

THOUGHT LEADERSHIP

BY JACKSON ETTI & EDU

MEDICAL EXPATRIATES IN NIGERIA:

WHAT DOES THE LAW REALLY SAY?



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BACKGROUND

Since 2020, the Lagos State government, through the Health Facility Monitoring and Accreditation Agency (HEFAMAA), shut down hospitals based on non-compliance to Medical and Dental Council of Nigeria's (MDCN) guidelines on expatriate doctors engagement.

According to the Executive Secretary of the agency, Dr. Abiola Idowu, hospitals were shut down for employing expatriates that were not certified to practice locally. The chairperson of HEFAMAA, Dr. Yemisi Solanke-Koya also noted that such practice has been going on clandestinely for a while, and such actions raise concerns regarding the regulatory oversight of healthcare in the State. However, some hospitals concerned have now announced that the expatriates engaged have now been certified locally by the Medical and Dental Council of Nigeria (MDCN) and other regulatory bodies.¹ Nevertheless, it appears that many other hospitals continue to engage foreign doctors without complying with MDCN's guidelines.

The Difficult Dialogue

Some commentators appear to blame the Lagos Government on the rationality of shutting down hospitals that seek foreign experts. It is argued that most Nigerian medical professionals are relocating abroad. In the absence of enough qualified practitioners, it only seemed reasonable that foreign help should be embraced. Others believed that the actions of the Government through HEFAMAA should be applauded as it saves the sovereignty of the country as well as the security of jobs. Such actions, it is believed, safeguard the health, safety, and welfare of Lagosians and hold the facilities engaging Foreign-Based Transient Medical Doctors (FBTMDs) accountable.

On the other hand, some hospitals are lamenting over the lack or shortage of experts in certain medical fields in Nigeria. If saving lives means welcoming foreign practitioners, then that is what the oath demands, they argue. However, the Commissioner for Health, Lagos State, Professor Akin Abayomi has directed HEFAMAA to implement an FBTMD policy that will ensure that FBTMDs are approved by the Federal Body – MDCN, to practice medicine in the State, provided such persons also register with HEFAMAA prior to their medical practice in the State.

In the light of the foregoing, it has become expedient to recollect the provisions of the laws regulating these actions and to guide or proffer practical solutions to FBTMDs, healthcare providers, and regulators. That is the purpose of this article.

1 Independent, 'Our operators have their licenses' available at <https://independent.ng/our-expatriates-have-their-practicing-licenses-verdic-lifecare-hospital/> accessed 2 November 2021.

Regulatory Requirement for FBTMDs

Any person seeking to enter Nigeria for any purpose must first comply with the provisions of the Immigration Act.² Where the person is medical personnel seeking to practice in Nigeria, the provisions of the Medical and Dental Practitioners Act (MDPA) must also be complied with.

Section 1 of the MDPA saddles the Medical and Dental Council of Nigeria ('MDCN', 'Council') with the duty of registration and licensure of medical and dental practitioners who wish to practice in Nigeria. Section 18 of the MDPA stipulates - '*A person shall not hold an appointment or practice as a medical practitioner or dental surgeon in Nigeria unless he is registered with the Council under the provisions of this law*'. Section 17 makes it an offence to contravene the provisions of section 18.

The MDPA provides for 3 categories of licenses to practice. They are:

- a. Provisional Registration: This category covers fresh medical or dental graduates that must undertake internship training before qualifying for full registration.
- b. Full Registration: This category includes Nigerian medical graduates who having been provisionally registered, have satisfactorily completed the internship training in a recognized hospital, OR a non-Nigerian graduate of an accredited school in Nigeria who has satisfactorily completed the internship training in a hospital recognized by the Council. See section 8.
- c. Limited (Temporary) Registration – These concerns expatriates (FBTMDs) wishing to practice in Nigeria. This is the focus of the article.

Section 13 of the Act provides that a foreigner shall satisfy the Council that he/she has been selected for employment *for a specified period* in an *approved hospital or institution* in Nigeria, in the capacity of a practitioner of medicine, surgery, dental surgery, or midwifery, and he/she intends to be in Nigeria for that *limited period for the purpose of the employment*. The foreigner must equally show that he/she has passed the assessment examination, if any, of the Council following some qualifications granted outside Nigeria and acceptable by the Council.

The purport of the section is that FBTMDs are allowed to practice in Nigeria. However, the employment letter must state the period of engagement as the offer letter cannot be in perpetuity. This is one requirement the MDCN must check when approving FBTMDs.

It is also instructive to note that the Act further provides that registration and license obtained can only apply whilst the practitioner is in such employment and within the period so stipulated. Sadly, the Act is silent on whether such periods of employment and license are renewable. It would appear from the provisions that where an establishment seeks to extend the period of engagement, notice must be given to the Council for further direction. Where there is doubt as to whether the practitioner's employment has been

² Immigration Act 2015 – dealing with the residence and work permit for entering Nigeria.

terminated or not, the decision of the Council shall be conclusive on the matter.

The Act prohibits any such foreigner practitioner with limited registration from opening or managing a private health institution on his own. Although the Act deems a limited registration as a full registration in relation to employment, other matters are excluded.

Section 9(3) of the Act gives the Council the discretion to institute an assessment examination for holders of foreign medical or dental qualifications recognized by the government of their respective countries. Accordingly, the Council through its Guidelines on Registration as a Medical or Dental Practitioner in Nigeria has stipulated that expatriate graduates of foreign institutions who apart from the basic medical/dental qualifications, possess an additional specialist qualification recognized by the Council, shall not be required to sit and pass the Councils' assessment examinations before becoming eligible to apply for limited registration. Hence, expatriates who possess such additional qualifications need only apply.

Requirements for FBTMDs seeking License / Approval from the MDCN

A foreigner wishing to practice medicine or dentistry in Nigeria must comply with the following requirements:

- ◆ Evidence of course training attendance and qualification in a medical school recognized by the foreign government.
- ◆ Professional postgraduate specialist qualification recognized by the MDCN or sitting and passing the Assessment Examination set by the MDCN.
- ◆ Evidence of firm offer of employment in a recognized hospital in Nigeria.
- ◆ Satisfactory evidence of resident and work permit in Nigeria as required under the Immigration Act.
- ◆ Filled application form for Limited Registration attaching all aforementioned documents. Same must be submitted to the Registrar by the Practitioner or through his designated agent i.e., Legal Attorney.
- ◆ Evidence of registration by the Council of the country he/she has worked previously.
- ◆ A letter of good standing sent directly by the Council of the country he previously worked.
- ◆ Payment of all official and necessary fees as stipulated by law, or the regulations of the Council as may be published from time to time.
- ◆ The Applicant must satisfy the Registrar that he/she is of good character, sound mind, and appropriate disposition towards Nigeria and her citizens.

On fulfillment of these requirements, the Council would approve and issue the required license.

It, therefore, appears that the law has taken into cognizance and has addressed the

concerns relating to the invitation of foreign medical experts to Nigeria. It is now a question of enforcement and implementation rather than an absence of a regulatory framework. Thus, if Nigerian hospitals and institutions comply with the provisions of the Act, the patients would be protected. As for jobs, it is important to note that one of the requirements for applying for an expatriate visa under the Immigration Act, is that the expatriate must possess a critical skill, that is, a skill that is rare or absent in the country. So, where there is a dearth of medical experts available, the entry of foreign experts may be excused. What remains to be said is that the Council must not neglect the criteria of good character, sound mind, and most importantly appropriate disposition towards Nigerians. Although it would be almost impracticable to track or measure 'disposition', it is the duty of Nigerian patients and doctors to speak up and complain to the MDCN. Indeed allegations persist that expatriates maltreat Nigerians.³

MDCN, HEFAMAA & FBTMDs

The professional health regulatory agency for the professions of Medicine, Dentistry and Alternative Medicine in Nigeria is the MDCN and it is one of the foremost medical regulatory authorities in Africa.

The Health Facility Monitoring and Accreditation Agency (HEFAMAA) is a creation of the Lagos State Government charged under Part 5 of the Health Sector Reform Law of Lagos State 2006, with the responsibility of monitoring both private and public health facilities to ensure registration and accreditation of all health facilities in Lagos State.

Concerns have been raised regarding the authority of HEFAMAA to shut down medical establishments that engaged FBTMDs since HEFAMAA is not MDCN. These concerns are, however, misguided. The State has the authority under the Constitution to provide for the health and safety of Lagosians. While it has no jurisdiction to decide on foreign entrants into the medical profession, it can, however, work together with the appropriate federal authority, in this case, the MDCN, to ensure that the life of Lagosians is protected. Its powers are, however, subject to the overriding powers of the federal authority where the subject matter is on the concurrent list. What hospitals were shut down for, is the lack of expatriate license from MDCN, not lack of registration/license with HEFAMAA. Although, the policy is that once compliance with MDCN has been made, HEFAMAA should be informed to register same on its records. In this case, the expatriates at the time were yet to obtain the required license from MDCN.

But what does registration with HEFAMAA entail? Does it entail further bureaucracy and payment? Indeed, medical facilities requiring foreign experts may find the process too rigorous and expensive where payment is expected. Such payment, if submitted must be minimal to cover the cost of record-keeping only. The essence of such a record is

3 See - <https://independent.ng/discordant-tunes-over-chinese-doctors/> ; <https://www.pressreader.com/nigeria/the-punch/20200424/281917365225668> ; <https://guardian.ng/news/how-foreign-firms-break-labour-laws-maltreat-nigerian-workers/>

important to the functions of HEFAMAA so as to create a sync between the MDCN list and that of HEFAMAA. This will have an extended effect on the lives of Nigerians in Lagos.

Conclusion and Recommendation

The very notion of the right to life demands that everything humanly possible must be done to protect and safeguard lives. Following the multiple exoduses of medical personnel in Nigeria to foreign countries, medical facilities are battling to meet the needs of patients. Reaching out to foreign experts and providing Nigerians with the needed healthcare seems inevitable. However, it is recommended that the reach to foreign expatriates should be limited to instances where there is a scarcity or lack of Nigerian experts (local or diaspora) in the required field. The requisite MDCN license should be issued before entry of the expatriate, as required by the Guidelines. This is a demand by law for the safety of Nigerians.

Further registration, it is recommended that a record of expatriates that have been granted a license by the MDCN should be maintained by HEFAMAA. Thus MDCN will need to work closely with HEFAMAA and other State monitoring bodies, to fully achieve its function without raising further costs and bureaucracy for licensed expatriates or their employers. A symbiotic relationship between the MDCN and States' monitoring agencies is a step in the right direction.

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