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Confidentiality of Patients and the Use of Medical Records in Nigeria

Abimbola Elizabeth Adewusi*
Olubukola Olugasa, PhD**

Abstract

The issue of confidentiality in patient doctor relationship needs to be addressed urgently in order for our health care system to become better and efficient. Many times, patients have lost the confidence they have in their doctors because they are not sure if the doctor would keep their information confidential. Another challenge that needs to be addressed is the uses of medical records. This article will employ a doctrinal research methodology. Doctrinal methodology was chosen for this research because it uses legal principles in providing practical answers to problems by analyzing the doctrines, principles and concepts.



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Keywords

Confidentiality, Medical records, Patients' data, Privacy.

1.1 Introduction

This article looks at a number of legal issues regarding the confidentiality and uses of patients' medical records. It challenges the general belief of

health workers and patients concerning medical records. It discusses the patients' rights and their rights to their medical records in Nigeria. This article shall appraise the concept of confidentiality, purposes, ownership and the various uses of patients' medical records in Nigeria. This article shall look at statutory provisions enacted to guide the confidentiality, purposes, ownership and the various uses of patients' medical records in Nigeria. This article looks at confidentiality of patients' data and concludes by talking about the duty of confidentiality owed to patients by other health care workers. The central question to this paper is, are medical records available to patients' for future purposes?

1.2 What are Patients' Rights?

The right of a patient is contained in the bill of rights of patients'. A patients' bill of rights contains the rights that is guaranteed for those receiving medical care. It may take the form of a law or a non-binding declaration. Typically a patients' bill of rights guarantees patients information, fair treatment and autonomy over medical decisions, among other rights.¹

The Consumer Protection Council (CPC), in conjunction with the Federal Ministry of Health, presented the Nigerian patients' Bill of Right (PBoR). The sector remains one of the most critical for the country's economic and social development, despite being one of the most abandoned, mismanaged, and abused; just in the same manner as majority of Nigerian consumers². By putting together a Patients' Bill of Rights, the CPC seeks to refine the quality of services delivered to consumers of healthcare and by extension contribute to the development of the healthcare sector.

A bill of right is the compilation of rights of citizens of a country. The evolution of the concept of fundamental rights is derived from the institution of the bill of rights, which has gained pre-eminence in the constitutions, and statutory instruments of different countries. The Nigerian constitution contains a set of these universal rights, which guarantees the fundamental rights, and freedom of citizens. These are listed in chapter IV of the constitution, which include right to life, right to dignity of human person and right to personal liberty, amongst others.

* **Abimbola Elizabeth Adewusi is an LLM Candidate at the Babcock University School of Law & Security, Nigeria.**

** **Olubukola Olugasa, PhD is an Associate Professor at the Babcock University School of Law & Security, Nigeria.**

¹ Promise Chizurulam Onyewu, 'Impact of Violation of Patients' Rights in Nigeria Public and Private Health Facilities' (2016) *Journal of Nursing Care*, 2167, 1168.

² *ibid.*

Essentially, Patient's Bill of Rights is a declaration of the various rights, which are given to patients or users of healthcare services to avoid them from receiving inadequate proper medical care. With the introduction of this, which is in line with its statutory mandate of protecting the rights of patients as recognized in the extant statutes, codes and principles of common law.

It is worthy to note that the second patients' rights that is outlined in the Patients' Bill of Rights that is relevant to this study.

1. Right to timely access to detail and accurate medical records and available services³.

A patient who has suffered harm or injury as result of breach of any of the rights in the PBoR may seek to enforce same through the mechanisms provided by the CPC pursuant to the Consumer Protection Act, or by instituting an action in court pursuant to the provisions of the Constitution, the National Health Act and under common law tort for medical negligence. In addition, a disciplinary proceeding may be instituted under the Medical and Dental Practitioners Act against the medical practitioner or healthcare provider in breach of the patient's rights. The enforcement of these rights can be categorized as rights exercised or enjoyed under legislations and common law.

Legislatively, Sections 33, 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (2011 as amended), provides for fundamental rights to life, dignity of human person, and personal Liberty respectively. These rights are inalienable rights which as the Nigerian Supreme Court declared in the case of *Mustpha v. Governor of Lagos State*⁴, are rights which encompass all humanity, and attach to a man because of his humanity. The ability to enforce human rights has been settled in a plethora of cases.

Under the common law, the principle of negligence also extends to the conduct of healthcare providers when discharging their professional duties toward their patients. Negligence as defined by the Black's Law Dictionary as the 'failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation'. In the famous case of *Bolam v. Frien Hospital Management committee*,⁵ the court noted that a doctor would not be liable for medical carelessness if he behaved in a way that is generally acceptable by medical personnel skilled in that particular work. In order words, he would be held liable if he acts otherwise. A patient may institute a civil action under tort of medical negligence for harm or injury incurred in the course of receiving medical care.

⁴ *Mustapha v. Governor of Lagos State*, [1987] JELR 42731 (SC).

⁵ *Bolam v Frien Hospital Management Committee* [1957] 1 WLR 583

1.3 The Rights of Patients' to Their Medical Records

There seems to be no provision for a patient who needs their medical records in order to get a second view as regards the treatment given or where the patients wants to use the medical records for his own personal use. The NMA Guideline explicitly validate that the patients' medical data does not belong to the patient but only for medical professionals. On the issue of confidentiality of patient's medical data, s.44 of the NMA guideline clearly states that medical records are used to give treatment to the patient and cannot be accessible to a person who is not providing health care. Health providers are to keep updated medical records in order to prove that adequate health care was provided to the patient⁶

It is important to note that paramedics and nurses are not members of the profession like doctors and dentists and therefore they have no right to access medical data. Except those attending to the patient in the medical facility and in the case of a minor, the patient and the guardian have the right to the patients' data.

Section 26(1)(2) provides that:

- (1) All information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment is confidential.⁷

Where a person fails in his duty to control and ensure information is not available to unauthorized persons, such a person shall be charged a fine of N250, 000.00 or two years imprisonment.⁸

The 2014 HIV/AIDS Anti-Discrimination Act makes it illegal to discriminate against people based on their HIV status. It also gives no room to any employer, individual or organization from requesting an individual to take an HIV test as a prerequisite for employment. The common practice of people taking their domestic help for HIV and Hepatitis A, B & C test is illegal.⁹

There is no law that prohibits an employer from asking for a doctor's note if such information is needed for administrative purposes such as leave of absence. Nevertheless, an employer cannot apply for medical records from a health care provider without the approval of an employee.¹⁰

⁶ NMA Guideline, s. 44

⁷ National Health Act, 2014, s. 26(1) (20)

⁸ *ibid.* Section 29.

⁹ HIV and AIDS (Anti-Discrimination) Act 2014, s.8-13.

¹⁰ Myrna El Fakhry Tuttle, 'Privacy and Medical Information in the Workplace' (2019)

1.4 The Right to Obtain Your Medical Records

The National Health Act 2014 allows patients to be able to obtain their medical records, medical notes, test results and other documentation related to their care.

Section 23(1) of the Act provides thus:

- (1) Every health care provider shall give user relevant information pertaining to his state of health and necessary treatment relating thereto including:-
 - a) The user's health status except in circumstances where there is substantial evidence that the disclosure of the users health status would be contrary to the best interests of the user.¹¹

The right to information, which includes medical record, is further provided for under the 2011 Freedom of Information Act. Hence, the right of a person to access his or her own information is established.¹² However, it is important to note that the Freedom of Information Act is only applicable to public agencies that is government hospitals.

Aderibigbe and Sodipo rightly observed that since a patient cannot be granted permission to access his own medical records in Nigeria, this means it would be difficult for the patient to state what is written about him. The NMA regulation does not stipulate the condition for a patient to demand for information about his medical records. He has no opportunity to comment on what is on record or contradict or disagree with the content of the medical record. This has made it difficult for a patient to file a case on breach of confidentiality of medical record in Nigeria. Since the patient lacks access to medical records in order to proof his case. To proof such case, the patient would need to come up with an evidence that the disclosure involved him and its from his medical records, and this feat cannot achieved be achieved without access to records.¹³

They further explained that confidentiality as stated in Guideline 44 of the NMA is valid only when the physician commits a breach on the privacy of his patient when discharging his duty as a doctor. This simply means that information that has being known about the patient when the doctor was not carrying his duty, as a medical doctor is not covered by the confidentiality clause. Therefore, the patient cannot make claim a breach since such breach has no proof. In such situation, the doctor has not committed any offence. The

<<https://www.lawnow.org/privacy-and-medical-information-in-the-workplace/>> accessed on 10th June 2020.

¹¹ National Health Act, 2014, s.23 (1).

¹² Freedom of Information Act, 2011, s.1 (1).

¹³ Titilayo Aderibigbe and Bankole Sodipo 'Patient's Medical Records, Privacy and Copyright in Nigeria: On-going Research' (2016) 42 University of Western Australia Law Review 2, 88-106.

appropriate action would be to instigate an action for breach or tort for negligence. It is when this happens that the court can grant access to the patient for their medical record. Part C, guideline 32 of the NMA Code states that it is the employer of the medical doctor or a professional colleague that can bring cases of malpractice known about another colleague to the attention of the disciplinary Tribunal¹⁴. It is the duty of medical personnel to report cases of malpractice.¹⁵

It is uncertain if any medical institution would voluntarily report a colleague for an unprofessional behavior, and this is due to the fact that the institution would be accountable for such improper conduct. The medical personnel involved may have to pay compensation as the court may award, and may also be punished by withdrawing his license to operate as a medical practitioner. Hence, it is import for the NMA to be revised to incorporate widely appropriate and current principle of a patient's right to his medical records¹⁶.

1.5 Uses of Medical Records: Research and Informed Consent

The Black's Law Dictionary¹⁷ defined informed consent as 'a person's agreement with a recommended medical procedure with full knowledge of the risk involved and the alternatives.¹⁸ It is the patient's consent that gives the permission for any form of treatment or course of action to be administered on him.¹⁹

Consent in medical cases is essential. It is necessary that consent is free, prior and informed.²⁰ Free infers that consent is not valid if was secured by brainwashing or coercion of the patient.²¹ Where consent is acquired involuntarily, by compulsion or coercion, it may result to an action for battery.²² Only a patient who has legal capacity can give consent.²³ Prior implies that consent must be gotten reasonable in advance of any authorization by the medical or hospital authorities or commencement of

¹⁴ *ibid*

¹⁵ Rules of Professional Conduct for Medical & Dental Practitioners Code on Medical Ethics in Nigeria, Laws of the Federation of Nigeria, (2004) s.32

¹⁶ Titilayo Aderibigbe and Bankole Sodipo 'Patient's Medical Records, Privacy and Copyright in Nigeria: On-going Research' (2016) 42 University of Western Australia Law Review 2, 88-106

¹⁷ *Blacks Law Dictionary*' (8th edn St Paul M.N USA) 323

¹⁸ *Blacks Law Dictionary*' (8th edn St Paul M.N USA) 323

¹⁹ F. O. Esiri 'Medical Law and Ethics in Nigeria' (Malt house Press Limited. Lagos 2006) 7.

²⁰ L. B Fontana and J. Grugel, 'The Politics of Indigenous Participation through "Free, Prior, Informed Consent": Reflections from the Bolivian Case,' (2016) 77 World Development 249-25

²¹ Antoanella Lulia Motoc, 'Preliminary Working Paper on Free, Prior and Informed Consent of Indigenous Peoples in relation to Development affecting their Land and Natural Resources' (2008) 13 UN Resolution.

²² J G M Tyas, *Law of Torts* (Macdonald and Evans 1973) 36

²³ S. D. Pattison, *Medical Law and Ethics* (Sweets & Maxwell 2006) 98

activities by a hospital that affects the health of the patient.²⁴ Informed means that the patient's consent must only be sought after full and legally accurate disclosure of information concerning the proposed medical procedure.

The disclosure must be in a form, which is both available and comprehensible by the patient regarding *inter alia* the nature, scope, duration, potential risks and foreseeable consequences of the medical procedure.²⁵ There must be full disclosure of information relating to treatment, benefit, risk involved, the problem and repercussions of such procedure. The physician provides all the necessary information regarding a procedure or treatment to be carried out on the patient.²⁶

In Nigeria, the issue of free, prior, informed consent in medical practice is poorly implemented. Several factors are responsible for this. Firstly, there is the problem of low level of literacy in Nigeria. Illiterate patients tend to rely completely on the judgment of the physician.²⁷

The second factor is the fact that the right to informed consent is poorly enforced. There is limited remedy available in Nigerian law to patients whose rights to informed consent have been breached. Furthermore, the mechanisms for enforcing the right to informed consent are hampered by bureaucracy.²⁸

In Nigeria, the doctrine of informed consent is established under Section 37 and 38 of the 1999 Constitution as a fundamental right. According to section 37, the privacy of citizens and telephone conversations is hereby guaranteed and protected. Section 38 (1) further provides that every person is allowed to have freedom of thought, consciences, and religion, which includes the freedom to change from a religious belief to another, and freedom either alone or in community with others, and in public or in private to manifest and propagate his religious belief or belief in worship teaching, practice, and observance.²⁹

These provisions protect the right of a patient to refuse a form of medical treatment due to their religious beliefs. Therefore a Jehovah's Witness can decide to object to a blood transfusion on religious grounds as a result of the right accorded to him in section 37 and 38 of the 1999 Constitution.

²⁴ *ibid.* United Nations Development Group Guidelines on Indigenous Peoples Issues (U.N. Development Group Publication 2008)

²⁵ *ibid*

²⁶ D. Goguen 'What is 'Informed Consent' in Medical Malpractice Case'. Accessed 15, August 2016; J.A Dada 'Legal Aspect of Medical Practice in Nigeria' (University of Calabar Press, Nigeria 2006) 257,218

²⁷ B. C. Umerah, *Medical Practice and the Law in Nigeria* (Longman Nigeria Ltd 1989) 132

²⁸ *ibid.* Patricia Imade Gbobo and Mercy Oke-Chinda

²⁹ Constitution of the Federal Republic of Nigeria (1999) (as amended) Federal printing Press; Apapa

Commencing surgical procedures without the patient giving consent would be an infringement of his right to privacy. It doesn't matter even if the doctor feels such procedure would be of great benefit to the patient or that the rejection of such procedure seems mindless or absurd to others.³⁰

The Nigerian Supreme Court in the case of *MDPDT v Okwonkwo*,³¹ Uwaifo, JSC, said I am completely satisfied that under normal circumstances no medical doctor can forcibly proceed to apply treatment to a patient of full sane faculty without the patient's consent, particularly if the treatment is of a radical nature, such as in amputations or other radical surgery.³²

Hence, it is of paramount importance that the doctor ensures that there is valid consent given by the patient and that he does nothing that will amount to a breach of patient rights. International laws and Nigerian laws recognize the importance of informed consent in research and medical practice.³³ The code of medical ethics of the Medical and Dental Council of Nigeria guides the conduct of physicians. Rule 19 of part A focuses on informed consent and agrees entirely with the definitions and discussion above.³⁴ The Supreme Court of Nigeria has pronounced this. In the *Medical and Dental Disciplinary Tribunal vs Okonkwo*³⁵ the Nigerian Supreme Court ruled: The patient's consent is paramount (accordingly) the patient's relationship (with the doctor) is based on consensus. It follows that the choice of an adult patient of sound mind to refuse informed consent, barring state intervention through judicial process, leaves the practitioner helpless to impose a treatment.³⁶

It is generally accepted that in emergency situations, the patient or representative (patient's relatives or the physician) must put into action the 'duty of care' concept in order to save life or limb and do whatever is immediately necessary. The physician should at all times in these emergency situations be able to indicate obvious suffering or danger to life or health of the patient. All treatments and or investigations must be limited to those that will help in saving life or limb, or the general health of the patient.³⁷

³⁰ Y. Z Lawal, E.S. Garba, M. O. Ogirima, I. L. Dahiru, M. I Maitaima and K. Abubakar. The Doctrine of Informed Consent in Surgical Practice' (2011) 10 Annals of African Medicine 1,5

³¹ *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* (SC 213/1999) [2001] 10 (02 March 2001)

³² *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* (SC 213/1999) [2001] 10 (02 March 2001)

³³ C. B. I. Jsselmuiden and R. R. Faden, 'Research and Informed Consent in Africa- Another Look' (1992) New England Journal of Medicine

³⁴ Medical and Dental Council of Nigeria, *Codes of Medical Ethics in Nigeria* (Petruvanni 2004) 26,31

³⁵ *Medical and Dental Disciplinary Tribunal v Okonkwo* (2002) AHRLR 159 (NgSC 2001); [2001] WRN 1

³⁶ *ibid.*

³⁷ F.E Camps (ed) *Gradwhol's Legal Medicine* (3rd edn Bristol John: Wright and Sons; 1976) 419-29.

Most legal actions against physicians in respect of consent are as a result of carelessness, and raise uncertainties as to the adequacy of consent given by the patient. Although the physician's intentions in performing an operation may have been good, the courts will not judge him on that. The courts have repeatedly affirmed that the good intent of the physician cannot be replaced with the will and choice of the patient. A higher standard of disclosure may be required in operations or procedures that are not entirely imperative to the physical wellbeing of the patient, e.g., cosmetic surgery.³⁸

No respectable practitioner or facility that performs tests, processes or treatments will do so without asking the patient or his guardian to sign a form giving consent because the practitioner is expected to give clear description of the risks and benefits before the patient's participation, although that does not always happen as thoroughly as it should.

Hence, section 21 of the Nigerian Medical Code of Ethics provides:

Practitioners involved in procedures requiring the consent of the patient, his relation or appropriate public authority must ensure that the appropriate written and signed consent is obtained before such procedures, either for surgery or diagnostic purposes are done, be they invasive or non-invasive. Consent forms should be in printed or written form either as a part of the case notes or in separate sheets with the institution' name boldly indicated.³⁹

1.6 Purpose of Medical Records and Confidentiality of Medical Records

The purpose and use of the Medical records cannot be over emphasized in the medical profession. It serves many purposes; however, Aderibigbe identified three important purposes of the medical records. First, the medical personnel document the examination conducted, diagnosis and treatment of a patient. These details are important for all health providers. The health personnel attending to a patient may change and such detail becomes crucial for future health providers. A significant reason for the maintenance of medical record is to ensure that a patient continually receives the care needed⁴⁰

³⁸ Y. Z Lawal, E.S. Garba, M. O. Ogirima, I. L. Dahiru, M. I Maitaima and K. Abubakar, 'The Doctrine of Informed Consent in Surgical Practice' (2011) 10 *Annals of African Medicine* 1,5

³⁹ Medical Code of Ethics, s.21

⁴⁰ Titilayo Aderibigbe and Bankole Sodipo 'Patient's Medical Records, Privacy and Copyright in Nigeria: on-going Research' (2016) 42 (2) *University of Western Australia Law Review* 88, 106

Secondly, medical records can be useful to researchers in looking into the family of the patient as regards hereditary diseases⁴¹.

Thirdly, medical records may be required by employers, educational institutions and many other organizations before employment is offered to an employee, admissions and the like. Medical records also help insurance companies in evaluating the damage caused to the patient and what the insurance covers. A patient's medical record may show that his claims that his health condition was prompted by a road traffic accident, an injury at work is inaccurate. This might be because such symptoms have existed before the incident but the patient decided to use that opportunity to claim insurance cover.

1.7 Confidentiality: Nurses and students' Access to and use of Patients' Medical Record

Patients find it much easier to discuss their health when they are assured that the doctor is not going to share their data with a third party. They are likely to be more honest and this is important for effective treatment⁴². A patient should be in the best position to decide who knows about their medical data. Some hospitals are referred to as teaching hospitals. Their purpose of this is to teach medical students while engaging the patients' medical records as well as the physical presence of the patients to carry out the teaching. Thus, in the teaching, learning process the confidentiality of patient is breached through the disclosure of their privacy to the medical students and colleagues. Adekeye pointed out that since the students have not sworn to the 'Geneva' or 'Hippocratic Oath', nothing stops them from breaching the confidentiality of patients they observed during the course of their learning.⁴³

In the above case, the confidentiality of patients is breached just by the mere fact that the student doctors identify the medical records and the identity of the patients during the course of their training. The NMA guideline technically does not cover these students during the course of their learning. The students, at this stage do not also have a right of access to patients' medical records. It is arguable that since medical students are enrolled to the institution or the teaching hospital whatsoever that is written in a patient's medical record is the copyright that belongs to the hospital or institution even if the student has been sent to put in the record routine observations such as blood pressure, temperature, analysis of urine sample and so on. In a situation when the student doctor carelessly records the wrong diagnosis in the medical record of a patient, which eventually leads to mis-diagnosis of

⁴¹ *ibid*

⁴² Charter College, 'Why is Patient Confidentiality so important in Healthcare? 2019

⁴³ Ifedayo Adekeye, 'Practicability of Medical Confidentiality in Nigeria (II)', (2016) <<http://www.medicalworldnigeria.com/2016/03/practicability-of-medical-confidentiality-in-nigeria-ii>> Accessed on 22 August 2020

ailment or wrong medication. The medical students are also under obligations of confidentiality owed to their medical college.

In the process of maintaining that, medical records is only for the consumption of members of the profession, the NMA Guideline appears to leave out other healthcare practitioners from having access to medical records.⁴⁴

The use of the term, medical professional or members of the profession in the NMA Guideline exclude the nurses as well. This brings to the fore the issue whether nurses can have access to the medical records, input and uses the medical record of patients as much as the medical doctor as stated in the NMA Guidelines. But it is questionable that although unlike doctors and nurses, dentists, paramedics and other healthcare workers are not recognized members of the “profession” and are most probably not entitled to consume the patients’ medical records, such other healthcare workers are contributors to the medical records and therefore have some right to consume same.⁴⁵

Nurses are care-givers and by the very nature of their job description they are most often time come in contact and more frequently with the patients than the medical doctors’ routine during and after the course of their treatment in the hospital. The NMA Guideline does not specifically state whether nurses can be granted access and make input into patient’s medical record. In this modern world the nursing profession has become a lot more refined than the Florence Nightingale⁴⁶ image of someone who cares for the ailing.

The communication, psychological, information, observatory and research abilities of nurses are so significant in the course of healing, that doctors regularly rely on it for detailed prescriptive directive that they may find necessary to include in the medical record this is because the nurses may have a better familiarity and insight of the patients than the medical doctors because of their routine care and close bedside contact with the patients.⁴⁷

In the course of regular checkup, the nurses in particular learn more about the patient in their care and make many clinical observations about the

⁴⁴ NMA Part D section 44 of the NMA Guideline No. 23

⁴⁵ Titilayo Aderibigbe and Bankole Sodipo ‘Patient’s Medical Records, Privacy and Copyright in Nigeria: on-going Research’ (2016) 42(2) University of Western Australia Law Review 88, 106

⁴⁶ Louise Selanders, Patrick Crane, ‘The Voice of Florence Nightingale on Advocacy’ (2012) 17 The Online Journal of Issues in Nursing 1
<<http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-17-2012/No1-Jan-2012/Florence-Nightingale-on-Advocacy.html>>
accessed on 22 August 2020.

⁴⁷ Titilayo Aderibigbe and Bankole Sodipo ‘Patient’s Medical Records, Privacy and Copyright in Nigeria: On-going Research’ (2016) 42 (2) University of Western Australia Law Review 88,106

patient; this can assist in treating the patient. Staff nurses in particular, learn many intimate clinical observations about the patient in their care, which can assist in the course of treatment the patient receives. The time the doctors spend with the patient is comparatively low to that of the nurses. This is of great importance; as such notes will form part of the medical record of the patient. The contact hours of the medical doctors' with the patient is usually comparatively less than those of the nurses. To understand the extent or limit of the nurses' access to contribute to the medical record of patients in their care and by extension contribute to it.

Nurses in Nigeria can add to the medical record of patients while doing routine check, in their interactive connection with the patients in their care. Due to this, several authors opined that it is unreasonable to exclude the nurses from having access to medical records of patients for the purpose of frequently contributing to the medical record and for research purposes⁴⁸. Aderibigbe and Sodipo suggest that it is necessary to have a more definitive legislation (or an amendment of the N&MCN) to include specific directive on the position of the nurses on the handling of the patients' medical records and use it for medical and scientific research. However, no law prohibits them from making inputs into the medical records of patients at the moment.⁴⁹

In *Attorney General v Guardian Newspapers*⁵⁰, the court held that a duty of confidence arises when such confidential information comes to the knowledge of a confidant who has knowledge that such information is to be treated confidential⁵¹. There is a breach where the person who receives the information that is the recipient fails in securing sensitive information by leaking it.

The relationship between a patient and a doctor in Nigeria brings about the issue of confidentiality of medical records. At common law, there is an obligation on medical practitioners to value the confidentiality of the medical records of their patients. This doctor-patient confidentiality principle in the common law is akin to that of priest-penitent relationship as declared by Browne-Wilkinson in *Stephens v Avery*.⁵² He stated that: "In all medical institutions and facilities, patient records are extremely private and

⁴⁸ Titilayo Aderibigbe and Bankole Sodipo 'Patient's Medical Records, Privacy and Copyright in Nigeria: On-going Research' (2016) 42 (2) University of Western Australia Law Review 88,106

⁴⁹ *ibid*

⁵⁰ *Attorney General v Guardian Newspapers Ltd* [1999] JELR 55518 (SC)

⁵¹ Obiajulu Nnamuchi 'Physicians' handling of Patients' health information: Ethics and law of Confidentiality' <<https://lawexplores.com/physicians-handling-of-patients-health-information-ethics-and-law-of-confidentiality>> accessed 4th April 2021

⁵² *Stephens v Avery* [1988] 2 WLR 1280

confidential such that only authorized personnel within the medical profession have access to patients' medical records"⁵³.

Confidential information in medical records goes far beyond the information obtained from the patients during their treatment, but it includes all other forms of information received directly or indirectly from the patient under notice of privacy circumstances. The House of Lords explicitly stated that a sensible person should know that the situation at which such information are obtained from the patients is confidential even if it has not been specifically declared as such.⁵⁴

There are strict procedures put in place for patients to access their medical records except it relates to the clinical procedure to a fellow medical practitioner involved in the treatment of the patient.

The Freedom of Information Act 2015 recognizes that discussion that happens between a patient and⁵⁵ a health care worker is considered as privileged information but where the information is not privileged, it must be disclosed⁵⁶. The Act allows a public institution to refuse a person who applies for privileged information except where such information is not privileged.

This encourages patients to give out more information without fear; patients are likely to keep vital information to themselves if they know that the physician could share such information with someone else. Hence, sensitive information of patients such as attempted suicide, abortion, drug dependence and so on must not be disclosed by a medical doctor but are only stated in a patient' medical records.

In conclusion, this article appraised the issues surrounding the legal provisions of confidentiality of medical records in Nigeria. Medical records are considered to be delicate and private information with the assumption of confidentiality of patients' data.

Hence, it can be rightly said that confidentiality is not only a moral issue but also a legal principle, which needs clear regulations for the different kinds of individuals that have access to patients' medical record.

The need for medical confidentiality cannot be over-emphasized as every other universal right such as a right to life, freedom of speech, freedom of movement rests on the ability of patients to trust their handlers with their information⁵⁷

⁵³ *ibid*

⁵⁴ *Attorney General v Guardian Newspapers Ltd.* [1999] JELR 55518 (SC).

⁵⁵ Freedom of Information Act 2015. s. 16.

⁵⁶ *ibid.* s. 16 (b).

⁵⁷ N. Oragwu, S. Juwah, S. Ifejika 'COVID-19: Patient Confidentiality and Right to Medical Laboratory Reports' (2020) <<https://www.mondaq.com/nigeria/reporting-and-compliance/977386/covid-19-patient-confidentiality-and-right-to-medical-laboratory-reports>> accessed 10th March 2021

This study explored a number of legal issues involving the confidentiality and uses of patients' medical records. It discusses the patients' rights and their rights to their medical records, the purposes and the duty of confidentiality owed to patients by other health care workers.

1.8 Recommendations

- I. Awareness on where the law stands as regards student doctor present during consultation needs to be made in order for patients' to fully trust their health care providers that their medical data is kept confidential.
- II. Doctors need to become aware of the harm they could be causing to their patients if they don't keep information confidential. A lot of patients would result to self-medication because of fear of their health challenges leaked to a third party.
- III. Consent forms should be designed for health care centres that allows a patient to sign when their medical records is given to a third party. This would help more patients to have more confidence in their health care providers as they are assured that their medical data cannot be given without their consent.
- IV. Our laws should provide for patients to either decide for a student doctor to be present during their consultations, surgery and treatments. Student doctors should also be made to sign confidentiality forms. This would help patients to trust the medical system and know that student doctors cannot share their confidential information.
- V. It is also highly recommended that health awareness programs be organized for people in rural areas in order for them to understand their rights as patients and the duty of confidentiality owed to them by doctors. Illiteracy and poverty significantly contributes to breach of confidential information.