

## ***Malpractice and Medico-Legal Issues***

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The Medical and Dental Council exists for the protection of the interest of the patient and for guiding the doctor to provide skilled, safe, appropriate and friendly health care for members of the public that need it. Although, the health care team consists of a variety of important professionals giving investigative, dispensary, curative and other ancillary services for patient care; the doctor alone has the moral and legal liability and is often sued when any part of that health care goes seriously wrong. Although this may seem unfair, it is absolutely as it should be. People needing medical attention go to a particular health institution in order to see a particular doctor, perhaps because of his reputation. There always exists an unwritten contract between the doctor and his patient, and this contract is justifiable. It is up to the doctor to ensure that he has a good team of associate professionals working with him because he is legally liable for their errors.

As the public has become more and more enlightened, the doctor's involvement with the law has gone beyond the expert witness. He is now being increasingly subjected to public accountability for all aspects of the practice. Complaints often arise, and if they are not carefully managed, may go beyond the health institution to the law courts, or to the Medical and Dental Tribunal, or to both. While lawyers are expected to serve the interest of justice from the point of view of their clients, some endeavour desperately to serve that interest by capitalizing on any technical legal loophole, which now becomes the issue, while the real issues are relegated to the background. The client is served but justice is compromised from the point of view of society. While the Legal Assessor is there to limit such tendencies on legal aspect, medical professionals in the MDCN try to limit it on medical issues.

If the MDCN were not there, the charge of professional misconduct would not be appreciated, and the mishaps resulting from them would be the offence for which the doctor would be charged. For example, if a patient died as a result of the mistakes of the doctor, he would have to face a charge of murder or manslaughter. Medicine would become a dangerous profession to practice. By creating the MDCN, it is now possible for doctors themselves to determine whether a particular colleague exercised sufficient skill and care that would be expected of a competent and caring professional. As they say, it takes a thief to catch a thief !

It is obvious that the aim of creating the MDCN is to produce a suitable environment to make the doctors and dentists self regulate their profession. It is given sufficient powers to govern the profession and to enforce reasonable and acceptable standards of professional practice and etiquette.

The public needs to know whom among the people presenting themselves as doctors and dentists the MDCN is screened and found competent and safe. The list is published as the Register of doctors and dental surgeons. It should be authoritative, reliable and accessible to the employers of health professionals and to the general population. In the UK, the Register is produced annually. The MDCN has not yet achieved this ideal due to past mismanagement. The new management is going to change that picture within the near future. The Register is mentioned because the MDCN has authority only over registered practitioners. The offences committed by non-registered practitioners have to be sued in ordinary courts since it is a criminal offence to practice orthodox medicine without being qualified and registered practitioners.

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### **Principles of Good Practice (Ethics)**

The principles of good practice constitute an unwritten contract between clinicians and their patients, and form the basis on which the MDCN expects all registered doctors and dentist to practise. They are summarized as follows:

1. Make the care of your patient your first concern.
2. Treat every patient politely and considerably. While the doctor retains the right to choose his patients except in emergencies, all treatment must be conducted without discrimination.
3. Respect patients' dignity and privacy, and do not force treatment on an unwilling conscious patient.
4. Listen to the patients and respect their views.
5. Give patients information in the way they can understand.
6. If you get involved in biomedical research on human beings:
  - a. The patient's informed consent is essential.
  - b. It must not involve withholding effective treatment.
  - c. Your research protocol must be approved by an Ethical Committee.
7. Respect the rights of patients to be fully involved in decisions about their care.
8. Use only scientifically sound methods, keeping your professional knowledge and skills up to date. Expose unsound practice and practitioners.
9. Recognize the limits of your professional competence, consult and/or refer to others when necessary.
10. Be honest and trustworthy, never certify what you have not verified, or assist other people by dishonest opinions and prescriptions.
11. Respect and protect the confidential information of patients. The widespread practice of sending entire case notes to the pharmacy for drugs or the pathology laboratory for blood investigations unnecessarily exposes the confidential information in the case notes. Appropriate forms exist for these services.
12. Make sure that your personal beliefs do not prejudice your patient's care.
13. Act quickly to protect patients from risk if you have a good reason to believe that you or your colleagues may not be fit to practice.
14. Avoid abusing your position as a doctor.
15. Work with colleagues in the way that best serves the patient's interests. Collaborate with persons or other professionals in the health team in rendering care, but ensure that:
  - a. The professionals are competent in their fields.
  - b. They are recognized by their professional bodies.
  - c. You do not delegate to anyone procedures that are the exclusive responsibility of medically qualified clinicians.
  - d. You retain the absolute authority and take full responsibility for whatever happens to the patient.

### **Right and Responsibilities**

- Only a registered practitioner may practice.
- Other members of the health team must perform under the permission and supervision of a doctor or dentist.
- When an MDCN- registered practitioner is not available, others perform according to standing orders prepared by the supervising doctor or dentist of the institution. If they perform outside the framework of the standing orders, then they become liable for the error.

### **Professional Misconduct (Infamous Conduct)**

This is a general term describing a clinician's avoidable act of omission or commission against the principles of good practice, with consequences detrimental to the patient. The act may be deliberate, with some ulterior motive, or more commonly, due to negligence or carelessness. The term more or less covers all offences for which clinicians may be charged before their professional disciplinary tribunal.

### **Malpractice**

A definition can be composed from informatiothe

MDCN pamphlet on “Rules of Professional Conduct” thus: *Malpractice is failure, in the practice of medicine or dentistry, to exercise the skill, decorum and standards adjudged appropriate and acceptable to the generality of the registered members of the profession and recognized by the MDCN.*

The skills and correct method of practice in medicine and dentistry are learned by apprenticeship over 5 to 10 years *after graduation*. This is why the residency programme exists. Graduation from a medical or dental college is only an indication that the new graduate has attained sufficient theoretical knowledge to start training to be a clinician. Only consultants are fully trained. All other professionals are not supposed to work on their own. One of the most dangerous aspects of clinical training is to be a self-taught practitioner. Unfortunately, our system promotes being self-taught, for it is the new graduates that are sent to work in remote rural areas where they have no senior colleagues or even a library to consult. In order to solve unfamiliar problems, they often invent methods that are not in accordance with the safer established standard practice in the profession. We should remember that scientific medicine is built on knowledge and skills acquired and improved over the centuries, and passed from one generation to another. Many of these skills and attitudes cannot be found in textbooks.

The greatest weapon against malpractice is to be thorough and pay attention to detail. Take a complete history, do a complete examination and base your provisional diagnosis on the evidence before you. Avoid diagnosis by guesswork and inspiration. The MDCN has now insisted that every doctor must own personal basic diagnostic equipment, which they should always use during clerking.

A concerned practitioner, who devotes one hundred percent attention to his or her clinical responsibilities would hardly get involved in malpractice. The temptation to quickly get away or tally in order to meet other engagements elsewhere may cause an otherwise skilled practitioner to take regrettable decisions. Needless to say, the temptation

to make more money by choosing the more expensive or invasive procedure is malpractice.

### **Negligence**

Our guidelines give a list of what is usually considered to be negligence:

1. Fails to give prompt attention to a patient.
2. Manifests incompetence in clinical assessment of patient.
3. Wrong diagnosis in the presence of obvious clinical presentation.
4. Fails to advise a patient on the risks attendant on a particular course of management or operation.
5. Makes glaring mistakes.
6. By action or omission causes other members of the health team under his supervision to act to the detriment of the patient.

### **Self-Advertisement**

Direct and indirect self-advertisement aimed at attracting patients is forbidden, whether done by the doctor or through an agent. Other forbidden actions are:

- (i.) Press announcement of dramatic breakthroughs in treatment.
- (ii.) Professional touting.
- (iii.) Sign boards that are advertorial rather than informative in nature.

### **Other factors**

Practitioners can be charged with infamous conduct in a professional respect under the following circumstances:

- a. Improper termination of a pregnancy, which is criminal abortion under the Nigerian law.
- b. Conviction in a court of law for certain offences that the MDCN considers to be incompatible with the status of a medical or dental practitioner.
- c. Attending to patients while under the influence of alcohol or drugs. Alcoholism and drug abuse are offences.

### **Conclusion**

People who have a true vocation to be doctors derive much pleasure from practicing their

profession, and they thrive under the hard work and have no problem with the regulations. They may occasionally fall into temptation and get into trouble, perhaps through tiredness and overwork, but they admit their mistakes and appear sorry rather than resort to lies and mobilize their resources and friends for a cover-up. They have a much easier time with the Medical and Dental Tribunal. The profession of medicine may appear glamorous, but it demands your soul, and people with a vocation gladly give it.

The greatest weapon against malpractice is to be thorough and pay attention to detail. You are a medical detective, trying to discover the crime committed by disease. Take a complete history, do a complete examination, and base your diagnosis on the evidence before you. Avoid diagnosis by guesswork and inspiration. If you are too tired or not well enough to do this, pass the patient to a sympathetic colleague.

If you ever accidentally get into trouble and are great enough to see your fault, admit it. No one is above making mistakes; the public and the MDCN know that. You will do much better than you fear. Denial and lies send the wrong signals to everyone. Above all, remain understanding and tender to the injured family. They may be bitter, angry and even hostile, especially after the loss of a human life, but you should remain cool and comforting to them. Clinicians should always try to understand things from patients' point of view.

#### **REFERENCES**

1. Rules of Professional Conduct for Medical and Dental Practitioners. MDCN. 1995.
2. Code of Medical Ethics in Nigeria MDCN; Revised Edition. 2004.
3. Good Medical Practice. General Medical Council of the UK. 2004.