

Examining the Role of Federal Competition and Consumer Protection Commission (FCCPC) in Regulating the Medical Profession in Nigeria

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Abstract

Medical negligence is the failure of a medical practitioner to exercise a reasonable degree of skill and care in treating a patient. Over the years, aggrieved patients' prospect of obtaining redress in complaints of alleged medical negligence needed a boost in Nigeria. This was in view of some disappointing responses of the medical professions' regulatory bodies, particularly the Medical and Dental Practitioners' Council (Council), to medical complaints. The Council had been perceived as unduly protective of the medical professionals rather than patients for too long. The establishment of the Federal Competition and Consumer Protection Commission (FCCPC), an agency of Government, through the Federal Competition and Consumer Protection Act of 2018 (FCCPA), came as a welcome relief to patients in the handling of rising cases of medical negligence. The FCCPC looks into the medical profession through the lens of a neutral watchdog whose sole quest is to achieve safe medical practices and consumer satisfaction. However, a major problem ensued: the Council adopted an uncooperative stance with the FCCPC. This paper, therefore, investigates FCCPC's functions, powers, and the incursion of FCCPC into medical regulation and concludes that this intervention is timely, desirable and helpful for patient safety. The paper was researched, adopting a doctrinal methodology. It recommends that though the FCCPC does not establish medical standards, Council could view its role in a complementary and collaborative capacity towards a common goal of consumer protection and promotion of qualitative healthcare in Nigeria.

Keywords: Medical Negligence, Medical Malpractice, Medical Regulation, Consumer Protection, Patients' Rights



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1.0 Introduction

“Medicine is the law, and the law is medicine, and the amalgam is perfused and strengthened by the authority of tradition, religion, and the arts, such as music, the dance, and painting.”⁷⁹⁵

Right from ancient times, Medicine and Law have been related. Historically, the intersection existed as result of the necessity to protect communities from irresponsible acts of impostors.⁷⁹⁶ Both Law and Medicine are concerned with human beings and the numerous problems man encounters during his lifecycle. Each profession has a humanistic interest in improving conditions under which men live and in social protection of those who are handicapped, regardless of cause. The paths of Law and Medicine would always cross. There is a clear intersection between law and medicine, which oftentimes necessitates that the law dictates medical practice. The legal-medical intersection is however an uneasy one, as medical practice sometimes appears to run outside or faster than the law. The traditional philosophy for this intersection forms the basis for aspects of the Federal Competition and Consumer Protection Act, which are relevant to this discussion.

On January 30, 2019, Nigeria enacted the Federal Competition and Consumer Protection Act (FCCPA). The FCCPA created two institutions to enforce its provisions: the Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal (CCPT). Additional purpose of their creation is to develop and promote fair, efficient and competitive markets in the Nigerian economy and facilitate the access by all Nigerians to safe products and services, as well as secure the protection of rights of all consumers in Nigeria.⁷⁹⁷ In light of this, according to Section 32 of the Federal Competition and Consumer Protection Commission Act, a consumer is “an individual who purchases, uses, maintains or disposes of products or services”.⁷⁹⁸

⁷⁹⁵ Cawte, J.E. (1974). *Medicine is the Law: Studies in Psychiatric Anthropology of Australian Tribal Societies*. Honolulu: University of Hawaii Press. Cited in <http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812009000400006> Accessed 22 June 2022.

⁷⁹⁶ C. Wecht , *The History of Legal Medicine* 2005 <<https://www.semanticscholar.org/paper/The-history-of-legal-medicine.-Wecht/5f9a7e1699168a9d50001198aff7b8d275653b1d>> Accessed 18 June 2022

⁷⁹⁷ Preamble to the FCCPA 2019.

⁷⁹⁸ FCCPA 2019, section 32

Hospitals and healthcare facilities provide services to consumers. The scope of this work is limited to the aspect of FCCPC's functions, which relate to consumer protection in the health services sector only. Consumer's rights are inalienable rights, and Government has a role in regulating business relationships among the citizenry to check and regulate the excesses of businesses and individuals against the Nigerian consumer. This accounts for the establishment by the Government of specific agencies to monitor, identify and prosecute fraudulent and/or negligent businessmen and women.

Consumer protection is an international phenomenon that has become a very useful instrument in protecting the weak, vulnerable, and disadvantaged. Consequently, consumer rights have become increasingly prevalent in national and international circles. Protection of the individual consumer can be perceived not only as part of protecting human life but also as maintaining human dignity, especially against big businesses, monopolies, cartels and multinational corporations.

Hospitals and healthcare facilities provide services which fall within the purview of FCCPC's responsibility in 'protecting and promoting the interests and welfare of consumers....'⁷⁹⁹ FCCPC looks into the medical profession in a quest to promote consumer satisfaction.

2.0 Scope of FCCPC's Mandate With Consumer Protection

FCCPC's role is in a collaborative capacity with applicable professional bodies. It does not investigate or evaluate conduct to determine professionalism, ethics or violation of professional/ethical codes. It is also instructive to note that FCCPC does not examine adopted procedures of qualified and authorized professionals. It does investigate and determine whether service providers adequately respect the rights of consumers and appropriate standards of care in compliance with those rights and provide redress or remedies for injured consumers.⁸⁰⁰ The Commission also adopts some important areas of operation, and they include:⁸⁰¹

⁷⁹⁹ Section 1(c) FCCPC Act

⁸⁰⁰Possible Violation[s] of Patient/Consumer Rights under the Federal Competition and Consumer Protection Act; and Extant Laws in Providing Medical Attention/Urgent Care. <https://www.fccpc.gov.ng/news-events/releases/2021/05/10/possible-violation-s-of-patient-slash-consumer-rights-under-the-federal-competition-and-consumer-protection-act-and-extant-laws-in-providing-medical-attention-slash-urgent-care/>

⁸⁰¹ FCCPC, 'What We Do' 2022 <<https://www.fccpc.gov.ng>> accessed on 9 June 2022

1. **Complaint Resolution:** It is normal for consumers to file their grievances and dissatisfactions concerning the services being rendered, and they are referred to as ‘complaints.’ These complaints are communicated to the commission in various ways such as physical, online platforms, letters, etc. These complaints are resolved through certain resolution tools such as: mediation, negotiation, investigations and the like.
2. **Surveillance and Enforcement:** The rights of consumers are also protected through surveillance of the market and corrections where there are violations. This is actualized in both random and targeted forms. The latter is done when anonymous tips are given likewise on account of intelligence gathered.
3. **Quality Assurance and Development:** As the satisfaction of a consumer is important, the commission channels energy towards quality assessment of products and services nationwide. These assessments are carried out through analysis, sampling, investigation and also the issuance of Standard Operating Procedures in order to achieve the aim of ensuring the provision of quality goods and services.
4. **Consumer Education:** The commission carries out periodical enlightenment programmes for consumers to inform the latter on their rights as consumers, enforcement mechanisms they are privy to, and the procedures for utilising the processes.
5. **Research and Strategy:** This is an important tool in how the commission accomplishes its objectives as it engages in global and local research on products and services rendered to the public. It aims to develop intervention plans and adjust existing mechanisms to be more effective and efficient.

3.0 Patients’ Bill Of Rights

FCCPC’s involvement and interest arise from the fact that patients are consumers of medical services and must be protected. In that wise, patients are entitled to basic minimum standards of qualitative service from medical service providers.⁸⁰² The Patients’ Bill of Rights (PBoR)

⁸⁰² A medical service provider is any person who provides medical, technical or other services designed to diagnose, treat, aid in the diagnosis and / or treatment of, or otherwise impact the health status of an individual. He is an individual certified, registered or licenced in the healing arts, including but not limited to, a physician, nurse, podiatrist, optometrist, chiropractor, physical therapist, dentist, psychologist, physician’s assistant or emergency medical services person. <https://www.lawinsider.com>. Accessed 5th January 2022.

is a major achievement of the FCCPC. It is a concise aggregation of patients' rights as extracted from several instruments⁸⁰³ and presented in an illustrative, graphic, and self-explanatory document. PBoR was developed and inaugurated in July 2018 for the protection of consumers. This document was produced by the FCCPC, in conjunction with the Federal Ministry of Health and multiple healthcare professional associations led by the Nigerian Medical Association, and the Federal Ministry of Health.

FCCP received approximately 100 complaints between this period (July 2019) and December 2019. Prior to the introduction of the PBoR, only one medical complaint on Consumer Protection was received. The PBoR is a balanced and concise document which also provides for patients' obligations, provisions for access to information, patient-related information, fee-related information, confidentiality and quality of care. It is also a declaration of the rights given to patients and individuals who utilise healthcare service to prevent them from wrongful treatments during medical care services⁸⁰⁴. It also highlights minimum standards for patients' dignity, access to emergency care, patients' refusal of care and interruption of service by the provider.

For the first time in the history of patient-medical service provider relationships in Nigeria, patients are now empowered with basic official information about their rights and obligations as well as minimum standards for medical service providers to observe when dealing with patients. Clearly, this promotes circumspection and attention to detail by medical service providers in the handling and care of patients. It also ensures that the average patient is actively involved in his treatment, handling and health.

4.0 Key Provisions of FCCPC on Consumer Rights

4.1 Functions of The FCCPC on Consumer Protection

The FCCPA provides inter-alia;

⁸⁰³ The Constitution, Consumer Protection Act, National Health Act, Child Rights Act, Freedom of Information Act, the Hippocratic Oath, Professional Ethical Codes and other regulations.

⁸⁰⁴ Samuel Idhiarhi, 'Bill of Rights for Patients In Nigeria' 2021 <<https://www.reseachgate.net/publication/349086576>> accessed on 9 June 2021

that the FCCPC shall make rules and regulations on the protection of consumers, carry out investigations on consumer protection, eliminate hazardous services and collaborate with consumer protection groups for consumer protection purposes.⁸⁰⁵

These provisions are broad powers, which enable FCCPC to embark on all necessary actions, investigations and searches in pursuit of consumer satisfaction.

4.2 Powers of the FCCPC on Consumer Protection

The FCCPA empowers the Commission to prevent services that constitute a public or imminent public hazard, and seal up premises producing goods or services that are fake, substandard, hazardous or inimical to consumer welfare in collaboration with relevant sector regulators. FCCPC is also endowed with powers to summon and examine witnesses, and call for and examine documents.⁸⁰⁶

4.3 Investigative Powers of FCCPC

Where there is reason to believe that an undertaking is likely to or has contravened provisions of the FCCPA, the FCCPC may enter and search premises, inspect and remove articles and documents from such premises and process a search warrant for such purpose.⁸⁰⁷

4.4 Consumer Rights Under FCCPC⁸⁰⁸

4.4.1 Right to Information in Plain and Understandable Language

Consumers of goods and services are entitled to information in plain and understandable language⁸⁰⁹. The provision proceeds to state an explanation of what constitutes ‘simple language,’ as what an ordinary consumer of the class of persons for whom such information is intended and who possesses average literacy skills and minimal experience as a consumer of said goods or services could be expected to understand by the contents.⁸¹⁰

4.4.2 Disclosure of Price of Goods and Services

⁸⁰⁵ Section 17

⁸⁰⁶ Section 18

⁸⁰⁷ Sections 27 to 38

⁸⁰⁸ Part XV, Sections 114 to 132

⁸⁰⁹ Section 114 (1)

⁸¹⁰ Section 114 (2)

No undertaking shall display goods or services for sale without adequately displaying their price to the consumer.⁸¹¹ Details of what constitutes ‘adequate display of price’ to a consumer were articulated in the section, including display in Nigerian currency and visible display⁸¹². Also, a consumer shall not be required to pay the price for any goods or services higher than the displayed price.⁸¹³ Other provisions of consumer rights include consumer’s rights to cancel the reservation, booking or order, subject to a reasonable charge for cancellation,⁸¹⁴ and consumer’s right to choose or examine goods⁸¹⁵ With particular reference to services rendered by the medical profession, there are explicit provisions on rights pertaining to the quality and safety of goods and services.⁸¹⁶

4.4.3 Right to Safety

It is the right of a consumer to be free and shielded from hazardous and harmful products and services, likewise dangerous production processes.

4.4.5 Right to Choose

A consumer should not be coerced nor forced into the purchase of any good nor the rendering of services. They should and are expected to have access to various quality and good products.

4.4.6 Right to Redress

A redress is a tool in the situation of unsatisfactory products and services. A consumer is entitled to Repair, replacement or refund.

4.4.7 Right to Representation

A consumer has the right to be heard and effectively represented where regulations and rules affecting customers are made.⁸¹⁷

4.5 Scope of Application of the FCCPC

⁸¹¹ Section 115 (1)

⁸¹² SECTION 115 (2)

⁸¹³ Section 115 (3)

⁸¹⁴ Section 120

⁸¹⁵ Section 121

⁸¹⁶ Sections 130 to 132

⁸¹⁷ FCCPC, ‘ Consumer Rights’ 2022 <<https://www.fccp.gov.ng/consumer/rights/>> accessed on 10 June 2022

The Act applies to all undertakings and commercial activities within or having an effect in Nigeria.

5.0 Regulation of the Medical Profession

5.1 Regulation in the Context of Medicine

Regulation is sustained and focused control over activities generally acceptable or desirable to society. It is the control of conduct within areas of responsibility. Regulation is essential to define a clear framework within which health professionals acquire and maintain the competence to provide high-quality, safe, effective and patient-centred health services.

In medicine, regulation is primarily concerned with enabling patient access to high-quality, safe and effective medical devices, while restricting access to unsafe products or limited clinical use. On the flip side, the regulation also protects the rights of medical practitioners and other stakeholders.

6.0 Conflicts, Opposition, Challenges

FCCPC's intervention in healthcare has expectedly elicited a sharp reaction from health professionals in Nigeria. The FCCPC had organised a public hearing to investigate issues involving medical practitioners over "possible violations of patient/consumer rights under the Federal Competitions and Consumer Protection Act 2018, and other laws in providing medical attention/urgent care."

6.1 Peju Ugboma

For instance, in the case of a public inquiry organized by the FCCPC into circumstances leading to the unfortunate death of Mrs Peju Ugboma, a Lagos-based chef, who died due to alleged negligence at the Premier Hospital, Victoria Island, Lagos, Dr. Osinomo Omolole, from Premier Hospital, was summoned to the Panel but he did not appear. Rather, he was represented by counsel, Abimbola Akeredolu SAN, who explained to the Panel that the said doctor was outside the country. The doctor requested to appear virtually before the Panel, but this was turned down by the Panel. Counsel also informed the Panel that other doctors of Premier Hospital who initially honoured the summons to the public hearing, received a message from the Medical and Dental Council of Nigeria (MDCN) and Nigerian Medical Association (NMA) instructing them to leave the sitting, failing which they would lose their

respective practice licences.⁸¹⁸ On the flip side, Babatunde Irukera, the Executive Vice Chairman and CEO of the FCCPC, would not accept the doctors' blatant refusal to appear before the Panel but determined that justice must be done.

In November 2021, the Medical and Dental Practitioners' Council (the Council) announced its indictment of three medical doctors in Peju's death and announced that they would face the Medical and Dental Practitioners Tribunal. A coroner's inquest is also ongoing at the Magistrate Court in Ogba, Lagos. Thus, with an air of finality, the Council⁸¹⁹ jettisoned the intervention of FCCPC over malpractice allegations by stopping doctors from appearing before FCCPC. Reasons canvassed for Council's decision were outlined in a letter dated 14th June 2021 by its Registrar, Dr T.A.B. Sanusi to FCCPC⁸²⁰ and were two-fold;

Firstly, they regarded FCCPC's investigation into allegations of misconduct in professional respect by registered medical practitioners while attending to a patient as an encroachment on the statutory mandate of the Council, which is the statutory body with the mandate for the regulation of the professions and practice of medicine and dentistry in Nigeria.⁸²¹

Secondly, the Council noted that the proposed format of FCCPC's investigation would place registered medical practitioners in violation of the rights of a patient to confidentiality even after their demise, this being a very serious offence under the Code of Medical Ethics in Nigeria.⁸²²

6.2 Dr Anuoluwapo Adepoju and Medcontour Services LTD

Controversial Lagos-based cosmetic surgeon, Dr. Anuoluwapo Adepoju, was arraigned before a Federal High Court in Lagos in July 2020 for alleged evasion from an investigation into a failed cosmetic surgery and obstruction of FCCPC's investigation. She, alongside her hospital, Med Contour Services Limited, was arraigned for allegedly obstructing the investigation by FCCPC into the case. The FCCPC had, in April 2020, sealed the second defendant (Med Contour), a plastic surgery hospital, over suspicion of illegal activities. In a

⁸¹⁸Nsikak Nseyen, Peju's death: Premier hospital clashes with FCCPC panel as doctors stay away from hearing. <https://dailypost.ng/2021/06/15/pejus-death-premier-hospital-clashes-with-fccpc-panel-as-doctors-stay-away-from-hearing/> Site visited on 27th December 2021.

⁸¹⁹ Joseph Jibueze, MDCN stops doctors from appearing before FCCPC. <https://thenationonlineng.net/mdcn-stops-doctors-from-appearing-before-fccpc/> Site visited on 26th December 2021.

⁸²⁰ See note 2 above. A copy of the letter issued by MDPC to FCCPC was made available to the Nation newspaper.

⁸²¹ Section 15(3) of the Medical and Dental Practitioners' Act, and contrary to Section 18(i) of Federal Competitions and Consumer Protection Act 2018.

⁸²² 2008 edition.

five-count charge brought against the defendants, the prosecution alleged that, without sufficient cause, the first defendant failed to appear before the FCCPC in compliance with the Commission's summons and for allegedly preventing and obstructing the Commission from carrying out its investigation into the botched cosmetic surgery. The offences were said to have contravened some of the provisions of the FCCPC Act.⁸²³ In a six-paragraph affidavit of completion of investigation attached to the charge sheet, the Commission said it received complaints against the 1st Defendant from three patients that the cosmetic surgeon's services 'are unsafe for consumers' and that she made 'false, misleading and deceptive representation in relation to the marketing of their services,' allegedly resulting in the death of a female patient after a failed cosmetic surgery. The incidents were said to have happened between April 15th and May 4th, 2020, at Lekki Phase 1, Lagos. This is in addition to the indefinite suspension of the 1st Defendant by the MDCN on 5th November 2020.

7.0 Analysis of FCCPC's Incursion Into Medical Regulation

A vexing issue is a relationship between FCCPC and the medical profession. Is this intervention necessary or helpful? Has it contributed any value to patient safety? Does the role of the FCCPC in the medical profession amount to over-regulation?

In answering the above questions, it is important to note that the Medical profession in Nigeria has a strong history that tilts in favour of self-regulation.⁸²⁴ The profession prefers to deal with its issues internally.⁸²⁵ They, therefore, regard FCCPC's intervention as an encroachment on the statutory mandate of the Council, which is the statutory body with the mandate for the regulation of the professions and practice of medicine and dentistry in Nigeria.⁸²⁶

In considering the usefulness or otherwise of FCCPC's intervention in medical regulation, we must assume that the medical profession has been very protective of their members. The

⁸²³ See sections 11(1)(a), 33(1)(a), 110, 113(1)(a) and 159(4) of FCCPC Act

⁸²⁴ Self-regulation of the medical profession involves many levels of oversight aimed at guaranteeing the competence of the practicing physician. This is done, utilizing the instrumentality of the Hippocratic Oath, other well-established standards which have been reduced into law; the Medical and Dental Practitioners Act and the Code on Medical Ethics.

⁸²⁵ Sylvia R. Cruess, MD and Richard L. Cruess, MD

The Medical Profession and Self-Regulation: A Current Challenge <https://journalofethics.ama-assn.org/article/medical-profession-and-self-regulation-current-challenge/2005-04> Accessed 17th January 2022.

⁸²⁶ A classic situation was the Peju Ugboma case.

Bolam case⁸²⁷ is a case in point. *Bolam v Friern Hospital Management Committee*, where the plaintiff, a voluntary patient at a mental health institution run by Friern Hospital Management Committee, broke his pelvis during a medical procedure called Electro-convulsive therapy. When he sued in negligence, on the basis that the doctors ought to have warned him of the risks of the said treatment by not holding him down during the procedure and not administering relaxant drugs to him, expert witnesses showed that there were two (2) divergent but acceptable medical opinions on the matter. Therefore, it was held that the defendant was not liable for negligence since the therapy adopted aligned with acceptable practice. The Bolam test states that if a doctor reaches the standard of a responsible body of medical opinion, he is not negligent.

The Bolam test was also applied in *Barnett v Chelsea & Kensington Hospital*. Three men attended the emergency department, but the casualty officer, who was himself unwell, did not see them, advising that they should go home and call their own doctors. One of the men died some hours later. The post-mortem showed arsenical poisoning, which was a rare cause of death. Even if the deceased had been examined and admitted for treatment, there was little or no chance that the only effective antidote would have been administered to him in time. Although the hospital had been negligent in failing to examine the men, there was no proof that the deceased's death was caused by that negligence

Whitehouse v Jordan is a relatively recent case in which the Bolam test was applied. The claimant was a baby who suffered severe brain damage after a difficult birth. The defendant, a senior hospital registrar, was supervising delivery in a high-risk pregnancy. After the mother had been in labour for 22 hours, the defendant used forceps to assist the delivery. It was found that the doctor's standard of care did not fall below that of a reasonable doctor in the circumstances, so the baby was awarded no compensation.

Though the FCCPC is still relatively new, its activities and cases handled so far have brought a lot of publicity and succour to the plight of the average aggrieved patient. The FCCPC has won the confidence of Nigerians for its speed in dealing with issues, its result-oriented and no-nonsense stance as a neutral party, and its doggedness in monitoring and pursuing cases to logical conclusion.

⁸²⁷ *Bolam vs Frern Hospital Management Committee* (1957) 1 WLR 585

The FCCPC does not establish medical or health standards. That function belongs to the Medical Council through the MDPA, Pharmacy Council of Nigeria Act, Nursing and Midwifery (Registration etc) Act. Rather, the FCCPC looks into the medical profession with an impartial lens in a quest for consumer satisfaction. In the Dr Anu Adepoju case, for instance, FCCPC took firm steps in entering and sealing up the premises to put a stop to Dr Adepoju's unwholesome medical practice, pending the full-scale investigation and action expected of the Medical Council.

Therefore, it would be safe to regard FCCPC's role as complementary and collaborative with the mainstream medical regulator towards a common goal of consumer protection and promotion of qualitative healthcare in Nigeria.

8.0 Conclusion and Recommendations

This paper investigates FCCPC's functions, powers, and the incursion of FCCPC into medical regulations. It observed that change is a constant phenomenon and should be embraced wholeheartedly, especially when such change adds value to the subject of discourse. As society evolves, every health care sector inclusive should adapt to changing times so that some segments are not left behind. The foregoing is why the establishment of the FCCPC is a welcome development. Key goals of the FCCPC⁸²⁸ are: to ensure that both the service providers and customers respect their contracts, to diminish and, if possible, eradicate consumer dissatisfaction and frustration, to effectively protect consumers from harmful products or injury from hazardous products and services, to hold producers and service providers accountable to the satisfaction of their customers with relation to the goods or services provided, and so on, can also be channeled towards the medical and healthcare services provided to patients as the latter can be regarded as consumers.

The study found that for ease and effective functionality of the FCCPC, the mainstream medical regulators need a watchdog. Meanwhile, the intervention of the FCCPC is very useful and essential for patient safety, and it also serves as a check and balance on the

⁸²⁸ FCCPC, 'Strategic Goals' 2022 <<https://fccpc.gov.ng/aout/strategic-goals/>> accessed 9 June 2022

self-regulation of mainstream regulators. The medical profession is encouraged to regard the FCCPC as its partner in future endeavours.

Section 104 of the FCCPA, which grants the Act supremacy over every other law in all matters relating to consumer protection (excepting the Constitution) may need to be reviewed as FCCPC may not regulate better than those in the mainstream medical professions.