

**MEDICO-LEGAL PRACTICE COMMITTEE OF THE LAW SOCIETY OF
KENYA**

DRAFT OF THE NATIONAL PATIENTS' RIGHT CHARTER, 2012

INTRODUCTION

The Medico-legal practice committee of the Law Society of Kenya is a voluntary association currently comprising of Advocates who are seeking to promote medical, legal, scientific knowledge and to promote co-operation between the medical and legal profession, in the interest of justice and in the interest of patients, medical practitioners, health providers, insurance providers, medical schemes and the legal system. The members have extensive experience in the litigation of medico-legal issues primarily in personal injury and health care malpractice litigation.

PREAMBLE

The Constitution of Kenya 2010 recognizes the right to access to healthcare services. In order to make the National Patients' Health Charter a reality, a high standard of professionalism must be put in place to regulate the services offered by the health care providers and health care professionals/workers on the one hand and, on the other hand, to protect the rights of the patients who are usually the vulnerable consumers of the health care services and consumers of the medical services and goods.

Article 2 (5) of the Constitution recognizes that the general rules of international law shall form part of the law of Kenya including but not limited to;

- The Universal Declaration of Human Rights, 1948
- The United Nations Convention on the rights of the Child, 1989
- African Charter on the Rights and Welfare of the Child
- African Charter on Human and Peoples Rights (Banjul Charter)
- European Convention on Human Rights
- World Medical Association (WMA) Declaration International Code of Medical Ethics, 2006.
- WMA Declaration of Geneva,2006
- WMA Declaration of Tokyo,2006
- WMA Declaration of Helsinki,2008

Article 43 (1)(a) and (2) of the Constitution guarantees every person the highest attainable standard of health inclusive of health care services, maternal and reproductive health care and the right to emergency medical treatment;

Article 46 (1) (c), (d), (2) and (3) of the Constitution provide for a right to be compensated for loss or injury arising from defects in goods and services (including but not limited to unlicensed and/or fake pharmaceutical products or medical services offered by unlicensed medical practitioners);

Article 53 (1)(c) as read together with Article 43 (1) (c) of the Constitution;

Article 27 of the Constitution provides that all citizens have a right to equal protection and benefit of the law, where equality includes the full and equal enjoyment of all rights and fundamental freedoms;

And finally Article 21 as read together with Article 56 (e) of the Constitution ensures that the vulnerable groups, marginalized groups and minorities (including but not limited to the illiterate, the medically incapacitated, the uneducated and uninformed) should have reasonable access to health care services.

Law and ethics are not always synonymous, in theory or practice, because law is both the creation and enforcer of social sanctions; it is for this sole reason that the professionalism in delivery of medical care should be regulated and the patients accorded the highest attainable standards of health care services and goods.

COMMENCEMENT DATE

SIGNATORIES TO THE PATIENTS' RIGHTS CHARTER

In order to ensure the realization of the rights and access to health care services as guaranteed in the Constitution of Kenya 2010 and with a common aim of achieving the commitment of upholding, protecting and promoting these rights, and to ensure that this Charter has a legal and binding effect, the following Ministries, persons and recognized bodies shall be signatories:

- i. Ministry of Health
- ii. Ministry of Medical Services
- iii. Ministry of Justice and Constitutional Affairs
- iv. Ministry of Culture and Social Services (to cater for registered herbalists)
- v. Law Society of Kenya
- vi. Medical Practitioners and Dentist Board
- vii. All health care professionals
- viii. All health care providers and medical centres
- ix. Nutritionists and Dieticians
- x. Nurses Council
- xi. Clinical officers
- xii. Laboratory technicians and technologists
- xiii. Pathologists
- xiv. Insurance providers
- xv. Medical schemes
- xvi. Pharmacy and Poisons Board
- xvii. Kenya Bureau of Standards
- xviii. Kenya Medical Suppliers Agency (KEMSA)
- xix. National Bio-safety Authority (as established under the Biosafety Act,2009)

ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE MEDICO-LEGAL TRIBUNAL

1. Medical-Legal Tribunal will be established, by statute, and it shall consist of:
 - a) A Chairman appointed under the Vetting of Judges and Magistrates Act, No. 2 of 2011, who shall be qualified for appointment as a Judge of the High Court of Kenya;
 - b) An Advocate of the High Court of Kenya nominated by the Law Society of Kenya;
 - c) An Advocate of the High Court of Kenya with professional qualifications in the field of Medicine appointed by Law Society of Kenya;
 - d) Two persons who have demonstrated exemplary academic competence in the field of medical-negligence law and practice appointed by a collaboration of the Minister of Justice and Constitutional Affairs, Minister of Health and Minister of Medical Services;
 - e) Two health care professionals who are holders a degree in Medicine recognized and approved by the Medical Practitioners and Dentists Act, Chapter 253 Laws of Kenya.
2. All appointments to the Tribunal shall be by name and by Gazette Notice.
3. The members of the Tribunal shall hold office for a period of three (3) years [renewable] from the date of appointments.

Proceedings of the Tribunal

4. The Tribunal shall not be bound by the rules of evidence as set in the Evidence Act, Chapter 80 Laws of Kenya, except in criminal matters.
5. The Tribunal shall sit at such times and places as it may appoint.
6. The proceedings of the Tribunal shall be open to the public save where for good reason or cause, the Tribunal otherwise directs.
7. The Tribunal shall have power to summon witnesses, to administer oaths and affirmations including any person who possesses special knowledge of any medical-legal matters, or of any other matter thereof.
8. The Tribunal shall regulate its proceedings as it deems fit.

Awards of the Tribunal

9. The Tribunal, after hearing both parties, shall make an award, make directions and give decisions to the parties concerned, and such an award, direction or directions, as the case may be shall be capable of being enforced.

Quorum

10. For purposes of hearing and determining any cause or matter in this Tribunal, the Chairman and four (4) members of the Tribunal shall form a quorum, provided that, a member, who is subject of the proceedings before the Tribunal shall not take part in those proceedings.

Appeals to the High Court

11. Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal to the High Court.
12. The decision of the High Court on any appeal shall be final.

PATIENTS' RIGHTS

Every person, patient or client has a:-

1. Right to access to health care and to receive emergency/ first aid treatment in any hospital.

In case of emergency situations, irrespective of whether the patient is able to foot the bill or not, the health care professionals/providers should administer first aid treatment so as to manage and/or restore the health of the patient, pending further and/or specialized medical attention.

2. Right to know the provisions of one's Medical Scheme/Health Insurance Policy.

Anyone who is enjoying the provisions of a medical cover (insured) is entitled to know all the privileges accorded and also entitled to challenge, where and if necessary, the contents and decisions of the medical scheme and health insurance policy.

The medical insurance cover should be reviewed to include sufficient cover for product liability for defective products and the insurance companies should ensure that the suppliers also obtain indemnity covers from all other concerned parties.

3. Right to choose a health care provider.

Every adult person of sound mind is entitled to a health care provider of one's choice who is registered, identifiable and qualified to provide treatment for the particular ailment or illness as long as that choice is acceptable in medical and ethical standards.

4. Right to equality in the Consumer market.

In purchasing and/or being provided with medical and pharmaceutical products (e.g. medical devices, prostheses, surgical insertions, implants, pacemakers), the consumer/patient is entitled to institute action, jointly and severally against anyone in the supply chain (including but not limited to the producer, distributor, retailer and the service provider) in event of illness and/or death resulting from the consumption of the defective or hazardous medical or pharmaceutical products.

5. Right to refuse treatment.

Any adult person, patient or client may refuse, withdraw or withhold treatment and such refusal shall be either in verbal and in the presence of an independent witness or in writing, provided that such refusal, withdrawal or withholding does not endanger the health of others.

It shall be the duty of the health care professional to explain (except in emergency situations) to explain to the patient, the health consequences and risks the patient is exposing oneself to, and if the patient still insists on refusing, withdrawing and or withholding treatment, the patient shall expressly indicate the same and the health professionals shall be legally bound to respect the patient's decision.

6. Right to receive affordable palliative care for especially for the terminally ill.

Every person suffering from any terminal illness or any incurable disease has a right to receive affordable, effective and pocket friendly palliative care and services

7. Right to be provided for with high standard of rehabilitation services.

Every adult person of sound mind [or if the person is under the age of 18 (a minor), the minor **MUST** be accompanied by an adult member of the family] has the right to receive treatment and undergo rehabilitation which must be expressly explained to, by the health care professional in a language that the person understands, to enable the person to understand the procedure, the expectations of the rehabilitation and also the resultant consequences.

8. Right to confidentiality of treatment information.

Since the medical records are part of a person's private life, every person, patient or client has a right to have his medical information and treatment to be treated as confidential between health care professional/ centre and the patient and thus disclosure of a patient's records without the patient's consent is therefore a breach, except where one has expressly consented, or disclosure is allowed by statute or if the disclosure is in the public interest. The duty of confidentiality shall be maintained even after a patient's death.

9. Right to receive full and accurate information from the health provider.

Every adult of sound mind has a right to determine what shall be done on one's body including giving express (written or signing a consent form) or implied consent (e.g. offering one's arm for an injection). The consent must be "real" and therefore the patient must understand the nature and purpose of the proposed treatment.

Every adult person of sound mind shall have the right to receive health information and how best to utilize such services and information to the best of one's knowledge and health and the information shall be delivered in the language that one is well conversant with.

In addition, every adult person of sound mind shall be entitled to be provided for with copies of ones medical/treatment notes and this request shall be made in writing.

10. Right to receive and to be provided for dignified treatment

Displayed by health care professionals/workers/services of one's choice who should exercise patience, empathy and tolerance while according dignified treatment to the patient.

11. Right to seek a second medical opinion.

Every adult person, patient or client has the right to seek a second medical opinion regarding his diagnosis, procedures, treatment and/or medication from any other qualified health professional of one's choice, who should be qualified in the respective field and have more years of experience than the previous health professional. The person must inform the previous

doctor in writing of his intention to seek the second opinion for purposes of facilitating the patient's records to the receiving doctor.

12. Right of a health care provider to provide continuous treatment.

Where a patient has been transferred from one hospital to another for advanced treatment or for whichever other reason to be provided in writing, the receiving hospital must accord the patient the treatment, surgery, rehabilitation and/or counseling that is of high and acceptable medical standards.

13. Right to lodge a complaint about health care professional/services.

In a situation where one is dissatisfied with the medical services offered, an avenue of having the complaint fully investigated and the investigation report should be made available.

14. Right to be provided for with counseling services

Every person shall have the right to receive counseling without any sort of discrimination whatsoever, coercion or deceit in all areas relating to one's health including but not limited to matters of reproductive health, rehabilitation centres, terminal illness, HIV or AIDS, nutrition and teenage pregnancies

15. Right to be accorded special treatment

In addition to the right of health care services, a provision of persons with special needs who require special treatment shall be provided and the special needs are in the cases of new born babies, children, maternal and reproductive health care, pregnant women, the mentally incapacitated and mentally handicapped, the vulnerable groups (e.g. the uneducated and ignorant), disabled, HIV and AIDS patients and terminally ill patients.

16. Right to be respected and protected from discrimination

Every patient has a right to receive treatment from a health professional/worker or health provider of one's choice and not to be discriminated on the basis of one's race, pregnancy, marital status, health status, culture, customs, ethnic or social origin, colour, disability, religion, conscience, belief, culture, dress, language, sex, age or birth.

PERSONAL RESPONSIBILITIES TO BE OBSERVED BY THE PATIENTS

It shall be every person or client or patient's duty to:-

- a) Find out about the cost of treatment, surgery, admission costs, rehabilitation or counseling or any other process to be provided by a health care centre/provider.
- b) Arrange to pay for the treatment, surgery, admission costs, rehabilitation or counseling or any other procedure performed by the health care provider or health care centre.
- c) Be well informed about the services offered by the health care provider or health care centre including asking questions where one does not understand.
- d) Utilize and respect the health care system and the services offered.
- e) Provide a health care provider with precise information so as to enable the provider to diagnose, to treat, to rehabilitate or to offer counseling services.
- f) To respect the rights of other patients and advise from health providers
- g) Observe and comply with the prescribed treatment, rehabilitation and counseling process.
- h) Not to abuse medication provided for by the health care provider.
- i) Protect and care for one's health and where the patient is a minor, the parent and/or guardian must accord protection and care to the minor.
- j) Be cautious and conscious about one's physical and environmental surrounding and overall health.
- k) To take care and protect the environment.
- l) Inform the health care providers, where necessary and where one wishes to donate one's organs and/or any other arrangements/wishes upon one's demise.
- m) Take good care of health records, including but not limited to X-ray films, medical reports, medical treatment charts, medical records, printout of computerized records and any other documents that may emanate from the health care provider.