

## TELEHEALTH IN NIGERIA: A LEGAL PERSPECTIVE\*

### Abstract

Public health care delivery in Nigeria is almost in shambles while access to private health facilities is almost beyond the reach of the middle class. This easily explains the resort to medical tourism by the wealthy in Nigeria. Telehealth has been seen by many as a ray of light at the end of the tunnel for healthcare delivery in Nigeria. Simply, telehealth is leveraging on the internet to deliver healthcare services to those in need of them. The target of this paper is an attempt to appraise the prospects and challenges of telehealth in Nigeria; existing laws regulating telehealth in Nigeria, the legal framework for telehealth in India and see how telehealth can be legally regulated to improve healthcare delivery in Nigeria.

**Keywords:** Telehealth, Law, Nigeria, India

### 1. Introduction

Telehealth has been described as health care provided remotely to a patient in a separate location using two-way voice and visual communication (as by computer or cellphone).<sup>1</sup> Telehealth — sometimes called telemedicine, lets your health care provider provide care for you without an in-person office visit.<sup>2</sup> Telehealth is done primarily online with internet access on your computer, tablet, or smartphone.<sup>3</sup> It is pertinent to mention that telehealth does not focused on creating new or different health care services. Rather, it is targeted at simply innovating the delivery of existing healthcare service with the use of technology.<sup>4</sup> On the clinical side, telehealth bridges the distance between patient and health care provider by allowing patients to remain in their communities, while being seen by a health care provider at a distant site. Research reveals that telehealth and telemedicine are used interchangeably. The American Telemedicine Association even asserted that –

Telemedicine and telehealth both describe the use of medical information exchanged from one site to another via electronic communications to improve the patients' health status. Although evolving, telemedicine is sometimes associated with direct patient clinical services and telehealth is sometimes associated with a broader definition of remote health care services.<sup>5</sup>

Based on the foregoing, 'telehealth' and 'telemedicine' shall be used interchangeably in the course of this paper. The World Health Organisation defined telemedicine as delivery of health care services, where distance is a critical factor, by all health care professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and for the continuing education of health care providers, all in the interests of advancing the health of individuals and their communities.<sup>6</sup> There are various forms of telehealth and they include the following:

**Remote Monitoring:** This is also known as self-monitoring or self-testing. It utilizes a range of technological devices to keep tabs on the health and clinical signs of a patient remotely. Remote monitoring is greatly applied in the management of chronic diseases that include diabetes mellitus, cardiovascular disease and asthma.<sup>7</sup> The advantages of remote monitoring telehealth include increased patient monitoring, cost effectiveness, and better patient satisfaction. Its disadvantages include inaccuracy in tests conducted by non-professionals like the patients themselves; wrong diagnosis where the symptoms are common to multiple ailments; and the like.

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<sup>1</sup> Merriam Webster, 'Telehealth.' <https://www.merriam-webster.com/dictionary/telehealth> retrieved on August 12, 2022.

<sup>2</sup> Telehealth.HHS.Gov, 'What is Telehealth?' <https://telehealth.hhs.gov/patients/understanding-telehealth/> retrieved on August 12, 2022.

<sup>3</sup> *Ibid.*

<sup>4</sup> H Exner-Pirot, 'Challenges of Telehealth.' <https://openpress.usask.ca/northernhealthcare/chapter/chapter-25-challenges-to-telehealth-implementation/> retrieved on August 17, 2022.

<sup>5</sup> T A Lustig, 'The Role of Telehealth in an Evolving Health Care Environment: Workshop Summary.' [https://www.ncbi.nlm.nih.gov/books/NBK207145/pdf/Bookshelf\\_NBK207145.pdf](https://www.ncbi.nlm.nih.gov/books/NBK207145/pdf/Bookshelf_NBK207145.pdf) retrieved on August 12, 2022.

<sup>6</sup> I Uche, 'Nigeria: Telemedicine In Nigeria: Data Protection Considerations.' <https://www.mondaq.com/nigeria/data-protection/1159640/telemedicine-in-nigeria-data-protection-considerations> retrieved on July 7, 2023.

<sup>7</sup> Y Smith, 'Types of Telemedicine.' <https://www.news-medical.net/health/Types-of-Telemedicine.aspx> retrieved on August 12, 2022.

**Real-time Interactive Services:** This occurs where the health personnel and the patient have a live interactive session via the internet either through a computer or a mobile device. Through this means immediate advice can be rendered to patients that need medical attention. In the course of the interactive session, the patient's medical history can be taken with consultation involving the presentation of symptoms, and subsequently an assessment by the health personnel similar to what happens during physical medical appointments.<sup>8</sup> A good example of this form of telehealth is teleneuropsychology which combines neuropsychological consultation and assessment over the phone with patients that possess a cognitive disorder or are perceived to have same. Standard evaluation techniques are implemented to assess the patient via video technology.<sup>9</sup>

**Store-and-forward Telehealth:** Here, patient information such as x-ray results or biosignals may be sent to the health personnel as required when it has been gotten from the patient.<sup>10</sup> This form of telehealth is popular dermatology, radiology, and pathology. Where properly handled, the store-and-forward form of telemedicine is time saving and allows health personnel render their services more fully. The patient's medical history report and documented information or images are relied on to make a diagnosis other than the regular physical examination. The down side of this form of telehealth is the likelihood of misdiagnosis that can complicate issues for the patient.<sup>11</sup>

## 2. Prospects of Telehealth

The importance of telehealth to mankind cannot be overemphasized. The COVID 19 pandemic proved this assertion correct as physical movement was heavily restricted globally. Apart from the health sector, other sectors of the economy depended on technology hugely for product and service delivery. Progressively, the nexus between application of technology and the future of health and healthcare delivery is being appreciated over time, if not broadly accepted or consolidated.<sup>12</sup> Internationally, telemedicine is being used in rendering healthcare services but is embedded in few countries.<sup>13</sup> The necessity and utilization of telehealth differs between the developed and developing countries – the latter battle with both communicable diseases and non-communicable diseases, and with very scarce resources to handle them.<sup>14</sup> The state of the Nigerian health sector is such that leaves much to be desired, coupled with the alarming rate of brain drain by health personnel regularly. Despite the challenges associated with the application of telehealth in the delivering health products and services, the benefits of telehealth include the following:

*Limited or no contact with persons with infectious diseases:*<sup>15</sup> This is one of the major advantages of telehealth as the health safety of the health personnel is guaranteed. Where the patient's health condition is established, health personnel can use telemedicine to monitor and the patient. During the COVID 19 pandemic, globally, telehealth was immensely helpful in access healthcare services – especially at the peak of the pandemic.

*Greater degree of confidentiality between the health personnel and the patient:*<sup>16</sup> This is so as some persons tend to be freer when they are not physically present with the health personnel and not under direct scrutiny by same.

*Greater access to specialists:*<sup>17</sup> Patients have a higher likelihood to access the services of specialists among health personnel virtually than physically as they are not limited by geographical constraints.

*Improved efficiency in healthcare delivery by medical personnel:*<sup>18</sup> As they are more comfortable and not physically pressured, health personnel are more relaxed and dispense their services better. This in turn leads to more income, improved patient follow-up and better health outcomes.

With telemedicine, it is easier and cheaper for patients with greater levels of chronic diseases to manage their health.<sup>19</sup> This is so as such patients require constant tests, health checks, dietary advice, and other emergency

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> R E Scott and M Mars, 'Telehealth in the Developing World: Current Status and Future Prospects.' <https://www.dovepress.com/getfile.php?fileID=23551> retrieved on August 12, 2022.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Eurasian Research Institute, 'Prospects for the Development of Telemedicine.' <https://www.eurasian-research.org/publication/prospects-for-the-development-of-telemedicine/> retrieved on August 14, 2022.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

care. Utilizing telehealth for this kind of patient also makes it easier for health personnel to handle the patients better.

Research has shown that monitoring a patient at home via with telemedicine helps allergists identify allergy triggers, and neurologists and physiotherapists observe and evaluate a patient's ability to navigate and take care of themselves in their own home.<sup>20</sup>

The overriding convenience and ease brought by telemedicine cannot be over emphasized.<sup>21</sup> The patient enjoys medicare from the comfort of wherever he or she is. The same is the case for health personnel utilizing telehealth to render medical services.

Telehealth aids the rendering of healthcare services in remote towns and villages especially where the road network is not really accessible. With good internet access, patients in such places can access healthcare services and their health progress or decline can be monitored and managed digitally.

It has been discovered internationally that telemedicine has great prospects and opportunities for its development.<sup>22</sup> Artificial intelligence, digital telemedicine and diagnostics, and telehealth have transformed healthcare delivery in internationally especially in developed countries.

### **3. Problems of Telehealth**

Limited or no access to internet or telecommunication connectivity in developing countries like Nigeria: As wonderful as telehealth is, a major challenge that may likely be encountered is the inability of patients in the rural areas where internet connectivity is poor, fluctuating or totally absent. It is made worse where these people have poor road access to where internet facilities can be accessed as it means they might be cut off from accessing healthcare services. This may be common in riverine parts of Nigeria or places devastated by insurgency attacks.

High costs of setting up Telehealth systems in a way same would be effectively beneficial.<sup>23</sup> Inasmuch as telehealth is perceived to bring down the cost of accessing quality healthcare services, the cost of accessing a functional and effective telehealth system is not cheap both for patients in rural and urban areas alike. Internet data is not exactly cheap and devices to be used need to be of high quality to give good access – they also do not come cheap.

Unreliable power supply can affect powering the devices through which telehealth can be made possible.<sup>24</sup> It is no longer news that electricity supply in Nigeria is erratic. Hence poor power supply can be a setback to effective access to telehealth. Most of the devices that are to be utilized to access healthcare through telemedicine need to be powered with electricity. Alternatively, solar energy could be used but is not cheap to access.

Implementation challenges:<sup>25</sup> A good number of challenges have been noted to affect the smooth implementation of telehealth. Some of them are discussed hereunder.

Health personnel reservations as to the trustworthiness and capability of technology: This concern is expressed most times by health care professionals based on the poor connectivity experienced in rural communities. Research revealed that many telehealth devices are optimized for low bandwidth, and even remote communities typically have internet access at the community health centre in developed countries. The major worry is the high cost of internet connectivity.

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<sup>20</sup> *Ibid.*

<sup>21</sup> B W Hasselfeld, 'Benefits of Telemedicine.' <https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/benefits-of-telemedicine> retrieved on August 15, 2022.

<sup>22</sup> *Ibid.*

<sup>23</sup> K C Ukaoha and F Egbokhare, 'Prospects and challenges of Telemedicine in Nigeria.' (2012) *Journal of Medicine and Biomedical Sciences*, [https://www.researchgate.net/publication/272877000\\_Prospects\\_and\\_challenges\\_of\\_telemedicine\\_in\\_Nigeria](https://www.researchgate.net/publication/272877000_Prospects_and_challenges_of_telemedicine_in_Nigeria) retrieved on August 15, 2022.

<sup>24</sup> O Egbewande, H J Oladipo, S A Olowolagba & H Iyiola, 'Application of Telemedicine in the Provision of Healthcare in Nigeria: An Insight from COVID-19.' (2023) *Journal of Health Reports and Technology*, p. 2.

<sup>25</sup> H Exner-Pirot, *op. cit.*

**Jurisdictional issues:** This arises where the health personnel and the patient are in different jurisdictions. One party might be in a jurisdiction that regulates telemedicine while the other is in a place without any form of regulation. Taxation and statutory breaches are factors that would complicate issues with regards to jurisdiction.

**Difficulty and confusion around payment for services:** Health personnel would hardly go out of their way to render their services virtually if they cannot get paid for them.

**Misdiagnosis:** Telehealth is usually virtual. Hence, there is the likelihood of misdiagnosis and wrong treatment.<sup>26</sup> During medical consultation, a complaint from a patient could be an indicator for different health conditions dwelling on the wrong one could lead to wrong treatment. Again, where a health personnel is not opportune to physically examine a patient the likelihood of misdiagnosis is high. Any health personnel who is not well trained in healthcare delivery through telehealth could make a misdiagnosis and give a wrong treatment that could have life threatening implications. Misdiagnosis in the medical profession is a serious issue and treated as a profession malpractice in different jurisdictions around the world. Research shows that misdiagnosis is a serious but common medical error made by medical personnel during telemedicine session.<sup>27</sup> The implications of misdiagnosis include death, compounded health challenge for the victim of the misdiagnosis. On the part of the medical personnel, depending on the gravity of the harm caused by the misdiagnosis, there is the likelihood of criminal and/or civil litigation and disciplinary action from the disciplinary committee of the professional body the medical personnel is part of. Having seen the foregoing challenges, it can be safely stated that telehealth is a good innovation to healthcare delivery internationally but can be greatly hindered where the attendant challenges are not looked into and handled properly.

#### 4. Legal and Ethical Concerns arising from Telehealth

In the practice and procedures involved in telehealth, there are underlying issues that arise and need to be addressed. Some of the issues are considered hereunder.

**Informed Consent:** Informed consent is the process in which a health care provider educates a patient about the risks, benefits, and alternatives of a given procedure or intervention.<sup>28</sup> As a general rule, before medical personnel commence any treatment on any patient, they are professionally mandated to get the patient's consent first – where possible. This is so because of the likelihood of an action for the tort of assault or battery. Telehealth is a virtual consultation but still involves interaction between a healthcare provider and a patient. Hence, consent ought to be sought and got consent before consultation, commences – in the interest of both parties involved. It has been rightly asserted that the pertinence and gain of informed consent also applies to telehealth just as it does to traditional, in-person medical care.<sup>29</sup> Additionally in telehealth, the informed consent process should incorporate risks specific to the delivery of care using telecommunication technologies.<sup>30</sup> In a Statement on Accountability, Responsibilities and Ethical Practice of Telemedicine published in 1999, the World Medical Association even went as far as emphasizing that where a physician in the course of a telemedicine session needs to get the expert opinion of a distant physician, the patient's consent should be sought and got.<sup>31</sup> In a nutshell, obtaining informed consent is indispensable during telehealth to forestall litigation and other associated problems that would arise in the absence of informed consent.

**Confidentiality:** One of the things medical personnel do during regular medical consultations is getting the patient's personal details that include the patient's medical history. As part of their professional ethics, medical personnel are obligated to maintain confidentiality on patients' information. For medical doctors, it even forms part of the Hippocratic Oath taken by them during their induction into the medical profession. Also, the Code of Medical Ethics in Nigeria and other jurisdictions globally impose a duty of confidentiality on all doctors as they carry out their duties professionally. This is contained on Rule 44 of the Nigerian Code of Medical Ethics. Basically, the duty of confidentiality requires health care providers to keep a patient's personal health

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<sup>26</sup> Credentialing Resource Center, 'Mitigate the Risk of Misdiagnosis in Telehealth.' (2021) Credentialing Resource Center Digest, <https://credentialingresourcecenter.com/articles/mitigate-risk-misdiagnosis-telehealth> retrieved on August 5, 2023.

<sup>27</sup> G R Graham, 'Most Common, Serious Medical Error Made During Telemedicine.' <https://www.grgpc.com/gray-ritter-graham-blog/medical-errors-made-in-telemedicine> retrieved on August 5, 2023.

<sup>28</sup> P Shah, I Thornton, D Turrin and J E Hipkind 'Informed Consent.' <https://www.ncbi.nlm.nih.gov/books/NBK430827/> retrieved on August 6, 2023.

<sup>29</sup> L M Cascella, 'Risk Perspectives in Telehealth: Informed Consent.' <https://www.medpro.com/telemedicine-informed-consent> retrieved on August 6, 2023.

<sup>30</sup> *Ibid.*

<sup>31</sup> World Medical Assembly, WMA Statement on Accountability, Responsibilities and Ethical Practice of Telemedicine 1999, [http://www.wma.net/e/press/1999\\_5.htm](http://www.wma.net/e/press/1999_5.htm) retrieved on August 6, 2023.

information private unless consent to release the information is provided by the patient.<sup>32</sup> The major rationale behind this duty is to encourage patient to freely and honestly provide information during medical consultations.<sup>33</sup> The duty of confidentiality imposed on medical personnel is not absolute as there are legal instances that the duty of confidentiality would not be rigidly stuck to. In Nigeria, Rule 44 of the Code of Medical Ethics and section 26 (2) of the National Health Act stipulated instances where disclosure can be made by healthcare providers without the patient's consent. Such instances include the following –

- a. When a Court order requires such disclosure.
- b. In the case of a minor or person otherwise unable to give consent, at the request of a parent or guardian.
- c. When non-disclosure will constitute a threat to public health.

Just as with physical medical consultations, medical personnel must maintain confidentiality with any information disclosed to them by patients digitally. Patients are more vulnerable with telehealth as it is most likely hosted on the internet. The digital application or website through which the healthcare personnel and the patient are communicating are not totally controlled by them. The likelihood of the interception of the information being shared is quite high. Internet fraudsters could intercept the information and use same against the parties involved in the telehealth sessions. It is important that providers of telehealth services must take all necessary measures to safeguard channels through which patients share information with them.

**Relationship between the Parties Involved:** By the provisions of Rules I – IV of the American Code of Medical Ethics, a patient-doctor relationship is said to exist when a physician attends to a patient's medical needs.<sup>34</sup> During traditional medical consultations, some kind of relationship is created that comes with duties and obligations. For instance, once a legal relationship is established, there is the existence of several duties imposed on the medical personnel that include the duty of care, the duty of confidentiality, and the like. These duties also arise once a relationship is established between a healthcare provider and a patient. Ordinarily, the absence of a physical meeting during telehealth sessions should not take away the duties and rights that flow from a doctor-patient relationship during physical consultations. Yet, medical personnel strongly hold the view that a doctor-patient relationship is created with only physical medical consultations. A school of thought opined that since the doctor in a telehealth session cannot fully examine a patient and effectively prescribe treatment, a doctor-patient relationship does not fully exist. This position taken on the belief that physical medical examination is key in doctor-patient relationship. Hence, its absence makes the said relationship incomplete.<sup>35</sup> From all indications, there is the air of uncertainty as to whether the doctor-patient relationship arises with the consequential rights and duties.

**Data Privacy:** During medical consultation, patients divulge a lot of personal information. Also, during telehealth sessions, healthcare workers get personal details from patients through the internet which safety cannot be totally guaranteed. Resultantly, information exchanged through the internet is susceptible to interception by third parties that are not part of the telehealth process. The unsavory implication is the increased risk of exposed access and illegal disclosure of health data. Measures need to be put in place by providers of telehealth to secure the data being exchanged during telehealth sessions.

**Jurisdictional Concerns:** Where the parties to a telehealth session are both in one country, there would be no issues as to applicable laws when legal issues arise. The real issue arises where the parties are in different countries. This is part of the legal implications of telehealth. Ordinarily, the medical practice is controlled internationally, but the same is not the case with telehealth practice which does always fall into place within the traditional areas of law and regulation applicable to the medical profession.<sup>36</sup> Most of the countries that have special laws regulating telehealth do not make provisions for situations where telehealth is done internationally.<sup>37</sup>

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<sup>32</sup> J D Bord, W Burke and D M Dudzinski, 'Confidentiality.' <https://depts.washington.edu/bhdept/ethics-medicine/bioethics-topics/detail/58> retrieved on August 6, 2023.

<sup>33</sup> *Ibid.*

<sup>34</sup> American Medical Association, 'Patient-Physician Relationships.' Code of Medical Ethics, <https://code-medical-ethics.ama-assn.org/ethics-opinions/patient-physician-relationships> retrieved on August 7, 2023.

<sup>35</sup> J Menage, 'Why Telemedicine Diminishes the Doctor-Patient Relationship.' (2020) British Medical Journal, <https://www.bmj.com/content/371/bmj.m4348> retrieved on August 7, 2023.

<sup>36</sup> H Lowells, 'International Telemedicine: A Global Regulatory Challenge.' <https://www.lexology.com/library/detail.aspx?g=f2d9946b-e5c3-43f5-b813-9528e23afbda> retrieved on August 7, 2023.

<sup>37</sup> *Ibid.*

## 5. Telehealth in Nigeria

### Historical Background of Telehealth in Nigeria

In Nigeria, sometime between 2009 and 2010, the Lagos University Teaching Hospital, Idiara, Lagos, hosted the first public telemedicine project while partnering with some universities in India.<sup>38</sup> Professor Akin Osibogun, the Chief Medical Director of the hospital at the time, was noted to have asserted the possibility of telemedicine in Nigeria as same was demonstrated during the programme.<sup>39</sup> Osibogun further opined that the telemedicine project embarked on enabled the Lagos University Teaching Hospital to exchange seminars with leading hospitals in India. Subsequently, National Hospital, Abuja in collaboration with the Sickle Cell Foundation successfully hosted a live interactive diagnostic on a 13-year-old sickle cell patient in Lagos.<sup>40</sup> This was done through a teleconferencing technology linking university-based medical experts working at National Hospital in Abuja and the National Sickle Cell Foundation in Lagos. The teleconferencing technology was facilitated by an Indian communications provider Suburban West Africa. By 2015, an indigenous telemedicine organization Hudibia, owned by Dr. Ahjoku Amadi-Obi developed the first telemedicine digital application for accessing healthcare services digitally.<sup>41</sup> During the peak of the COVID 19 pandemic, 2020, the Hudibia application was reported to have recorded about 400% increase in downloads.<sup>42</sup> Impressively, the Nigerian Federal Government in partnership with a Canadian Firm, Ethnomet, is set to launch a digital healthcare platform – *NigComHealth*. *NigComHealth* is projected as a telemedicine platform targeted at allowing millions of Nigerians to have access to quality healthcare digitally.<sup>43</sup> It is hoped that when launched, the platform will transform the way patients and healthcare providers connect by providing convenient and accessible medical consultations by licensed healthcare professionals anytime, anywhere via mobile app.<sup>44</sup> Presently, various business entities in Nigeria offer healthcare services through telehealth such as Sesame Care, MeMD, Amwell, MDLive, Health Tap, telehealth ambassadors, Medisr, MyMedicalBank, 1Dokita Healthcare Ltd, and Medtech Africa.<sup>45</sup>

### Legal Regulation of Telehealth in Nigeria

It has been argued that there is no legal framework for the practice of telehealth in Nigeria.<sup>46</sup> Research reveals otherwise.<sup>47</sup> Ordinarily, there are no specific laws made to regulate the practice of telehealth in Nigeria. all the same, there are still some laws in Nigeria that have provisions that can regulate telehealth in Nigeria to some extent some of such laws are looked at hereunder.

#### *National Information Technology Development Agency Act 2007*

The National Information Technology Development Agency Act<sup>48</sup> plays a crucial role in the development and regulation of telemedicine services in Nigeria. The NITDA Act in section 1 established the National Information Technology Development Agency. The NITDA Act generally tasks the National Information Technology Development with the creation of regulations for electronic governance and monitoring of the use of information technology and electronic data in Nigeria. Telehealth involves the deployment of healthcare delivery through digital systems and comes under what the NITDA Act should regulate ordinarily. Specifically, section 6 outlines the functions of National Information Technology Development Agency. A careful look at the said section reveals that NITDA has powers to make regulations to govern telehealth practice in Nigeria. The said section is reproduced below.

<sup>38</sup>T Fatunde, ‘Nigeria: Telemedicine arrives at Lagos.’ (2010) <https://www.universityworldnews.com/post.php?story=20100114190633688> retrieved on July 7, 2023.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> L Adamu, ‘Hudibia is a Mobile App that wants to Disrupt the Nigerian Medical Scene.’ (2016) <https://techcabal.com/2016/11/22/hudibia-is-a-mobile-app-that-wants-to-disrupt-the-nigerian-medical-scene/> retrieved on July 7, 2023.

<sup>42</sup>T Adegbite, ‘Telemedicine – A Panacea for Nigeria’s Healthcare Ills?’ (2021) <https://www.thisdaylive.com/index.php/2021/03/21/telemedicine-a-panacea-for-nigeriashealthcare-ills> retrieved on July 7, 2023.

<sup>43</sup> R Ibeh, ‘Federal Govt Partners Canadian Firm To Launch Digital Healthcare Platform.’ (2023) <https://leadership.ng/federal-govt-partners-canadian-firm-to-launch-digital-healthcare-platform/> retrieved on July 7, 2023.

<sup>44</sup> *Ibid.*

<sup>45</sup> A Umeike, C Eze and E Ughanze, ‘Navigating the Regulatory Landscape of Telemedicine in Nigeria.’ (2023) <https://businessday.ng/news/legal-business/article/navigating-the-regulatory-landscape-of-telemedicine/> retrieved on July 7, 2023.

<sup>46</sup> I Uche, *op. cit.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Hereinafter referred to as NITDA Act.

The Agency shall:

- a. Create a frame work for the planning, research, development, standardization, application, coordination, monitoring, evaluation and regulation of Information Technology practices, activities and systems in Nigeria and all matters related thereto and for that purpose, and which without detracting from the generality of the foregoing shall include providing universal access for Information Technology and systems penetration including rural, urban and under-served areas;
- b. Provide guidelines to facilitate the establishment and maintenance of appropriate for information technology and systems application and development in Nigeria for public and private sectors, urban-rural development, the economy and the government;
- c. Develop guidelines for electronic governance and monitor the use of electronic data interchange and other forms of electronic communication transactions as an alternative to paper-based methods in government, commerce, education, the private and public sectors, labour, and other fields, where the use of electronic communication may improve the exchange of data and information;
- d. Develop guidelines for the networking of public and private sector establishment.
- e. Develop guidelines for the standardization and certification of Information Technology Escrow Source Code and Object Code Domiciliation, Application and Delivery Systems in Nigeria;
- f. Render advisory services in all information technology matters to the public and private sectors;
- g. Create incentives to promote the use of information technology in all spheres of life in Nigeria including the setting up of information technology parks;
- h. Create incentives to promote the use of information technology in all spheres of life in Nigeria including the development of guidelines for setting up of information technology systems and knowledge parks;
- i. Introduce appropriate regulatory policies and incentives to encourage private sector investment in the information technology industry;
- j. Collaborate with any local or state Government, company, firm, or person in any activity, which in the opinion of the agency is intended to facilitate the attainment of the objective of this act;
- k. Determine critical areas in Information Technology requiring research intervention and Development in those areas;
- l. Advise the Government on ways of promoting the development of information technology in Nigeria including introducing appropriate information technology legislation, to enhance national security and vibrancy of the industry;
- m. Accelerate internet and intranet penetration in Nigeria and promote sound Internet Governance by giving effect to the Second Schedule of this Act;
- n. Perform such other duties, which in the opinion of the Agency are necessary or expedient to ensure the efficient performance of the functions of the Agency under this Act.

Presently, there may not be a particular law regulating telehealth in Nigeria but section 6 of the NITDA Act reveals that NITDA is empowered to make regulations to legally regulate the practice of telehealth in Nigeria. It is hoped NITDA would take a positive step in that direction to legally protect the parties involved in telehealth in Nigeria.

### ***Code of Medical Ethics 2008***

The Medical and Dental Council of Nigeria's Code of Medical Ethics 2008, recognises the importance of telemedicine as a means of improving healthcare delivery in the country. The Code addresses telemedicine in Guideline 22 and provides guidelines for its use as follows:

Telemedicine, a professional opportunity outcome of modern advances in computer and telecommunication technology, is steadily creeping into professional practice in Nigeria. It is medicine requested and practised at a distance, and it is particularly useful for patient care and management by general practitioners and specialists in accessing tele-support in their daily practices on the basis of requirements for specialist consultation in various specialties of medicine and dentistry.

The above provisions are quite impressive as they provide a guide for medical doctors in Nigeria that choose to render healthcare delivery electronically. The Medical and Dental Council of Nigeria have taken the lead to

guide their members on telehealth. It is hoped that other health personnel who render healthcare services, like pharmacists, would also provide professional regulations to guide their members.

### **Evidence Act 2011**

In Nigeria, Section 84 generally makes provisions for the admissibility of electronically generated evidence in judicial proceedings. Section 84 (1) of the Evidence Act generally makes electronic evidence admissible. Section 84 (2) (a) – (d) lists the conditions for admissibility of electronically generated evidence. Section 84 (3) deals with the source of electronic evidence especially from various computers which should be treated as from one computer. Section 84(4) mandates the production of a certificate of authentication to validate the source of the electronically generated evidence. Based on the foregoing, where the practice of telehealth becomes the subject of litigation, section 84 of the Evidence Act regulates the manner in which such evidence would be tendered.

### **Data Protection Act 2023**

The Data Protection Act, 2023, is the legislation which provides a legal framework for the protection of the personal data of Nigerian citizens. Being the main data protection legislation in Nigeria, it sets out guidelines and standards for the collection, processing, storage, and transfer of personal data in Nigeria. The Act applies to all data controllers and processors who collect, process or store personal data in Nigeria, including healthcare providers who engage in telehealth. Section 1 of the Act spells out the objectives of the Act which includes ensuring that data controllers and data processors fulfil their obligations to data subjects.<sup>49</sup> Generally, section 2 of the Data Protection Act is applicable to processing of personal data whether by automated means or not. Section 2 (2) of the Act provides as follows:

This Act applies only where —

- (a) the data controller or data processor is domiciled, ordinarily resident, or ordinarily operating in Nigeria;
- (b) the processing of personal data occurs within Nigeria; or
- (c) the data controller or the data processor is not domiciled, ordinarily resident or ordinarily operating in Nigeria, but is processing personal data of a data subject in Nigeria.

Interestingly, section 2 (1) (e) of the Data Protection Act makes its provisions applicable to data controllers or the data processors that are not domiciled, ordinarily resident or ordinarily operating in Nigeria, but processing personal data of data subjects in Nigeria. This provision would take care of health personnel outside Nigeria engaging in telehealth sessions with patients in Nigeria.

## **6. Telehealth in India**

Presently in India, there is no law enacted to regulate telehealth yet. However, in March 2020, the ‘Telemedicine Practice Guidelines’ was drafted by the Indian government and made Appendix 5 of the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulation, 2002.<sup>50</sup> The said Regulations generally provide a legal framework for the practice of telemedicine in India. Impressively, the Telemedicine Regulation touches on ethical and legal issues such as persons qualified to practice telehealth sessions with patients – registered medical practitioners; identification of the physician and the patient;<sup>51</sup> consent; confidentiality; documentation; fees and other relevant matters. Other laws that have provisions that apply to telehealth in India include the Information Technology Act of 2000.<sup>52</sup> Inasmuch as the Telemedicine Regulation is not a statute, the Indian Courts are doing well in recognizing its provisions and applying the provisions. In a case involving the death of an Indian, actor Sushanth Singh Rajput, the prescription of a given drug procured through a teleconsultation session, the court in placing reliance on the provisions of the Telemedicine Practice Guidelines in delivering its judgment.<sup>53</sup>

## **7. Conclusion and Recommendations**

Telehealth has been accepted internationally as a tool for augmenting healthcare delivery hence its increased use. It is unfortunate that even amongst healthcare providers, there is yet to be a general acceptance of telehealth sessions as establishing doctor-patient relationship. Good enough, in Nigeria, telehealth has been accepted and is being practiced. It is very important that the National Assembly enacts a law specifically to regulate the telehealth process to protect the parties involved maximally. Also, there need to be established a specialized administrative body to regulate and monitor the practice of telehealth in Nigeria.

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<sup>49</sup> Section 1 (e) of the Data Protection Act of 2023.

<sup>50</sup> S N Pai, M Jeyaraman, N Jeyaraman, *et al*, ‘Understanding the Medico-Legal Aspects of Telemedicine in India.’ (2023) <https://assets.cureus.com/uploads/editorial/pdf/173699/20230725-12313-t305lp.pdf> retrieved on August 7, 2023

<sup>51</sup> None of the parties is allowed to be anonymous.

<sup>52</sup> S N Pai, M Jeyaraman, N Jeyaraman, *et al*, *op. cit*.

<sup>53</sup> *Ibid*.