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Commentary

Commentary on *locus standi* of Traditional Medicine Practice Act 575 and complementary and alternative medicine practices in Ghana

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ABSTRACT

One significant aspect of the Traditional Medicine Practice Act (2000) Act 575 is to ensure the registration of Traditional Medicine Practitioners in the Ghanaian jurisdiction that comes within its ambit. This is made clear by the preamble to the law, which states in part, that the law is to establish a Council to regulate the practice of traditional medicine, to register practitioners and license practices, to regulate the preparation and sale of herbal medicine and to provide for related matters. Thus the letter and spirit of the law are clear without ambiguity. The Traditional Medicine Practice Council established by Act 575 now regulates Complementary and Alternative Medicine Practices in Ghana. This commentary provides *locus standi* or the capacity of Act 575 and the practice of CAM in Ghana.

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1. Introduction

Interpreting the law is a critical aspect of legal practice, with healthcare law being no exception. Garcia et al.¹ have explained that the letter of the law is its literal meaning. On the other hand, the spirit of the law is its perceived intention or its aim.¹ Thus, when one obeys the letter of the law but not the spirit, one is obeying the literal interpretation of the words (the "letter") of the law, but not necessarily the intent of those who wrote the law. Equally, when one obeys the spirit of the law but not the letter, one is doing what the authors of the law intended, though not necessarily adhering to the literal wording.²

In defining Traditional Medicine, the World Health Organization³ explains that:

“Traditional medicine refers to the knowledge, skills, and practices based on the theories, beliefs, and experiences indigenous to different cultures, used in the maintenance

of health and in the prevention, diagnosis, improvement or treatment of physical and mental illness.”

Fokunang et al.⁴ have also defined Traditional medicine as: “Health practices, approaches, knowledge, and beliefs incorporating plant, animal and mineral-based medicines, spiritual therapies, manual techniques, and exercises, applied singularly or in combination to treat, diagnose and prevent illnesses or maintain well-being”. Traditional Medicine encompasses the explicable and inexplicable. This goes to say that certain aspects of Traditional Medicine can be explained and others cannot be explained.

Thus, Traditional Medicine in Ghana is an ageist practice; thus, the need for regulation of the profession. One can therefore not say those framers of Act 575 were ignorant in drafting the law to regulate Traditional Medicine in Ghana. The letter and spirit of the law were straightforward before the passage of Act 575.

Alternative and Complementary Medicine are relatively new entrants into the Ghanaian Healthcare space and are regarded as Medical Practices imported into the Country.

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CAM practices include; Naturopathy, Homeopathy, Chiropractic, Acupuncture, and others. Framers of Act 575 did not take into consideration CAM Practices at the time of the drafting and passage of the Act. Due to this deficiency, we intend to assess Act 575 and its capacity to extend to CAM practices in Ghana.

2. Assessment of Act 575

Naturopathy was dormant under the umbrella of Alternative Medicine in Ghana. The Traditional Medicine Practice Act 2000.^{5,6} Act 575 is the Legislative Instrument (LI) that regulates Traditional Medicine (TM) practice in Ghana. Though the Council has extended Act 575's mandates to the practice of alternative medicine, the Act is completely silent on alternative medicine and only emphasizes traditional medicine. Act 575's preamble is straightforward and states:⁶

“An ACT to establish a Council to regulate the practice of traditional medicine, to register practitioners and license practices, to regulate the preparation and sale of herbal, medicine and to provide for related matters.”

The definition of who qualifies to be called a Traditional Medicine Practitioner in the Ghanaian jurisdiction is a subject for debate. Section 42 of Act⁶ which deals with the interpretation states: "practice" means traditional medicine practice; "practitioner" means a traditional medicine practitioner whose practice uses herbs and any other natural products; "traditional medicine" means practices based on beliefs and ideas recognized by the community to provide health care by using herbs and any other naturally occurring substances. From the review of the Act, it is straightforward to recognize the many lacunae in Act⁶ and it is increasingly evident that it needs extensive amendment after twenty (20) years of promulgation, if the TMPC intends to use the same Act to regulate CAM practitioners.

Section 6: of Act 575 also deals with the appointment of committees.⁶ There is the Standard Setting and Ethics Committee which deals with setting standards and ethical issues in the practice of traditional medicines. There is also the Educational Committee, which also deals with accreditation issues and training in traditional medicine.

Section 10:⁶ highlights the qualification framework for registration and states:

1. Where the Board is satisfied that:
 - (a) An applicant has adequate proficiency in the practice of traditional medicine, and
 - (b) The application has been endorsed by any two of the following:
 - i. The district chairman of the Association.
 - ii. The traditional ruler of the community.
 - iii. The District Co-ordinating Director.

It shall direct the Registrar to enter the applicant's name in the register of practitioners and issue the applicant with a

certificate of registration on the payment of the prescribed fee by the applicant.

Section 11:⁶ further deals with the temporary registration of non-citizens and notes:

A person who is not a citizen may be temporarily registered as a practitioner where that person:

1. Is the holder of a work permit or is otherwise entitled to engage in gainful employment in the Republic.
2. Has satisfied the requirements of subsections (1) and (3) of section 10.
3. Has a good working knowledge of English or an indigenous Ghanaian language.
4. Has proof of qualification and registration to practice in the country of origin or where that person was trained”.

Section 13:⁶ places emphasis on the titles of practitioners. It states: “The Minister, on the recommendations of the Board given in consultation with the Association, may prescribe by Regulations the titles to be used by practitioners based on the type of service rendered and the qualifications of the practitioners.”

Section 17:⁶ further emphasizes the requirement for Licensing of practices. It states:

“A person shall not own or operate a practice unless that person holds a license in respect of the practice issued under this Act.” Section 18:⁶ further details the application and conditions for a license. It notes that:

1. A person may apply to the Council for a license for a practice through the district office of the Council within the area in which the practice is to be operated in the form determined by the Board.
2. There shall be attached to the application.
 - (a) The block plan of the premises for the practice.
 - (b) Provisional approval from the district planning authority or relevant authority on land use.
 - (c) Evidence of ability of proposed practitioners in the practice and proof of their registration.
 - (d) Testimonials of each proposed practitioner in the proposed practice from the Association.
 - (e) Two passport-size photographs of each proposed practitioner in the practice.
 - (f) A list of the types of services to be rendered by the practice.
 - (g) The prescribed licensing fee.
3. A license shall not be granted to an applicant unless the Board is satisfied that the applicant.
 - (a) Is registered as a practitioner under this Act,
 - (b) Has the experience and competence to manage the practice in accordance with this Act.
 - (c) Has complied with any other requirement specified by the Board and any other relevant law.

4. The Board may request from the applicant where necessary:

- (a) Clearance or an appropriate permit from the Environmental Protection Agency.
- (b) Evidence of financial viability for the ownership and operation of the practice.

Section 21:⁶ provides the roadmap for application by non-citizens. It states that:

A non-citizen may apply to the Council through the district office of the Council within the area in which the practice is to be operated for a license to own or operate a practice where that person.

1. Possesses a valid work permit issued by the Minister responsible for the Interior.
2. Has evidence of being trained in the practice of traditional medicine in the country of origin, where that person was not trained in Ghana, and has been registered or licensed as a practitioner.
3. Has at least five years post qualification experience in a recognized institution of relevance to traditional medicine.
4. Has passed:
 - (a) An English language proficiency test where English is not the language trained in, or a similar test in a Ghanaian language.
 - (b) A professional test set by the Council, where applicable,
5. Has registered with the Ghana Investment Promotion Centre, where appropriate.
6. Has fulfilled any of the conditions set out in section 18 (2) as determined by the Board and any other conditions set by the Board.

Section 28:⁶ also provides the relationship between Practitioners and Coroners. It states: A practitioner shall notify a coroner within twenty-four hours of a death which occurs on the Premises of the practice”.

Section 29:⁶ of the act deals with the appointment of the Registrar. It states that:

1. The President shall, in accordance with article 195 of the Constitution, appoint a practitioner with administrative and managerial experience, as the Registrar of the Council.
2. The Registrar shall hold office on the terms and conditions specified in the letter of appointment.

Section 31:⁶ provides the register of traditional medicine practitioners. It states:

1. The Registrar shall record in a register to be known as the Register of Traditional Medicine Practitioners the names of registered practitioners and the premises licensed for practice under this Act.

2. The Minister on the advice of the Board shall determine the registration and licensing fees to be paid by practitioners.

Section 32:⁶ also deals with the appointment of an Administrative Secretary. It notes:

1. The President shall in accordance with article 195 of the Constitution, appoint an Administrative Secretary of the Council.
2. The Administrative Secretary shall assist the Registrar in the performance of functions.

Section 33:⁶ deals with the appointment of other staff and states:

1. The President shall in accordance with article 195 of the Constitution and on the terms and conditions determined by the President, appoint other staff of the Council.
2. The Council shall have any other officers and staff that are necessary for the proper and effective performance of its functions.
3. The Council may engage the services of consultants and advisers as the Board may determine on the recommendation of the Registrar Section 34:⁶ provides the framework of delegation of appointment. It states: The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of public officers under this Act.

3. What does article 195 say in the 1992 Constitution?

1. Subject to the provisions of this Constitution, the power to appoint persons to hold or to act in an office in the public services shall vest in the President, acting in accordance with the advice of the governing council of the service concerned given in consultation with the Public Services Commission.⁷
2. The President may, subject to such conditions as he may think fit, delegate some of his functions under this article by directions in writing to the governing council concerned or to a committee of the council or to any member of that governing council or to any public officer.⁷
3. The power to appoint persons to hold or act in an office in a body of higher education, research or professional training, shall vest in the council or other governing body of that institution or body.⁷

4. Conclusion

In examining the Traditional Medicine Practice 2000(Act 575), one can deduce that the letter and spirit of the law are clear on traditional medicine and not Complementary and Alternative Medicine. Though it does not have the *locus standi* to regulate CAM practitioners, no law prevents or proscribes CAM practitioners from *plowing* their trade.

5. Competing Interests

The authors declare that they have personal relationships with Nyarkotey University College of Holistic Medicine & Technology (NUCHMT).

6. Authors' Contributions

RNO conceptualized the study. Both authors reviewed literature and archival records. RNO developed the manuscript. LAB critically reviewed and proofread the manuscript for publication.

7. Conflict of Interest

None.

8. Source of Funding

None.

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