisement about a product is guilty of an offence and failure to attend and or testify before the council or the state committee is also an offence. The same also applies to a failure to answer any lawful inquiry.

Finally, supply of false information and violation of an order of the council or state committee make one liable for an offence. The offences mentioned above may attract a fine or imprisonment or both.

Other major regulatory legislations at the national level include the *Trade Malpractice (Miscellaneous Offences) Act 1992*, which prohibits deceptive practices, sharp practices relating to weights and measures, advertisement for non-existent products and holds liable any individual who labels, packages, sells, offers for sale or advertises any product in a manner that is false or misleading or is likely to create a wrong impression as to its quality character, brand name, value, composition merit or safety, commit an offence. There is also the *Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act 1999*, which prohibits the production, importation, manufacture, sale and distribution of any counterfeit, adulterated, banned or fake drugs. It also prohibits a person from selling any drug in an open market without permission from the proper authority. The Act further provides that any one who produces, imports, manufactures, sells, distributes, or is in possession of or sells or displays for the purpose of sale, or aids or abets any person to produce, import, manufacture, sell, distribute or display for the purpose of sale, any counterfeit, adulterated, banned or fake, substandard or expired drug or unwholesome processed food, in any drug or poison whatsoever in any market, kiosk, means of transportation or in any other place not duly licensed or registered for the purpose of sale and distribution of drugs or poison shall be guilty of an offence.<sup>50</sup>

*Bendel State (Applicable in Edo State) Traditional Medicine Board Edict*<sup>51</sup>

The Edo State Ministry of Health is in charge of Traditional Medicine in Edo State by virtue of the Bendel State Traditional Board Edict of 1985. The State

---

<sup>50</sup> *Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act, 1999*, Nigeria, section 1.

<sup>51</sup> *Bendel State (Applicable in Edo State) Traditional Medicine Board Edict*, no. 17 of 1985, Nigeria.

Government took over the administration of traditional medicine in 1983 when a Steering Committee was constituted. Thereafter, a traditional medicine Board was inaugurated in 1984. The Board has a membership of 11 persons and their duties are spelt out in section 8(1) of the Edict. The Registration of traditional doctors is provided for in the Edict under section 9(1) and (2) as follows; details of the nature and scope of traditional healing practice, nature and identity of herbs used in such practice, suitable place or premises for practice, satisfaction of any conditions it may impose and any information it may require.<sup>52</sup>

An applicant may be required, for this registration, to satisfy the board regarding the adequacy of his/her experience by passing a proficiency test to be conducted by the Board. Once a person is registered as a traditional doctor, he is expected to live up to the ethics or code of conduct which are as follows; He/she must not carry out major operation, he must not involve himself in a practice, whereby he purports to say that his/her medicine can make people very rich, he/she must not accuse people of being wizards or witches, he/she must not commercialize traditional healing and he must not commit adultery with the patients. The license of a Traditional practitioner can be withdrawn if he/she is found wanting and his/her recognition is also withdrawn and may be prosecuted.<sup>53</sup>

The problem according to the secretary of the Board is that since all the traditional doctors are self employed, control is not usually easy. Another problem cited in traditional healing method is that trado-medical practice is closely associated with religion; because to some practitioners, knowledge of the healing arts, resides in the bosom of a Divine Being, who dispenses it through the agency of traditional doctors; some patients interviewed believed that healing comes directly from God. In Africa, in general, and in Nigeria in particular, the oral tradition have it that traditional medicine and religion are inseparable, much as it came directly from the supreme deity and operated through a tutelary divinity or spirit. Among the *Nupes*, in preparing or administering medicine the name *Soko* (god) is mentioned and the medicine is applied with reference to God, hence some Trado Medical Practitioners claim to be directed by the spirit.

---

<sup>52</sup> *Bendel State (Applicable in Edo State) Traditional Medicine Board Edict* (n 51), section 1(a) – (e).

<sup>53</sup> *Ibid*, section 19.

The Edict lacks the potency of enforceability of discipline among the Traditional doctors. There is no penalty for non registration or withdrawal from the Association. Every Trado-Medical practitioner in Edo State is at liberty to practice Traditional-Medicine whether he is a registered and licensed Trado-Medical practitioner or not and since there is no section in the Edict that empowered the Board members to stop non licensed traditional practitioners from practice, the issue of discipline of practitioners will remain a problem.

### **Delta State Traditional Medicine Board Law**<sup>54</sup>

The Board was established by virtue of Delta State Traditional Medicine Board Law<sup>55</sup> with retrospective commencement date of 4<sup>th</sup> March 1985. Thus, the effect of the commencement date is as a result of the creation of Delta State from Bendel State where the law had its roots as a new State. The Delta State Traditional Medical Board Law apparently has its roots from the existing Bendel State Traditional Board Edict of 1985 applicable to Edo State. Both laws have the same scope with some modifications in the case of Delta State. It is on this basis that references will only be made to highlight the modifications. The law provides definition of the following key words: Traditional medicine, Traditional health institution and Traditional medicine practitioner.<sup>56</sup>

The Board is empowered with the following functions: to carry out the directive of the government on traditional medicine; appoint, promote and discipline its staff subject to guidelines based on the rules and regulations applicable in the Civil service; regulate the practice of traditional medicine in the State; to register traditional medicine practitioners and maintain a register of all traditional medicine practitioner in the State; compile and collate statistics of attendance of patients at traditional health institutions including the number of burns and deaths occurring in such centres; formulate plans for the development of standards in traditional health institutions throughout the State; consider, approve and classify herbs for curing or preventing ailments; to nationalize the different methods of traditional healing; propose and pilot the development of traditional herbs into preservable forms for easy prescription to patient; promote research into herbs and the various methods of traditional medicine treatment; promote research into traditional phenomena and beliefs

---

<sup>54</sup> *Delta State Traditional Medicine Board Law*, 1985, Nigeria, Cap 45 vol. 2.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, section 2.

and their roles in traditional medicine and healing methods; standardize the use of oracular divination in traditional medicine treatment; engage with other experts to identify and document the various herbs used in traditional medicine healing with their universally accepted scientific names.<sup>57</sup>

In addition to the function the Board is also mandated with the following powers- standardize training in the art of traditional medicine practices; regulate the code of conduct and practice of traditional herbalists and traditional medicine practitioners; establish within the State registration offices from purposes of registering traditional herbalists, birth attendants, and other practitioners within the State; to issue licence to registered traditional medicine practitioners; charge and collect fees for registration and to review such fees with the approval of the Commissioner for Health; confer the title Registered Traditional medicine Practitioner on those accepted as qualified and registered traditional medicine practitioners; do anything necessary with the approval of the commissioner which in his opinion shall ensure the achievement of the aims and objective of this law.<sup>58</sup>

### **Lagos State Traditional Medicine Board<sup>59</sup>**

The Lagos State traditional medicine Board was established by virtue of section 121 (1) of the Lagos State Health Sector Reform Law<sup>60</sup>. The Board by virtue of section 121(2)<sup>61</sup> shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. The board consists of 12 members who must possess the following qualification, namely, the Chairman must be a University graduate registered with the traditional medicine Board with a minimum of 10 years experience. A member must have cognate experience of 5 years, and must be nominated by his Association. Two representatives shall be nominated to represent the Health Service Commission. Other members appointed shall ex-officio include a member representing the Pharmaceutical Society of Nigeria, Lagos Branch, a Legal Practitioner of not less than 10 years post call experience, a representative of Lagos State Ministry of Education, Lagos State Drugs Quality Assurance Laboratory, the Registrar of the Board who must be a University graduate with

---

<sup>57</sup> *Delta State Traditional Medicine Board Law* (n 54), section 8 (a) –(m).

<sup>58</sup> *Ibid*, Section 12 (a) – (g).

<sup>59</sup> *Lagos State Health Sector Reform Law*, 2006, Nigeria, section 121(1).

<sup>60</sup> *Ibid*.

<sup>61</sup> *Ibid*.

considerable experience in traditional medicine, and a registered Trado-Medical practitioner of at least 5years experience.

The functions of the board is to facilitate, coordinate and harness all efforts aimed at the development of traditional medicine in the state;<sup>62</sup> establish institutional framework and purpose policies for the practice of traditional medicine in the State;<sup>63</sup> liaise with the relevant regulatory authorities on traditional medicine at the Federal and Local Governments with respect to implementation of the National policies and guidelines on traditional medicine;<sup>64</sup> encourage and promote the establishment of model services and institutions on traditional medicine such as clinics, school, botanical gardens, herbal centres, drug manufacturing units, etc. in the state;<sup>65</sup> collect, publish, disseminate and exchange information on traditional medicine and develop a State Traditional Medicine Information system on a regular basis;<sup>66</sup> establish and maintain a register of persons entitled to practice traditional medicine in the State and publish annually, a list of persons so registered;<sup>67</sup> prepare and review, from time to time, code of practice for practitioner of traditional medicine in the State;<sup>68</sup> develop curricula of studies, and determine the standards of knowledge and skills for training in traditional medicine in the State in collaboration with other relevant agencies or bodies;<sup>69</sup> accredit institutions properly organized and equipped for conducting the whole or any part of a course of training on traditional medicine approved by the Board in collaboration with relevant agencies and bodies;<sup>70</sup> compile and maintain a register of all Traditional birth attendants, Nurses, Midwives and Traditional Medicine Ingredients/Product Sellers or other practitioners of Traditional medicine in the State;<sup>71</sup> and perform such other functions as are necessary for carrying out its objectives under this Part.<sup>72</sup>

---

<sup>62</sup> *Lagos State Health Sector Reform Law* (n 59), section 125(a).

<sup>63</sup> *Ibid*, section 125 (b).

<sup>64</sup> *Ibid*, section 125 (c).

<sup>65</sup> *Ibid*, section 125 (d).

<sup>66</sup> *Ibid*, section 125 (e).

<sup>67</sup> *Ibid*, section 125 (f).

<sup>68</sup> *Ibid*, section 125 (g).

<sup>69</sup> *Ibid*, section 125 (h).

<sup>70</sup> *Lagos State Health Sector Reform Law* (n 59), section 125 (i).

<sup>71</sup> *Ibid*, section 125 (j).

<sup>72</sup> *Ibid*, section 125 (k).

Section 126 of the Law provides for the duties or functions of the Board which it shall have the powers to carry out and the functions includes; determining the standards for certifying persons seeking registration with the Board as traditional medicine practitioners,<sup>73</sup> making regulations for the discipline of erring traditional medicine practitioners;<sup>74</sup> determining the guidelines for the establishment of Committees for the regulation and practice of traditional medicine in the State;<sup>75</sup> Establish and periodically review and update the guidelines for the regulation of traditional medicine practice in the State with a view to protecting the population from quackery, fraud and incompetence;<sup>76</sup> right of access to all records of any institution or bodies to which this Law applies;<sup>77</sup> entering into collaborative and cooperative agreements or arrangements with agencies and bodies with similar objectives within and outside the State;<sup>78</sup> considering for approval or otherwise any qualification in traditional medicine obtained from foreign institutions on training schools recognized by government of the countries where the institutions or schools are located and the Board may withdraw such approval in line with the provisions of this Law;<sup>79</sup> standardizing training in traditional medicine and type of medical service to be rendered;<sup>80</sup> power to establish within the State registration offices for purposes of registering traditional herbalists, birth attendants, and other practitioners in traditional medicine practicing within the State;<sup>81</sup> powers to lay down conditions to be followed by traditional herbalists, birth attendants and other practitioners in traditional medicine in clinics and hospitals, within the State;<sup>82</sup> power to regulate the code of conduct and practice of traditional herbalists or healers, birth attendants or other practitioners in traditional medicine in the State;<sup>83</sup> charge fees for and collect fees for registration and to review such fees;<sup>84</sup> power to regulate the code of conduct

---

<sup>73</sup> *Ibid*, section 126 (a).

<sup>74</sup> *Ibid*, section 126 (b).

<sup>75</sup> *Ibid*, section 126 (c).

<sup>76</sup> *Ibid*, section 126(d).

<sup>77</sup> *Ibid*, section 126(e).

<sup>78</sup> *Ibid*, section 126(f).

<sup>79</sup> *Ibid*, section 126 (g).

<sup>80</sup> *Ibid*, section 126(h).

<sup>81</sup> *Ibid*, section 126(i).

<sup>82</sup> *Lagos State Health Sector Reform Law* (n 59), section 126(j).

<sup>83</sup> *Ibid*, section 126(k).

<sup>84</sup> *Ibid*, section 126(l).



and practice of traditional herbalists;<sup>85</sup> power to regulate the conduct and practice of Traditional Medicine Ingredients/Products Sellers;<sup>86</sup> power to make regulations with respect to sale of herbal products within the State;<sup>87</sup> and anything generally which in its opinion shall ensure the achievements of the purposes of this Board.<sup>88</sup>

By virtue of section 126(q), the Board shall be responsible for the overall supervision of traditional medicine, hospitals, clinics and traditional institutions owned by traditional herbalists or healers, birth attendants or other practitioners in traditional medicine within the State and the supervision and maintenance of any traditional clinic, health centres and hospitals that the Board may set up and operate.

The Traditional Medicine Board Disciplinary Committee's power of sanction for professional misconduct is provided under section 134, 135 and 136 of the law. It further provides that where; a person practicing under this law is deemed by the Disciplinary Tribunal to be guilty of infamous conduct in any professional respect; or a person practicing under this Law is convicted by a law court or committee in the State or elsewhere having power to award imprisonment, of an offence (whether or not an offence punishable with imprisonment) which in the opinion of the Disciplinary Committee is incompatible with the status of a traditional medicine Practitioner; or the Disciplinary Committee is satisfied that the name of any person has been fraudulently registered; the Disciplinary Committee may, if it deems fit, make a recommendation to the Board to give direction reprimanding that person or ordering the Registrar of the Board to strike his name off the relevant part of the register. Apart from the Disciplinary Committee, the law provides for the establishment of the Lagos State Traditional Medicine Board Investigating Panel<sup>89</sup>.

Though the Lagos State Law is more comprehensive than the Bendel State Law applicable to Edo State, the issue of control and discipline is still a major problem, since there are no provisions to make it compulsory for all Trado Medical Practitioners to register with the board before they can engage in Trado-Medical Practice.

---

<sup>85</sup> *Ibid*, section 126(m).

<sup>86</sup> *Ibid*, section 126(n).

<sup>87</sup> *Ibid*, section 126 (o).

<sup>88</sup> *Ibid*, section 126 (p).

<sup>89</sup> *Lagos State Health Sector Reform Law* (n 59), sections 138- 9.

Effective enforcement of this law has been fraught with problems, such as the problem of adequate discipline of practitioners by the Board since not all the practitioners are under its control and training, inadequate manpower to enforce the laws as provided, lack of awareness by practitioners of the existence and objectives of the law, modernization of the preparation of drugs and the administration of such drugs.

The highlighted problems of Nigeria in effectively enacting a specific law to regulate Trado-Medical Practice has necessitated the writers to look at other jurisdiction and state how the subject matter have been tackled.

### **The Trado-Medical Regulatory Framework of Ghana**

Missionaries introduced allopathic medicine to Ghana during the colonial period. After independence in 1957, a number of medical projects were initiated by the Government with the aim of promoting allopathic medicine as Ghana's official medical system.<sup>90</sup> Successive governments have also recognized both traditional and complementary/alternative medicine as necessary to complement the orthodox health care system.

There are a number of associations of traditional medicine practitioners, including the Ghana Psychic and Traditional Medicine Practitioners' Association, which was formed in 1961<sup>91</sup>. In 1999, the Government brought all the traditional medicine associations together under one umbrella organization, the Ghana Federation of Traditional Medicine Practitioners' Associations.<sup>92</sup> Restrictions contained in the Poisons Order 1952 limit the use of the substances listed in the Order to registered medical practitioners. The Medical and Dental Decree of 1972 and the Nurses and Midwives Decree of 1972 allow indigenous inhabitants of Ghana to practice traditional medicine, provided they do not practice life endangering procedures.

---

<sup>90</sup> E. N Mensa, 'Traditional Medicine in Ghana: Situation, policies, development and challenges of the 21<sup>st</sup> Century', International Congress on Traditional Medicine, Beijing, China, 22 – 24 April 2000.

<sup>91</sup> K Oppong-Boachie, 'Strategy for traditional medicine for the African region: the experience of Ghana', *WHO consultative meeting on strategy for traditional medicine for African region*, 2001 -2010, Harare, Zimbabwe, 13 – 15 December 1999.

<sup>92</sup> E. N Mensa (n 90).

The Centre for Scientific Research into Plant Medicine was established in 1975, and in addition to its research capacity, the centre operates a hospital providing both traditional and allopathic medicine. Until the passage of the Traditional Medicine Practice Act, the Government worked with the Ghana Psychic and Traditional Medicine Practitioners' Association to license and register traditional medicine practitioners and to ensure a standard of care.<sup>93</sup>

The *Traditional Medicine Practice Act 595* was drafted by traditional medical practitioners, placed before the Parliament in 1999, and passed on 23 February 2000. The Act establishes a Council to regulate the practice of traditional medicine, register practitioners and license them to practice and to regulate the preparation and sale of herbal medicines. The Act is divided into four parts. Part I concerns the Traditional Medicine Practice Council, including its establishment; function; membership; tenure of members; meetings; the appointment of committees such as Finance, General Purposes, Research, Training, Ethics, and Professional Standards; granting of allowances to members; and the establishment of regional and district offices. Part II covers the registration of traditional medical practitioners. Clause 9 states that no person shall operate or own a practice or produce herbal medicines for sale unless registered under this act. The qualifications for registration are stated in Clause 10. Clause 11 provides for the temporary registration of foreigners who have a work permit, satisfy the requirements for registration under this act, and have a good working knowledge of English or a Ghanaian language. The rest of Part II deals with matters concerning renewal of the certificate of registration, suspension of registration of practitioners, cancellation of registration, and representation to the Council. In Clause 13, it is provided that the Minister of Health, on the recommendation of the Council in consultation with recognized associations of traditional medicine practitioners, may regulate the titles used by traditional medicine practitioners based on the types of services rendered and the qualifications of the practitioners. Part III covers matters concerning the licensing of practices: mandatory licensing; method of application and conditions for licensing; issuance and renewal of licenses; acquisition and display of licenses; ownership and operation of a practice by a foreign practitioner; revocation, suspension, and refusal to renew a license and representations to the Council by aggrieved persons; powers of entry and inspection by an authorized inspector; and notification of death to a coroner. Part IV concerns staff for the Traditional Medicine Practice Council as well as financial and miscellaneous provisions, such as the appointment of a registrar,

<sup>93</sup> See Wondergem P Le Grand A, *Herbal medicine and health promotion: a comparative study of herbal drugs in primary health care*, Royal Tropical Institute, Amsterdam, 1990.

the provision of the Register of Traditional Medicine Practitioners, offences and regulations.

The Traditional Medicine Unit<sup>94</sup> under Ghana's Ministry of Health was created in 1991. In 1999, this was upgraded to the status of a directorate. The Ministry, in collaboration with the Ghana Federation of Traditional Medicine Practitioners' Associations and other stakeholders, has developed a five-year strategic plan for traditional medicine, which outlines activities to be carried out from 2000 to 2004. It proposes, among other things, the development of a comprehensive training programme in traditional medicine from basic to tertiary levels. Volume 1 of the Ghana Herbal Pharmacopoeia contains scientific information on 50 medicinal plants. A second volume is currently in preparation. Efforts are being made to integrate traditional medicine into the official public health system. It is expected that by the year 2004, certified efficacious herbal medicines will be prescribed and dispensed in hospitals and pharmacies.

### **Challenges of the Regulatory Framework**

Despite the plethora of regulations and regulatory agencies, the regulation of trado-medical practice in Nigeria is fraught with a number of both legal and administrative challenges which includes conflicts of functions among the various regulatory agencies in the regulation of trado-medical practice in Nigeria. For instance, there have been cases of conflict between the Consumer Protection Council and National Agency for Foods and Drugs Administration in the regulation and removal of hazardous manufactured products by erring producers. A solution to this problem would be to establish an inter-agency committee to jointly enforce the laws that touch on trado-medical practices; or a central coordinating inter-departmental unit to coordinate the activities of the regulatory agencies.

Secondly, there is an absence regulation in the rural areas where majority of the trado-medical practitioners operate from, leaving monitoring of their practices unchecked; thereby, rendering enforcement of the regulations ineffective. Furthermore, the various regulatory agencies have inadequately staffed personnel, and in most cases, majority of the personnel are inadequately trained in the regulation of trado-medical practices and products. A solution to this

---

<sup>94</sup> K Opong-Boachie (n 88).

challenge would be to create offices of the regulatory agencies at least at the Local Government levels and a special department for trado-medical practice monitoring for improved enforcement.

Thirdly, there is presently no specific regulation on the issue of trado-medical practice and traditional medicine. This is because the specific National legislations on the topic have not been passed into law rendering them unenforceable and their objectives merely illusionary. As a result, various State legislations are being resorted to, with minimal success, due to the thorny legal issues of jurisdiction of each State laws. In addition, the Government is responsible for formulating laudable policies without effectively implementing them. For instance, in the 1980s, policies were established to accredit and register trado-medical practitioners and regulate their practice, but they were not implemented. It is the humble view of the authors that the reason for this state of affairs is the lack of political will on the part of Government to see that the various bills and policies on trado-medical practice are passed into law. We humbly submit that change in the negative attitude and political will of Government towards matters relating to trado-medical practice, plus an immediate assent to the various pending legislations on trado-medical practice and their immediate implementation.

Due to the fact that majority of the people who patronize trado-medical practitioners are generally from the rural areas, illiterate and poor; cases of malpractices by these trado-medical practitioners are hardly ever reported to the regulatory agencies for prompt action. A viable solution to checkmate this malaise would to embark upon an aggressive enlightenment campaign in the rural areas to educate the rural dwellers about the risks associated with malpractices and the legal and medical remedies available to them.

The sanctions imposed on offenders are generally not punitive enough to discourage violators from committing offences repeatedly. For instance, some of the existing laws give offender the option of paying fines instead of serving prison term for violation<sup>95</sup>. Such laws are grossly inadequate and discourage deterrents who believe that the financial gains greatly outweigh the punishment. A solution to this challenge would to impose stricter sanctions like prison terms without an option of fine and a further development of the law of tort in respect to negligence by some unscrupulous trado-medical practitioners.

---

<sup>95</sup> See the NAFDAC Act 2004.

There is also the problem of inaccurate data on trado-medical practice in Nigeria. This problem stems from a variety of reasons ranging from the age long attitude of secrecy by trado-medical practitioners about the actual contents of their products, inaccurate register of the exact number of trado-medical practitioners in Nigeria, lack of report to the National Pharmaco Vigilance Centre of the adverse reactions to herbal medicines; lack of records of patients treated by trado-medical practitioners. It is our humble submission that this problem can be resolved by establishing a central data collecting centre, mandatory annual registration and application for practicing licence by trado-medical practitioners and compulsory regular updates to the central data collecting centre of patients treated by trado-medical practitioners.

Finally, appointments into the regulatory agencies are based on the recommendation of the Government. The agencies are not independent in the discharge of their statutory responsibilities due to incessant Government interference, where there is conflict of interest. Creating an independent appointing authority to prevent unnecessary interference is advocated as a means of solving this problem.

## **Conclusion**

It is our humble submission that, based on the analysis of the current regulatory framework which is weak, it is essential for strengthening the laws and agencies, in order to effectively regulate trado-medical practice in Nigeria. To this end, there is an urgent need for the Nigerian Government to ensure that the various legislations requiring assents are attended to. Also, effective implementation of policies on traditional medicine, positive change in Government's attitude toward the regulation of trado-medical and the practice in Ghana, where all the various types of trado-medical practitioners are brought under one umbrella body are advocated as they will assist in the enforcement of the regulations and laws on trado-medical practice, in no small way. Traditional medicine is a part of Nigeria's unique heritage and protecting it can be achieved by an effective regulatory framework which will encourage continued patronage of the practice.