

Ghana Healthcare System and Practising Medicine Without Authority: Is Cross System Medical Practice Acceptable?

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Abstract

Interestingly, while some hospitals and clinics are now putting out banners for integrative medicine and offering herbal medicines, naturopathy, acupuncture, massage, nutrition, and other treatments, they are doing so without being taught about them in medical schools as part of an integrative model for medicine. In the book, *Criminal Law in Ghana* by P. K Twumasi, P. 585, he tackles practising medicine without authority: It reads: “*A person commits an offence and is liable to a fine not exceeding C1,000 or to imprisonment for a term not exceeding twelve months or both if he willfully and falsely takes or uses any name, title, addition or description evidently implying a qualification to practice medicine or dentistry, or without being registered under N.R.C.D. 91: (a) practises or professes to practise or publishes his name as practising medicine or dentistry or b) receives any payment for practising medicine or dentistry. This offence is created under section 48(1) of the Medical and Dental Decree (N.R.C.D. 91), and is a wholesale reproduction of section 20 of the Medical Practitioners and Dentists Ordinance, Cap. 69 of the Gold Coast. Mens rea is an essential element of the offence and therefore where a person accused honestly believed that he was entitled to use or assume any name or title, etc., he does not commit an offence under the decree: Commissioner of Police v. Wonkyi [13] 2 W.A.L.R. 196[16]*”. In view of this, where integrative medicine is also being promoted, there is the need to assess the legal implications. The question for discussion and research is whether cross-system medical practice is permitted by law in Ghana?

Keywords: Cross system, Medical Practice, Crime law, crime, integrative medicine.

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INTRODUCTION

A cross-system practice is widely prevalent in Indian settings and gradually spreading outside as well. As medicine is now evolving and the current pandemic brought some light and gaps in our healthcare system, many are advocating for integrative approach to healthcare. However, what are the legal implications? Can practitioners of conventional or allopathic medicine prescribe natural remedies? What about the practitioners of Natural remedies who also prescribe conventional pharmaceutical drugs to their patients? In Ghana, to the best of my knowledge, I am yet to come to terms to any court judgment on cross-system medical practice. However, since the laws of Ghana also embrace the common law by virtue of *Article 11 of the Constitution*, there is the need to research into other jurisdiction based on common law for discussion to draw my conclusion. Also one of the maxims enshrined in the Ghana Health Service Charter Patient’s Right states that, “*The patient is entitled to know of alternative treatment(s) and other health care providers*

within the Service if these may contribute to improved outcomes”. So can the Medical Practitioner also prescribe any alternative remedies to the patient if the patient request without any training in alternative medicines or he or she has to refer to a practitioner of alternative medicines?

Interestingly, India is a nation of pluralist medicine and the *locus classicus* which sets the tone for cross-pathy medical practice is the *Poonam Verma Vs. Ashwin Patel and Others [1] 4 SCC 332*. In this case, the Indian Supreme Court held that, if you are practising any other system it is negligence *per se*. The Supreme Court came down heavily in cases where Homeopathic Doctors treated the patients with allopathic medicines. In *Poonam Verma Vs. Ashwin Patel and Others [1, 9] 4 SCC 332* where a doctor holding Diploma in Homeopathic Medicine and Surgery (DHMS) and registered under Bombay Homeopathic Practitioners Act caused the death of a patient due to administration of Allopathic medicine,

the Supreme Court ruled that he is not qualified to practise Allopathy, and therefore he was a quack or pretender to the medical knowledge and skill as a charlatan and hence guilty of negligence *per se*. The facts being similar in this case, we hold that there is total negligence in treating the deceased patient. The Court held: *"Thus, we feel that an amount of Rs.7,50,000/- would be appropriate amount of compensation in face of peculiar facts and circumstances."*

Also in the case of *Dr. Mukhtiar Chand & Ors. Vs. [17] State Of Punjab & Ors.*, decided by the Indian Supreme Court on 08/10/1998, reported as AIR 1999, SC 468, (1998 (7) SCC 579) K.T. Thomas, Syed Shah Mohammed Quadri, the Court held that *"A harmonious reading of Section 15 of 1956 Act and Section 17 of 1970 Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian Medicine or Central Register of Indian Medicine to practise modern scientific medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of 1956 Act."*

In another case that appeared before the National Consumer Disputes Redressal Commission, New Delhi Original Petition No.214 of 1997, the Commission found that: *"When a patient is admitted in a hospital, it is done with the belief that the treatment given in the hospital is being given by qualified doctors under the Indian Medical Council Act, 1956. It is not within the knowledge of the relatives of the patient that the patient is being treated by an Unani Specialist. We hold that it is clear deficiency in service and negligence by the hospital for leaving the patient in the hands of Unani doctor. As laid down by the Apex Court in the Jacob Mathew case, we feel that it is high time that hospital authorities realize that the practice of employing non-medical practitioners such as Doctors specialized in Unani system and who do not possess the required skill and competence to give allopathic treatment and to let an emergency patient be treated in their hands is a gross negligence. We do not wish to attribute negligence on the part of Dr. Rehan alone while the patient was in his charge in terms of directing to pay compensation but solely on the hospital authorities for leaving the patient in his complete care knowing he is not qualified to treat such cases."*

DISCUSSION

As a law student and practicing Holistic and Naturopathic Medicine, I have had a great impact and influence in my medical journey and future legal practice in medical law with regards to alternative medicine practice and policy directions. Interestingly, when I juxtapose the many cases I have come across in the course of research into the field of alternative medicines in other jurisdictions and with what pertains in Ghana, the question is sometimes asked: What would

be the fate of many practitioners in Ghana if what is happening in other jurisdictions happen in Ghana? The law and medicine appear to be a battlefield! I look at the so many advertisements, claims, backgrounds coupled with the many network marketing companies selling their products and ask a simple question whether practitioners actually understand some of the things we do? Also, is the regulatory body in Ghana, the Traditional and Alternative Medicine Practice Council of the Ministry of Health established in 2000 based on Traditional Medicine Practice, 2000 (Act 575) resourced enough to carry its legal mandate? As a practitioner and a student of Law, the author has even now become more defensive than previously and that is the impact that the study of Law has had on me. One interesting lesson that I have learnt in legal studies is that, it pays for every practitioner to sit up and do the right thing!

In 2000, the Parliament of Ghana enacted the Traditional Medicine Practice, 2000 (Act 575 to regulate traditional medicine as it was practiced at that time. Act 575 was silent on alternative medicine practice. The law established the then Traditional Medicine Practice Council. Fast forward, policy makers underscored the need to add alternative medicine to its regulation and Ministerial directives were given per the information available to me. As it stands, there is a new Bill pending before (Parliament) which started in 2014 known as the Traditional and Alternative Medicine Bill [2], (now rechristened Traditional and Alternative Medicine Bill, 2018) to the best of my knowledge. This current Bill, if passed, will ultimately recognize both traditional and alternative medicine fully into our healthcare system. Currently, the then traditional Medicine Practice Council of the Ministry of Health is now Traditional and Alternative Medicine Practice Council of the Ministry of Health. We are waiting for the passage of the new Bill as it stands for full national recognition. This means that, alternative medicine is totally different from traditional medicine. Alternative medicines are imported into this country as defined by the Traditional and Alternative Medicine Bill.

The other side of this issue is that in many developing countries where rural health is important and qualified practitioners are not available the authorities are appointing Community Health Workers (CHW). These CHW are provided with some of the common medicines which can be used for domiciliary management of common illnesses. Also, the matter regarding qualified practitioners of Ayurveda, Unani, Siddha and Homoeopathy systems prescribing allopathic medicines have been examined in depth by the Hon'ble Supreme Court of India in Civil Appeal No.89 of 1987 *Dr. Mukhtiar Chand & Others versus State of Punjab & Others*.

Representations have been received from time to time on this matter and accordingly Department of

AYUSH entrusted the study of the contemporary acts on medical practice in the light of judgement of Hon'ble Supreme Court in 1987 *Dr. Mukhtiar Chand & Others versus State of Punjab & Others* and other similar judgements. Drugs can be sold and supplied by a Pharmacist or a Druggist only on a prescription of a Registered Medical Practitioner and who can also store them for treatment of patients.

Who is a Registered Medical Practitioner?

The practice of traditional and alternative medicine in Ghana cannot be underestimated as many people have embraced the services of practitioners partly due to the minimum side effects involved. Practitioners of alternative medicines have also helped in educating the public on preventative issues and ultimately curative as well. However, a section of the public has raised concerns concerning activities of some practitioners, level of medical training, titles they use, the quality of schools run by some practitioners and the kinds of certificates they issue to trainees. As a practitioner, a staunch advocate of naturopathic medicine and a law student, I am now particular about policies and the legal framework for this industry to help streamline the sector to save the many vulnerable patients and ultimately complement conventional healthcare. The question as to who is a registered Medical Practitioner needs to be addressed. In Ghana, A Practitioner (doctor) is a person registered under the Medical and Dental Council Decree (1972) NRCD 91 to practice medicine or dentistry in Ghana.

Also per Section 9 of the Traditional Medicine Practice ACT, 575:

(1) A person shall not operate or own premises as a practitioner or produce herbal medicine for sale unless that person is registered in accordance with this Act.

(2) A person seeking full or temporary registration shall apply to the Registrar in the manner determined by the Board.

Section 10. Qualification for registration

(1) Where the Board is satisfied that (a) an applicant has adequate proficiency in the practice of traditional medicine and (b) the application has been endorsed by any two of the following:

- (i) The district chairman of the Association;
- (ii) The traditional ruler of the community;
- (iii) The District Co-ordinating Director, it shall direct the Registrar to enter the applicant's name in the register of practitioners and issue the applicant with a certificate of registration on the payment of the prescribed fee by the applicant.

(2) A person issued with a certificate under subsection (1) shall be known as a practitioner for the purposes of this Act.

According to Section 2 (ee) of the Drugs and Cosmetics Rules, 1995 of India, Registered Medical Practitioner means a person:

- i. holding a qualification granted by an authority specified or notified under Section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or
- ii. registered or eligible for registration in a medical register of a State meant for the registration of persons practicing the modern scientific system of medicine (excluding the Homoeopathy system of medicine); or
- iii. registered in a medical register (other than a register for the registration of Homoeopathic practitioners) of a State, who although not falling within sub-clause (i) or sub-clause (ii) is declared by a general or special order made by the State Government in this behalf as a person practicing the modern scientific system of medicine for the purposes of this Act.

Hon'ble Supreme Court defended the validity of Rule 2 (ee) (iii) as well as the notifications issued by various State Governments there under allowing Ayurveda, Siddha, Unani and Homoeopathy practitioners to prescribe allopathic medicines. With regards to the above judgment, Ayurveda, Siddha, Unani and Homoeopathy practitioners can prescribe allopathic medicines under Rule 2 (ee) (iii) only in those States where they are authorized to do so by a general or special order made by the concerned State Government in that regard. Practitioners of Indian Medicine holding the degrees in integrated courses can also prescribe allopathic medicines if any State act in the State in which they are practicing recognizes their qualification as sufficient for registration in the State Medical Register.

Cross-Pathy Medical Practice?

Can cross practice be administered in Ghana? The new Traditional Medicine Practice Council application form has integrative medicine area as part of system of healings in Ghana. Thus, this justifies cross practice in Ghana? Who is entitled to practice integrative medicine as well in Ghana and what are the requirements and the legal implications?

Cross-system prescription' is defined as a doctor of one system of medical practice prescribing medicines of another system, in which she/he has not been formally trained [11]. For example, conventional doctors prescribing natural or herbal medicines or vice versa. Similarly, 'cross-system practice' means when a doctor of one system of medicine practises in another medical system, in which she/he has not been formally trained. A case study here, myself, being a Naturopathic

and holistic doctor trained only in Naturopathy and alternative healings now decides to dabble in the affairs of conventional medicine by prescribing pharmaceutical drugs for my patients which I received no training there, or Conventional Medical Doctor trained in Mainstream of Medicine who has no training in Natural medicines decides to prescribe Natural or herbal medicines to patients in which he or she has no training there as well.

In India, recent changes in policies allowing practitioners of Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) to integrate into the mainstream of healthcare and also allowing practitioners of Ayurveda and Homoeopathy to perform medical termination of pregnancy (MTP) under the proposed amendment to the MTP Bill have brought cross-system practice into the limelight.

According to Math *et al.* [12], across judgments, the Judiciary has held that cross-system practice is a form of medical negligence; however, it is permitted only in those states where the concerned governments have authorized it by a general or special order. Further, though a state government may authorize an alternative medicine doctor to prescribe allopathic medicines (or vice versa), it does not condone the prescription of wrong medicines or wrong diagnosis. The Courts have also stated that prescribing allopathic medicines and misrepresenting these as traditional medicines is an unfair trade practice and not explaining the side-effects of a prescribed allopathic medicine amounts to medical negligence. Finally, the Supreme Court of India has cautioned that employing traditional medical practitioners who do not possess the required skill and competence to give allopathic treatment in hospitals and to let an emergency patient be treated by them constitutes gross negligence. In the event of an unwanted outcome, the responsibility is completely on the hospital authorities. Therefore, there is an urgent need to abolish cross-system practice, invest in healthcare, and bring radical changes in health legislations to make right to healthcare a reality.

Why Cross-Pathy was initiated in India?

In India, about 70% of the Indian population lives in rural areas and has access to only basic healthcare facilities. There is a scarcity of doctors in these areas as they are not willing to work in locations where the infrastructure is poor, and medicines and healthcare equipment are not available. These unmet needs have caught the attention of politicians and policy-makers. The government has responded to this issue by amending laws, implementing new policies and initiating new medical courses. This response has raised some concerns. So for instance, in Ghana now, Traditional and Alternative Medicine Practice is regulated by the Traditional Medicine Practice Council based on Act 575. We have Medical Herbalists trained from Kwame Nkrumah University of Science and Technology, KNUST, and they have been deployed to

work also in some government hospitals. The natural medicine industry is growing; some Medical Doctors are also refusing to be posted to our rural areas. The government can decide to permit Medical Herbalists undertake some further courses to help them go to the rural areas and further given the power to practice both conventional and herbal medicines to help serve the needs of the people. This is the basis of cross system medical practice.

In India as well, Allopathy is regulated by the Indian Medical Council Act, 1956; AYUSH by the Indian Medicine Central Council Act, 1970; and Homoeopathy by the Homoeopathic Central Council Act, 1973. Under the Indian Medicine Central Council Act, 1970, there is the 'Central Register of Indian Medicine' and 'State Register of Indian medicine', which regulate the registration of practitioners of Indian medicine. Likewise, under the Indian Medical Council Act, 1956, there is the, 'Indian Medical Register' and 'State Medical Register', which regulate the registration of practitioners of medicine. These separate legislations and separate registers with different names (i.e. Register of Indian Medicine versus Indian Medical Register) indicate that the law-makers wanted the systems to be independent of each other. Another contentious issue relates to referring 'vaid' and 'hakim' as 'doctors' even though the Indian Medicine Central Council Act, 1970, does not contain the word 'doctor' at all and refers to such practitioners only as vaid and hakim.

State laws on health

In India and other jurisdictions as well, the right to prescribe drugs of a system of medicine would be synonymous with the right to practise that system of medicine. In simple words, if any state Act recognized the qualification of an integrated course as sufficient qualification for registration in the State Medical Register of that state, the prohibition of Section 15(2)(b) will not be contravened. Hence, some state governments have authorized ayurvedic and homoeopathic doctors to prescribe allopathic drugs where there is a shortage of allopathic doctors. The Government of Maharashtra had issued a gazette notification in 1992 allowing vaid to practise allopathy. However, a petition has been filed by the Indian Medical Association, Pune in Bombay High Court against this in 2014 (WP 7846/2014 and 7847/2014). According to the Supreme Court judgment, Ayurveda, Siddha, Unani and Homoeopathy practitioners can prescribe allopathic medicines only in those states where they are authorized to do so by a general or special order made by the concerned state government in that regard.

In one interesting case of Chandigarh Nursing Home v. Sukhdeep Kaur. Appeal No. 591 of 2010, an Ayurvedic doctor could not diagnose Stevens–Johnson syndrome, the life-threatening side-effect of an allopathic medicine which he himself had prescribed.

Unfortunately, he continued to treat the child for measles. The consumer forum took note of the inadequate knowledge and lack of skills of the ayurvedic doctor. In this landmark case, the forum said that the state government may authorize an AYUSH doctor to prescribe medicines for allopathy, but that does not authorize the doctor to prescribe wrong medicines and to diagnose the disease wrongly. Hence, the doctor was found negligent and was asked to pay compensation. This means that the Courts have acknowledged that state rules or orders for cross-system practice are valid in India. However, the outcome in this instance did not benefit the patient, for the benefit of whom these rules/orders have been made. The forum also said that in the event of medical negligence due to cross-system practice, the onus of responsibility lies on the practitioner.

Supreme Court on Cross-Pathy

The Ghanaian Court is yet to decide on any case to the best of my knowledge though, there have been anecdotal evidence of some practitioners dabbling in affairs of conventional medicines in Ghana by prescribing some antibiotics and others. However, the apex Court of India, in another landmark decision of *Dr. Laxman Balkrishna Joshi v Dr. Trimbak Babu Godbole and Another I* [3] SCR 206], has held that, when a patient consults a doctor, the doctor has certain duties, namely (i) duty of care in deciding whether to undertake the case; (ii) duty of care in deciding what treatment to give; and (iii) duty of care in the administration of that treatment. A breach of any of these duties gives a cause of action for negligence. A person who does not have knowledge of a particular system of medicine but practises in that system is a 'quack' and a pretender to medical knowledge or skill, or a charlatan as held in the *Poonam case*.

Irreconcilably, some High Courts eg. *Tamilnadu HC (Tamil Nadu Siddha Medical Graduates Association, Vs. Smt. Letika Saran, Cont. P. No. 775 of 2010, decision dated 23.07.2010)* and *State commissions (Manpreet Kaur Vs. Dr. Veena Ghumber I 2005 CPJ 63)* have pronounced that a practitioner of Indian system of medicine can prescribe drugs of modern medicine. But the overall situation has not changed much since then, cross-pathy is legally not allowed. *According the doctrine of stare decisis, the decisions of SC are binding on all lower courts including the High Courts.*

Legal Issues from the research studies

1. Supreme Court judgement: A person can practice only that therapy for which he/she has a degree / recognized qualification or experience.
2. Medical Council of India by Clause 1.1.3 of MCI prohibits allopathic practitioners from prescribing ayurvedic or homeopathic drugs.

Who is a Genuine Medical Practitioner?

Any individual who has acquired a qualification or degree from an institute which is recognized by its registering authority, like Medical Council of India, Dental Council of India, Homoeopathic, Ayurvedic or Unani System of Medicine, and is registered with respective authority is a genuine medical practitioner for that specific system. In case an individual acquires degrees for two different systems, eg, a person who has passed BHMS and later studied and passed MBBS examination, can practise homeopathy as well as allopathy provided he/she is registered with both authorities. All other persons should be treated as quacks or fraudulent medical practitioners. According to Supreme Court, any person who claims to be expert is a quack unless he has an adequately standardized training or qualification for these supposed specialties. There are many people who may be teachers, clerks or shopkeepers and claim that they have learned homeopathy as a hobby, or many who claim they have learned the art of healing backache and many other ailments. Surprisingly, the government has bracketed yoga experts and siddha or naturopaths with ayurvedic, homeopathic and unani system qualified persons under AYUSH ie. ayurveda, yoga experts, unani, siddha (naturapaths) and homeopaths.

The implication of the above is that, for instance, if someone acquires MBChB and registered with the Medical and Dental Council, Ghana, and also acquired degree in Herbal Medicine or qualification in Natural Medicine and also registered with the Traditional and Alternative Medicine Practice Council of the Ministry of Health can practise both system of medicines provided he is registered with both. The Traditional and Alternative Medicine Practice Council of the Ministry of Health, Ghana application form makes a way for integrative Medicine. This means that, someone with a background in Medical sciences who has knowledge in natural medicines is eligible to apply for a licence as an integrative Medical Practitioner.

Well, as law student with interest in Medical Law, I would further delve into this from the position of the Medical and Dental Council on their position if their members decide to also practise alternative medicine if they have knowledge in it. Per Section 9 of the Traditional Medicine Practice ACT, 575,

(1) A person shall not operate or own premises as a practitioner or produce herbal medicine for sale unless that person is registered in accordance with this Act. (2) A person seeking full or temporary registration shall apply to the Registrar in the manner determined by the Board.

Also, a Practitioner (doctor) is a person registered under the *Medical and Dental Council Decree, 1972 NRC D 91* to practice medicine or dentistry in Ghana.

Ayurvedic Medicines Studied by Allopaths

In India, the argument is that, the modern medicine is evidence based, peer reviewed, technologically assisted, favored by worthy students and hence probably more accepted. Because of all these advantages and better avenues allopaths shall try to explore the talent and research in other systems for the benefit of human race. The Supreme Court of India forbids prescription or administration of drugs from other systems but research is not forbidden (in fact there are many drugs like Reserpine, Vinblastine etc which are herbal in origin). Many natural medicines have been studied by the allopathic experts in many institutions including All India Institute of Medical Sciences, New Delhi and found to be effective. It is no one's case that ayurvedic medicines are not effective. The scientific studies done in institutes have validated the efficacy of these medicines, and must have studied the safety aspect also.

This point is highlighted by manufacturers of ayurvedic drugs. But, this cannot be a reason or argument that, as, these medicines have been found to be effective and safe by experts of modern medicine so practitioners of modern medicine (allopaths) can prescribe these medicines.

Yash Paul and Satish Tiwari had this to say [4, 10]: "If we allopaths justify prescribing those ayurvedic medicines which have been studied by the experts of our own system then a qualified practitioner of other system would have a stronger case to justify prescribing allopathic drugs. Their argument would be that in addition to our own drugs we prescribe or administer those drugs which have been found to be effective and safe by scientific studies. By this criterion a practitioner of any other system would be justified to prescribe an antibiotic as suggested by urine culture and sensitivity report.

Thus any person who prescribes a drug from other system is liable for legal action by a court of law and suitable punitive action by respective authority like Medical Council of India, Dental Council of India, etc. An allopathic doctor cannot prescribe Liv 52 or Calcaria Phos, very popular ayurvedic and homoeopathic drugs respectively. Similarly, a vaid or a homoeopath cannot prescribe Amlodipine in hypertension, Valproic acid in epilepsy and any antibiotic".

Can supplements be prescribed?

According to Yash Paul and Satish Tiwari, products which are food supplements can be prescribed or purchased by anyone, because no prescription is required. Thus, over the counter (OTC) drugs like Strepsil, Vicks, Hajmola, Ferradol, Sharkoferrol, Chyavanprash and protein preparations can be prescribed by any one. In fact, most of these products are available and sold without prescription in general

stores also. The honorable SC in, C A no. 3541 of 2002, *Martin F. D'Souza vs. Mohd. Ishfaq* has observed that: "No prescription should ordinarily be given without actual examination. The tendency to give prescription over the telephone, except in an acute emergency, should be avoided. A doctor should not merely go by the version of the patient regarding his symptoms, but should also make his own analysis including tests and investigations, where necessary. A doctor should not experiment unless necessary and even then he should ordinarily get a written consent from the patient.

So from the forgoing analysis on cross-pathway medical practice from the judgements of Supreme Court, there is need to prepare a list of some common drugs (may be between 8-10) with specific indications from various systems (pathies) which can be included in curriculum and the basic pharmacology of these drugs are taught so that the practitioners would not be labelled as "quacks" as pronounced by SC in *Poonam Varma case*. These can be used for domiciliary treatment of common illnesses like diarrhoea, respiratory infections etc in rural / slum area with referral to higher centres for further management whenever required according to Yash Paul and Satish Tiwari.

Herbal Products

In India, According to Yash Paul and Satish Tiwari, Some therapeutic indices mention group of 'licensed herbal products' under many sections. Bonnisian is mentioned under section drugs for gastrointestinal system, Liv52 under section drugs for hepatic disorders, Abana is mentioned under section drugs for cardiovascular system, Eves Care for menstrual disorders, Septilin as Immunostimulant in various infections. The word drug is derived from the French word 'drogue' a dry herb. Drug is defined as any substance used for the purpose of diagnosis, prevention, relief or cure of disease in man or animal. According to the World Health Organisation, a drug is "any substance or product that is used or intended to be used to modify or explore physiological systems or pathological states for the benefit of the recipient [14]". The Drugs and Cosmetics Act also defines a drug to include "all the preparations, whether allopathic or ayurvedic". A drug can be sold or supplied by the pharmacist or druggist only on the prescription of a "registered medical practitioner" defined under Indian Medical Degrees Act of 1916. The Indian Medical Council Act regulates modern system of medicine; the Indian Medicine Central Council Act, 1970 regulates Indian Medicine while the Homoeopathic Central Council Act, 1973 regulates practice of Homoeopathic medicine [6].

On September 29, 2010, an issue was raised with Central Drugs Standard Control Organisation, New Delhi and Medical Council of India, New Delhi in respect of: "As per Medical Council of India (MCI) the practitioners of modern medicine i.e., Allopaths are not

permitted to prescribe Ayurvedic or Homoeopathic medicines. CIMS published by CMP Media India Private Limited, Bangalore (Jan-April 2010 issue) contains separate section of 'Licensed Herbal Preparations.' Does it imply that Allopaths are permitted to prescribe Ayurvedic drugs mentioned under licensed Herbal Preparation?" A reminder was sent on October 17, 2010, but the author has not received any communication from either of them.

The Section 16 of the Pharmacy and Drugs Act 1961 of Ghana states that: "No person shall mix, compound, prepare or supply any restricted drug unless that person is a pharmacist, or is a licensed company acting in accordance with section 17 of this Act: Provided that this section shall not prevent: (i) the mixing, compounding or preparing of any drug by a medical practitioner, dentist or veterinary surgeon, or the supply by any such person of a drug either to a person in urgent need of treatment or from a place more than five miles from the premises of a pharmacy business, or (ii) the supply of any drug, other than a drug of class A or B, by a licensed chemical seller in accordance with section 18 of this Act, or (iii) the mixing, compounding or preparing of any drug, under the immediate supervision of a pharmacist, by a student undergoing instruction at an institution approved by the Pharmacy Board, or (iv) the supply of any drug, in accordance with directions given by a medical practitioner, to an out-patient attending a medical treatment centre.

Engaging the services of Practitioners of Other Systems in Hospitals

A hospital can provide services of practitioners of other systems along with practitioners of modern medicine (Allopaths) under the same roof, provided every practitioner follows her/his system of medicine in an integrative setting. This is currently done in some selected government hospitals where we have Traditional Medicine Directorate in Ghana. For instance, the Shai-Osudoku District Hospital, Dodowa has a Traditional Medicine Directorate with Traditional Medicine Practitioners working there along with conventional doctors and allied healthcare team.

In India, some private hospitals employ Homoeopathic Doctors and others as resident medical officers under supervision of consultants. As these are trained and qualified persone, their observations may be accurate but they have to administer allopathic medicines as advised by the consultant. In case it happens to be the fact, this could be considered fraud with the patients who attend that hospital for allopathic treatment by allopaths.

Cross-Practice in Hospitals

Cross-practice is not confined to individual doctors only. One research conducted survey of OPD prescriptions of a tertiary care allopathic hospital and an

ayurvedic hospital, both belonging to government setup. The study found that the prescriptions from tertiary care hospital had 12% ayurvedic drugs, while prescriptions from ayurvedic hospital had 58% allopathic drugs.

Home Remedies

There are many plant products which have been found to be effective in many different ailments. For example, hibiscus Tea for hypertension, neem for malaria, clove or clove oil is effective in tooth pain, caraway a type of linseed, called ajwain in Hindi is effective in dyspepsia, Basil plant called tulsi in Hindi, fem liquorice, called mulethi in Hindi and honey have been found to be effective in cough and sore throat. Many more such products have been used as home remedies for centuries and are passed on to generations as grand mothers' formulae. Many people take the stand that these natural products have been found effective so these may be given as such or as ayurvedic medicines.

The solution for our medical sector in Ghana and globally is to adopt an integrated approach. This is why I believe health is holistic and to achieve this in Ghana, there is the need for adequate training, capacity building, and provision of infrastructure, empowerment of health workers (including Nurses, etc.) Yash Paul and Satish Tiwari, [5] prescribe some remedies for cross-path as follows:

1. To conduct integrated course, 4-5 commonly used drugs from different pharmacopoeia may be included in the pharmacology syllabus.
2. An 8-12 weeks training or posting can be done in pathies other than the one in which the students are enrolled for under graduate medical education.
3. An expert or specialists from various branches can be deputed or posted in rural area by giving extra benefits/privileges to supervise the local health workers. A weekly / monthly visits or follow-ups can be planned to guide and empower the local health workers.

Biased Trade Practice

In the *Bhanwar Kanwar v. R.K. Gupta & ANR*. [7, 15] [Civil Appeal No. 8660 of 2009], an ayurvedic doctor had advertised in a newspaper, offering patients with seizures treatment with ayurvedic medicines and also claimed total cure. A family sought ayurvedic treatment of their 4-year old child. In spite of giving the prescribed medicine, the child continued to have seizures and his condition worsened. The family consulted the practitioner many times over the next 3 years but the seizures did not stop. Later the family came to know that the ayurvedic doctor was prescribing allopathic medications in the name of ayurvedic ones. In a landmark judgment, the Indian Supreme Court upheld that the ayurvedic doctor was entitled to practice allopathy in the state of Uttar Pradesh (UP), as per letter No.726/ 712200315 dated 24th February, 2003 of the Secretary, Medical Education Department, Government

of UP. However, to curb a false representation and to restore faith of the people in the ayurvedic system, the Court held that the ayurvedic doctor was guilty of unfair trade practice and adopted unfair methods and deceptive practice by making false statements orally as well as in writing that he was prescribing only ayurvedic medicines. Thus, the victim was entitled for compensation for the injury suffered. Hence, now cross-system practitioners need to declare and also inform patients that they have prescribed a medicine from another system of medicine than the system in which they are registered. Ultimately, it is the patient's choice, safety and informed consent that play a major role

Take Home

There is need for the Government, the Judiciary and Medical Council to look into these vital issues and to frame clear cut guidelines keeping in mind the situation and facilities in our country. There shouldn't be confusion or paradox in legal, ethical or evidence based scientific recommendations. This is important so as to prevent or decide cases of medical malpractice and negligence in future [8].

So in a nutshell, across judgments, the Courts have held that cross-system practice is medical negligence; however, it is permitted only in those states where such practitioners are authorized to do so by a general or special order of the concerned state government. The courts have also stated that prescribing allopathic medicines and misrepresenting these as traditional medicines is an unfair trade practice, and placing misleading advertisements that a person practices only traditional medicine and not explaining the side-effects of a prescribed allopathic medicine—all invite a case for medical negligence. But as it stands now a cross-system practice is illegal. The words of the learned author, P. K. Twumasi is instructive on the subject. The learned author has noted at page 585 of his book titled "Criminal Law in Ghana" that:

"A person commits an offence and is liable to a fine not exceeding ₵1,000 or to imprisonment for a term not exceeding twelve months or both if he willfully and falsely takes or uses any name, title, addition or description evidently implying a qualification to practice medicine or dentistry, or without being registered under N.R.C.D. 91: (a) practices or professes to practice or publishes his name as practicing medicine or dentistry or

(b) receives any payment for practicing medicine or dentistry. This offence is created under section 48(1) of the Medical and Dental Decree (N.R.C.D. 91), and is a wholesale reproduction of section 20 of the Medical Practitioners and Dentists Ordinance, Cap. 69 of the Gold Coast. Mens rea is an essential element of the offence and therefore where a person accused honestly believed that he was entitled to use or assume any name or title, etc., he does not commit an offence under the

decree: Commissioner of Police v. Wonkyi [13] 2 W.A.L.R. 196".

From this, cross-pathy is also a crime as one doing so is *practising* medicine without authority. However, if the one practising has qualifications in both system of practice, then, the practitioner has authority in both systems and can therefore exhibit his or her authority to practice.

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To all students of Nyarkotey College of Holistic Medicine, Tema Community 7, Ghana

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