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MEDICAL ETHICS IN THE FACE OF EMERGING MEDICO-LEGAL ISSUES IN NIGERIA

I. INTRODUCTION

The word, "ethics"¹ is derived from the Greek word 'ethos' which means customs and habits². It means something in conformity with moral norms or standard of professional conduct. The word relates to the precepts which should control moral behaviour. Ethics is that science of knowledge, which deals with the nature and grounds of moral obligations, distinguishing what is right from what is wrong³.

Medical ethics make news but are far from new. From the formulation of the Hippocratic Oath⁴ in Ancient Greece, to the present day, doctors have debated among themselves the codes of conduct which should govern the art of healing⁵. These days, philosophers, theologians, lawyers and journalists are joining the debate. Outside interest, or interference as doctors sometimes see it, is not new either. Both Christian and Islamic Preachers, through the centuries, have asserted the right to pronounce on medical matters of spiritual import, such as abortion and euthanasia, and to uphold the sanctity of life.

The Hippocratic Oath makes interesting reading. Its first premise is that the doctor owes loyalty to his teachers and his brethren. Obligations to exercise skill for the benefit of patients' health come second. Abortion, direct euthanasia and abetting suicide are prohibited. Improper sexual relations with patients are banned. Confidentiality in all dealings with patients is imposed among others⁶.

It must be stressed that few professions still stand so high in public esteem as medical profession.⁷ None the less, the final years of the twentieth Century, and first years of the twenty-first, dealt a blow to the reputation of the medical profession. Scandal after scandal beset medical doctors. Surgeons carrying out cardiac operations on infants were found to have continued to operate despite incurring higher death rates for such surgery. Vulnerable children were not the hospital's priority. Care was badly organized; the standard of care was poor and openness non-existent.

It is trite that it has become imperative for the medical profession to exercise a greater degree of caution while undertaking diagnosis and treatment of patients. It is also

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¹ This is the branch of Philosophy which studies the principles of right or wrong in human conduct. See the New Webster's Dictionary of the English Language (Int'l Edition) pg 842

² P.I. Okolo, 'Medical Ethics in Nigeria' Edited by B.C. Umeral. Pg 8.

³ Ibid, p.8

⁴ Hippocrates, the father of modern medicine as far back as the 5th or 6th Century BC, recognized a code of conduct for practitioners of the art of healing and laid down this statement of code known as the Oath of Hippocrates.

⁵ See Margaret Brazier and Emma Cave, Medicine, Moral Dilemmas and the Law, Chapter 3 (4th Edition) pg 49

⁶ Ibid., pg 49

⁷ See R. Tallis, (2004) *Hippocratic Oaths: Medicine and Its Discontents* Atlantic Books, pg 102.

desirable for the patients to observe certain norms, so that they benefit most of the medical help sought and healthy relationship with the doctor/hospital.

II. RIGHTS OF PATIENTS

Medical law, Kennedy and Andrew declared⁸, is essentially '... a sub-set of human rights law.' The fundamental nature of the relationship between doctors and patients amply proves this point. At stake, within the realm of medical law, is our right to make our own decisions about how we live our lives and how we die. Our interests in privacy and in family life, in having or not having children, are central to our dealings with health professionals.

The Universal Declaration of Human Rights⁹ provides:

"Everyone has the right to a standard of living adequate for the health and well being of himself and his family including food, clothing and medical care."

From the above, a patient has some inherent rights under the law and these can be summarized hereunder as follows:

1. A patient has a right to know the clinic/hospital rules, regulations and charges before getting treated/admitted;
2. A patient has absolute right to privacy, consultation, physical examination, case discussion, procedures and the right to have his treatment kept confidential. He has a right to ask any person who is not directly involved in his treatment, examination, e.t.c not to be present;
3. He has a right to know about the nature¹ of his illness, and reports of investigations;
4. It is the patient's right to know:
 - (a) necessity of treatment;
 - (b) alternative modes of treatment;
 - (c) risk of pursuing the treatment/undergoing a surgery including their inherent risks and complications;
 - (d) Probable duration of treatment;
 - (e) Prognosis (chances of recovery) of illness in the language he can understand.
5. A patient has a right to ask the doctor to write in the prescription the name of disease he is suffering from, the finding of the doctor or in brief the probable diagnosis, the name and dose of the drugs he is dispensing and procedure and investigations he does or ordered to be done on him.
6. It is equally a patient's right to seek consultation from another doctor/specialist.
7. It is his right as a patient to refuse further medical care. He can leave against medical advice, to the extent that it does not contravene any law. In case he decides to quit treatment against medical advice, he has a right to obtain details of investigations and treatment undergone.

⁸ I Kennedy and A Grubb, (2000) *Medical Law: Text and Materials* (3rd edition, Butterworths, p 3

⁹ Article 25(1) See also International Bill of Human Rights, Amnesty International Publications (4th Edition 1988) pg 8

8. Patient has a right to refuse reasonable treatment even if it is unreasonable to do so.
9. It is his right to get medical record.
10. It is his right to obtain a medical certificate of illness/fitness.
11. It is a right of the relative/attendant of a deceased patient to obtain a death certificate from the doctor/hospital which last treated the deceased and,
12. It is his right as a patient, to examine and receive an explanation about the bill of the doctor/hospital and a receipt of the amount paid, regardless of the source of payment¹⁰.

III. DUTIES OF MEDICAL DOCTORS IN NIGERIA

The laws and various Codes of Medical Ethics and Declarations have been enacted to regulate medical practice in Nigeria. Among these laws are:

1. Medical and Dental Practitioners Act, Cap LFN 2004.
2. Hippocratic Oath;
3. Declaration of Geneva;
4. Declaration of Helsinki;
5. International Code of Medical Ethics.

The duties and obligations of a doctor can be summarized as follows:

- (a) Duties to patient;
- (b) Duties to the public;
- (c) Duties towards law enforcers;
- (d) Duties not to violate professional Ethics;
- (e) Duties not to do anything illegal or hide illegal acts;
- (f) Duties to other doctors and others in the medical world.

For our purpose here, only two of the above listed duties will be examined

(a) Duties to patient and

(b) Duties not to violate professional ethics.

(a) DUTIES TO PATIENTS

A medical doctor owes the following duties to the patients

- (i) Standard of care, These include, due care and diligence of a prudent doctor; standard suitable equipment in good repair; standard assistants, standard premises; standard proper record keeping for treatment given, surgery done, x-ray and pathological reports; not to experiment with patients; standard proper reference to appropriate specialist; observe punctuality in consultation, e.t.c.
- (ii) Doctor's duty of providing information to the patient regarding-necessity of treatment; alternative modalities of treatment; risks of pursuing the treatment, including inherent complications of drugs, investigations, surgery e.t.c.

¹⁰ Dr Jagdish Singh and Vishwa Bhushan(2007), *Medical Negligence and Compensation*, Bharat Law Publications, pg 2.

- (iii) **Emergency care:** A doctor is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency on humanitarian grounds (A doctor is bound to provide emergency care on humanitarian grounds, unless he is assured that others are willing and able to give such care). It should be noted that prior consent is not necessary for giving emergency/first aid treatment. In emergency, medico-legal cases, condition of first being seen by medical jurist is not essential.
- (iv) **Consent for treatment:** This is another major and important thing which a doctor must obtain before treating a patient. This must be given by a person who is conscious, mentally sound and without any fear, fraud or misrepresentation of facts.

(b) DUTY NOT TO VIOLATE PROFESSIONAL ETHICS

This is another very important duty of a medical practitioner and these can also be summarized as follows:-

- a. A doctor has a duty not to refuse professional service on grounds of religion, nationality, race, politics or social status.
 - b. Duty not to associate with unregistered medical practitioner and not to allow him to practice what he is not qualified for.
 - c. Duty not to indulge in self-advertisement, except such as is expressly authorized by law. In this case, the identity of the doctor may properly be made known, his address or photograph should not be published and any appointment he may hold should not be mentioned and no suggestion of his possessing any special skill should be made;
 - d. Duty not to issue false certificates and bills;
 - e. Duty not to attend to patient when under the effect of alcohol;
 - f. Information given by patient to be kept secret.
- The Oath of Hippocrates emphasizes the need to keep secrets. The Oath has this to say:

“Whatever I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men which on no account one must spread abroad, I will keep to my self holding such things shameful to be spoken out.”

However, if a doctor is accused by a patient, the doctor could disclose the truth with respect to the accusation or in a situation where fraud or deception is discovered. Also, if a criminal act is involved, the doctor should make every effort to bring this to the notice of the appropriate authority.

- g. A medical doctor should not talk carelessly about his colleagues.
- h. He should not also write secret formulations. e.t.c.

All these and more are acts the breach of which may amount to professional misconduct. Any Medical Practitioner who is guilty of these breaches, as well as any other offence, is guilty of infamous conduct in a professional respect. *Lord Justice Lopes* explained infamous conduct in a professional respect in the following words:

“If it is shown that a medical man in the pursuit of his profession, has done something with regard to it which would be reasonably

regarded as disgraceful or dishonourable by his professional brethren of good repute and competence, then it is open to the council to say he has been guilty of infamous conduct in a professional respect"¹¹

IV. MEDICO-LEGAL ASPECTS OF ASSISTED REPRODUCTIVE TECHNOLOGY

A physician is expected to exercise due care in his management of a patient. The patient has a right to expect a duty of care from the physician he/she sees. The original status of the all-knowing Doctor who was assumed to do the correct thing for the patient has evolved to that of a worker whose decisions and actions need to be open to scrutiny. With more wide-spread education of the populace and better communication within and between communities, verbally, in writing, and by electronic means, this assessment of medical practice has widened and will continue to be more common and extensive. This situation has given rise to more occasions of conflict between what is acceptable as reasonable and correct, and what is not in medical practice¹².

In societies such as those in developing countries like Nigeria, medico-legal issues can be expected to increase with time as traditional methods of settling disputes in the society give way to modern judicial processes. Assisted conception is a development of the last 40 years and has become more widespread during the last 20 years in particular¹³. In most developing countries these new reproductive processes have not become part of the body of laws. In developed countries of Europe, North America, Japan and Australasia, there are regulatory bodies and enabling legislations of varying complexity.

V. CONSENT TO TREATMENT

The ethical and legal application of any treatment or procedure requires the patient or the person legally responsible for the patient, to give consent. Consent must be "informed" in the sense that it must be obtained without any element whatsoever of coercion, inducement or deception. The procedure to be performed must be explained to the patient in plain language that he/she is fully conversant with, if necessary through an interpreter. In the case of a minor, aged below 18 years, the consent should be given by the parents or guardian.

Assisted Conception involves two partners – usually, a male and a female, preferably together rather than singly. Carrying out a procedure on a patient without consent would be litigable and culpable and could be trespass or assault. If a third party genetic material, such as sperm, is used on a woman without her partner's consent, her partner can hold that adultery has taken place and that the Doctor is an accomplice to the act¹⁴.

The same holds, if a man has equivalent therapy resulting in pregnancy in a woman who is not his legal partner. The use of gametes (egg or sperm) or embryos therefore requires informed consent of participants.

¹¹ *Allison Vs Gen. Council of Medical Education and Registration* (1894) 1 QB 750

¹² Giwa-Osagie, Kayode; *Medico-legal aspects of Assisted Reproductive Technology* in Compendium of Medical Law Under the Commonwealth & United States Legal System (Edited by Abubakar Sadiq Ogwuche, Maiyati Chambers) 151.

¹³ Ibid.

¹⁴ Ibid.

In a slightly different context, an adult male or female can undergo procedures to stop their fertility e.g sterilization or fitting of contraceptive coil in a female without the consent of a partner. The partner whose consent was not sought can take social action against his partner. He could desert her but is unlikely to succeed in an action against the doctor hospital, provided the patient gave informed consent.

However if the method results in long term effects such as the sterilization procedure or hysterectomy or vasectomy, the partner can use it as cause for litigation and divorce against his partner. The medical practitioner therefore is expected, where a patient has a partner, to obtain consent of both partners.. This principle is expected to apply also to same sex marriages and partnership.

VI. COMMON SOURCES OF LITIGATION IN MEDICAL PRACTICE

It is necessary for every medical doctor/medical establishment to exercise their minds individually and jointly to effectively give better service to patients. Human elements in medical care determines the patient's/attendant's reaction to an untoward event. Sources of discontent, such as tactless handling, trivial indignations or casual unpleasant remarks are causes of a large number of legal actions brought against doctors and hospitals.

Behaviour of the entire system including receptionist, junior staff, cleaners e.tc. are very germane to this point. Also, proper documentation is another common source of litigation in Nigeria. A proper documentation of the date, time and history (in brief), positive physical findings, investigations, treatment and instructions to the junior staff and the patient are necessary.

Another very important source of litigation in medical practice is the issue of consent which has already been mentioned above. Experience has shown that most of the consents being obtained in Government and private hospitals as well as nursing homes are not legally valid. In most of the cases filed against doctors, it is alleged that either no consent was obtained or a legally invalid consent was obtained. Obtaining of a legally valid consent will thus be a cornerstone of protection against litigation.

Also, to prevent litigation, a physician must constantly remind himself that it is ill-advised to prescribe or administer to a patient, any medication without an appropriate medical indication. The physician must be aware of possible contraindications on the use of any drug:

- (1) because of other medical problems the patient has;
- (2) because of interference with other medications the patient is already taking; and
- (3) because of any allergies to related drugs.

VII. DISCIPLINARY MEASURES IN MEDICAL PRACTICE

The Medical and Dental Practitioners Tribunal and Investigation Panel are some of the disciplinary machineries. The Medical and Dental Practitioners Tribunal is charged with the duty of considering and determining any case which engages the attention of the Tribunal or is referred to the Tribunal by another body, called the Medical and Dental Practitioners Investigating Panel.

Section 15(1) of the Medical and Dental Practitioners Act¹⁵ Laws of the Federation of Nigeria 2004 provides:-

"There shall be established a tribunal to be known as the Medical and Dental Practitioners Disciplinary Tribunal (in this Act referred to as "the Disciplinary Tribunal), which shall be charged with the duty of considering and determining any case referred to it by the Panel established under subsection (3) of this section and any other case of which the Disciplinary Tribunal has cognizance under the following provisions of this Act."

It therefore flows from the above provisions that the responsibility of the panel is to conduct preliminary investigations into allegations of professional misconduct against any medical or dental practitioner.

The Medical and Dental Practitioners Act has therefore in Section 16(2) of the Act stipulates the penalties for any Medical and Dental practitioner found guilty by the Tribunal as follows:

Section 16(2)¹⁶

"The Disciplinary Tribunal may give a direction under subsection (1) of this section-

- (a) ordering the Registrar to strike the person's name off the relevant
- (b) register or registers or
- (c) suspending the person from practice by ordering him not to engage in practice as medical practitioner or dental surgeon, as the case may be, for such period not exceeding six months as may be specified in the direction or
- (d) admonishing that person.

VIII. CONCLUSION

Medico-legal issues are far less common in developing countries compared with developed countries. This is partly because the populace in developing countries are less well informed of their rights and because of fatalistic attitude in many societies in developing countries. It is not common for deaths from medical accidents to be viewed as acts of God in developing societies. With more awareness of the people, medico-legal issues are likely to increase. Assisted conception is a relatively new frontier in medicine and medico-legal issues related to it are evolving. These issues centre mainly around the issues of consent, ownership and duty of care. Paternity can easily be determined by DNA analysis but in practice, legal paternity and ownership may not be one and the same. As more and more cases of assisted conception are performed the medico-legal issues will unfold as grey areas are revealed and expectations and decisions will be needed. One can predict that this area of legal and medical practice will expand.

It is therefore worthy of mention that it is imperative for the Nigerian doctors to imbibe the characteristics of the human physician as listed out by the American Board of

¹⁵ Cap M 8, Laws of the Federation of Nigeria (LFN) 2004

¹⁶ Ibid

International Medicine¹⁷, would help a lot in the practice of medicine in Nigeria. The characteristics are as follows:

- Encompassing integrity, respect and compassion
- Availability.
- Expression of sincere concern.
- Willingness to take time to explain all aspects of the patients illness.
- Attitude of being non-judgmental with patients who have different lifestyles, attitudes and values
- Alert to their own reactions to such situations which evoke strong negative (and occasionally strong positive) emotional responses and.
- Consciously monitor and control their behaviour so that the patients' best interest remains the principal motivation for their actions at all times.

IX. RECOMMENDATIONS

In order to keep up with 'current accepted practice', doctors and others should update their knowledge and skills, and facilities should be updated according to the claims made by the clinic/hospital. It is the responsibility of every doctor to keep himself generally informed on mainstream changes in diagnosis, treatment and practice through leading textbooks and journals of his specialty.

Knowledge of medical ethics and laws in practice of medicine is very useful in improving practicing attitude and methods of medical doctors.

Adopting attitude and body language of respect, care and concern are important. A high proportion of complaints is precipitated or escalated into legal action by a progressive breakdown of the doctor-patient communication; try to keep in mind the mental state of the close relatives/friends.

Be compassionate, be careful while informing about 'functional cases', 'bad news' and remember not to refuse patient's right to examine and receive explanation about the bill. A doctor should not be averse to any suggestion of seeking a second opinion.

Doctors who are open-minded and communicative are much less likely to be complained against as patients generally are extremely forgiving of errors made by a friendly and concerned medical practitioner.

Try to appreciate and make kind oral statements to the patient, his family members and to the other members of the treatment team. In some situations, a stern warning, a bit of forceful advice, perhaps even righteous indignation may be appropriate recourse in handling the recalcitrant, uncooperative patient. But harshness, excessive criticism, profanity or an injudicious, unwarranted tirade will do more to interfere with good patient rapport than almost any other action by a doctor.

The idea that justice is a moral issue that doctors can properly ignore is clearly mistaken. Few would disagree with a proposition that doctors should treat patients justly. Justice in this concept might be interpreted as meaning that patients are entitled to be treated fairly and equally by their doctors. The president should be treated no differently from a homeless person brought into casualty after he is found unconscious in a doorway. Health professionals should not show preference for patients to enjoy a particular status, or provide substandard care for patient of whom they disapprove.

¹⁷ See Dr Jagdish and Vishwa Bhushan, op cit at pg 192