NURSING AND MIDWIFERY PRACTICE IN NIGERIA: THE LEGAL PERSPECTIVE

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Abstract
Nursing and Midwifery Practice should portray a professional image in a positive sense in moral, ethical and legal impact in their nursing practice and profession. The workplace is the hospital and/or hospital related base. The hospital is an organization that mobilizes and uses experts of a number of widely varied groups of professionals, semi-professionals and non-professional to provide highly personalized care to patients. Therefore, hospital requires effective performance by many professionals and semi – professional personnel with highly specialized knowledge and skills that should ultimately serve to promote patients care and satisfaction of family members and health care providers. The functions and duties of health care workers within hospital health care sector, however, are not performed in isolation; it is understandable that they are potential source of conflict between the various professionals in the hospital. To achieve a reasonable set goal in the health care sector, there must be an effective and efficient management of all resources, including the maintenance of an enabling environment for constructive interaction among the workforce of the organization. It is obvious that there are occurrence and effects of conflicts in the workplace. The conflict over decision making and the lack of role definition for nurses and midwives contribute significantly to stress and subsequent burnout (suffering) amongst health care professionals in the hospital. The nurses and medical doctors conflict is associated with the combination of socio-economic, inter- personal and inter- group factors. The hospital management should understand the interplay of these factors and recognize its role in the handling of such conflicts. Medical Doctors and Nurses must also acquire the understanding of teamwork – building and group dynamics through training to achieve good nursing and midwifery practice in Nigeria. This is achievable in Nigeria if the necessary interplay is placed and mounted by the health care providers and the stake holders.

Key Words: Nursing, Midwifery, Conflict and Legal Practice

Introduction
Florence Nightingale defined nursing as an act of utilizing the environment of the patient, to assist him in his recovery. She considered a clean, well ventilated and quiet environment as an essential pre-requisite for recovery of a patient.1 Whereas Virginia Henderson defined nursing as a unique way to assist the individual that is sick or well in the performance of those activities contributing to the health or its recovery, or to a peaceful death; “that he would perform those activities un-aided, if he has necessary strength, skill or knowledge to do so in such a way as to help him gain independence as rapidly as possible”. One thing is common in many definitions; nursing is caring, nursing is an act, it is a science, it is client centered, nursing is holistic and adaptive. Nursing is concerned with health promotion, health maintenance; health restoration and nursing is a helping profession.2

Nursing and Midwifery as a profession, encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well and in all setting. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people. It encourages

2 Ibid. p.13 cited as Henderson 1966 at p.3.
3 Ibid. p.13.
and promotes safe environment, research, participation in shaping health policies, in clients and health systems, management and education are also key nursing roles4.

Nursing is the protection and optimization of health and the abilities; prevention of illness and injury; alleviation of suffering through diagnosis and treatment of human responses; and advocacy in health care for individual families, communities and population5.

The uses of clinical judgment in the provision of care to enable people to improve, maintain, recover or cope with health problems, and to achieve the best possible quality of life, whatever is the disease or disability, until death6.

A Nurse is a person who cares for the sick, wounded, or enfeebled, especially one who makes a profession of it7. A nurse is a person whose job is to care of a sick or injured person usually in the hospital while a midwife is a person who is trained to help women give birth to babies8. The Nursing and Midwifery Profession is regulated by Nursing and Midwifery Council (Registration etc) Act of Nigeria, Laws of Federation of Nigeria Cap 1439.

Also, Midwife is a woman who assists women in delivery and midwifery is obstetrics10. Obstetrics is a branch of medical science relating to pregnancy and childbirth; midwifery11. The Midwife has a statutory duty to patient and a midwife in charge of a case of labour shall under the Act comply with the provisions of this regulation12.

Duties etc., of midwife in charge of a case of labour
1. The midwife shall not leave the patient without giving an address at which she can be reached without delay13.
2. After the commencement of second stage of labour, the midwife shall stay with the patient until the expulsion of the placenta and membranes and for as long a time as may be necessary14.
3. In a case where the labour is abnormal or there is threatened danger, the midwife shall send for a doctor or have a doctor sent for and she shall await the arrival of the doctor and faithfully carry out his instructions15.
4. If for any reason when a doctor is sent for, the services of a registered medical practitioner are not available, the midwife shall, if the case may be one of the emergency, shall remain with the patient and to do her best for her until the emergency is over16.
5. Having complied with provisions of paragraph (4) (as to the summoning of medical assistance) of this regulation, the midwife shall not incur any legal liability by remaining on duty and doing the best she can for her patient if the services of a registered medical practitioner are not available.
6. A midwife shall not, except in a case of grave emergency, undertake operative work or give treatment which is outside her province as a midwife.

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6 Royal College of Nursing, 2003, retrieved 22/12/2014.
9 Nursing and Midwifery (Registration etc) Act. Council of Nigeria, 2011
11 Ibid, p. 873.
12 Nursing and Midwifery Council (Registration etc) Act, Cap. 143, Laws of Federation of Nigeria.
13 Section 27(1)
14 Section 27 (2)
15 Section 27 (3)
16 Section 27 (4)
7. Where a midwife, in a case of grave emergency, undertakes such work or gives such treatment, she shall forthwith inform the local supervisory authority.

8. The question whether, in any particular instance, such work or treatment was justified shall be judged on the facts and circumstances of the case.

Section 28 (1)(a) – (d) of the regulation, provides that the midwife shall wash the genital parts of the patient’s body with soap and water and then swab them with an antiseptic lotion on the following occasions; before making all internal examinations; after the termination of labour; before passing a catheter, and after bowel action.

Subsection (2) of that section further provides that “the swabbing with antiseptic lotions shall be repeated before each further examination and before a douche is given and for this purpose the midwife shall use material which has been boiled or otherwise disinfected before use”.

Section 29 provides that internal examination during labour shall be restricted to the absolute minimum, while section 30 provides that the midwife in charge shall in all cases of labour examination, examine the placenta and membranes before the disposal thereof and shall satisfy herself, that they are completely removed. The midwife shall remove soiled linen, blood, faeces. Urine, placenta and membranes from the neighbourhood of the patient and from the puerperium room as soon as possible after the labour and in every case before she leaves the patient.

The midwife shall personally supervise or advise on the cleanliness, comfort and proper dieting of the mother and child during the puerperium and shall within the lying in period record the temperature, pulse, respiration, swabbing, home visits after labour twice daily for three days and then daily for two days.

If, after ceasing to attend case the midwife subsequently attends a mother or child suffering from illness connected with the confinement, all direction contained in these regulations where appropriate to the case shall apply.

Nursing and Midwifery Practice should portray a professional image in a positive sense in their moral, ethical and legal impact in their nursing practice and profession. The workplace is the hospital and/or hospital related base. The hospital is an organization that mobilizes and uses experts of a number of widely varied groups of professionals, semi-professionals and non-professionals to provide highly personalized care to patients. Therefore, hospital requires effective performance by many professionals and semi-professional personnel with highly specialized knowledge and skills that should ultimately serve to promote patient care and satisfaction of family members and health care providers.

The functions and duties of health care workers within hospital health care sector, however, are not performed in isolation; it is understandable that they are potential source of conflict between the various professionals in the hospital. To achieve a reasonable set goal in the health care sector there must be an effective and efficient management of all resources, including the maintenance of an enabling environment for constructive interaction among the workforce of the organization. It is obvious that there are occurrence and effects of conflicts in the workplace. The conflict over decision making and the lack of role definition for nurses and midwives contribute significantly to stress and subsequent burnout (suffering) amongst health care professionals in the hospital.

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17 Section 27 (6) – (9)
18 Section 31
19 Section 32 (1)
20 Section 32 (2)
This work tries to elucidate and express nursing and midwifery profession and practice vis-a-vis some of her moral, legal, ethical duties and her inclusiveness into medical field cum the benefits and otherwise of their patients/clients.

Some of the decided cases are used to illustrate these points and gaps between legality, morality and ethical duties of these dramatis persona and other related professionals in the medical health care and profession.

In Nigeria, there is a code of conduct and rules that control the practice of nursing and midwifery as a profession. The check and balances in the Medical Health Care in Nigeria and all her practicing professionals are enjoined to practice strictly under the legal regime in Nigeria, viz, Nursing and Midwifery (Registration etc) Act\(^{23}\) and Medical and Dental Practitioners Act\(^{24}\).

Nursing and Midwifery (Registration etc) Act - Section 1 (1) – provides “that there is hereby established a body to be known as the Nursing and Midwifery Council of Nigeria (in this Act referred to as the ‘the Council’) which shall be a body corporate with perpetual succession and a common seal and may sue and/or be sued by the name aforesaid.”

Section 2 of the same Act – provides that the Council shall be charged with the general duty of –

(a) determining what standard of knowledge and skill are to be attained by persons seeking to become members of the profession of nursing and midwifery (in this Act referred to as “the profession”) and reviewing these standards from time to time as circumstances may require;

(b) securing in accordance with the provisions of this Act the established and maintenance of the register of persons entitled to practice the profession and publication from time to time of the list of persons;

(c) regulating and controlling the practice of the profession in all within the profession;

(d) maintaining in accordance with this Act of discipline within the profession; and

(e) performing the other functions conferred upon the Council by this Act.

Section 3 - Subject to subsection (4) of this section and to any direction of the Minister under this Act, they shall have power to do anything which in its opinion is calculated to facilitate the carrying on its activities.

Section 4 – The Council shall not have power to borrow money or to dispose of any of the property except with the prior consent of the Minister and shall not have power to pay remuneration (including pensions) allowances or other expenses to any member or employee of the Council or to any other person except in accordance with the scales approved after consultation with the Federal Civil Service Commission.

Nigerian Nurses and Midwives must act in line with the Law or the Act creating their profession with other related Medical Health Care personnel/officers in providing health care to individuals, groups and communities; also bring to bear on nursing and midwifery practice in other roles, such as leadership, education and/or researches.

Registration of Nurses
Under section 18 (1) of this Act:

Section 1 - provides that subject to any restriction upon registration otherwise imposed by this Act, the holder of:

(a) any qualification of a general nature specified in part A of the second schedule to this part;

(b) any qualification of a specialized nature specified in Part B of the second schedule to this Act,

- shall be entitled to registration as a nurse in the appropriate part of the general register maintained pursuant to section 6(2) of this Act.

Section 2 - A registered nurse may apply for registration as a nurse tutor upon the ground that she has undergone requisite practical training in an institution where student nurses are trained and has completed a

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\(^{23}\) 1979 No.89 and 1992 No.83 Cap 143 Law of Federal Republic of Nigeria (LFN) – Nursing and Midwifery (Registration etc) Act. Establishment of Nursing and Midwifery Council of Nigeria, etc sections 1, 2 (a) – (e), 3 and 4.

\(^{24}\) Medical and Dental Practitioners Act, Cap. 22 rule 6 and section 34 of 1999 constitution of LFN.
course for nurse tutors in an institution or university recognized for that purpose by the Council, and if the Council is satisfied as to his qualification, the Council may direct registration accordingly.

**Registration of Midwives**

**Section 9 (1)** – an applicant for registration shall, unless otherwise precluded by the Act, be entitled to registration as a midwife if she satisfies the Council that she is of good character and –

(a) is the holder of a certificate under Part B of the Second Schedule to this Act; or

(b) is exempted from examination as the holder of a qualification granted outside Nigeria and for the time being accepted by the Council;

Provided that if the Council so requires, the applicant shall satisfy the Council that she has sufficient practical experience as a midwife.

Sub-section 2 – that any person aggrieved by the decision of the Council under this section may appeal to the High Court most convenient in terms of access to her, within one month after notice is given to her of the decision of the Council.

As a registered and licensed nurse and midwife, who had successfully gone through the sections 8 and 9 of the Nurses and Midwifery Council of Nigeria, Cap 143, Laws of Federation of Nigeria, they are enjoined to register and renew their registration, also that any applicant must be committed to uphold the standards therein contained in the said Act.

This commitment to professional standards and etiquette as required by the law for every registered and licensed nurse and midwife is a mandatory requirement, meaning that an action would be taken against the registered and licensed nurse and/or midwife, if he or she fails to uphold the ethics of the profession or thereby commit any wrong or crime most unprofessional in such a manner or conduct to be described as an infamous conduct, is a serious offence that could lead to striking out the name of the offender from the register.

**Penalties for an Unprofessional Conduct**

**Section 18 (1)** – provides that where –

(a) a person registered under the Act is convicted by any Court in Nigeria or elsewhere having power to award imprisonment for an offence which in the opinion of the Tribunals is incompatible with the status of a nurse or midwife; or

(b) a registered person is judged by the a Tribunal to be guilty of infamous conduct in a professional respect or

(c) the Tribunal is satisfied that any person has been fraudulently registered, the Tribunal may, if it thinks fit, give a direction –

(i) reprimanding that person; or

(ii) ordering the registrar to strike his/her name off the relevant part of the register; or

(iii) suspending him from practice by ordering him/her not to engage in practice as a nurse or midwife for such period not exceeding six months as the case may be specified in the direction;

and any such direction may, where appropriate, include provision requiring refund of moneys paid or the handing over of documents or any other thing in the circumstances, as the case may require.

As a registered and licensed nurse and/or midwife one would be professionally and legally accountable for his/her actions and omissions, irrespective of whether he/she is following the instructions of another or using his or her initiative. Medical Health Care litigation is growing and patients are increasingly growing to assert their rights.

A thorough and critical appreciation of the legal, ethical and professional issues affecting nursing and midwifery practice is essential, in order to develop the professional awareness necessary to escape the hazards of the profession, also its demand are on the student nurses, practicing nurses and the midwives to practice in accordance to the ethical and legal framework that ensures the privacy of the patients and their interest.

**Respect for People’s Right to Privacy and Confidentiality**
A good nurse and/or midwife owe a duty of confidentiality to all her clients by making sure that the patient/client is informed about the care. The information about him or her is shared appropriately. Also make sure you get properly informed consent in a written document before carrying out any action.

(i) The legal framework that inform the nursing practice include the provisions within registration statutes and code of conduct and some advice from registering authorities, also other requirements in our Civil Law, Statute Law, Criminal Law and/or sanctions.

(ii) The moral and ethical framework is seen in the professional code of ethics and other normative and sociological development such as ethics of obedience.

**Are Nurses and Midwives Autonomous Professionals or Handmaidens of Doctors**

(a) The idea of the nurse being an autonomous professional began with Ethel Bedford Fenwick in 1908 and it was repeated or cited by Dock and Stewart.

The features of the storey are that it originally addressed the pursuit of professional equality through sameness model in establishing autonomy of the profession and in the setting of standards.

Nevertheless the model was pursued without redress to the power imbalances in the way in which health care system is structured. This has not been addressed and to some extent has perpetuated the cultural problems, such as institutionalized powerlessness, nor has it met the need to foster confidence and promote innovation within the profession. It has been predominantly on nursing rather than health. Note that the image described here are still present in both recent time, in case law and workplace practice to some extent, especially in Nigeria.

(b) Nurses and Midwives are required to deliver quality care for their patients and/or clients, upon which they ought to be valued or respected. The question is whether the nurses were allowed to deliver this quality care, valued and thereat respected? The answer to the above question is hinged upon some factors:

(i) a multi disciplinary team approach to patient care delivery; this is embed in the safety and quality agendas;

(ii) the quality to provide care which satisfies nursing and patients expectation;

(iii) a formula to ensure reasonable workloads (which ought only to be a short term solution);

(iv) and a work environment which fosters nurse autonomy and control over practice in order to provide safe patients care.

The power imbalances must be attended to institutionally also by the way of legislation and by applying the provisions of the law, for example – stamping out quackery in the nursing and midwifery profession and those that support infamous conduct. Such defaulters should be prosecuted and punished under sections 17 and 18, 20, and 21 of Nursing and Midwifery Council Act, Cap 143 of Laws of Federation of Nigeria and section 16 of Medical and Dental Practitioners Act Cap 22, Laws of Federation of Nigeria. Meaning that, Section 18 (1) (v) - Ordering the Registrar to strike his/her name off the relevant part of the register supra, could be invoked by the panel.

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28 Ibid.

29 Ibid.


Power imbalances in the work-place need to be addressed, from both medical doctors and the nursing perspectives\textsuperscript{32}. See these cases to appreciate this orchestrated imbalance. Note that the only strategy nurses still possess to influence patient care in situation of concern is to bring a problem to the attention of the medical doctors. They cannot force the doctors to act. See the case of MacDonald \textit{v. York County Hospital}\textsuperscript{33} - The case focused on the legal question of causation ‘that the persons action or in action directly caused the harm to the patient, only to serve to highlight the nurses’ dilemmas’. The patient in the above case lost his leg and the nurses were found not to be negligent on the grounds of causation.

Also in the case of Bolitho \textit{v. City and Hackney H.A.}\textsuperscript{34} - the child suffered catastrophic brain damage. In this case, the doctor did not respond to the nurses concerns and their failure to attend was found to be breach of duty, though they were found not to be negligent because the doctors gave evidence that they would not have altered their treatment even if, they had seen the patient. The Judges did not comment on the distress and difficulties the nurses might have experienced both in trying to contact the doctors and were powerless to reverse the course of events.

In the case of Anderson \textit{v. Medical Practitioners}\textsuperscript{35} here the doctors failed to take action on the expressed concern of the nursing staff, the patient died.

In the case of Johnson \textit{v The Medical Practitioners Council}\textsuperscript{36} - the doctor failed to answer to the nursing staff on duty for the concern of the patient, the patient equally died. In all the cited cases the nurses expressed their professional and clinical opinions to the doctor on the patient’s conditions, which were not followed or attended to by these doctors on the excuse that they would not have changed the treatment, if they had heeded to the nurses concerns. These doctors ignored the nurses concerns which led to some detriment and/or the death of the patient.

However, power imbalances impact on the patient’s safety as nurses’ powers were not defined as to their rights and responsibilities, such that they cannot compel the doctors to act\textsuperscript{37}.

\textbf{Nurses and Doctors conflict}

Conflict is an inevitable phenomenon in our social, economical and physiological spheres of our live and endeavors and the strongest division that affects the Health Care system in Nigeria, most especially the conflict between the nurses and the medical doctors, this conflict could be resolved through dialogue and legislation.

This is achievable in Nigeria if the necessary interplay is placed and mounted by the health care providers and the stake holders. The nurses and medical doctors conflict is associated with the combination of socio-economic, inter-personal and inter-group factors. The hospital management should understand the interplay of these factors and recognize its role in the handling of such conflicts. Medical Doctors and Nurses must also acquire the understanding of team work – building and group dynamics through training to achieve good nursing and midwifery practice in Nigeria.

Major clinical and professional dispute procedure would be averted, if some provisions are made for some intervention which is recognizable by both nurses and doctors. These provisions would be invoked if the nurses considered on a reasonable grounds that the patient’s life or well being was in serious danger. Failure to carry out or acknowledge nurse’s concern in such a situation would attract some disciplinary action on the medical doctor/officer so concerned. This would check some excesses of some medical doctors. The nurses would be provided with some legitimate recognition of their moral authority

\textsuperscript{33} (1973) 41 D.L.R. (3d) p.321.
\textsuperscript{34} (1998) A.C. p.232.
\textsuperscript{35} (1938 - 1964) 85 W.N. pt.1 (NSW) cited as \textit{Re – Anderson}
\textsuperscript{36} (1938 -1964) 85 W.N. pt.1 (NSW) cited as \textit{Re - Johnson}
\textsuperscript{37} Aiken L, “Superior Outcomes for Magnet Hospital- the evidence base”. In A.S. Hinshaw and M. McClure (eds.) Magnet Hospitals revisited. Attraction and retention of professional nurses, American Nurses Publishings, Washington D.C., U.S.A.
within the framework where they operate. It would equally remove the ethical constrains and challenging tyranny of some medical officers on nurses.

Creating and sustaining good nursing and midwifery practice in Nigeria, power imbalances between nurses and medical doctors ought to be revisited to have a good professional and clinical procedure equated, harmonized, and failure to observe the said procedure, by any medical officer or any nursing officer, same would be considered as an infamous conduct, that would attract legal sanctions. Also, quackery should be checked and reduced or be stamped out if possible in the medical health system by the board empowered by the law to do so.

Quackery in the Nursing Profession

A quack is a pretender of a medical knowledge or skill, a charlatan, ignorantly or falsely pretending to cure38, such a person should not be registered or licensed as a nurse or a midwife or practice within the medical spheres or any other profession in Nigeria because he or she is a charlatan and under sections 1 and 9 (1) second schedule Part A and B of Nursing and Midwifery Council (Registration etc) Act Cap143 Laws of Federation of Nigeria, 2010, is not to be registered by the Registrar of the Council.

Nursing profession is regarded by some, as a middle man power profession and presently a lot of quackery is being discovered in the profession or half trained and/or non professional, non - licensed and uncertificated nurses/midwives are flooded in the system, especially in the local or in our rural areas. Some quack nurses/midwives are trained by some medical doctors in their private clinics, on the guise that they assist them in the hospital without minding the dangers they pose in the medical health care system, to the extent of issuing these quacks with certificates in the name of the said hospital which is against the law. Section 21 of the Nursing and Midwifery (Registration etc) Act Cap143 Laws of Federation of Nigeria, 2010 - provides that “it shall be an offence for any person without the approval of the Minister, given on the recommendation of the Council, to train or purport to train any person as a nurse or midwife or to provide any course of training or establish any school for such purpose or as one of its purposes; any such person shall be liable to the said section 21 of the said Act which provides that on conviction, otherwise in the High Court for a fine of ₦2000.00 etc… though I am of the view that this punishment section be reviewed upwards to meet the present evil, to check the grievous excesses of the current defaulters.

The current rate of quackery in nursing and midwifery profession ought to be checked and stopped by the Nursing and Midwifery Council of Nigeria, and to bring such offenders to book.

Conclusion

Nursing and Midwifery as a profession, encompasses autonomous and collaborative care of individuals of all ages, families, groups, and communities, sick or well and in all setting. Nursing includes the promotion of health, prevention of sickness, and the care of ill, disabled and dying people. It encourages and promotes safe environment, research, participation in shaping health policies, in clients and health systems, management and education are also key nursing roles39.

Nursing is caring, nursing is an act, it is a science and it is client centerd, nursing is holistic and adaptive. Nursing is concerned with health promotion, health maintenance and health restoration, nursing is a helping profession; hence, it ought be recognized and cherished as such, by all people. Conflict is an inevitable phenomenon in our social, economical and physiological spheres of our live and endeavors and the strongest division that affects the Health Care system in Nigeria, most especially the conflict between the nurses and the medical doctors.

There ought to be checks and balances between the Medical Health Care professionals which shall be drawn from both Nursing and Midwifery Council Act and Medical and Dental Council Act/Laws, under sections 17, 18, 20, and 21 of both Laws of the Federation of Nigeria, these would help in achieving good nursing and midwifery practice in Nigeria.


Recommendation

It is recommended that a good nursing and midwifery practice in Nigeria could be attained by checking the power imbalances between nurses and medical doctors. This could be revisited by legislation, creating professional and clinical procedure; harmonized, equated, and any failure to observe the said procedure by any medical officer or nursing officer would be considered as an infamous conduct, which would attract legal sanctions. Also quackery should be checked and reduced or be stamped out if possible in the medical health system by the board empowered by the law to do so.

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