

The Legal Requirement of Consent to Medical Treatment in Nigeria

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Abstract

The principle of consent to medical treatment is a cornerstone of patient autonomy and medical ethics in Nigeria. This paper examines the legal requirements surrounding consent, focusing on its various forms, express and implied consent, and the scope within which it operates. It also explores the capacity required for individuals to give valid consent and the exceptions to this requirement, particularly in emergencies, waiver cases, and compulsory treatment scenarios. Furthermore, the paper analyses the legal framework governing consent to medical treatment in Nigeria, highlighting key provisions in the Constitution of the Federal Republic of Nigeria, the National Health Act, the Medical and Dental Practitioners Act, and the Code of Medical Ethics. These legal instruments collectively regulate the obligations of medical practitioners and safeguard patients' rights, ensuring ethical medical practice and legal compliance. Despite these legal protections, challenges persist in enforcement, awareness, and professional adherence. This study, therefore, underscores the need for legislative reforms, stronger regulatory oversight, and enhanced public education to promote a more effective and rights-based approach to medical consent in Nigeria.

Keywords: Informed Consent, Medical Ethics, Doctor-Patient Relationship, Autonomy, Healthcare Law, Medical Treatment

1.1. Introduction

A fundamental aspect of physicians' and other medical professionals' responsibilities involves performing procedures that may intrude on a patient's privacy during treatment.¹ The legal basis for such procedures is known as informed consent. This principle serves as the cornerstone of the relationship between patients and healthcare providers, aiming to uphold the dignity of the patient.²

The principle of consent in medical practice requires patients to provide authorisation before undergoing any medical procedure or treatment.³ Such consent must be given after receiving an explanation from a healthcare professional. Regardless of the procedure type, the physician must secure the patient's informed consent. Globally, acknowledging a patient's right to consent to medical treatment recommended by healthcare professionals is fundamental in medical practice.⁴ This right is rooted in the principle that individuals should have the freedom to make decisions regarding their health. Informed consent serves to uphold patient autonomy while ensuring that their best interests are considered.⁵ Physicians must provide patients with relevant information about available treatment options, enabling them to make informed decisions. Patients have a legal right to receive comprehensive details regarding their health status and necessary treatments. Without such information, any consent given for treatment cannot be deemed valid.⁶

Consent refers to a patient's voluntary agreement with a physician to undergo treatment or diagnostic procedures. It is a deliberate decision made by a competent and autonomous individual after receiving sufficient information and careful consideration from medical professionals about a proposed procedure that may impact their health.⁷ Consent may be given orally or in writing; however, written authorisation is generally preferred for high-risk treatments and is legally

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¹ YZ Lawal and Others, 'The Doctrine of Informed Consent in Surgical Practice' [2011] (10(1) *Annals of African Medicine* 1-5

² Ibid

³ Irehobhude O. Iyioha and Oluchi Aniaka, 'Informed Consent' <<https://lawexplores.com/informed-consent/>> accessed 12 February 2025.

⁴ Ibid

⁵ YZ Lawal and Others (n1)

⁶ Ibid

⁷ TL Beauchamp and JF Childress, *Principles of Biomedical Ethics* (Oxford University Press 2001) 34

mandated for certain medical procedures.⁸ Justice Cardozo clearly outlined the rationale behind the requirement for consent in *Schloendorff v Society of New York Hospital*,⁹ stating that “every human being of adult years and sound mind has a right to determine what shall be done to his own body.” Similarly, in *Malette v Shulman*,¹⁰ the Canadian court affirmed this legal position, emphasising that a competent adult has the right to refuse a specific treatment, even if the decision poses serious risks, including death, and may be deemed erroneous by medical professionals or society. Regardless of a doctor's opinion, the ultimate decision to undergo treatment rests with the patient. Informed consent is a process of communication between a physician and a patient, culminating in the patient’s agreement to proceed with a medical procedure. The relationship between a medical practitioner and a patient is fiduciary, requiring the physician to provide full disclosure of all relevant information regarding the patient’s care.¹¹ This chapter discusses the legal requirement of consent to medical treatment under Nigerian laws.

1.2. Types of Consent to Medical Treatment

Consent to medical treatment can be express or implied.

1.2.1. Express Consent to Medical Treatment

Express consent refers to a patient’s explicit approval of a proposed treatment or procedure, which is communicated through a signed consent form or a verbal agreement.¹² This means that the physician must provide the patient with adequate information about the proposed treatment, enabling them to make an informed decision on whether to authorise the procedure.¹³ Failing to obtain express consent before performing a procedure or treatment can lead to a medical malpractice claim. This underscores the importance of physicians fully explaining treatments and procedures to patients before they begin.¹⁴ Express consent is a clear, deliberate, and voluntary declaration of agreement. For instance, a patient may sign an authorization form at a hospital, granting permission for a scan or treatment.¹⁵ This indicates that the patient fully understands the significance and potential consequences of the proposed medical procedure and willingly agrees to it. Consent is considered express when a patient explicitly communicates their direct approval for a specific treatment or procedure presented by the physician.¹⁶

1.2.2. Implied Consent to Medical Treatment

While express consent is given, implied consent is a notion of permission inferred from the patient's actions.¹⁷ It should be noted that implied consent also refers to situations where a patient consents to medical treatments through actions or behaviors rather than clear and direct agreement,

⁸ Ibid

⁹ 105 N. E. 92, 211, N. Y. 125.

¹⁰ (1990) 37 O. A. C 281 (CA)

¹¹ M I Ezeuko, ‘Nigerian laws on Informed Consent’ <<https://pubmed.ncbi.nlm.nih.gov/31588846/#:~:text=Rule%2019%20Part%20A%3A%20Code,consent%20before%20a%20medical%20intervention>> accessed 13 February 2025

¹² L Towey, ‘What is the difference between express and implied consent?’ <<https://www.briantoweylaw.com/what-is-the-difference-between-expressed-and-implied-consent/>> accessed 23 February 2025

¹³ Ibid

¹⁴ M W Michael, ‘What is the difference between express and implied consent?’ <<https://www.wilsonlaw.com/blog/difference-between-express-and-implied-consent/>> accessed 23 February 2025

¹⁵ H T Hollander, ‘Express consent vs Implied consent-what is the difference?’ <<https://www.hollanderlawfirm.com/blog/what-is-the-difference-between-express-and-implied-consent/>> accessed 23 February 2025

¹⁶ Ibid

¹⁷ I Wigmore, ‘Express Consent’ <<https://www.techtarget.com/whatis/definition/expressconsent#:~:text=Express%20cons>> accessed 23 February 2025

such as a nod of the head or hand signal. Implied consent is most common in emergencies, where a physician must intervene to save a patient's life without waiting for express consent. For instance, if a person is involved in an accident and is unconscious or unable to communicate, health professionals will assume that the victim would want them to provide aid if they were conscious or could communicate. Consent can sometimes also be implied due to intoxication, debilitating mental illness, young or old age, or when there is a language barrier between the patient and the medical professional. In the context of a patient-doctor relationship, implied consent typically arises when a physician performs actions within the scope of standard medical practice, and the patient does not oppose them.¹⁸

1.3. Scope of Consent to Medical Treatment

The requirement of consent is a fundamental aspect of medical treatment. It is a well-established principle that a patient must provide valid consent before undergoing any medical procedure and has the right to refuse treatment, even if it is life-saving.¹⁹ Consent is arguably the only principle that applies across all areas of healthcare, serving as both a legal and ethical expression of an individual's right to autonomy and self-determination. Consequently, administering treatment without valid consent may expose a physician to liability under both tort and criminal law.²⁰ It is important to recognize that consent, whether express or implied, applies to a specific medical treatment or procedure. Therefore, a medical practitioner must be mindful of the limits of their professional actions and ensure that they operate strictly within the scope of the consent granted by the patient.²¹

In *Dr. Rom Okekearu v Danjuma Tanko*,²² Niki Tobi JSC noted that the term *treatment*, referring to the substance or method used to address an illness through medical means, is broad and imprecise. Therefore, for consent to hold significance, it must be specific. In *Mohr v Williams*,²³ Mrs. Anna Mohr consented to surgery on her right ear. However, after she was anesthetised, the defendant physician decided to operate on her left ear instead, having determined that the right ear was not as severely affected as initially thought. As a result, Mrs. Mohr's hearing worsened, leading her to sue the surgeon for assault and battery due to the unauthorized change in the surgical site. The Supreme Court of Minnesota ruled that the physician should have obtained her consent before performing surgery on the opposite ear. Similarly, in *Pratt v Davis*,²⁴ Mrs. Parmelia Davis sued her surgeon for battery after he performed a hysterectomy without her consent. While the physician had previously obtained consent for an earlier procedure, he admitted to failing to secure consent for the second operation and deliberately withholding information about his intention to perform a hysterectomy to treat her epileptic seizures. Dr. Edwin Pratt, the surgeon, justified his actions by arguing that Mrs. Davis's epilepsy rendered her incapable of making an informed

¹⁸ H Baltimore, 'Implied Consent' <https://www.legalmatch.com/lawlibrary/article/IMPLIEDCONSENT-INAMEDICALMALPRACTICECLAIM.html#:~:text=Implied%20consent%20in%20the%20context.of%20all%20the%20relevant%20facts.>> accessed 23 February 2025

¹⁹ Nandimath V Omprakash, 'Consent and Medical Treatment: The legal paradigm in India' <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779959/#:~:text=The%20patient%20has%20a%20legal,obtained%20should%20be%20legally%20valid>> accessed 23 February 2025

²⁰ Ibid

²¹ Ibid

²² (2002) 15 NWLR (PART 791) 657

²³ 95 Minn. 261, 104 N.W. 12, 108 N.W. 818

²⁴ 224 Ill. 300, 79 N.E. 562, 7 L.R.A., N.S., 609

decision. In ruling in favor of Mrs. Davis, the appellate court emphasised the fundamental right to personal autonomy, stating:

*In a free society, the most essential and overarching right is the inviolability of one's person, the right to self-ownership, universally acknowledged. This right inherently prohibits any physician or surgeon, regardless of skill or reputation, who has been consulted for examination, diagnosis, advice, and prescription, fundamental steps in medical care, from violating a patient's bodily integrity without consent.*²⁵

In *Rolater v. Strain*,²⁶ The plaintiff filed a lawsuit against her surgeon for removing a bone from her foot during a procedure that was originally intended only to incise and drain an infection. Although the surgeon had obtained consent for the infection drainage, the patient had explicitly stated that no bones should be removed during surgery. As a result, the bone removal was deemed a violation of her bodily autonomy, leading to charges of assault and battery. Unlike the rulings in *Mohr* and *Pratt*, the surgeon in this case had obtained consent and operated on the correct foot. However, the Supreme Court of Oklahoma held that the principles established in the earlier cases still applied because the surgeon had exceeded the agreed-upon scope of the procedure. This ruling underscore the principle that medical practitioners must not proceed with any treatment that a patient has expressly refused, nor should they go beyond the boundaries of the consent provided.

1.4. Capacity to Consent to Medical Treatment

Adults are generally presumed to have decision-making capacity unless proven otherwise. Capacity refers to an individual's ability to make decisions, and in a medical context, it signifies a patient's ability to understand information about their illness and available treatment options to make choices that align with their values and preferences.²⁷ Determining whether a patient has sufficient capacity to make decisions is largely based on interactions between the physician and the patient.²⁸ Concerns about a patient's capacity to consent to treatment typically arise when they struggle to comprehend or assess medical information or are unable to communicate their treatment decisions effectively.²⁹

The ability to consent to medical treatment requires a patient to comprehend and retain relevant information, apply this knowledge in their decision-making process, and make independent choices. Capacity to consent is decision-specific and may fluctuate over time, meaning a patient may be deemed competent for one decision but not for another at a particular moment.³⁰ During hospitalisation, a patient's capacity to consent to treatment or medical investigations should be assessed based on their clinical condition. Some medical decisions are relatively straightforward, while others are more complex.³¹ A person may be capable of making simple medical choices but struggle with more intricate decisions, such as refusing life-sustaining medication. In such cases, the cognitive process of understanding, retaining, and evaluating information is significantly more demanding.³² Moreover, a person's capacity to make decisions can vary over time. For instance,

²⁵ 224 Ill. 300, 79 N.E. 562, 7 L.R.A., N.S., 609

²⁶ [1913] OK 634

²⁷ *Nandimath v Omprakash* (n20)

²⁸ *Baltimore* (n19)

²⁹ *Ibid*

³⁰ J Boyle, 'Capacity and Consent to Medical Treatment' <<https://www.eldac.com.au/tabid/5270/Default.aspx>> accessed 23 February 2025

³¹ *Ibid*

³² *Nandimath Omprakash* (n20)

an individual may be able to decide at one point in the day but lack the same ability later due to fluctuations in their mental or physical state.³³

It is essential to recognise that having a medical condition, mental illness, or intellectual disability does not automatically mean a person lacks decision-making capacity. As long as they meet the criteria for capacity assessment, they retain the right to make their own treatment decisions.³⁴ Patients are considered to have the capacity to make medical treatment decisions if they can understand and retain relevant information, including the potential consequences, and effectively evaluate and apply this information in their decision-making process.³⁵ In *Re T (Adult: Refusal of Medical Treatment)*,³⁶ T, who was 34 weeks pregnant, sustained injuries in a car accident. After consulting with her mother, a Jehovah's Witness, T repeatedly refused a blood transfusion, despite it being deemed critical to saving her life. Although she no longer identified as a Jehovah's Witness, she acknowledged retaining some of its beliefs. The Court ruled that, while every adult has the fundamental right and capacity to accept or refuse medical treatment, regardless of whether the refusal could result in permanent harm or even death, and irrespective of whether the reasoning was rational, irrational, or absent, this right is not absolute. If a patient's decision-making capacity has been unduly influenced by others, doctors have a duty, guided by their clinical judgment, to act in the patient's best interests.

Physicians must provide patients with accurate information and sufficient time to make informed decisions. In *Thefaut v Johnston*,³⁷ Mrs. Thefaut suffered from severe back pain along with pain and numbness in her leg. During consultations with her surgeon, she was informed that without surgery, she would recover within 12 months. She also received a letter recommending surgery, stating a 90% likelihood of alleviating her leg pain and suggesting that her back pain had a strong chance of improvement. However, the letter failed to mention key details, including the option of foregoing surgery, the expected recovery timeline without the procedure, and the inherent risk that surgery could worsen her condition. Mrs. Thefaut proceeded with the operation but later reported worsened leg pain and persistent back pain. The Court held that the informed consent process did not meet the required standard, as the risks were understated, the likelihood of success was exaggerated, and the non-surgical alternative was not adequately presented. It emphasized that patients must be given sufficient time and space to make decisions. Additionally, physicians must ensure that medical information is conveyed clearly and free from technical jargon, enabling patients to fully understand their options.

1.5. Exceptions to Consent to Medical Treatment

In general, physicians must obtain a patient's consent before initiating treatment. However, there are circumstances where a patient is unable to make independent decisions and has not appointed a surrogate decision-maker. This section addresses such situations.

1.5.1. Emergency Situations

The American Medical Association defines a medical emergency as a situation where immediate treatment is necessary to prevent imminent harm.³⁸ The emergency exception is founded on the

³³ Ibid

³⁴ Boyle (n31)

³⁵ Ibid

³⁶ [1992] 4 All ER 649 (CA)

³⁷ [2017] EWHC 497 (QB).

³⁸ J Frank, 'Consent to treatment' <https://www.jotform.com/blog/exceptions-to-informed-consent>> accessed 25 March 2025

principle that a reasonable person would not wish to be deprived of essential medical care simply because they are unable to provide consent. However, this applies only when the patient requires treatment to preserve life or prevent permanent disability.³⁹ A medical procedure or treatment is considered to be in the patient's best interest if it is performed to save their life, enhance their condition, or prevent further decline in their physical or mental health.⁴⁰ Proxy consent may be obtained if the patient has previously authorized someone to make medical decisions on their behalf. If no such authorisation exists, treatment is determined based on the "necessity test" established in *Re F*,⁴¹ which requires that any medical intervention be in the patient's best interests. In most emergencies, patients do not require immediate intervention to prevent death or serious harm and are generally competent to provide consent. Therefore, when treating trauma patients, physicians must assess whether there is enough time to obtain consent without delaying treatment and increasing risks. If consent is bypassed in an emergency, it should only be because the time required for disclosure and patient decision-making would compromise the patient's well-being. The urgency of the situation is primarily assessed based on the potential consequences of delaying treatment.⁴²

At this point, it is important to emphasize that the applicability of the emergency exception depends on the specific circumstances of each case. Generally, only reasonable and necessary treatment within the scope of the emergency is permitted. If the harm is not imminent, no true emergency exists. In certain cases, courts may overrule a physician's decision to proceed with treatment without consent unless there is an immediate threat to the patient's well-being. For instance, a physician who is aware of a patient's refusal of a procedure but delays action until harm becomes imminent cannot justify proceeding without consent under the emergency exception. Additionally, a prior refusal to give informed consent remains valid even in an emergency.⁴³ The emergency exception also does not apply when a physician treats a patient incapable of giving consent without first seeking approval from an available proxy.⁴⁴ This principle was upheld in *Dewes v Indian Health Service*,⁴⁵ where the court held that the exception was inapplicable because the patient's parents were present at the hospital, and the physician had sufficient time, evidenced by the fact that he drank a cup of coffee before performing the procedure to obtain informed consent from them.

1.5.2. Waiver

Another exception to the requirement of informed consent is the waiver exception. Unlike the emergency exception, which is based on necessity, the waiver exception upholds the same fundamental value as the doctrine of informed consent itself, patient autonomy. For a patient to validly waive their right to give informed consent, they must first be aware that they possess this right.⁴⁶ This means they must understand that physicians must disclose treatment-related information, that patients have a legal right to make their own healthcare decisions, that medical

³⁹ Ibid

⁴⁰ George Franklin, 'Urgent Medical Treatment' <<https://www.plea.org/health-1/treatment-withoutconsent/urgent-situations>> accessed 25 March 2025

⁴¹ Re F 1990 2 AC, [1989] 2 All ER 545

⁴² George Franklin (n41)

⁴³ Ibid

⁴⁴ JC Moskop, 'Informed Consent in the Emergency Department' [1999] (17) (2) *Emergency Clinical Medicine* 327–340

⁴⁵ 504 F.Supp. 203 (1980)

⁴⁶ George Franklin (n41)

treatment cannot proceed without their consent, and that this right includes both the ability to accept and refuse treatment.⁴⁷

While physicians are responsible for informing patients of their rights, they must also consider the patient's mental health when disclosing information. A patient who waives their right to decide on a particular medical treatment does not need to understand every detail of the procedure but retains the right to access that information before making a decision. For a waiver to be valid, it must be given freely and voluntarily.⁴⁸ A waiver obtained through coercion, such as physical force, undue inducement, excessive persuasion, or authoritative pressure, is not considered voluntary. Although physicians should not compel a patient to accept a treatment recommendation or force them to waive their decision-making rights, they may advocate for a particular treatment by providing recommendations and attempting to guide the patient toward making an informed choice. Importantly, simply disclosing medical information without any recommendation or guidance from the physician constitutes a breach of the duty to disclose.⁴⁹

1.5.3. Compulsory Treatment

The legal requirement for obtaining consent before administering medical treatment can, in certain circumstances, be waived, with compulsory treatment being one such instance. This exception exists not only to protect an individual's health but also to safeguard public interest, particularly in cases where a person poses a risk to others.⁵⁰ Consequently, treatment may be mandated for individuals diagnosed with severe mental illness or infectious diseases. The underlying justification for compulsory treatment is the presumption that the individual in question presents a serious threat to themselves or others. In some cases, people may be required to undergo medical treatment due to prior actions that classify them as dangerous.⁵¹ The term 'compulsory treatment' generally refers to the administration of medical intervention against a person's will.⁵²

In *Washington v Harper*,⁵³ The Supreme Court of Washington held that a state policy permitting prison authorities to medicate inmates involuntarily was unconstitutional, as it violated their due process rights. However, the United States Supreme Court acknowledged that while inmates have a Fourteenth Amendment right to refuse medical treatment, this right must be weighed against the state's duty to manage a safe prison environment and provide care for mentally ill inmates. Because compulsory treatment directly challenges the principle of patient autonomy, the cornerstone of informed consent's application must be strictly regulated. While such treatment must offer potential benefits to the patient, it may not necessarily align with the patient's perception of their best interests.⁵⁴ Unlike the waiver exception, which is determined by the patient's voluntary decision, compulsory treatment is only permissible when authorised by a valid court order or statute. In most cases, efforts should first be made to obtain the patient's informed consent before resorting to legal enforcement. Courts typically intervene only in exceptional cases, such as when

⁴⁷ Ibid

⁴⁸ Moskop (n45)

⁴⁹ Ibid

⁵⁰ Lawrence Gostin and William J. Curran, 'Legal Control Measures for AIDS: Reporting Requirements, Surveillance, Quarantine, and Regulation of Public Meeting Places' [1987] (77) *American Journal of Public Health* 214-218

⁵¹ Ibid

⁵² Ibid

⁵³ 494 U.S. 210, 110 S.Ct. 1028(1990)

⁵⁴ Moskop (n45)

a patient refuses treatment on religious grounds, but their decision has broader societal implications.⁵⁵

1.6. Legal Framework Governing Consent to Medical Treatment in Nigeria

The healthcare profession is vital to every nation, as the overall well-being of a country significantly depends on the dedication and expertise of its medical professionals. According to the World Health Organization (WHO), the right to health is a fundamental human right, inherently linked to other internationally recognised rights.⁵⁶ The WHO further emphasises that ensuring the highest attainable standard of health places clear legal obligations on states to create conditions that allow all individuals to enjoy this right without discrimination.⁵⁷

Consent forms the legal foundation for a doctor's authority to provide medical treatment. The right to consent to treatment is a fundamental principle, as reaffirmed by Lord Templeman in *Sideway v. Board of Governors, Bethlehem Royal Hospital*.⁵⁸ Similarly, in *Malette v Shulman*,⁵⁹ The court ruled that the ultimate decision to undergo treatment rests with the patient. Given these legal precedents, the necessity for a comprehensive and effective legal framework governing consent to medical treatment in Nigeria cannot be overemphasized.

1.6.1. Constitution of the Federal Republic of Nigeria 1999 (As amended)

The Constitution stands as the supreme law of the land, serving as the foundation of citizens' rights.⁶⁰ In *Abatan v Awudu*,⁶¹ the Court of Appeal, per Aderemi JCA, affirmed that the relationship between a doctor and a patient is built on trust and confidence, wherein the doctor has both the power and the duty to treat and restore the patient's mental and physical well-being. In Nigeria, the doctrine of consent to treatment is firmly established as a fundamental right under Sections 37 and 38 of the 1999 Constitution. Section 37 guarantees every Nigerian citizen the right to privacy, including the confidentiality of their home, correspondence, and communications. As a result, physicians cannot impose treatment on patients against their will. Embedded in this right to privacy is the individual's autonomy in making medical decisions, including the choice of treatment, surgical procedures, and preferred medication.⁶²

In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,⁶³ Mrs. Martha Okorie was admitted to Kanayo Hospital after childbirth and was diagnosed with a severe illness requiring a blood transfusion. However, both she and her husband, being Jehovah's Witnesses, refused the procedure on religious grounds. Maintaining that forcing her to undergo a transfusion would violate her rights to freedom of religion and privacy, she was discharged and taken to another hospital where the respondent, also a Jehovah's Witness, treated her without a blood transfusion until she later passed away. The respondent was subsequently charged with negligence and suspended by the disciplinary tribunal. However, the Court of Appeal overturned the tribunal's decision, and upon further appeal, the Supreme Court upheld the ruling in favor of the respondent. The Supreme Court held that a patient's right to refuse medical treatment, particularly, in this case,

⁵⁵ Ibid

⁵⁶ Patricia Imade Gbobo and Mercy Oke-Chinda, 'An Analysis of the Doctrine of Informed Consent in Nigeria's Health Care Services' [2018] (69) *Journal of Law, Policy and Globalisation* 15-25

⁵⁷ Ibid

⁵⁸ (1985) 1 ALL ER

⁵⁹ (1990) 47 DLR 18 at 24

⁶⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) section 1(3)

⁶¹ [2003] 10 NWLR (Pt. 829) 451 C.A

⁶² Yinka Olomajobi, 'Right to Privacy in Nigeria' <http://dx.doi.org/10.2139/ssrn.3062603>>accessed 27 February 2025

⁶³ (2002) AHRLR 159

a blood transfusion on religious grounds, is protected under the fundamental rights enshrined in Sections 34 and 35 of the 1979 Constitution.⁶⁴ This guarantees the right to privacy and the right to freedom of thought, conscience, and religion.

In Nigeria, there is a deep-rooted belief in a supreme being that governs both the living and the dead. This belief often poses a challenge to the effective implementation of informed consent in healthcare service delivery.⁶⁵ The essence of informed consent is to empower patients to take control of their health by actively participating in decisions affecting their well-being, rather than surrendering their fate to divine intervention. However, a patient who attributes their illness to spiritual forces may be reluctant to seek medical care.⁶⁶ Numerous legal cases have arisen in which courts have been called upon to determine whether medical treatment should be administered against a patient's religious objections. A notable religious group in this context is the Jehovah's Witnesses, who firmly oppose blood transfusions based on scriptural doctrine. This raises a critical legal and ethical question: should medical practitioners respect a patient's refusal of treatment on religious grounds? The answer is complex.⁶⁷ Those who refuse treatment argue that their right to religious freedom, protected under the Nigerian Constitution, must be upheld. Consequently, a patient's decision to decline medical treatment for religious reasons must be acknowledged and respected.⁶⁸

Judicial decisions have affirmed the rights of patients who object to medical procedures on religious grounds. In the American case of *Stamford Hospital v Vega*,⁶⁹ The plaintiff hospital sought an injunction to administer a blood transfusion to a Jehovah's Witness patient who had refused consent despite experiencing severe postpartum bleeding. The attending physicians deemed the transfusion necessary for her survival and ability to care for her newborn. The trial court granted the injunction, citing the state's interest in preserving life and protecting innocent third parties, such as the baby. However, on appeal, the Connecticut Supreme Court overturned the ruling, holding that:

*The injunction violated the patient's common law right to bodily autonomy. The hospital's interest in protecting its patients did not extend to the baby, as the infant's health was not at risk. While the hospital had a compelling interest in preserving life and upholding medical ethics, these interests did not outweigh the patient's right to refuse treatment, provided she was competent, adequately informed of the consequences, and made the decision freely.*⁷⁰

This case underscores the principle that patient autonomy and informed consent must be upheld, even in life-threatening situations, as long as the individual is capable of making an informed and voluntary decision. In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,⁷¹ the court emphasised the need to balance multiple interests when considering religious objections to medical treatment. These include an individual's constitutional right to religious freedom, the

⁶⁴ Now sections 37 and 38 of the 1999 Constitution (As amended)

⁶⁵ Olomjobi (n63)

⁶⁶ Ibid

⁶⁷ Ebele Angela Obidimma and Emmanuel Chukwudebere Obidimma, 'Right of a Patient to Refuse Medical Treatment: Justification for Judicial Intrusion' [2014] (5) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 150-162

⁶⁸ Ibid

⁶⁹ 236 Conn 646 (1996)

⁷⁰ Ibid

⁷¹ (2001) LPELR-SC. 213/1999

state's interest in public health and safety, and the ethical integrity of the medical profession. The court affirmed that under Sections 37 and 38 of the 1999 Constitution, patients have the right to refuse medical treatment, including blood transfusions, on religious grounds, even if the physician believes the treatment is necessary to save their life.

1.6.2. The National Health Act⁷²

This Act establishes the legal framework for regulating, developing, managing, and advancing Nigeria's healthcare system.⁷³ It creates a national health system that applies to both public and private healthcare providers.⁷⁴ The Act defines the rights of individuals receiving healthcare services, including their entitlement to relevant information about their health status and the necessary treatment options.⁷⁵ This means that the physician is required to thoroughly inform the patient about their health condition, the proposed treatment, and any potential consequences. The patient has the right to full disclosure,⁷⁶ right to health records,⁷⁷ and the protection of such records,⁷⁸ right to confidentiality of information relating to his health status.⁷⁹

1.6.3. Medical and Dental Practitioners Act⁸⁰

The Act was enacted to regulate medical and dental practice in Nigeria, ensuring adherence to medical ethics and professional conduct. It established the Nigerian Medical Council, responsible for setting and improving standards of knowledge and skills for medical and dental practitioners.⁸¹ The Act established the Nigerian Medical and Dental Council to periodically review and define the standards of professional conduct for medical and dental practice in Nigeria.⁸² The Council is a corporate body with the authority to sue and be sued. It sets professional standards for medical service providers, and non-compliance may constitute professional negligence.⁸³ In this context, failure to obtain the proper consent of the patient constitutes a breach. In *Dr. (Mrs.) F.C.L. Olaye v. Chairman, Medical and Dental Practitioner Investigating Panel & Others*,⁸⁴ the Council reaffirmed its standards for professional fitness and took disciplinary action against a medical practitioner whose negligence brought disrepute to the profession.

1.6.4. Code of Medical Ethics

The Medical and Dental Council of Nigeria, in line with its statutory functions, codified professional conduct rules in the Code of Medical Ethics in Nigeria (2008), with Rule 19 of Part A specifically addressing informed consent.⁸⁵ The *Code of Medical Ethics in Nigeria* aligns with the principles of autonomy and human rights upheld in developed Western countries. It serves as the primary regulatory framework for promoting and ensuring patient-informed consent in Nigeria. The Code acknowledges that consent may be obtained from the patient, their relatives, or a public

⁷² Act No. 8 of 2014

⁷³ *Ibid* section 1

⁷⁴ *Ibid*

⁷⁵ Uzoamaka Nwokorie, 'An Evaluation of the Legal Framework for the Protection of Users of Medical Services in Nigeria' [2019] (1)(13) *International Review of Law and Jurisprudence* 29-36

⁷⁶ National Health Act 2014 section 23

⁷⁷ *Ibid* section 27

⁷⁸ *Ibid* section 29

⁷⁹ *Ibid* section 26.

⁸⁰ Cap M8 Laws of Federation of Nigeria 2004 (as amended)

⁸¹ *Ibid* section 1

⁸² *Ibid* section 3

⁸³ *Ibid* section 7

⁸⁴ (1997) 5 NWLR (pt 506) 55 C.A

⁸⁵ Codes of Medical Ethics in Nigeria

authority, depending on the circumstances. While patients have the fundamental right to receive information and make decisions regarding their treatment, a next of kin may provide consent on behalf of minors or individuals lacking capacity.⁸⁶ If no relative is available, the most senior physician in the institution can authorize treatment to preserve life, with a court order required in special cases.⁸⁷ This Code of Practice establishes the fundamental ethical principles that uphold the integrity and moral values of the medical and dental professions. It broadly defines the standards for acceptable medical and dental practice in Nigeria, emphasizing a practitioner's duty of care to patients. Any breach of this duty may result in liability for negligence. A key principle of the Code is that practitioners may be found guilty of infamous conduct if their actions are deemed disgraceful or dishonourable.⁸⁸

1.7. Conclusion and Recommendations

The legal requirement of consent to medical treatment in Nigeria is a fundamental principle that safeguards patient autonomy, promotes ethical medical practice, and ensures that healthcare providers uphold professional standards. Consent, whether express or implied, is a critical aspect of medical decision-making, allowing patients to make informed choices regarding their treatment. However, exceptions exist, such as in emergencies, cases of waiver, and compulsory treatment, where consent may be overridden in the interest of public health or patient welfare.

The legal framework governing consent to medical treatment in Nigeria is anchored in the Constitution of the Federal Republic of Nigeria (1999, as amended), the National Health Act, the Medical and Dental Practitioners Act, and the Code of Medical Ethics. These legal instruments collectively provide the foundation for protecting patient rights and ensuring that medical practitioners adhere to ethical standards. However, challenges persist in the implementation and enforcement of these laws, leading to gaps in patient awareness, professional compliance, and legal accountability. This chapter makes the following recommendations.

1. Strengthening Public Awareness Campaigns

There is a need for greater public education on the legal rights of patients concerning consent to medical treatment. Awareness campaigns should be conducted through hospitals, media, and community outreach programs to ensure that individuals understand their right to informed consent.

2. Enhancing Training for Healthcare Professionals

Medical practitioners should receive continuous training on ethical and legal standards relating to patient consent. This should be incorporated into medical and dental school curricula and reinforced through regular professional development programs.

3. Stronger Enforcement Mechanisms

Regulatory bodies, including the Medical and Dental Council of Nigeria, should strengthen enforcement mechanisms to ensure strict compliance with consent regulations. Disciplinary actions should be consistently applied in cases of violations to uphold professional accountability.

⁸⁶ *Ibid* section 4

⁸⁷ *Ibid* section 5

⁸⁸ *Ibid* section 28

4. Legislative Reforms for Clarity and Effectiveness

Existing laws governing consent to medical treatment should be reviewed and amended where necessary to provide clearer guidelines on exceptions, particularly in cases involving minors, mentally incapacitated individuals, and compulsory treatment.

5. Judicial Activism and Legal Precedents

Nigeria's courts should continue to play an active role in interpreting and enforcing the laws on medical consent, ensuring that judicial precedents reinforce the principles of patient autonomy and medical ethics.

6. Ethical Considerations for Special Cases

While the law recognizes exceptions to consent, careful consideration should be given to religious and cultural factors in medical treatment decisions. Policies should be designed to balance individual rights with societal health interests without infringing on constitutional freedoms.

By implementing these recommendations, Nigeria can achieve a more effective legal and ethical framework for consent to medical treatment, ensuring that patient rights are protected while maintaining the integrity of the healthcare system.