

AN APPRAISAL OF THE LEGAL FRAMEWORK FOR TELEMEDICINE IN NIGERIA*

Abstract

Telemedicine is an innovative approach to delivering healthcare services through the use of technology, which has become increasingly popular in Nigeria. With the aid of technology, more lives are saved, and more complications are resolved. Diagnoses, surgical procedures, prescriptions, consultations have all taken on new forms. Health technologies such as telemedicine render a plethora of possibilities that can improve affordability, accessibility, availability, and quality healthcare services. This work examined the legal appraisal of telemedicine in Nigeria, it highlights the absence of a specific legislation regulating telemedicine in the country and the implications of this for the practice of telemedicine. This work also examined the concept and development of telemedicine in Nigeria and further emphasizes the need for a legal framework. This work further discussed jurisdictions such as Malaysia where telemedicine has been successfully integrated. Consequently, this work adopted the qualitative methodology of research such as examining primary sources such as the Nigeria Data Protection Regulation, and secondary sources such as learned journal articles, textbooks, periodical articles, and the likes. The results show that, owing to the weak and fragmented state of the healthcare system, there is a pressing need for increased awareness of the benefits of telemedicine, as well as funding a legislation aimed at controlling the practice. Hence, this research work draws the curtains by strongly suggesting that state and federal governments should work together to formulate an appropriate regulatory framework that will incorporate telemedicine into the Nigeria healthcare system.

Keywords: Telemedicine, E-health. Telehealth, ICT, Legal Framework, Regulatory

1. Introduction

Healthcare is the world's largest and fastest growing industry, the context of healthcare is rapidly changing and evolving. One of the greatest challenges facing humankind in the 21st century is to make high-quality health care available to all.¹ In advanced economies, health care systems are deemed financially unstable, while in emerging economies, they are still being shaped. These systemic changes result from government pressure to contain the cost of health care.² The delivery of healthcare services, where distance is a critical factor, by all healthcare 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 healthcare providers, all in the interests of advancing the health of individuals and their communities is known as Telemedicine as elaborated by WHO in 2010.

Telemedicine uses ICTs to overcome geographical barriers, and increase access to health care services. This is particularly beneficial for rural and underserved communities in developing countries – groups that traditionally suffer from lack of access to health care. Telemedicine in Nigeria is still at its nascent stage. The need for telemedicine as an instrument in developing the healthcare sector and saving millions of lives cannot be overemphasized. Nigeria has a population of more than 140 million people, a major percentage of which live in the remote rural areas, with little or no access to modern health-care facilities. Geographic isolation, the scarcity of physicians and hospitals, and difficulties of travel to larger cities where such care is available are among the factors limiting this access. Governments at federal, state and local levels, have been making healthcare in these remote rural areas their focal point over the years so as to enable citizens in both rural and urban areas have equal access to medical services and clinical healthcare despite the geographic isolation barriers but this effort has only been partly successful. Therefore, using a system of healthcare that could allow doctors gain access to patients in remote locations is necessary and most useful in achieving government's aims of bringing useful healthcare to these remote rural and poorer areas. This among other things would improve the quality of healthcare in rural and outlying areas, lower costs of delivering healthcare and give remotely placed physicians the opportunity to consult over any patient's case.³ At present, Nigeria's healthcare system is plagued with a lot of bottlenecks and a dearth of trained medical professionals, funding, ill-equipped facilities amongst others. Its current state can be likened to a critically ill patient in a comatose state with telemedicine as one of the treatments to the rescue. Just like virtual meetings, online learning, online marketing, etc. have become the new norm, telemedicine is gradually becoming same. With the incessant cases of COVID 19, telemedicine is a practicable solution to treating patients as many hospitals have been limiting in-patient visits.⁴ Thus, this leaves a higher percentage of the populace without access to healthcare services they need, as well as an increase in

*By **B. N. OKPALAOBI, PhD, LLM, BL, LLB**, Professor of Law, Faculty of Law, Department of Commercial and Property Law, Nnamdi Azikiwe University, Awka, Nigeria; and

***Ngozi Eunice EMEKA, LLM, BL, LLB, PhD Candidate**, Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria, Email: ne.nwafor@unizik.edu.ng, 07035114683.

¹ J Craig, & V Patterson, . (2005). Introduction to the practice of telemedicine. *Journal of Telemedicine and Telecare*, 11(1), 3–9. <https://doi.org/10.1258/1357633053430494>

² A. N. Emmanuel, (2014). Challenges of implementing sustainable health care delivery in Nigeria under environmental uncertainty. *Journal of Hospital Administration*, 3(6), 113–126. <https://doi.org/10.5430/jha.v3n6p113>

³ A Ikwu, DT Komulafe, G Ohanewu and SE Nwawudu, 'Advancement of telemedicine in Africa and the current laws: A case study of Nigeria' *The Medico-legal Journal*, November 2021

⁴ Tremendoc Ltd, 'Telemedicine in Nigeria: 5 reasons you should talk to a doctor online' (Tremendoc, 13 July 2020) <https://tremendoc.com/blog/2020/07/13/telemedicine-in-nigeria-5-reasons-you-should-talk-to-a-doctor-online/> accessed March 26, 2023.

the demand for telemedicine. The COVID 19 global pandemic has put pressure on stakeholders and the government for a systemic change and restructuring of the healthcare system.

However, there are a few legislations that sparingly regulate telemedicine. They include as follows: 1999 Constitution of the Federal Republic of Nigeria, National Health Act 2014, Code of Medical Ethics 2008, National Information Technology Development Agency Act 2007, Nigerian Communications Act 2003, Medical and Dental Practitioners Act (MDPA) 1988, Nigeria Data Protection Regulation 2019, Standards Organization of Nigeria Act 2015, Federal Competition and Consumer Protection Act 2018 amongst others. There should therefore be a proper legal framework to attain a telemedicine system in Nigeria which meets the high standards of conventional medicine.

2. Definition of Telemedicine

According to the European Commission, telemedicine is defined as the provision of health care services, through the use of Information and Communication Technology (ICT), in instances where distance is a barrier between the health professional and the patient.⁵ In a similar vein, World Health Organization (WHO) defines Telemedicine as the delivery of health care services at a distance using electronic means for ailment diagnosis, prevention and treatment of illnesses.⁶ In simple parlance, it involves the delivery of healthcare services remotely through ICT, for example, consultation, treatment of patients, etc. It is where information telecommunications technology and medicine meet. The pivot of telemedicine is remote clinical services. The many definitions highlight that telemedicine is an open and constantly evolving science, as it incorporates new advancements in technology and responds and adapts to the changing health needs and contexts of societies.

Four elements are germane to telemedicine:

- (i) Its purpose is to provide clinical support.
- (ii) It is intended to overcome geographical barriers, connecting users who are not in the same physical location.
- (iii) It involves the use of various types of ICT.
- (iv) Its goal is to improve health outcomes.

Telemedicine is essentially divided into the following categories:

- (i) The Store-And-Forward Telemedicine: This refers to the electronic transmission of a patients' medical information, such as lab report to a practitioner, usually a specialist, who uses the information to properly evaluate the case or render a service outside of a real-time or live interaction.⁷
- (ii) Tele-Monitoring: This is the continuous or non-continuous monitoring process that allows a healthcare professional to remotely interpret the data necessary for a patient's medical follow-up, and if necessary, make decisions regarding the patient's state of health.⁸
- (iii) Real-Time Telemedicine: Also referred to as interactive services, involves the provision of immediate advice to patients who require medical attention. There are several different mediums utilized for this purpose, including phone, online and home visits. A medical history and consultation about presenting symptoms can be undertaken, followed by an assessment similar to that which is usually conducted during face-to-face appointments.

3. History and Origin of Telemedicine

Historically, telemedicine can perhaps be traced back to the mid to late 19th century⁹ with 'one of the first published accounts taking place in the early 20th century when electrocardiograph data were transmitted over telephone wires'.¹⁰ Telemedicine, in its recent form, started developing in the 1960s in large parts operated by the 'military' and 'space technology' sectors, as well as a few people using the readily accessible commercial equipment¹¹. Early examples include the use of television to ease consultations between specialists at a psychiatric institute and general practitioners at a state mental hospital, and the provision of expert medical advice from a major teaching hospital to an airport medical centre¹². Over the past decade, a rapid increase in the use of technology and the recent advancements has led to the development of telemedicine, creating new probabilities for health care service and delivery.¹³ The lowered costs of ICTs and the replacement of analogue forms of communication with digital methods, provided the health care organizations to envisage and enforce new and advanced ways of providing health care. This indeed resulted in wider interests in the use of telemedicine. The use of the internet by common people has accelerated the pace of computer advancements, and also

⁵ European Observatory on Health Systems and Policies & Peesto, Terje, 'Telemedicine: the time to hesitate is over!' 20 (3) 15-17 Eurohealth <https://apps.who.int/iris/handle/10665/332822> accessed 5th April 2023.

⁶ M Serper, ML Volk, 'Current and Future Applications of Telemedicine to Optimize the Delivery of Care in Chronic Liver Disease' 2018 Feb 16 (2): 157-16 Clin Gastroenterol Hepatol <https://www.ncbi.nlm.nih.gov/pubmed/29389489> accessed 5 April, 2023.

⁷ CCHP, 'Medicaid & Medicare: Store-And-Forward' < <https://www.cchpca.org/topic/store-and-forward/>> accessed February 19 2023.

⁸ Science Direct, 'The Human challenge of telemedicine: Tele-monitoring (2019)' < <https://www.sciencedirect.com/topics/nursing-and-health-professions/telemonitoring>> accessed February 19 2023.

⁹ J Craig, Patterson V. Introduction to the practice of telemedicine. Journal of Telemedicine and Telecare, 2005

¹⁰ Einthoven W. Le télécardiogramme [The telecardiogram]. Archives Internationales de Physiologie, 1906.

¹¹ Currell R et al. Telemedicine versus face to face patient care: effects on professional practice and health care outcomes. Cochrane Database of Systematic Reviews, 2000, Issue 2.

¹² Telemedicine https://www.who.int/goe/publications/goe_telemedicine_2010.pdf (Last visited 17th August, 2020).

¹³ Telemedicine https://www.who.int/goe/publications/goe_telemedicine_2010.pdf (Last visited 17th August, 2020).

expanding the scope of telemedicine to develop Web-based applications and multimedia applications. These advancements have led to the formation and development of telemedicine applications that the world is using today.

4. Challenges of Telemedicine Practice in Nigeria

The practice of telemedicine has not been widespread in Nigeria. Although several factors are involved; the main reasons can be summarized to include the following: high cost of installation and maintenance of equipment; inconsistent electricity supply; low levels of awareness of the advantages of telemedicine; reluctance of the health workers themselves to change their method of operations; and the abysmally low government funding of healthcare among others. The main challenges hindering full adoption and practice of telemedicine in Nigeria include: Low levels of awareness of the advantages of telemedicine especially among people at the very remotest parts of Nigeria who have no access to telemedicine. Similarly, many hospitals in Nigeria are yet to fully embrace telemedicine. The only way forward is advocacy and communications. Also the high prevalence of cyber-crimes (privacy violation, identity theft & fake websites): create vulnerability of patients' privacy and confidentiality and this is another ethical challenge in using e-health services, due to unprotected accessibility and potential abuse of confidential medical information via information technology.¹⁴ Also, lack of laws protecting telemedicine practitioners in hospitals is another factor affecting telemedicine because as telemedicine develops, it will, like any other medical discipline, bring with it a slew of medico-legal issues such as medical confidentiality, quality of care, doctor qualifications, and informed consent will all need to be addressed, as will fraud, licensing, remuneration, clinical incompetence, obligations, fines, and civil liability.

5. Legal and Regulatory Framework for Telemedicine in Nigeria

There is no stand alone or specific legal framework regulating telemedical activities in Nigeria however, there are several related laws that are applicable to some issues under telemedicine. As there are many laws that intersect with telemedicine activities across-the-board, the following laws are the main legislations connected with telemedicine in Nigeria:

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 17 which stipulates the provisions for right to health and Section 37 provides for the protection of the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication.¹⁵ This places the onus on telemedicine providers or health professional to ensure the privacy of medical records and health information. They have a duty to keep all data transmitted safe and private. Without doubt, data transferred over the internet is at risk of interception by cybercriminals.¹⁶ Nevertheless, the benefits of telemedicine outweigh the risk, hence providers must take all necessary steps to ensure fully encrypted data transmission and make sure patient records are not susceptible to cyber threats.

National Health Act 2014

The Nigeria's National Health Act 2014 (NHA 2014) was signed into law on October 31st, 2014. It provides a legal framework for the regulation, development and management of the Nigeria's Health System. The National Health Act is a useful tool in achieving Universal Health Coverage through a strengthened health system, it provides a framework for the regulation, development and management of structured health system and establishes the Nigeria Health System and delineates roles and responsibilities of Health Actors. The National Health Act is divided into seven (7) parts but surprisingly, the National Health Act has no provisions for the use of telemedicine in the Nigeria's health care system and this shows that our health care system is lagging behind.

Evidence Act 2011: Section 84 of the Evidence Act guarantees the admissibility of computer-generated documents.¹⁷ This means electronic documents exchanged between the telemedicine provider and the patient such as e-consent forms are legally recognized.

National Information Technology Development Agency Act ('NITDA') 2007: By virtue of section 6 (C) of NITDA, the agency is conferred with the power to set guidelines for electronic governance and monitor the exchange of electronic data.¹⁸ The guidelines of concern are the Nigerian Data Protection Regulation 2019 and the Management of Personal Data by Public Institutions in Nigeria 2020. The Agency is empowered to constitute regulatory standards and guidelines for e-health initiatives.

Standards Organization of Nigeria Act 2015: This established and empowered Standards Organisation of Nigeria and also has it as one of its general purposes to set standards for Medical device.

¹⁴ A Akuki. Why Nigeria needs e-health to improve care delivery; 2013.

¹⁵ Constitution of the Federal Republic of Nigeria 1999, (Cap 23, LFN 2004) s 37.

¹⁶ J Pennic, 'Telehealth and Cybersecurity: What you should know' (HIT Consultant 22 November 2020) Media, <https://hitconsultant.net/2020/07/22/telehealth-cybersecurity-what-you-should-know/> accessed 6 February 2023.

¹⁷ Evidence Act 2011, s 84.

¹⁸ NITDA Act 2007, s 6 (c).

National Agency for Food and Drug Administration and Control Act empowers the National Agency for Food and Drug Administration and Control (NAFDAC) by section 5 Act to create policies for quality criteria, information management and sale of medicines and regulated health products.

Medical and Dental Practitioners Act (MDPA) 1988 The MDPA was designed to regulate the medical and dental profession and provides for punitive actions against infamous conduct.¹⁹ It covers the requirements for registration and licensing of medical doctors.²⁰ By the same token, the Act establishes the Medical and Dental Council and bestows on it the responsibility of determining the standards of knowledge and skill to be attained by members, reviewing from time to time the statement of code of conduct for medical practitioners inter alia.²¹ However, it is recommended that the Act specifically provide for training and licensing of telemedicine doctors. This would ensure that tele doctors have the requisite skills and understand the standard of care required. It should also provide for the inclusion of some level of telemedicine education in the core curriculum of medical schools. A short-coming of this Act is that it created no provisions for a nexus between technology and health and it contains several gaps relating to the new trends of the country's health sector.

Cybercrimes Act 2015: The Act criminalizes unlawful interceptions, cyber squatting, fraud, identity theft inter alia, although it does not specifically provide for the protection of health data. Part 7.5 of the National Cyber security Policy classifies the healthcare sector as a National Critical Information Infrastructure.²² Section 5 of the Act punishes any attack against sectors designated as a critical infrastructure sector, with imprisonment for a term not more than 10 years.²³

Federal Consumer and Protection Act 2018: The Federal Competition and Consumer Protection Commission, which was established by the Federal Competition and Consumer Protection Act, 2018 to review economic activities and make extensive provisions for the enforcement of consumers' rights in relation to health care services.²⁴

National Agency for Food and Drug Administration and Control Act: s 5(a)–(t), which grants the NAFDAC autonomy to establish procedures for quality criteria, management of information and the sale of medicines and regulated health products.²⁵

Code of Medical Ethics 2008: The Code of Medical ethics is the only Nigerian legislation that directly addresses telemedicine.²⁶ It enjoins medical practitioners to take precaution by avoiding medico-legal hoaxes in the areas of confidentiality, equipment being used, referral of patient, professional consultant and registration status of the specialist being consulted. It also mandates practitioners to ensure security of personal information being sent through emails or other electronic means and in the storage of data.

Nigeria Data Protection Regulation 2019: The Nigeria Data Protection Regulation ('NDPR') contains a plethora of principles of data processing and is Nigeria's first codified legislation on Data Protection. The European Union's Global Data Protection Regulation 2018 (GDPR) served as a blueprint in the conception of this regulation. More particularly, Part 4.1 (1) of the NDPR, mandates all public and private organizations in Nigeria that control data of natural persons, to make available to the general public, their respective data protection policies, appoint a data protection officer and create a database management system. This is to ensure that the privacy rights as provided in the NDPR are guaranteed, and the data of the subjects, who in this case would constitute the users of the Telemedicine platforms.

Nigerian Communications Commission Guidelines: The guideline is made by the Nigeria Communications Commission in accordance with the power vested in it by section 70 of the Nigerian Communications Act 2003. Paragraph 12 of the guidelines places an obligation on the internet service provider (ISP) to provide the option of receiving and swiftly responding to content related complaints and any notice issued by the Commission to withdraw or disable access to identified content.

Patient Bill of Rights: The Patient Bill of Rights seeks to amplify the voices of patients in Nigeria. It is a compendium of the rights patients are entitled to. It stipulates 12 crucial rights of patients, some of which include right to quality care, right to treated with respect regardless of gender, race etc, right to transparent billing and full disclosure of any cost.

¹⁹ Medical and Dental Practitioners Act, Cap M8, LFN 2004.

²⁰ Section 8, 15, 16 and 17 Medical and Dental Practitioners Act, Cap M8, LFN 2004.

²¹ Ibid, s 1-2.

²² National Cybersecurity Policy 2014, Part 7.5. https://www.cert.gov.ng/ngcert/resources/NATIONAL_CYBESECURITY_STRATEGY.pdf accessed 17 April 2023.

²³ Cybercrimes (Prohibition, Prevention, etc) Act 2015, s 5.

²⁴ Federal Competition and Consumer Protection Act, 2018, <https://placng.org> (accessed 5 February 2021).

²⁵ National Agency for Food and Drug Administration and Control Act, <https://lawpadi.com> (accessed 5 February 2023).

²⁶ Code of Medical Ethics 2008, s22

Regulatory Bodies

There is no regulatory body or agency specially formed to regulate telemedicine-related matters in Nigeria.²⁷ However, there are government agencies indirectly responsible for regulating some of the issues that arise. These government agencies, otherwise known as regulatory bodies, include the Nigerian Communications Commission (NCC), National Agency for Food and Drug Administration and Control (NAFDAC), National Information Technology Development Agency (NITDA), Medical and Dental Council of Nigeria (MDCN), Federal Competition and Consumer Protection Commission (FCCPC) and the Standards Organisation of Nigeria (SON). The functions of these regulatory bodies intersect with telemedicine and its related services in Nigeria

6. Legal Framework for Telemedicine in Malaysia

Malaysia started the initiative to implement E- health since the establishment of Malaysia's Telemedicine Act in July 1997. It is a Malaysian law enacted to provide for the regulation and control of the practice of telemedicine and for matters connected therewith. According to Malaysia's Telemedicine Blueprint 1997,²⁸ the objectives of the telehealth are to strengthen the healthcare delivery via the use of telecommunications, information and multimedia technologies. Telehealth are also used as a tool to reshape the healthcare delivery system by becoming more virtual, more distributed and more integrated resulting in better healthcare delivery and efficient.²⁹ The Telemedicine Act of 1997 makes provisions for persons who can practice telemedicine. The Act also provides that the Council may issue to the applicant a certificate to practise telemedicine for a period not exceeding three years subject to such terms and conditions as the Council may specify in such certificate.³⁰ The Act also makes provision for when patients consent will be said to be valid consent³¹ and also set out regulations that are necessary or expedient for carrying into effect the provisions of this Act.³²

7. The Need for a Proper Legal Framework of Telemedicine in Nigeria

Over 207 million people live in Nigeria,³³ and a major percentage of this population live in the remote rural areas and some in these remote rural areas have very limited access to health care services. Governments at federal, state and local levels have been prioritising health care in these remote rural areas over the years.³⁴ Therefore, the establishment of an internet-based telemedicine system would be very useful in achieving the government's aim of bringing health care to these remote rural areas.³⁵ Among other things, this would improve the quality of health care in the rural areas, lower the costs of delivering health care and give remotely placed physicians the opportunity to consult over a patient's case. Telemedicine is of inestimable value and indispensable. This is due to the overcrowded hospitals and insufficient medical personnel, inadequate hospitals in rural arrears, amongst other contributing factors.³⁶ Health is the backbone of any progressive nation, as such there is a need for a legal scaffold guiding and protecting the safety of individual members of the society as well as ensuring that such services are provided by certified qualified personnel. Telemedicine cuts across various legal aspects some of which include Intellectual property (the platform created for patients and doctors to communicate), e-consent, telecommunication, data privacy, e-consultation amongst other legal fields. Also, social institutions such as commercial transactions, marriage, banking, tax, insurance, are subject to specific laws. Therefore, this signifies the need for a robust regulatory framework that covers other areas of law that telemedicine is interwoven with. According to WHO, one of the six building blocks of a health system is leadership and governance³⁷ and achieving good governance in health means ensuring that there are strategic policy frameworks (legal/regulatory documents) in the health sector.

In addition to this, laws help to facilitate and develop various sectors in the society. A proper legal framework on telemedicine would aid in facilitating the growth and development of the e-health sector in Nigeria which in turn can

²⁷DA Adeoye. Telemedicine and law in Nigeria: need for a proper legal framework, <https://lawaxis360degree.com/2019/11/27/telemedicine-and-the-law-in-nigeria-need-for-proper-legal-framework-adeoye> accessed 20th March 2023

²⁸ MSC Malaysia, "Taking Charge of Our Health", 2002, http://www.msomalaysia.my/codenavia/portals/msc/images/pdf/magazines/april_2002/apr_2002_taking.pdf

²⁹ Ministry of Health Malaysia (MOHM), "Telemedicine Flag- ship Application. Malaysia's Telemedicine Blueprint: Leading Healthcare into the Information Age," 1997.

³⁰ Section 4 of the Malaysian Telemedicine Act 1997

³¹ Section 5 of the Malaysian Telemedicine Act 1997

³² Section 6 of the Malaysian Telemedicine Act 1997

³³Worldometer. Nigeria population, 22(3), www.worldometers.info/world-population/nigeria-population/ (accessed 5 February 2023).

³⁴ OS Yisah. Design and implementation of a telemedicine system in Nigeria. Unpublished MSc thesis submitted to the Faculty of Sciences, Ahmadu Bello University, Zaria, 2008, 23(4). www.kubanni.abu.edu.ng/jspui/handle/123456789/2282 (accessed 5 February 2023).

³⁵ OS Adewale. Internet-based telemedicine system in Nigeria. *Int J Inform Manag* 2004; 24: 221–234.

³⁶ DA Adeoye, 'Telemedicine and Law in Nigeria: Need for Proper Legal Framework – D. A. Adeoye ESQ' (Law Axis 360°, November 27, 2019) <<https://lawaxis360degree.com/2019/11/27/telemedicine-and-law-in-nigeria-need-for-proper-legal-framework-d-a-adeoye-esq/>> accessed January 7, 2021.

³⁷ World Health Organization, 'Monitoring the Building Blocks of Health Systems: A Handbook of Indicators and their Measurement Strategies' https://www.who.int/healthinfo/systems/WHO_MBHSS_2010_full_web.pdf accessed 24th March 2020.

contribute to the economic development of the country.³⁸ It would also expand and enhance the standard of health care delivery in Nigeria. Furthermore, the need to protect the privacy of patients (patient's data security) and also ensure that the right parties bear the liabilities in the advent of a breach of duty or promise is another reason.³⁹ This would also boost the confidence of the Nigerian citizenry in the health system.

Legal issues could arise where the medical practitioner maybe in one jurisdiction and the patient in another i.e., conflict of laws in determining which laws would be applicable especially where the involved jurisdictions run two different legal systems, hence there is a dire need for an all-encompassing legal framework clarifying the labyrinth of telemedicine to ascertain which laws are applicable to certain cases.⁴⁰ It is also important to take account of situations whereby there is a technical failure during an online session that renders the tele-expert unable to connect to the patient. Who then bears the responsibility? On the same note, the issue of liability surfaces in telemonitoring.⁴¹ For example, in monitoring a patient suffering from heart disease, medical devices are implanted in the patient. These devices record the electrical activity of the heart and send electronic messages to the doctor at specific regular intervals. Some of these devices do not contain an alarm system; as such the question is whether the doctor would be liable for not responding quickly to a message. During surgical telemonitoring, the usual practice is for a specialized health care professional to guide a less experienced physician remotely. One would wonder who will be held liable if the less experienced physician does any wrongful act or can it be said to be a case of medical negligence, if yes the next question is; who is to be held liable.

With regards to all that has been discussed above, a proactive legal framework serves as an impetus for the use of telemedicine. In order to ensure safe telemedicine practices the legislature needs to create specific substantive legislation and ethical guidelines, operational guidelines, and technical guidelines catering to telemedicine in Nigeria.⁴²

8. Conclusion

Health and well-being are considered personal matters, but when someone close to us or ourselves becomes ill, we discover that health is, in reality, a public issue, and Health Rights play an ongoing role in our daily lives. Access to quality health is not only a human need, a right of citizenship, and a public good, but it is also a prerequisite to good health, which is essential to enjoy and achieve fruits of equitable development. The use of advanced technology to deliver healthcare services at a distance has proven to be one of the defining medical revolutions of the 21st century. In Nigeria, where access to affordable healthcare service is an issue, telemedicine will provide immense benefit to the public. Telemedicine allows for a new form of doctor-patient interaction, which needs mutual trust and acceptance. There is much hope for the future of telemedicine. With rapid advances in technology, telemedicine will become easier and more widely accepted in coming years. Before we can realize the full capacity of telemedicine, several important changes must take place within our legal system. Antiquated laws intended to manage the segregated and autonomous health-care models of the past must now evolve to recognize the impending globalization of medicine. Besides the obvious benefits to the average patient, telemedicine has the potential to reduce government spending, provide treatment to millions of impoverished or uninsured patients, and create access to the best doctors in the world. For telemedicine to flourish we need to develop the policies and guidelines. The writer therefore recommends the establishment of an Act which shall set up a body for the enforcement, regulation and control of telemedicine-related concerns all over the country just like the Malaysian telemedicine Act of 1997. Legal practitioners/lawyers also need to advocate for a proactive legal framework for telemedicine and to participate in the policy process.

³⁸ AUNThisWEEK, 'Telemedicine, Law & Development: Prof Ahmadu Urges Supportive Framework' (American University of Nigeria, April 9, 2019) <<https://www.aun.edu.ng/index.php/news-events/news/telemedicine-law-development-prof-ahmadu-urges-supportive-framework>> accessed January 8, 2021.

³⁹ EB Stason, 'The Role of Law in Medical Progress' (1967) 32 *Law and Contemporary Problems* 563 <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3173&context=lcp>> accessed January 10, 2021. 78 B Dickens, RJ Cook, 'Legal and Ethical Issues in Telemedicine and Robotics' (2006) 94 *IJGO* 73-73 <<https://poseidon01.ssrn.com/delivery.php?ID=5>>

⁴⁰ B Dickens, RJ Cook, 'Legal and Ethical Issues in Telemedicine and Robotics' (2006)

⁴¹ S Callens 'The EU Legal Framework on eHealth' https://www.euro.who.int/__data/assets/pdf_file/0008/138185/E94886_ch13.pdf accessed 24 March 2023.

⁴² T. Labisi, 'The Legal Framework of Telemedicine in Nigeria' <https://www.researchgate.net/publication/353664869> accessed 24 March 2023