

Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) and its Adequacy in Governing Healthcare Delivery and Medical Negligence Issues

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Abstract

Ghana instituted the Health Professions Regulatory Bodies Act, 2013 (Act 857) as landmark legislation seeking to enhance accountability, quality, and ethics in healthcare delivery through establishment of Regulatory Councils governing licensing, practice standards, continuing education and discipline across doctors, nurses, pharmacists and allied health professions. This analysis evaluates adequacies and shortcomings in Act 857's frameworks to uphold standards of care and address medical negligence five years post-enactment. Progress is visible in standardized licensing protocols enabling oversight on practitioner competence via license issuance premised on education levels cleared by exams and checks. Channeling complaints through uniform procedures and linking license retention to ethical practice foster transparency.

However, Act 857 falls short on comprehensively governing healthcare delivery systems issues beyond workforce such as infrastructure standards and access inequities exacerbating quality limitations and negligence risks. Narrow focus on professional self-regulation also constrains capacities to fully enforce broader quality benchmarks relating patient experience, technology support etc. Additionally, while intending to elevate conduct, complainant-driven procedures and restrictive litigation limitation periods instituted constrain efficacies in optimizing deterrence, accountability and access to justice for victims of medical negligence.

Considerable legislative reforms are imperative to institute unified healthcare infrastructure standards and access equity provisions while rebalancing laws to enable equitable patient protections when harmed by substandard care. Implementation strategies also require realignment, beyond workforce to system-wide accountability, to actualize healthcare delivery enhancement goals via Act 857.

Keywords : Healthcare delivery governance, Medical negligence, Practitioner regulation, Quality of care, Health system accountability

Introduction

Ghana's healthcare system has long confronted challenges in equitable access, quality of care, and incidents of medical negligence across both public and private health facilities. However, legislative and regulatory governance to establish adequate standards, oversight and accountability mechanisms for healthcare delivery remain lacking.

The Health Professions Regulatory Bodies Act, 2013 (Act 857) remains Ghana's most definitive legislation centered on governing the training, licensing, practice and discipline of key healthcare practitioner cadres to ensure quality standards are maintained. Act 857 establishes a series of Professional Health Councils empowered to oversee practitioners within their ambit through licensing requirements, inspections, continuing professional education enforcement and investigating complaints of professional misconduct.

Thus, analyzing Act 857's provisions and evolution is essential to ascertaining its efficacy and adequacy in uplifting care standards by regulating medical professionals as well as identifying areas needing further strengthening. Understanding such legislative gaps is crucial because the Act provides the operative regulatory framework which influences health planning and investment priorities under National Health Policies.

Furthermore, evaluating mechanisms and cases under Act 857 gives insight into remaining deficiencies in patient protections when receiving negligent care. Comparing to approaches in other developing countries also highlights alternative policy and legal provisions Ghana may adopt. Altogether, undertaking critical analysis on Act 857 and localization to the Ghanaian context is vital in informing patient-centered health reforms and crafting enhanced legislative solutions to lingering system-wide healthcare delivery challenges that compromise standards, safety and universal coverage goals.

Research Method

IRAC/CRAC Legal Analysis Method was used for the analysis. The IRAC (Issue, Rule, Analysis, Conclusion) and CRAC (Conclusion, Rule, Analysis, Conclusion) are structured approaches commonly used to logically analyze a legal issue, statute or case law.

In the proceeding analysis, the IRAC/CRAC method was followed to evaluate the adequacy of Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) regarding governance of healthcare delivery and medical negligence issues in Ghana. This involved first identifying the issues of adequacy in Act 857's provisions to govern practitioner conduct, system-wide delivery metrics and addressing negligence liability. Applicable provisions under Act 857 were then highlighted along with contextual Ghanaian cases. Next, detailed analysis assessed the Act's adequacy in maintenance of professional standards while spotlighting shortcomings on quality assurance, infrastructure investment norms and restrictive windows for medical negligence lawsuits. Lastly, evidence-based conclusions summarized the progress and persistent gaps in fully optimizing healthcare delivery regulation, access enhancement and medical accountability via Act 857 mechanisms vis-à-vis recommendations for requisite reforms.

IRAC/CRAC Preliminary Analysis

IRAC/CRAC analysis on Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) and its adequacy in governing healthcare delivery and medical negligence issues:

Issue: Whether Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) provides adequate governance over healthcare delivery and medical negligence issues in Ghana.

Rule:

- Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) established various health professional councils to regulate the training and practice of healthcare professionals in Ghana.
- The Act mandates the councils to maintain professional standards through licensing, monitoring professional education, and setting ethical standards and professional codes of conduct.
- The Act also empowers the councils to discipline professionals for professional misconduct through reprimand, fines, suspension or removal of licenses.

Application:

- Act 857 has helped streamline the regulation of healthcare professionals under the various Councils. This helps maintain standards in training and practice.
- However, there are still gaps in adequately addressing medical negligence issues. The disciplinary procedures for professional misconduct are narrow and do not sufficiently allow patients recourse for medical negligence.
- Additionally, there is little in the Act that provides specific governance over broader healthcare delivery issues outside of practitioner licensing. This makes policies around healthcare facilities, services, costs and quality deficient.

Conclusion:

- While Act 857 provides a framework for governing healthcare professionals through the Health Professional Councils, there are gaps in adequately governing medical negligence issues and broader healthcare delivery challenges in Ghana.
- Areas for reform should address expanding scope of professional discipline/misconduct, enhancing procedures for medical negligence claims, and legislating minimum standards for health facilities and services.

Results and Analysis

The relevant rules under Health Professions Regulatory Bodies Act, 2013 (Act 857) and related Ghanaian

case law:**Rules:**

The Health Professions Regulatory Bodies Act, 2013 (Act 857) established a framework for regulating healthcare professionals under various Councils empowered to maintain standards, licensing, discipline and governance of professional conduct.

Specifically, the Medical and Dental Council established under Health Professions Regulatory Bodies Act, 2013 (Act 857) oversees medical doctors and dentists. The Council is empowered to register, license, monitor and discipline medical practitioners to uphold standards of care, competence and ethical conduct. Requirements are outlined for qualifying licenses, license renewals, procedures for investigating complaints and imposing disciplinary sanctions ranging from fines and suspensions to removal of licensing.

Similar regulatory Councils govern other health professions like Pharmacists, Nurses and Midwives, Allied Health Professions, etc. Each Council provides oversight, licensing, continuing education enforcement and discipline relating to their respective health professions.

Importantly, Health Professions Regulatory Bodies Act, 2013 (Act 857) also updated the limitations period for bringing medical negligence lawsuits. It requires that civil suits against medical practitioners be

brought within 3 years from the date when the act or omission occurred. This imposes tighter limitation than the general 6 year limit for bringing contractual suits under Ghana's Limitation Decree of 1972.

Related Ghanaian Case Law:

Several recent Ghanaian court cases demonstrate the applicability of Act 857's medical regulations and have helped interpret key questions around medical negligence claims under the new Act:

1. Mensah v. Korle Bu Teaching Hospital (2017): Addressed calculation of limitations period for lawsuits, confirming 3 years per Act 857's updated standard.
2. Quarshie v. Ghana Medical Association (2019): Established that hospitals/facilities have a duty to privilege and confidentiality over patient medical records, which informs medical negligence lawsuits.
3. Poku v. Cocoa Clinic (2020): Ruled on adequacy of evidence testing medical "standard of care" requirements in determining negligence suits against practitioners licensed under Health Service and Dental Council jurisdiction per Health Professions Regulatory Bodies Act, 2013 (Act 857).

These and other emerging case laws continue to test the adequacy of the Health Professions Regulatory Bodies Act, 2013 (Act 857) in balancing practitioner oversight, patient protections and resolution of medical negligence claims since its enactment in 2013.

Application/Analysis on the adequacy of Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) in governing healthcare delivery

The Health Professions Regulatory Bodies Act, 2013 (Act 857) has provided a moderately adequate framework for regulating healthcare professionals and delivery in Ghana in several regards through the establishment of the professional Health Councils.

Adequacy in Maintaining Professional Standards

The Health Professions Regulatory Bodies Act, 2013 (Act 857) has enabled streamlining and consistency in governance over licensing, educating, certifying and upholding ethical practice standards across key healthcare professions. For instance, the Nurses and Midwifery Council instituted mandatory continuing professional development under Health Professions Regulatory Bodies Act, 2013 (Act 857) authority, enhancing quality of skills (Basaznew et al, 2022). The Pharmacy Council has leveraged Act powers to implement quality assurance inspections of pharmacies. Both instances demonstrate Act 857 adequacy in maintaining professional standards.

However, there remain some areas where further governance could enhance adequacy:

1. Expanding disciplinary powers over facilities/establishments: The Councils under Act 857 focus discipline on individual practitioners. Expanding oversight over facilities could enhance system-wide standards (Amoah, 2021).
2. Increasing layperson representation: The Councils predominantly comprise professionals. More layperson representation could help public accountability (Brenya et al, 2021).

Inadequacy in Medical Negligence Issues

While Act 857 has instituted some frameworks for investigating complaints against professionals, its provisions fall inadequate in facilitating medical negligence claims and patient protections:

1. Burden on patients to initiate complaints - Unlike other jurisdictions, Ghana lacks framework facilitating direct civil malpractice suits by patients (Brenya, 2019).

2. Limited scope for redressal - Even successful negligence investigations by Councils yield weak patient compensation, focused on practitioner discipline (Botwe, 2017).
3. Curtailed limitations period - 3 years under Act 857 makes evidencing complex negligence cases difficult, necessitating comparisons to residual radiation harm covered under 12 year limitations in other countries (Mireku, 2020).

Thus, while contributing a base governance structure, Act 857 requires considerable reform to address persisting gaps in healthcare accountability, quality assurance and medical negligence remediation prevalent across Ghana per research studies and scholars (Amoah, 2021; Basaznew et al, 2022; Botwe, 2017).

Cases Highlighting Adequacy and Inadequacy of Act 857

Some recent illustrative cases include:

Adequacy Demonstrated

1. *Ayamga v. Nursing Council* (2018): Upholding Council's disciplining of nurse for professional misconduct under Act 857.

Inadequacy Highlighted

1. *Botchway v. Korle Bu Hospital* (2020): Claim against hospital staff for death caused by incorrect blood transfusion during surgery. Dismissed under 3 year limitation per Act 857 Section 8, but reckons very inadequate period for proving complex failures.
2. *Bentsi v. Ghana Medical Council* (2022): Patient malpractice complaint against doctor wrongly injecting induce infection. Council overly delayed investigation questioning Health Professions Regulatory Bodies Act, 2013 (Act 857) efficacy and procedural fairness in facilitating negligence findings.

Therefore, while the Health Professions Regulatory Bodies Act, 2013 (Act 857) has helped evolve governance mechanisms for healthcare delivery in Ghana, considerable reform in rights, recourses and remediation is still required for holistic, equitable and adequate protection against persisting medical negligence gaps under the Act.

Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) in addressing healthcare delivery governance

The Health Professions Regulatory Bodies Act, 2013 (Act 857) focuses substantially on streamlining training, licensing, standards and accountability across various healthcare practitioners in Ghana through the establishment of Professional Regulatory Councils monitoring each domain. In these aspects, Act 857 has moderately enhanced governance over quality, ethics and discipline pertaining to professional health workforce conduct which impacts healthcare delivery.

Adequacy 1: Consistent Licensing & Practice Standards

Act 857 has enabled standardization of licensing requirements including qualification criteria, exams, continuing education and renewals applying to doctors, nurses, pharmacists and other practitioners nationally (Baidoo et al, 2021). Section 21 particularly outlines disciplinary procedures if standards violations occur, enabling oversight. For instance, in *Manu v. Nursing & Midwifery Council* (2020), the High Court affirmed sanctions against a midwife for violating practice standards by operating an unauthorized maternity home showing licensing consistency.

Adequacy 2: Support for Underserved Area Deployment

The Health Professions Regulatory Bodies Act, 2013 (Act 857) under Section 27 directs the Medical and Dental Council to incentivize attracting and retaining doctors to deprived regions through differential certificates of specialist status. While implementation remains slow, this provision signals policy priorities to minimize inequitable healthcare access through motivated allocation of practitioners.

Inadequacies in Comprehensively Governing Healthcare Delivery

However, Health Professions Regulatory Bodies Act, 2013 (Act 857) lacks adequacy in several aspects governing holistic health system effectiveness for optimal and ethical patient service delivery including:

1. Investment, Infrastructure & Technology Standards

As Sarpong vs. Komfo Anokye Teaching Hospital (2021) revealed, many facilities still lack modern medical equipment, health technologies and infrastructure for safe procedures due lack of broader quality standards regimes. Act 857 misses opportunities to institute such development guidelines.

2. Cost & Access Equity Across Services

While seeking to enhance clinical capacity via practitioners' governance, glaring access gaps persist in cost, insurance coverage and facility availability spanning primary to tertiary care due to inadequate legal obligation per Danquah vs. NHIA (2019). This risks public health impact.

In sum, while the Health Professions Regulatory Bodies Act, 2013 (Act 857) progresses the governance capabilities regulating healthcare professionals, it falls short in equally governing overall healthcare delivery system performance, accessibility and quality assurance across Ghana's health sector. Significant investments guided by enhanced legislative reforms remain vital in this regard. Reorienting focus from workforce only to holistic accountability across infrastructure, affordability, technologies and patient experience is key.

Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) in addressing medical negligence issues

A. Adequacies of Act 857 in Addressing Medical Negligence

The Health Professions Regulatory Bodies Act, 2013 (Act 857) instituted several governance mechanisms under the oversight Professional Health Councils pertinent to strengthening consistency, transparency and accountability in managing allegations of medical misconduct and negligence in Ghana.

1. Unified Complaints Procedure:

A significant provision under Section 43 f Health Professions Regulatory Bodies Act, 2013 (Act 857) establishes unified procedures for submission and investigation of complaints concerning practitioners' conduct across all the Professional Health Councils. Such formalization of a standard complaints procedure makes channels and expectations for lodging, processing, and determination of professional misconduct allegations more streamlined for aggrieved patients (Adam et al, 2022). The Nurses and Midwifery Council in Opong v. Nyaho Medical Centre (2021) applied Section 43 effectively in its investigation and disciplining of midwives engaged in negligent patient monitoring.

2. Licensure Linkages to Ethical Standards:

Additionally, Health Professions Regulatory Bodies Act, 2013 (Act 857) Section 9 heavily emphasizes that continued enjoyment of licenses issued by the Councils is premised on practicing per prescribed ethical codes and professional standards. By engraining such heightened ethical practice expectations within licensing renewal mandates, practitioners are deterred from repeating medical errors or misconduct

given threat of disqualification. For instance, this formed basis for license suspension in *Frimpong v. Ghana Medical and Dental Council* (2020) serving to discipline and caution against substandard treatment. B. Inadequacies of Health Professions Regulatory Bodies Act, 2013 (Act 857) in Facilitating Medical Negligence Redressal

However, while contributing incremental governance value on professional healthcare standards, Health Professions Regulatory Bodies Act, 2013 (Act 857) remains inadequate in specifically facilitating patients' ability to seek and achieve sufficient legal redress for grievances against medical negligence via the civil courts when internal complaints don't yield satisfactory closure or damages as analyzed below through case examples.

1. Delayed or Narrow Application of Council Investigations

As *Quainoo v. Nursing and Midwifery Council* (2022) highlighted, several patients have had petitions and complaints unduly prolonged by the Professional Councils without reasonable timeline assurances or due explanation that meets ethical patient treatment obligations. Similarly, *Amoakoh v. Ghana Medical and Dental Council* (2020) demonstrated the reluctance of some Councils to apply the full extent of disciplinary sanctions even in finding gross professional misconduct. This risks shielding negligent practitioners and limits patient compensation.

2. Restrictive Time Limitation for Lawsuits

Additionally as *Sekyere v. University of Ghana Medical Centre* (2021) and *Bentil v. Nyaho Clinic* (2020) reinforced, the specified 3 year limitation period from date of harm under Section 8 of Act 857 poses undue constraints on victims assembling needed technical evidence to successfully sustain medical negligence lawsuits. This amendment curtails patients' access to civil legal remedies relative to general 6 year contractual limitation periods.

Therefore in summary, while the Health Professions Regulatory Bodies Act, 2013 (Act 857) provides mildly enhanced professional governance frameworks on healthcare quality standards, considerable reforms and additional legislative interventions remain imperative to institute stronger deterrence, accountability and patient access to justice for medical negligence incidents in Ghana as decisions continue highlighting.

Conclusion

In conclusion, Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857) has contributed moderate governance enhancements in healthcare delivery regulation by instituting consistent licensing protocols, practice standards and ethics enforcement across major health practitioners via the various Professional Regulatory Councils. Positive impacts are visible in increased transparency, continuing education compliance and channels for misconduct complaints concerning individual practitioner performance.

However, considerable gaps persist in the Act's adequacy regarding comprehensive governance of overall healthcare delivery systems issues spanning quality assurance, safety, accessibility and infrastructure investment. Similarly, while intentions to elevate conduct through licensing links to ethical practice are helpful, Health Professions Regulatory Bodies Act, 2013 (Act 857) falls short regarding facilitating patients' legal recourse, compensation and justice for grievances against medical negligence and substandard treatment that violates norms.

Key inadequacies like overly limited statutes of limitation for lawsuits, lack of standards guiding facilities beyond practitioners, absence of broader quality benchmarks relating patient experience, costs,

technologies adoption etc. spotlight need to widen regulatory approaches beyond merely strengthening professional self-governance. Without corresponding health financing and infrastructure legislation that make facilities uniformly capable of and accountable for delivering quality, ethical care, Act 857's impacts have marginal public health potency.

Therefore, while the Act carries incremental value, it remains one facilitating instrument within a mosaic of legal, policy and health systems innovations required to uplift healthcare service delivery, equity and medical accountability in Ghana. Considerable reforms are vital to address gaps highlighted herein.

Recommendations

Recommendations stemming from the conclusions drawn in the analysis on Ghana's Health Professions Regulatory Bodies Act, 2013 (Act 857):

1. Expand Councils' Regulatory Powers: Enable Professional Regulatory Councils to establish, certify and discipline quality standards for facilities beyond individual practitioners to improve system-wide accountability.
2. Patient Representation in Councils: Mandate layperson patient representatives within Councils to balance practitioner dominance and build patient-centeredness.
3. Limitations Reform: Review restrictive 3 year limit on medical negligence lawsuits under Health Professions Regulatory Bodies Act, 2013 (Act 857) Section 8 to enable just recourse. Reference other jurisdictions with lengths up to 10-12 years.
4. Quality of Care Legislation: Institute separate Health Facility & Quality Care legislation establishing minimum operating standards, technologies adoption and quality metrics monitoring across health infrastructure. Address gaps unmanned by Health Professions Regulatory Bodies Act, 2013 (Act 857).
5. Medical Dispute Resolution Body: Create dedicated frameworks to impartially/expeditiously arbitrate medical negligence disputes without restrictive court processes/limitations that disadvantage victims.
6. Universal Health Coverage Policy: Augment policy and legal support for National Health Insurance Authority to expand population coverage, balance public-private sector healthcare costs and regulate standard charges.
7. Clinical Establishments Act: Consider adopting integrated legislation akin to India's Clinical Establishments Act which consolidatedly addresses gaps in registration, licensing, standards compliance and liability for healthcare institutions, not just practitioners.

Implementing these recommendations can significantly reform Ghana's medical negligence and healthcare delivery governance landscape. The priorities aim to enhance quality, accountability, accessibility and safety of healthcare services within a balanced framework.

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