

# The Conceptual and Contextual Jurisprudence of Alternative Medicine in Nigeria

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## I. INTRODUCTION

The popular saying that “one man’s food is another man’s poison” is perhaps true about what is conceived and understood of “Alternative Medicine” in Nigeria. From different perspectives, the technical conception of the subject varies. On the global level, the universal expression of the subject as “Alternative Medicine” may in terms of belief and terminology stand uniquely different in Nigeria. As a result, a study of the jurisprudence of alternative medicine in the country becomes relevant. Such a study is also apt because of the stunt clarity to be gained on the legal status of this special medical practice in the nation. When one comes to Nigeria and desires to discuss the subject of Alternative Medicine, basic understanding to be put in mind is thus the focus of exposition in this research. Interestingly, it is widely acknowledged, both formally and informally, that traditional medicine, as it would be better called in the nation, is a reality that must be accommodated in Nigeria.

In this study, what is conceived of Alternative Medicine, conceptually and contextually within the Nigerian Jurisprudence is examined. Following this brief introduction, the research contains three parts: jurisprudence of the concepts and context of the nation's Alternative Medicine; discussion of the jurisprudence of the legality of the medical practice; and finally, the conclusion as necessarily drawn from the study.

## II. JURISPRUDENCE OF ITS CONCEPT AND CONTEXT

The term “Alternative Medicine (AM)” is used to refer to non-orthodox (allopathic) medical practices in the country. The use in this sense references the nation's orthodox medical practitioners ( Law of the Federation of Nigeria, LFN, 2004e) and is appreciated by the fact that various legislative instruments refer to this system as either herbal (LFN, 2004f) or traditional medicine (Law of Kwara State of Nigeria, 2006b) and not as “Alternative Medicine” (MDCN, 2004a). This system of medical practice may not be properly referred to as 'complementary' medicine because the Medical and Dental Council of Nigeria (MDCN) does not consider traditional medical practice as 'complementary' but rather as distinct-from and unrelated to orthodox medical practice (MDCN, 2004b).

Whereas among orthodox medical practitioners, non-orthodox medicine is properly called 'alternative medicine', it is best referred to by the Nigerian majority as herbal or traditional medicine. Ironically, the masses do not consider it alternative at all but rather as their own form of 'primary medicine' and they perceive and treat orthodox medicine as the so-called 'alternative'. In essence, therefore, and in the Nigerian context, alternative medicine is understood quite differently. Thus, in understanding this context, reference must be made to classifications filed under different statutory instruments prepared by different statutory bodies.

### 2.1. MDCN’s Context of Alternative Medicine

In the *AM Provisional Registration Form*, the MDCN delineates the major forms of medicine considered practicable as 'Alternative Medicine' as follows: “*Acupuncture, Homeopathy, Naturopathy and Osteopathy*” (MDCN, 2004b).

#### 2.1.1. Acupuncture

The *Oxford Advanced Learner’s Dictionary* (Hornsby, 2010b) defines Acupuncture as “a Chinese method of treating pain and illness using specially prepared thin needles that are pushed into the skin at particular points in the

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body". With this connotation and the process involved, it appears that acupuncture is a medical activity "involving an incision in human tissue" and is, therefore, not a permitted alternative medical practice as it appears to contravene a provision of the MDP Act (LFN, 2004d). It may, therefore, not be legally sound for MDCN to register an alternative medicine practitioner for engagement in this type of traditional medicine as indicated on the *AM Provisional Registration Form*.

### 2.1.2. Homeopathy

This is "a system of treating diseases or conditions using very small amounts of the substance that causes the disease or condition" (Hornsby, 2010c). An appreciation of this type of alternative medicine is seen in Islamic Medicine from a widely related *hadith* of Prophet Muhammad. There, he noted that if a housefly drowns in one's food or drink with one side of its wing, one should also enable the other wing to also penetrate the food or drink. The prophet explained that while one wing may bear a disease, the cure (antidote) is to be found with the other wing (Al-Qardawi, 2003). In essence, the same substance (wing of the housefly) causing a disease also bears the prescribed remedy.

### 2.1.3. Naturopathy

Naturopathy is a "system for treating diseases or conditions using natural foods and herbs and various other techniques, rather than artificially synthesized drugs" (Hornsby, 2010d). This approach appears to generally express an analogous understanding for alternative medicine as held by the majority of Nigerian people.

### 2.1.4. Osteopathy

This is a "treatment of some diseases and physical problems by pressing and moving the bones and muscles (Hornsby, 2010a)." It is doubtful, however, that the MDCN can legally register this system as alternative medicine and license such a practitioner in view of provisions made by the *Medical Rehabilitation Therapists (Registration, etc) Act* (LFN, 2004i), which recognizes osteopathy as a profession (LFN, 2004i) and prohibits its practice without due registration (LFN, 2004i). The regulatory involvement of the MDCN in the practice of *Osteopathy* and its licensing as an alternative medical practice are clearly *ultra vires* and well defined in the MDP Act (MDCN, 2008). In the main, this conflict creates marked confusion as to the regulation and practice of osteopathy as a traditional medicine. Much more is said on this subject later in this study.

From the foregoing discussion, it does not become clear that the MDCN's context regarding alternative medicine is not confusing and neither expresses the local sense of its practice nor is it a technologically viable expression of the system. Thus, Alternative Medicine in Nigeria cannot, as currently defined within the suggested context of the MDCN, comprise acupuncture, homeopathy, naturopathy or osteopathy. Hence, one needs to look beyond its purview.

## 2.2. Its Context under the Kwara State Traditional Medicine Law

Kwara State (Nigeria, 1999a) enacted a law to regulate and register practitioners of traditional medicine (Laws of Kwara State of Nigeria, 2006). This law did not, however, define traditional medicine but rather gave an interpretation of 'who' the Traditional Medicine Practitioner is and further defined categories of Traditional Medicine Practitioners for which it permitted registration (Law of Kwara State of Nigeria, 2006a). The sense expressed under this law also accords exceedingly well with the conception of traditional/alternative medicine among Nigerians in general. Nevertheless, it ignored the Islamic system of medicine otherwise known as 'Prophetic Medicine'. Hence, there remains room for Islamic Medicine in Nigeria's categories of Traditional Medicine Practitioners, because it rightly deserves a place and, accordingly, ought to have been so specifically recognized (Abdul-Rahman, 2001; Jimoh, 2004-2006; Okesina, 2004-2006a, 2004-2006b).

## 2.3. General Public's Context of Alternative Medicine

Traditional/Alternative medical practices in Nigeria vary from one community to another. The provisions of the Traditional Medicine Law examined above substantially covered various understandings of the system(s) but they still need further explanation because alternative medicine in Nigeria focuses chiefly on (i) Traditional Mental Care Medical Practice; (ii) Herbal Medical Practice; (iii) Spiritual Medical Practice; and (iv) Islamic Medicine. Thus, in the Nigerian context, Alternative Medicine may be described as all forms of medical practice that are well known to indigenous Nigerian communities; especially those rooted in traditional herbal knowledge and local informal training and spiritual or religious beliefs, as opposed to the orthodox allopathic system as formally taught in Occidental oriented medical schools.

#### 2.4. Its Jurisprudential Conception as a Traditional Profession/Educational Career

In traditional Nigerian society, the practice of medicine is a highly dignified profession (Fafunwa, 1974) and significant constituent of the African Education System for intellectual training (Fafunwa, 1974). Like similar traditional professions (Fafunwa, 1974), it involves “elaborate and often very complicated systems of pre-initial training” (Fafunwa, 1974). When a young person undergoes training in traditional medicine, he receives instruction in a customary system of advanced education for which admission is very competitive and “restricted to those who have demonstrated capacity for further growth and the ability to keep secrets secret” (Fafunwa, 1974).

As a general curriculum, “the neophyte learns the secret of power (real and imaginary) as well as native philosophy, science and the theology of animism, all depending on the profession the young man wishes to pursue” (Fafunwa, 1974). Upon completion of such specialized training, traditional medical professionals hold a peculiar belief system shared by members of the society in general in that his medicine can be used “to kill and/or secure power, health and fertility in addition to personality or moral reforms” (Miracle, 1970; Olaosebikan, 2006).

Precisely speaking, for traditional Nigerian society, as Olaosebikan (Olaosebikan, 2006) posits:

“... medicine is all encompassing and it has various multipurpose functions. Medicine goes beyond herbs in African society, it also combines magic. It involves tree barks, herbs, roots of tree, incantations and so many things all together” (Olaosebikan, 2006).

It therefore follows that traditional alternative practices transcend the concept of an ordinary career that is easily pushed aside with a wave of the hand as it is an especial characteristic of the traditional folk-way of Nigerians. Hence, like any other field of study based on indigenous education, rather die or be relegated to archaic memory, it continues to wax strong (Fafunwa, 1974). The better option for the government, therefore, is the sober approach of establishing a system of standardization via critically considered legal remedies and qualified educational guidelines.

### III. JURISPRUDENCE OF ITS LEGALITY

Although the Nigerian Government designates Medicine a profession (LFN, 2004h), it remains unclear as to whether or not alternative medicine—apart from orthodox allopath—is included. Nevertheless, such vagueness is not relevant to the determination of a legal basis for the practice of alternative medicine in the country. Even so; the nature of legislative power-sharing in Nigeria is indeed germane to understanding both the legal basis and requirements for the practice of alternative medicine in the country. In the main, such an examination allows for the clear appreciation of the existing government instruments by which the regulation of traditional medicine can be effectively established and registration requirements sustained.

Nigeria has three levels of government (Nigeria, 1999a) and the nation's legislative powers are similarly divided into three for which two are explicitly mentioned in the constitution (Nigeria, 1999c). In essence, of the three legislative powers, only the Federal government may legislate items listed under the *Exclusive Legislative List* (Nigeria, 1999a), while legislative powers that attend the *Concurrent Legislative List* are shared by Federal and State governments (Nigeria, 1999a). Therefore, whatever is regarded as 'residual legislative power' is reserved for State government (Nigeria, 1999a).

The *Exclusive Legislative List* (Nigeria, 1999b) does not include medicine. The implication ordinarily is that matters related to medicine are not within the 'exclusive' legislative power of the federal government. However, from another purview, once a career field is designated 'professional' by the National Assembly (Nigeria, 1999a), it automatically falls within the exclusive legislative power of the federal government (*Concurrent Legislative List - Item 27; Exclusive Legislative List - Item 49*). The National Assembly's *Professional Bodies (Special Provisions) Act* (LFN, 2004c) did determine that the practice of medicine was a professional occupation (LFN, 2004c). Hence, one may want to conclude that the regulation and registration of any person for the practice of medicine, orthodox or traditional/alternative, falls exclusively within the realm of the federal government's legislative affairs. However, the legal position is that alternative medicine was not contemplated during that particular Assembly's consideration of medicine as a profession because those medical professionals regarded as professionals by the nation were clearly described as 'qualified' medical practitioners. According to section 18 of the *Interpretation Act* (LFN, 2004b), a 'qualified' medical practitioner “means a person who is a fully registered medical practitioner within the meaning of the Medical and Dental Practitioners Act”. Alternative medicine practitioners, therefore, as per our previous discussion of the MDP, were clearly not accounted as "qualified medical practitioners" under the MDP Act (LFN, 2004d).

Assuming that alternative medicine is a component of medical practice and that it is designated as a 'professional occupation' in the country as per items 27, 28, 29 and 30 of the concurrent legislative list (Nigeria, 1999c), this subsequently affords propriety for matters of medicine in the country to legally fall under concurrent legislative powers. It therefore follows that as much as the federal government can regulate medical practice; the state government can equally provide its own rules and regulations as long as such rules and regulations do not contravene provisions of law made by the federal government (Nigeria, 1999a).

Thus, it becomes clear that the Constitution provides a legal basis for the practice of alternative medicine and allows both federal and state governments to provide necessary rules and regulations, respectively, for the registration of and other matters affecting the practice of alternative medicine. The necessary guidance derived from this conclusion is that for one to engage in alternative medicine practice in Nigeria, one must be aware of and comply with the necessary requirements at both federal and state levels. As a result, it is pertinent, in appreciating the jurisprudence of the legality of alternative medicine in Nigeria, to examine the relevant federal and state statutes in this regard.

### **3.1. Jurisprudence of Its Legality at the Federal Level**

#### **3.1.1. Medical and Dental Practitioners Act (LFN, 2004e)**

The foundation for the legality and permissibility of the practice of traditional/alternative medicine in Nigeria was established by the MDP Act. Generally, under this Act any person who is not a registered as a medical practitioner practices medicine, for or in expectation of reward, is guilty of an offence for which he shall be liable to a fine not exceeding #5,000 (five thousand Naira) on summary conviction (LFN, 2004e) and to a fine not exceeding #10,000 (ten thousand Naira) or imprisonment for a term not exceeding five years, or to both fine and imprisonment on conviction of an indictment (LFN, 2004e). No distinction is made for the nature of the medicine being practiced by the unregistered medical practitioner who is found guilty of the offence and is liable to the penalty as stated. The implication is that it would have been illegal and criminal for any person to engage in the practice of traditional/alternative medicine except he/she is registered as a medical practitioner under the Act. However, saving grace is found for traditional/alternative medicine under section 17 (6, 7) of the same MDP Act.

By the combined provisions of both section 17 (6, 7), it becomes clear that traditional/alternative medicine is exempted from the requirement of registration under the MDP Act before it can be legally practiced. These subsections provide for the exemption as follows:

(6) Where any person is acknowledged by the members generally of the community to which he belongs as having been trained in the system of therapeutic medicine traditionally in use in that community, nothing in paragraph (a) of subsection (1) or paragraph (a) of subsection (2) of this section shall be construed as making it an offence for that person to practice or to hold himself out to practice that system.

(7) The exception conferred by subsection (6) of this section shall not extend to any activity involving an incision in human tissue ("Worldwide Review,") or to administering, supplying or recommending the use of dangerous drugs within the meaning of part V of the Dangerous Drugs Act (LFN, 2004a).

Pursuant to global rules of statutory interpretation, it is clear that any medicine traditionally in use in any community in Nigeria requires no special permission or registration from MDCN or any other agency or regulatory body before it can be practiced. One, therefore, wonders about the legal basis for the requirement for registration which MDCN now demands from traditional medicine practitioners. Subsection (7) erases all ambiguity by expressly stating in the essence of subsection (6) that it confers exemption on traditional medicine from requirements for any regulation by MDCN.

#### **3.1.2. National Primary Health Care Development Agency (NPHCDA) Act (LFN, 2004g)**

Apart from the legal platform created for the practice and promotion of alternative medicine in subsection (6) of section 17 of the MDP Act, another legal basis and justification for the legality of that system of medical practice is also found in the NPHCDA Act. The Act established an Agency in 1992 (Decree No. 29, 1992) and saddled it with many responsibilities. The Agency was especially charged with the promotion of alternative medicine's relevance and manner of practice in the community as crucial to the advance of Primary Health Care. Thus, the NPHCDA Act specifically declared part of the Agency's mandate as follows:

➤ to provide support to the village health system by –

- paying special attention and providing maximum support to the training, development, logistic support and supervision of village health workers and traditional birth assistants, and to the relationship between those workers and their communities and the mechanisms which link those workers to the other levels of the health system; and,
- paying special attention to the involvement of women and grassroots women's organizations in the village health system (LFN, 2004g).

Reference to 'village health' in the cited statutory provision is specifically for the practice of traditional/alternative medicine. Hence, if there was no legal basis for alternative medicine, or if it enjoyed no legal recognition in the country, an agency of the federal government would not have been mandated to pay attention to it and nourish its growth. Thus, by these provisions of the NPHCDA Act, not only is it legal to engage in the practice of alternative medicine, but one can also obtain necessary support from the National Primary Health Care Development Agency.

### **3.2. Jurisprudence of Its Legality at the State Level: Kwara State as a Case Study**

The previous analysis leads to the conclusion that matters of traditional medicine lie within the concurrent legislative powers of both federal and state governments. It should, therefore, not be surprising when states become involved in the promotion, regulation and registration of traditional/alternative medicine in Nigeria. Hence, it was legally appropriate for Kwara State to enact laws to regulate and register traditional medicine and its practitioners in the state.

Since 1994, traditional/alternative medicine has enjoyed formal recognition in Kwara State through its *Traditional Medicine Law (Law of Kwara State of Nigeria, 2006a)* which was enacted to regulate the activities of traditional medicine practitioners (Law of Kwara State of Nigeria, 2006a). To this end and since the commencement of the law, it became a criminal offence for any person to engage in the practice of traditional medicine without being duly registered (Law of Kwara State of Nigeria, 2006a). Without going into details of the law's provisions, it is most apt to the present study to focus on the fact that the practice of traditional/alternative medicine was/is not only permitted at the state level, but that legislation is also in place to rationally formalize its practice and thus, bring order, respect and sobering wisdom to the entire system.

### **3.3. Jurisprudential Conception of Its Legality in other Quarters**

Apart from both the physical and extant legal bases examined thus far, other legal efforts exist that have put forth traditional/alternative medicine as legally encouraged and permitted in Nigeria. A body called the *National Investigative Committee on Traditional and Alternative Medicine* was established in 1984 by the Federal Ministry of Health ("Worldwide Review, "). There is also a report to the effect that a National Traditional Medicine Development movement was launched in 1997 and that, thereafter, measures were taken by the Federal Ministry of Health towards the formal recognition and enhancement of traditional/alternative medical practices in the country ("Worldwide Review, "). Accordingly, we observed the following:

These measures include the constitution and inauguration of the National Technical Working Group on Traditional Medicine; development of policy documents on traditional medicine, including the National Policy on Traditional Medicine, National Code Ethics for the Practice of Traditional Medicine, the Federal Traditional Medicine Board Decree, and Minimum Standards for Traditional Medicine Practice in Nigeria and advocacy for traditional medicine at all levels and in relevant forums, such as the National Council on health (since 1997), Consultative Meetings of the Honourable Minister of Health with State Commissioners for Health and Local Government Chairman (in 1999), and the Presidential Think Tank Forum in 1999 ("Worldwide Review, ").

A critical look at the situation reveals a favorable legal environment for the practice of traditional/alternative medicine in Nigeria. The Constitution lays an excellent foundation by ensuring that matters affecting traditional medicine remain within the concurrent legislative powers of both federal and state governments. In addition, a statute of general application (the MDP Act) regarding the practice of medicine (LFN, 2004e) equally facilitates the cause by exempting traditional medicine practitioners from the requirements of registration with the MDCN. Furthermore, provisions in the *National Primary Health Care Development Agency Act* also encourage and make possible the growth of traditional/alternative medicine in the country. All of these allow us to conclude that a strong legal foundation for the practice of traditional/alternative medicine exists in the nation. But looking beyond this footing, we should also assess the degree to which practice depends on the system of regulation already in place.

#### IV. CONCLUSION

Nigeria supports the global promotion of alternative medicine. However, in the Nigerian context one needs to refer to such unorthodox allopathic practices as traditional and/or alternative medicine to grasp the general context of the nationally indigenous perspective. The present work combed through Nigeria's legislative position on traditional/alternative medicine to reveal contemporary and concurrent regulatory matters vested in legislative powers at the federal and state levels. Accordingly, it discovered legal bases that justify a practitioner's engagement in the practice of traditional/alternative medicine, with some regulatory measures equally put in place at both levels of governance. The boldly endorsed fact is that a favorable legal environment for the practice, regulation and standardization of traditional/alternative medicine is presently in place in Nigeria. Without mincing words, traditional/alternative medicine enjoys vibrant legality in the country *as per* the extant and robust frameworks cited in this paper. With little effort, these lawful provisions provide an extremely sound foundation upon which the nation may attach an even brighter future for traditional/alternative medicine. For these reasons, therefore, with dedicated and sincere commitment on the part of those so concerned, the nation does not need to start from scratch.

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