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## Commentary

# Commentary on legislative regulation of complementary and alternative medicine in Ghana: The journey so far

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### ABSTRACT

Despite immense progress made in the area of Complementary and Alternative Medicine in the Ghanaian healthcare system, the Traditional Medicine Practice Council still seeks to regulate CAM practitioners as Traditional Medicine Practitioners under Act 575, despite the clear differences between both professions. This situation has led to numerous conflicts and agitations between practitioners of both forms of medical practice. This paper presents a commentary on the evolution of CAM legislation and regulation in Ghana.

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## 1. Introduction

### 1.1. History of the directorate of traditional and alternative medicine (TAMD)

In 1992, a Department of Traditional and Alternative Medicine was created in the Ministry of Health. The Agency of Health in Ghana initiated several programs involving traditional medicine practitioners throughout the country developing a strategic framework.<sup>1,2</sup> Mr. Peter Arhin was the first director of the department of Traditional and Alternative Medicine.<sup>3</sup> At the time, they were under the Directorate of Medical Services. This created some acrimony in the medical community.

The first acrimony was created between some medical practitioners and Dr. Lugo Zuri, a renowned Ghanaian Naturopath who according to Dr. Albert Arthur (current acting president of GAMP), was treating cancer cases and was issuing medical reports to his patients. This didn't go well with some medical practitioners who held the view that, as a Naturopath, he had no capacity to write medical reports.

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Dr. Lugo-Zuri's instructed his lawyers to write to some of them. Due to this acrimony, the then Health Minister, Joseph Yieleh Chireh,<sup>4</sup> created the Directorate of Traditional and Alternative Medicine (TAMD) to act as a standalone body for T& CAM and moved away from the Directorate of Medical Services.

### 1.2. Background to the Ministerial directives of CAM Practices in Ghana

The background of CAM practices in Ghana as a distinct system of medical practice outside the Traditional Medicine in Ghana under Act 575, was initiated due to some controversy at the Council when the then Registrar ordered CAM practitioners to be considered TM Practitioners.

This didn't go well with some CAM practitioners at the Ministry of Health and as such, led by Dr. Albert Arthur, they petitioned the then Minister of Health, Benjamin Kumbour<sup>5</sup> who resumed office in 2009-2011 under the National Democratic Congress (NDC). Dr. Albert Arthur, was of the view that, in his era, the issue of many healthcare Councils became a nuisance which led to the government

merging some of them under the Ministry of Health. This led to some agitations where the Ghana Medical Association further took the Health Minister on<sup>6</sup> for neglecting them. He was later replaced by Joseph Yieleh Chireh.<sup>4</sup> When the new Minister took office, he revisited the petition and invited four of the CAM practitioners led by Dr. Albert Arthur, who was the spokesperson. The Minister asked them “What do you want”? They then presented their case of the Traditional Medicine Practice Council trying to impose Act 575 on them and register them as Traditional Medicine Practitioners, of which they were not in support. The Minister instructed his secretary to write to the Attorney General’s Office for a response on their case on whether Act 575 had the locus to consider them as TM Practitioners. The response from the Attorney General’s Office emphasized that Act 575 has no business to do with CAM practices and therefore they cannot be regarded as TM Practitioners, since there is no law to regulate CAM practices. This meant that the registrar could not impose Act 575 on CAM practices in Ghana.

### 1.3. Basis of the ministerial directive

On this clarity from the Attorney’s General Office, the Health Minister then issued the ministerial directive to the Council to consider regulating them as CAM Practitioners and not TM Practitioners. The Registrar heeded this directive and wrote another directive which he signed on CAM Practices.

### 1.4. Genesis of CAM regulation in Ghana

It is worthy to note that the process of regulation of CAM practices in Ghana started in 2010 when the Ministerial Order was issued by the then Minister of Health, Joseph Yieleh Chireh<sup>4</sup> This was necessitated by Dr. Albert Arthur, a Chiropractor at the Ministry of Health who petitioned the then Minister of Health on why the then registrar of the Traditional Medicine Practice Council of the Ministry of Health issued a directive that all CAM Practitioners are to be considered as Traditional Medicine Practitioners in Ghana and therefore there is no differentiation. In that era, there was a merging of some healthcare laws as well in Ghana.

This petition with the explanation provided by Dr. Albert Arthur paved the way for the Ministerial Order to recognize CAM as a distinct healthcare system and different from Traditional Medicine in Ghana, therefore the mandate was further given to the Council to regulate CAM practices separately.

### 1.5. Attorney general’s position on CAM regulation

There is a document<sup>7</sup> from the Attorney General’s Office dated 19<sup>th</sup> November 2010, with Reference No: L 15/2006 with the title: “Approval for Regulation of Alternative Health Practices in Ghana.” The content of the letter states:

Please refer to your letter No. MOH/TMPC/VRM/01/10 dated 19<sup>th</sup> October 2010 on the above subject matter addressed to the Chairman of the Traditional Medicine Practice Council and copied to this office.

I am directed to inform you that the Traditional Medicine Practice Act 2000(Act 575) does not regulate the practice of alternative medicine. As a result of this defect, Cabinet gave approval on the 3<sup>rd</sup> of June, 2010, for a new Bill on traditional and alternative Medicine practice to be laid in Parliament.<sup>7</sup>

The new Bill<sup>7</sup> which is Traditional and Alternative Medicine Bill provides for the establishment of a Traditional and Alternative Medicine Council to promote, control, and regulate the practice and practitioners of traditional and Alternative Medicine. The Passage of the Bill by Parliament will create a regulatory structure for non-orthodox healthcare practice in Ghana including alternative medicine.”

The Attorney General’s position was clear on this matter since 2010 when the issue of CAM regulation came up for discussion. This notwithstanding, no law criminalizes the practice of CAM in Ghana. This means that one can practice CAM freely whether there is law or not in the Ghanaian jurisdiction once the person practices within his or her scope of practice. The legislation aims to officially provide recognition of the practice.

### 1.6. The process of CAM recognition

There is also one letter<sup>8</sup> dated 29<sup>th</sup> June 2011, and one Executive Instrument dated 25<sup>th</sup> July 2011 with reference numbers; TAMD/EI/06/11 and TMPC/GAMPA/2011/S01 titled: Application Forms for Accreditation of Alternative Medicine Practitioners. The Executive Instrument was directed to the Registrar of the Traditional Medicine Practice Council.

Letter<sup>8</sup> reads: The request of the Ghana Alternative Medicine Practitioners Association (GAMPA) has been discussed and reviewed against the comments from your various other stakeholders. It is our view that “Form B” for the registration of Practitioners would be appropriate for registering Alternative Medicine Practitioners if the following can be amended to suit their particular needs.

- Section VII should be amended to include:

#### 1.6.1. Subsection A:<sup>8</sup>

Type of Alternative Health Practices;

1. Homeopathy
2. Chiropractic
3. Naturopathy
4. Osteopathy
5. Therapeutic Massage
6. Acupuncture
7. Chinese Traditional Medicine

## 8. Others (Eg Hydrotherapy, Reflexology)

### 1.6.2. Subsection B<sup>8</sup>

#### Level of Training/Grade

1. Apprentice
2. Junior Therapist
3. Assistant Therapist
4. Therapist (University Diploma)
5. Senior Therapist (Teacher or Medical Doctor)
6. Specialist Therapist (Specialist/Consultation)

- Section VIII: Referees<sup>8</sup>

### 1.7. Two referees

1. One of which should be the Head of their mother Association or the closest representative
2. The other should be the District Chief Executive of the Regional/District Director of Health Services.

It should be noted that all forms and regulatory tools are for pre-testing<sup>8</sup> until the review of the Health Sector Legislative and their relevant Legislative Instruments are established. Two members of the Associations of Alternative Medicine Practitioners are to be coopted on the relevant statutory committee of the Council to facilitate communication and vetting of Registration Applications.

It would be appropriate if this message could be communicated to the association and the Application Form B amended and applied accordingly.

This letter was signed by Hon. Joseph Yieleh Chireh (MP)<sup>4</sup>.

The second letter<sup>8</sup> was signed by the Registrar of the Traditional Medicine Practice Council, Torgbui Yaka IV to the President of the Ghana Alternative Medicine Practitioners Association through the Traditional and Alternative Medicine Directorate (TAMD), Ministry of Health.

It also has the title: Re: Application Forms for Accreditation of Alternative Medicine Practitioners.

The Letter notes:<sup>8</sup>

Reference is hereby made to the Minister's letter No. TAMD/EJ/06/11 dated 29<sup>th</sup> June, 2011.

1. Accordingly, we hereby forward, herewith, a modified copy of the particular Form for your information, and necessary action.
2. We also, on the basis of these letters, invite your colleague members to access the accreditation regime. Please contact our personnel in Rooms 49 53 of the Ministry of Health (MOH) HQ block.
3. For obvious reasons the agency would wish to have an idea about the requirements or conditions for admission of persons into your association or

membership. The objective is to, among others, ensure confidence in and co-ownership of the procedures as conducted at the association level.

4. As directed in the letter under reference, you are required to furnish the Secretariat, TMPC, with the names of two (2) nominees, specifically of the above mentioned association, to serve on the relevant statutory committee(s) of the Council as the governing body may deem appropriate.
5. Further, the two (2) nominees shall help handle applications for registration and licensing that are clearly problematic and will involve a more investigative approach.
6. Counting on your usual co-operation.

## 2. Legality of Ministerial Order

Wikipedia<sup>9</sup> defines Ministerial Order as a ministerial decree or ministerial order as a decree by a ministry. With a ministerial decree, the administrative department has delegated the task to impose a formal judgement or mandate. Ministerial decrees are usually imposed under the authority of the department's chief minister, secretary, or an administrator. The question that would arise is whether Ministerial Orders can be challenged. One can challenge a measure put in place by decree or order the same way one would challenge a law or regulation – by going to court. The court will consider both sides of the argument and has the power to declare a measure unconstitutional. If declared unconstitutional, this means the measure violates the Constitution of the Republic of Ghana. Article 1(2)<sup>10</sup> states that this Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall to the extent of the inconsistency, be void.

Thus, in a recent case involving *Justice Abdulai Vrs Attorney-General*,<sup>11</sup> supreme Court has ruled that a Deputy Speaker of Parliament, or any other member of the legislature presiding over business of the House, does not lose his or her right to vote while presiding. Such a Speaker or Member can also be counted as part of the quorum for decision making in the House under Article 104(1) of the 1992 Constitution. The Court, consequently, struck down Order 109 (3) of the Standing Orders of Parliament, describing it as “unconstitutional”. The Order provides that a Deputy Speaker or any other member of Parliament presiding over the business of the House shall not retain his or her original vote while presiding.

A notable case is *Mensima v. Attorney General*<sup>12</sup> the plaintiffs challenged the constitutionality of the Manufacture and Sale of Spirits Regulation (LI 239). Additionally, the court held that the laws of the nation in question make a provision for the imposition of restrictions by order of the court, that is required in the interest of defense, public safety or public order on the movement or

residence within Ghana of any person.

In the case of *Adjei-Ampofo v. Attorney General & President of the National House of Chiefs*.<sup>13</sup> Parliament enacted a legislation (the Chieftaincy Act, 2008 Act 759) which made it a criminal offence for a person to refuse deliberately to honor a call from a chief to attend to an issue. The Plaintiff who is a former chief invoked the original jurisdiction of the Supreme Court to challenge the constitutionality of this offence. He argued that the offence was an encroachment on liberty in general and on freedom of movement in particular. The Supreme Court upheld his submissions and declared that the freedom of movement conferred on Ghanaian residents in article 21(1)(g) of the 1992 Constitution could not be justifiably restricted by the criminal offence created by the Chieftaincy Act.

Also in *New Patriotic Party v Attorney General (31<sup>st</sup> December Case)*<sup>14</sup> the Supreme Court upheld the argument of the Plaintiff that the celebration of 31<sup>st</sup> December as a public holiday was unconstitutional. 31<sup>st</sup> December was therefore removed as a public holiday.

Also, on whether executive instrument needs Parliamentary approval, in *Osei-akoto Vrs Attorney General*.<sup>15</sup> The basic issue raised in this case is whether when the Executive is authorized to issue an executive instrument under the enabling authority of a statute, the Executive is obliged to lay that executive instrument before Parliament before it can validly come into force. The court held that the plaintiff's action as being without legal foundation. Hence, an executive instrument is not an "Order, Rule or Regulation" within the intendment of Article 11(7) of the 1992 Constitution.

This means the Ministerial order which mandates the Traditional Medicine Practice Council to regulate Complementary and Alternative Medicine in Ghana can be challenged in court if one decides to be litigant to seek clarification and the attorney General's Position is straight forward on this. This notwithstanding, the accreditation to recognize CAM practitioners in Ghana provides the recognition of the profession by the government.

### 3. Current Standardization

The current standard in Naturopathy developed by the Traditional Medicine Practice Council defines Naturopathy, provides standards on education, sets the scope of practice, registration framework, examination, facility licensing, and a code of ethical practices. Though there are concerns that regulation of the naturopathic profession appears as legitimizing or monopolizing the profession, this, in addition, gives credibility status to practitioners,<sup>16</sup> and further gives the public some kind of confidence in the Naturopathic profession.<sup>17</sup>

Respondents understood that being registered allowed them to legally practice under the title of naturopath and Naturopathic doctors in Ghana and further provide a clear

distinction between the two and their scope of practice. The regulation has no ambiguity and further protects their titles as well.

Though we found that some respondents were of the view that regulation does not serve the naturopathic profession, because it has an inhibitory effect on the profession, naturopathy is growing globally, including on the African continent,<sup>18</sup> there is the need to streamline the profession to protect the public in Ghana. We believe that these standards play important role in regulation for each profession and inform decision-making when concerns are raised about practitioners' conduct, health, or performance.<sup>19</sup>

For instance, in Ghana, there is a general view that when a patient sees a health practitioner in any government or the private hospital, they assumed that they have a minimum level of education<sup>19</sup> behind them, and that they follow ethical guidelines as set out by their profession. A case example is when seeing a doctor in Ghana, it is assumed that they have a medical degree. The same cannot be said for naturopaths or Naturopathic doctors<sup>19</sup> in Ghana. The reality is that; anyone can call themselves a naturopath or Naturopathic doctor with no training at all. For instance, in 2005<sup>19</sup> the Victorian State government commissioned a report to investigate whether naturopaths and herbalists should be registered. The report, entitled "The Practice and Regulatory Requirements for Naturopathy and Western Herbal Medicine" found that registration of naturopaths and WHM practitioners should be a requirement of the profession.<sup>19</sup>

### 4. Conclusion

We found that the journey for CAM recognition in Ghana started in 2010. There are government documents attesting to the happenings and progress of CAM legislation in Ghana. There were instances where the Attorney General had to step in to provide an interpretation of Act 575 to distinguish it from CAM practices. We recommend that it is time the government takes a keen interest in CAM legislation and regulation in Ghana to serve the public interest.

### 5. Competing Interests

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

### 6. Authors' Contributions

RNO conceptualized the study. LAB critically reviewed and proofread the manuscript for publication.

### 7. Conflict of Interest

None.

## 8. Source of Funding

None.

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