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Informed Consent as a Fundamental Principle of Medical Ethics: An Examination of its Application in Nigerian Healthcare Settings

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Abstract

The patient's right of consent to any medical treatment recommended by a medical practitioner is now internationally recognised. This consent is required by the premise of the individual's inviolable right to choose and control his own health-care situations. Consent must be free, prior, and informed. Free indicates that permission is invalid if obtained through manipulation or coercion. Consent gained unwillingly, under duress or coercion, may result in a battery lawsuit. The consent must be granted voluntarily by a patient who has capacity to so do. Prior means that consent must be obtained adequately in advance of any authorisation granted by medical or hospital authorities, or the initiation of hospital activities that influence the patient's health. Informed means that the patient's agreement must be obtained only after complete and legally accurate disclosure of information about the proposed medical operation. The disclosure must be in a form that is both accessible and clear to the patient, including the nature, scope, duration, potential hazards, and foreseeable consequences of the medical operation. There must be complete disclosure of information about the treatment, benefit, danger, complications, and repercussions of such a procedure. Regarding a procedure or therapy that needs to be administered to the patient, the doctor gives all the information that is required. In Nigeria, the idea of informed, prior, and free consent is not widely recognized in the medical field. This is caused by multiple variables. First, there is the issue of Nigeria's low literacy rate. Patients with limited literacy typically depend solely on the doctor's judgement. The second factor is the lack of enforcement of the right to informed consent. Under Nigerian law, patients whose rights to informed consent have been violated have little recourse options. Bureaucracy also hinders the processes that are in place to enforce the right to informed consent. This article makes the case that the legal and institutional regimes for Nigeria's informed consent laws are insufficient.

Keywords: Informed Consent, Healthcare, Medical Ethics

1. Introduction

The therapeutic relationship between patient and a legal practitioner is underpinned by the ethical imperative of informed consent, a paradigmatic expression of patient autonomy and independence. This principle empowers individuals to engage in autonomous decision-making exercising control over their bodily integrity and medical trajectory. As such, medical practitioners must cultivate a sophisticated understanding of informed consent, acknowledging its far-reaching implications for patient-centered care, shared decision-making, and the cultivation of trust within the clinical encounter. The number of cases involving consent that have been brought before courts for arbitration has increased within the past several years. Informed consent is a legal term that describes a patient's voluntary assent for a doctor to perform a surgery, arrange drug therapy, or carry out diagnostic tests[1]. According to medical ethicists, another definition that can be applied is the voluntary, uncoerced choice made by a sufficiently competent, autonomous person based on sufficient information and deliberation to accept rather than reject some recommended course of action that will affect him or her[2]. When it comes to his patients, the medical practitioner has a fiduciary duty. He must thus ensure that patients are thoroughly informed about every aspect of their care. Whatever definition one gives to informed consent, it is an agreement to a course of action or a willing submission to what another person requests or suggests. It is an essential

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[1] M Peters (edn), *The British Medical Association Illustrated Medical Dictionary* (2nd ed. London: Dorling Kindersley, 2008) 142.

[2] R Gillon, *Philosophical medical Ethics* (ChiChester: Wiley and Sons, 1985) 113.

procedure that every patient must go through while receiving treatment. Its primary benefit is that it complies with the moral demands of the treated person's autonomy.

Even though it is acknowledged as a crucial component of patient care, it frequently ends up at the back of the patient file. In our current setting, it might also be insufficient, misleading, or lacking in information in hospitals[3]. In the English case of *Slater v Baker and Stapleton*[4], which demanded a certain degree of professionalism in the treatment of orthopaedic patients, the precursor to informed consent started to take shape. Also, the landmark case *of Mohr v Williams*[5] marked a pivotal moment in the evolution of informed consent in US jurisprudence, as it became the first informed consent case to reach the Minnesota Supreme Court. In this instance, the patient gave permission for a right ear procedure. The surgeon found that the left ear was in poorer shape than the right throughout the procedure. He was found liable for battery after performing surgery on his left ear.

Every person who has attained the age of a major and is of sound mind has the right to determine what shall be done with his or her own body is no longer the exception, but rather the rule[6]. If a therapy, investigation, or diagnostic technique would negatively impact the patient in any manner, a surgeon is not allowed to perform any medical operation on them without obtaining proper consent. Around the world, doctors utilise a variety of consent forms. Probably the most flexible and widely utilised type is informed consent. This paper will go on to examine informed consent as a fundamental principle of medical ethics and its application in the Nigerian healthcare setting.

2. Legal Foundations of Informed Consent in Nigerian Healthcare

There doesn't seem to be anything special about the local, social or cultural background or culture that affects Nigeria's informed consent laws. Given Nigerian society's heterogeneous makeup and colonial past, this is not surprising. The Nigerian Code of Medical Ethics governs the professional behaviour of physicians, and Rule 19 of Part A addresses informed consent[7]. Its requirements and the concepts of autonomy and human rights it upholds are similar to those of any advanced western nation. It acknowledges that, depending on the circumstance, consent may be sought from the patient, his or her family, or the appropriate governmental authority. The Nigerian patient has the primary right to knowledge and decision-making on their care, but minors and those incapable of giving consent might have their consent granted by a next of kin. The most senior physician at the facility has the authority to issue a suitable directive to sustain life in the absence of a family member. In certain situations, a court injunction might be required. Discussions and documentation of consent ought to be observed. According to the Code, a valid informed consent must have the following elements:

(1) the benefits and the negative aspects of the procedure;
(2) suitable professional advice on possibilities;
(3) the patient's selection of the preferred option; and
(4) permission for the physician to start treatment by filling out the form.

The Code acknowledges a patient's inalienable rights to their body and life. Although the policy recognises several forms of consent, such as voluntary self-offer for treatment, it maintains that specific interactions require explicit and recorded approval. It does not recognise any alternative form used by individual physicians and only offers a uniform consent form.

The majority of procedural matters in Nigeria's legal system originate from British law, which serves as its foundation. When compared to developed nations, medical malpractice lawsuits are rather rare in Nigeria. The Medical and Dental Council of Nigeria, which oversees the regulation of professional medical practice in the country, has a disciplinary committee that hears matters involving allegations of

[3] Examination of the Consent Form of the Ahmadu Bello University Teaching Hospital Zaria MR3.
[4] (1767) 95 ER 586.
[5] 95 Minn. 261, 104 N.W. 12 (1905).
[6] KG Evans and LH Gowling, 'Consent A guide for Canadian Physicians'. *The Canadian Medical Protective Association*. <http://www.cmpa-acpm.ca/cmpapd04/docs/resource_files> accessed 5 November 2024.
[7] Medical and Dental Council of Nigeria, 2004, *Codes of Medical Ethics in Nigeria*. Surulere: Petruvanni Co. Ltd: 26–31.

medical negligence, incompetence, and unethical or unprofessional behaviour. Disciplinary committee decisions are appealable in ordinary appeal courts, however this is the exception.

It is claimed that Nigeria's sociocultural environment is deeply ingrained in the widespread reluctance to utilise litigation to resolve medical disputes[8]: There are deep-rooted customs that involve using family members, religious leaders, and elders to mediate conflicts. The preference of Nigerians is to "leave the judgement to God" instead of pursuing legal action to seek justice[9]. It is arguable, nevertheless, to what extent cultural considerations rather than social, educational, or economic factors account for this hesitancy to pursue legal action. Particularly in rural and northern sections of the nation, there is a low level of literacy. Many times, even well-educated persons do not fully understand their legal rights. In addition, lawsuits are quite expensive, and many who feel wronged would prefer to use their limited resources for other worthwhile projects and pressing needs when they are impoverished. Litigation is also unappealing for legal reasons. The court system is incredibly slow to act, and corruption within the bar and bench does not exempt them from it. Furthermore, Nigerian doctors are a privileged class of people; the general public may not have the means to pursue legal action. In addition, a lot of patients appear extremely late in the course of their condition and are already in poor health when they receive medical attention. It is more challenging to place the blame on the doctor in that case, regardless of the outcome. Nigeria may soon experience a drop in medical malpractice lawsuits due to rising literacy rates, the implementation of health insurance, and falling rates of poverty.

The Nigerian Supreme Court decided its most well-known case on informed consent in 2001, defying the custom of few lawsuits in the field of medicine[10]. In the case of *Medical and Dental Disciplinary Tribunal v. Okonkwo*, the appellate court reviewed the conviction of Dr. Okonkwo, for professional misconduct tantamount to medical malpractice. He had complied with the written and verbal requests of a Jehovah's Witness patient who had declined a blood transfusion and so passed away while receiving treatment. Dr. Okonkwo's appeal was supported by the Nigerian appellate court, and the Supreme Court agreed[11]. An adult Nigerian has the right to refuse life-extending medical care, including blood transfusions, according to a ruling by the Supreme Court. The court found that right in the freedom of speech, conscience, and religion as well as the right to privacy guaranteed by the constitution. In that ruling, the court defined the parameters of treatment by saying:

> *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 with a sound mind to refuse informed consent to medical treatment, barring state intervention through judicial process leaves the practitioner helpless to impose a treatment on the patient*[12].

Beyond the Okonkwo case, Nigerian courts have not established the parameters of the doctor's duty of consent, which means that in real practice, patients are not given much information. The aforementioned legislative decision and the laws addressed informed consent in a manner similar to any Western system, even though local culture and societal needs may have an impact on how informed consent is actually practiced in Nigeria. Legal experts have analysed Nigerian medical legislation, citing as precedents their near resemblance to US and British legal requirements[13]. The restrictions that the courts will place on medical professionals during real adversarial processes, however, are difficult to ascertain. The Okonkwo case was the first of its sort in Nigerian medical history, therefore it garnered attention from the media. However, because it was portrayed as a case involving Jehovah's Witnesses' freedom to refuse blood transfusion, the entire influence of the case on informed consent among doctors was not realised. However, this result shed further insight on the expectations surrounding the patient-physician

[8] JA Yakubu, ed., *Medical Law in Nigeria* (Ibadan: Demyaxs Press, 2004).
[9] *Ibid*
[10] CC Nweze, 'Medical Negligence: Comparative Contemporary Legal Perspectives'. *Consumer Journal* [2005] (1), 35–67.
[11] Supreme Court of Nigeria, *Medical and Dental Disciplinary Tribunal v. Okonkwo* (2001) 4 SCN 78. Nigerian Weekly Law Report 2001; Part 711: 205–255.
[12] AJ Dada, *Consent to Medical Treatment. In Legal Aspects of Medical Practice in Nigeria* (Calabar: University of Calabar Press, 2002) 157–171.
[13] *Ibid* (note 8).

relationship in Nigeria and indicates the likely direction that legal decisions will go in the event that litigation plays a substantial role in influencing consent practices in that country.

3. Elements and Dimensions of Informed Consent in Nigeria (Forms and Modalities of Consent)

Despite the critical role of informed consent in healthcare, Nigerian law presently lacks explicit legislation articulating diverse categories of consent. However, we will examine possible forms of consent below:

Express Consent

Consent is considered to be express when a patient, either in writing or orally, agrees to a medical treatment or procedure being performed on him or her. Express consent is important in circumstances and procedures that include risk, for example:

- Procedures involving thorough gynaecological investigations;
- Surgery requiring the administration of anaesthesia
- Major diagnostic procedure cases[14].

In the aforementioned case, written consent is ideal, but in order for the patient to make an educated choice, the doctor must provide sufficient information and an explanation of the treatment. As a result, a witness-who may be a member of the hospital staff or a family member-must certify to this permission.

Implied Consent

When a patient agrees to participate in a procedure or therapy, their behaviour or manner conveys their implied permission[15]. It is more typical in general practice or medicine to obtain implied permission. Implied consent is demonstrated when a patient enters a hospital and holds out his hands for a treatment or inspection without saying anything. Because it only pertains to minor treatments, implied consent is quite limited in scope. When a patient is going to have an invasive operation or examination, written agreement must be acquired after the patient has been fully informed of the significance of the procedure or treatment. Nonetheless, verbal consent is required in situations when implied consent is unclear.

Extra Verbal Consent

When implied agreement is unclear, extra verbal consent must be gained. This is especially true when sensitive and intimate body parts like the breast or genitalia are to be examined. Extra verbal consent is required in cases involving insertion of urethral catheter, chest x-ray, insertion of intravenous cannulam, wound dressing, insertion or removal of drainage tubes, examination of genitals, breast or rectum and insertion of Naso gastric tubes.

Furthermore, informed permission can only be provided by a competent adult in the proper mental condition. In the instance of a juvenile or other individual who is mentally or physically incapable, a close relative or guardian in locus parentis may sign on their behalf, but the minor's best interests must come first. The absence of a statute outlining the sort of consent that medical staff are required to obtain means that disagreements over consent issues would be resolved in accordance with ordinary professional practice rather than what the law provides. Therefore, requesting a patient's consent is not a legal obligation, but rather a customary professional practice.

3.1. Capacity and Consent in Nigerian Healthcare System

A person must be able to make these decisions[16] after receiving sufficient information about the operation or type of therapy, its advantages, its risks, any available alternatives, and any potential complications in order for their consent to be legitimate. A capable adult who is in good physical and mental health is able to provide permission for an operation or treatment to be performed on them. However, both partners must consent if the examination or procedure deals with marital matters such as sterilisation, pregnancy termination, or the removal of sex organs (uterus or breast). It should be noted

[14] JA Dada, *Legal Aspect of Medical Practice in Nigeria* (University of Calabar Press 2013) 257-218.
[15] *Ibid* 218.
[16] SD Pattinson, *Medical Law and Ethics* (Sweet & Maxwell Ltd. London: 2006) 129.

that this is a desired practice rather than a necessity under the law[17]. However, a patient in an unstable mental state, a minor, or an unconscious person might not be able to get therapy.

The Consent of Unconscious Patients

Although a patient who is unconscious lacks the ability to give consent, it is assumed that if they could, they would grant assent in order to preserve their own lives. The Doctrine of Necessity will be applicable in this case. The theory of necessity in criminal and civil law gives justification to otherwise wrongdoing, but the goal-saving or preserving human life—is of utmost significance[18]. Therefore, necessity is a defence for nonconsensual treatment, especially when the patient is unconscious, and a doctor performing a procedure or therapy on an unconscious patient to save his or her life should not be held criminally liable[19].

It is important to note that a doctor shouldn't use a patient's unconsciousness as an excuse to do a more involved surgery than is necessary to save their lives right away. This stance was developed in two well-known Canadian instances that distinguished between processes that were necessary and those that were merely convenient. In *Marshall v Curry*[20], the plaintiff filed a battery claim against the surgeon who removed the testicle during a hernia procedure. According to the surgeon, the patient's life would be in danger if the testicle wasn't removed right away due to illness. The surgeon's intervention was deemed necessary at that moment by the court.

But in *Murray v McMurdy*[21], the battery suit was successful, as the surgeon used a caesarian section to sterilise a female patient by removing her uterus against her will. The court determined that sterilisation is a procedure that could be decided upon at a later time and does not pose a risk to the patient's life. Therefore, in order to avoid criminal culpability, a physician performing invasive surgeries or treatments on a patient must get a legal consent before to doing so.

Consent of Minors

The power to provide consent is not restricted to the statutory age of majority[22]. In medical examinations or treatments, a competent minor under the age of majority can provide valid permission if he or she is fully informed and understands the implications of such treatment or procedure. It is assumed that parents have the ability and knowledge to make correct and informed decisions that affect their children's life[23]. This may be based on the notion that parents endure the long-term effects or repercussions of treatment decisions on behalf of their children[24].

Despite parents' legal rights to make decisions on behalf of incapable minors, they do not have the legal right to solely decide on some medical procedures, such as sterilisation and the removal of vital organs from a living child for donation, or to choose for the minor the right to die-martyr[25]. It implies that parents' rights to make decisions on behalf of their children are not absolute. However, if a mature minor has the capacity to grasp the choice of treatment and its repercussions, he or she can offer a legal consent to care as though he were an adult. The principle of a mature minor was established in the Supreme Court case of Re Ernestine Gregory[26].

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[17] JA Dada (n 14) 221.
[18] JK Mason and MC Call Smith, *Law & Medical Ethics* (7th Edn Oxford University Press 2006) 350-411.
[19] *Ibid,* 351.
[20] {1933} 3 DLR 260
[21] {1949} 2 DLR 442.
[22] The constitution of the Federal Republic of Nigeria prescribes 18 years as age of majority where a citizen can exercise his/her franchise.
[23] FO Esiri, *Medical Law and Ethics in Nigeria* (Malthouse Press Ltd. 2012) 304.
[24] DW Brock, 'Children for Health Care Decision Making' in JA Dada, *Legal Aspect of Medical Practice in Nigeria* (University of Calabar Press 2013) 257-218.
[25] RE T, (1992) WLR 782, 4 ALL ER 649.
[26] RE Ernestine Gregory 133 IU 2d 98549 NE 2d 322(1989).

Ernestine, a 17-year-old Jehovah Witness, was admitted in that instance due to leukemia[27]. Illinois set the age of maturity at eighteen. His mother supported him in his decision to refuse a blood transfusion because it went against his religious beliefs. The Chicago Child Welfare Officials filed a medical negligence lawsuit against his mother since he was a juvenile. The patient had enough maturity to make such a decision, but the trial court nevertheless ordered blood transfusions. The patient filed an appeal against this ruling. The mature minor's decision was upheld by the Court of Appeal. The Supreme Court also reaffirmed the appellate court's position and overturned the trial court's decision on the grounds that the patient has demonstrated sufficient competence to make such a decision and thus cannot be forced to submit to a blood transfusion; his right to self-determination must be respected.

Furthermore, Common Law stipulates that parents make all the decisions related to their children's welfare when there is no evidence of abuse or incapacity[28]. Moreover, there are prerequisites that need to be taken into account while applying the best interest principle, and these are as follows:

a) Will the child's condition improve as a result of the decision?
b) Can the child's condition not worsen any further as a result of the treatment?
c) If the treatment's advantages exceed the hazards to the child?
d) Is a less intrusive course of treatment an option?[29]

The Consent of Mentally Incapacitated Persons

In general, a person who is in good physical and mental health is capable of providing informed consent. Patients with mental illnesses or impairments, however, might not be able to give their informed permission for medical operations or treatment. Dementia brought on by aging-related brain degenerative processes may potentially be the cause of mental impairment.

Davis[30] divided incompetence into three categories: temporary (in infants), transient (in patients who are unconscious), or permanent (in certain patients with mental disabilities, unless they are in the lucid stage where they can comprehend the information that is presented to them). Determining when a patient is competent to provide informed consent for a therapy or surgical procedure is hence the problem.

4. Intersections of Competence, Consent, and Treatment Refusal

A person is said to be competent if they possess the cognitive capacity to decide on a given matter. From simple to complex decisions, the cognitive capacity to think or act rationally is restricted[31]. Status and capacity are the two factors that define one's ability to provide informed consent. As seen in the instance of *Re C*, a 68-year-old physician with schizophrenia (a mental illness) refused to consent to surgery to remove a gangrenous foot, demonstrating that a patient may be physically competent but intellectually incapable of understanding the issues at hand. He asked the court for and was granted an order prohibiting the hospital from amputating his leg without his prior consent[32]. A patient's right to decline a therapy, even one that could save their life, was established by the court in this case. A patient has the right to autonomy, or self-determination, and is free to accept or reject treatment, depending on his preferences.

However, it should be highlighted that the state acknowledges the great public interest in preserving and protecting life, even in the face of an individual's right to autonomy and self-determination. It is possible to refute the idea that a person has an unrestricted right to choose how their life unfolds[33]. The doctor has an obligation to act in the patient's best interest when the patient is incapable of making an informed choice. Unfortunately, the Mental Health Act is not relevant in Nigeria, and there is no legislation on the subject there. In Britain, the Mental Health Act Code lays out the standards for determining capacity.

[27] A medical condition: cancer of the blood resulting in frequent breakdown of the blood cells in the body.
[28] *Ibid* (n 14) 223.
[29] *Ibid* 224-225.
[30] M Davies, *Textbook on Medical Law* (London: Blackstone Press Ltd, 1998) 131-139.
[31] *Ibid* (n 16) 131.
[32] *Ibid*
[33] The Mental Capacity Act 2005 is a legislation which governs capacity.

It is also maintained that a patient has the freedom to choose the type of therapy they want and provide informed permission, which supersedes the physician's duty to save lives. This position was reinforced in the case of *Randolph v. City of New York*[34], when the court ruled that a patient has the right to refuse medical treatment, including blood transfusions, based on religious views. The court went on to say that a physician could not be held accountable for following the patient's order, even if he later delivered the blood transfusion after being granted authorization by hospital officials. As a result, the patient's choice is vital; it makes no difference whether such a decision or option is illogical, irrational, or harmful, and the patient's choice takes precedence over the medical professional's interests.

5. Legal and Clinical Implications of Suboptimal Informed Consent in Nigeria's Healthcare

Informed consent entails a thorough revelation of some critical information about a medical procedure, its benefits, related risks and/or consequences, and other treatment options if available. A physician has a legal obligation to acquire informed permission before performing a procedure on a patient or customer. Failure to get such permission might lead to a medical malpractice claim if a patient is harmed as a result of the treatment or procedure[35].

Furthermore, when a patent is not given adequate and essential information about the medical procedure, as is most commonly practiced in Nigerian health care services, it poses a number of challenges because the patient lacks knowledge of the condition and is thus unable to make an informed decision about whether or not to proceed with the proposed treatment[36].

In medical practice, there is a fundamental principle that every individual has a right to determine what happens to his or her body and the law must protect such rights[37]. It can be argued that a patient knows little or nothing about medicine hence the physician can go ahead and make decisions in the interest of the patient. This proposition however violates the principle of self-determinism or right of autonomy. In examining the legal implication of lack or inadequate informed consent in Nigeria's health care delivery, we shall explore the essentials of informed consent in relation to the crime of assault, battery and to lesser extent the tort of negligence.

Disclosure, comprehension of voluntariness, competence, and consent are necessary for a valid informed consent. When these components are compromised, a consent is deemed void, and depending on the specifics of the case, the doctor may be held accountable for either violence or murder. Because both parties are aware of their responsibilities, informed consent safeguards both the client and his patient. In the case of *Medical and Dental Practitioner Disciplinary Tribunal (MDPDT) v Okonkwo*[38], the significance of informed consent is explained. To give a brief overview of the case, Martha Okorie, a pregnant Jehovah Witness, arrived at the hospital in critical condition and needed a blood transfusion. Due to her religious beliefs, she turned down the offer. She was discharged from this hospital against medical advice. She was then admitted to the hospital of Dr. Okonkwo, a Jehovah's Witness, who treated her without a blood transfusion and she died. Her relatives filed a formal complaint of medical negligence with the MDPDT. Okonkwo was found guilty of violating the ethics of his profession and was suspended from practice for six months. His case was heard by the Court of Appeals and ultimately by the Supreme Court. The Supreme Court overruled the tribunal, holding as follows:

> *The patient was free to decide whether or not to submit to a treatment By a doctor… if the doctor making a balanced judgement advices the patient to submit to the operation, the patient is entitled to reject the advice for reasons which are rational or irrational or for no reason…*[39]

[34] 50 NTS. 2d Series 837(App. Division 1986); See also *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Part 711) 206.

[35] D Goguen, "what is' Informed Consent' in a Medical Malpractice Claim" www.medical-malpractice.lawyer.com/ proffessional-dutycare/lack-of-informedconsent.html assessed 5th January 2017.

[36] *Ibid*

[37] FO Emiri, *Medical Law and Ethics in Nigeria* (Lagos: Malt house Press Ltd., 2012) 325.

[38] (2001) 7 NWLR (Part 711) 206.

[39] *MDPDT v. Okonkwo* (2001) 7 NWLR (Part 711) 79.

This supports the principle of self-determinism, which is a patient's right to choose what happens to his or her body. The Supreme Court further declared that only the court can overturn a patient's refusal to provide informed consent. It can be argued that the court will make such a decision based on the overriding public interest and the right to protect and preserve the lives of its citizens.

In a similar vein, a woman consented to have anesthesia from her doctor in order to ascertain whether a detected fibroid tumor was cancerous in the *Schloedorff v New York Hospital*[40] case. While the patient was under the effects of the anesthetic, the doctor proceeded to remove the tumor without getting her permission. She filed a lawsuit. According to Cardozo J., the court ruled that every adult, mentally competent person has the right to decide what should be done with his own body: a surgeon who operates commits violence without the patient's consent and faces damages[41]. It is argued, however, that if a physician conducts an operation on a patient without their agreement, he will be charged with assault and monetary compensation will be paid to the patient.

A physician may be exempted from such liability in emergency situations where a patient is unconscious and there is an urgent need to save their life; consent may be given. In contrast, the right to self-determination may be waived in circumstances where the public interest outweighs it. In *Esabunor v Faweya*[42], the appellant refused consent to transfuse her child with blood due to her religion (Jehovah Witness). The magistrate court ordered the commissioner of Police to transfuse the infant with blood. The court ruled that, as an infant, the child would prefer to live rather than die, and that the appellant had no power to decide the child's fate. A superficial examination of the judgment: does it not violate the appellant's right to be a guardian of the minor, as well as the appellant's right to freedom of religion and association?[43] It is the humble view of the court that, regardless of the approach taken, the child's best interests (the right to life) must be protected and preserved by the law.

Furthermore, as demonstrated in the case of *Malette v Shulman*[44], every competent adult has the right to decide what happens to his or her body, even if the claim appears irrational or senseless, or if she is unable to give her consent at the time, but has a document in her possession that determines what her decision should be. In this case, a doctor performed a blood transfusion on a Jehovah Witness patient who had a card in her purse declaring that she would not consent to a blood transfusion under any circumstances. The patient sued the doctor during her rehabilitation because he ignored her wishes. The doctor maintained that the patient was in serious condition and could not give consent, and that he had a duty to preserve lives. He went on to argue that society's interest is the preservation of life, and that this rationale takes precedence over the patient's decision not to have a blood transfusion. The court ruled in favor of the plaintiff, holding that she has the right to make decisions that influence her life, whether reasonable or irrational. The plaintiff was awarded $20,000 in damages. The doctor was found guilty of trespassing. It is necessary to quote a piece of the court's verdict, which states as follows:

> *A competent adult is generally entitled to reject a specific treatment or all treatment or select an alternative form of treatment, even if the decision may entail risk as serious as death and may appear mistaken in the eyes of The medical profession or of the community…it is the patient who has the final say on whether to undergo a treatment.*[45]

In an emergency case, a surgeon may make a decision during an operation that the patient did not consent to but was uncovered during the surgical procedure. Can a doctor be held accountable for trespass for doing such a surgery without the patient's consent? This argument is addressed in the court decision in *Marshall v Curry*[46], in which a surgeon sought consent from a patient to cure a hernia. During the surgery, the surgeon discovered a deceased testicle that was harmful to the patient's health and removed it. The patient sued the doctor for removing his testicle without his permission. The court ruled that in

[40] (1944) 105 NE 92 at 93.
[41] *Ibid* as per Cardozo J.
[42] (2008) 12 NWLR (Part 1102) 794 at 810- 811 Para. E-B.
[43] Section 45, The Constitution of the Federal Republic of Nigeria 1999(as amended).
[44] (1990) 47 DLR. 18.
[45] (1999) 47 DLR.18.
[46] (1933) 3 DLR 260 (NS.SC).

an emergency case where consent cannot be obtained, the doctor may interfere to save the patient's life. The doctor was not found liable.

The court's decision in *Murray v McMurchy*[47], where the surgeon was found guilty, was in contrast to the *Marshall v Curry*[48] case. In the current instance, a pregnant woman consented to have a Caesarean section done on her. Because a future pregnancy could be risky, the doctor sealed up the fallopian tubes after discovering a tumor in the belly during the procedure. The woman filed a lawsuit. The court ruled that there was no emergency and that the patient should decide whether or not she wanted her tubes tied. Without her permission, the doctor was not legally allowed to clamp her fallopian tubes. Liability was placed on the doctor.

Furthermore, it is a well-established fact that every competent adult has the right to make their own decisions. However, as was determined in the case of *Fosmire v. Nicoleau*[49], the state's overriding interests can override an individual's choice. In this case, the plaintiff, a Jehovah Witness, had a caesarian section, but complications led to a significant loss of blood, which caused the hemoglobin level to plummet to 4 grams per deciliter[50].With her husband's approval, the plaintiff declined a blood transfusion on the basis of her religion. The hospital requested that the New York Supreme Court issue an order directing the patient to get blood. The application was approved. The patient filed a lawsuit against the hospital, claiming that it had violated her autonomy and fundamental rights to decide what would happen to her body. The patient possessed the right to self-determination, but the court ruled that this right also affected an innocent third person and the state, which has a greater interest in protecting the lives of its residents. The state won the case in court.

Similarly, in *Re S* (Adult Refuse of Medical Treatment)[51], the state's paramount interest is to preserve people's lives, regardless of their religious views or doctrines. A pregnant Nigerian living in England was admitted in labour; there was poor progress in labour as a result of the baby's aberrant lie[52], and so caesarean section is the only choice to save both the baby's and the mother's lives. The defendant and husband refused to provide their approval, claiming to be 'born again Christians.' The hospital applied to the president of the Family Court Division for an order to perform a caesarian section on the patient, and the court obliged them. The public's and the unborn child's interests take precedence over the defendant's and her husband's choice.

On the other hand, the state does not have unrestricted authority to overturn a person's decision under the principle of self-determination and fundamental human rights. In the Application of the President and Director of George Town College[53], the defendant, a Jehovah witness, was admitted to the hospital after a perforated ulcer caused her to lose a large amount of blood[54]; however, she refused a blood transfusion owing to her religious views. As the patient's mortality became imminent due to his denial of a blood transfusion, the hospital petitioned the federal court for authorization to administer a blood transfusion to him. The court ruled that it can only allow the motion if the patient's competency has been impaired by the disease. However, in this case, the court believes that the woman is now willing to accept the transfusion because she had come to the hospital seeking medical assistance. As a result, the court granted the hospital's request to administer a blood transfusion to the patient. It is argued that consent is the power that a doctor has to perform an operation on a patient; if such consent is withdrawn, the patient has the right of self-determination to say what happens to his body as long as it does not directly damage the rights of others.

[47] (1949) 2 DLR 442 (BC. SC)
[48] *Ibid* at note 46.
[49] 551 NY.S. 2d 876 N.Y 1990 (Court of Appeal of New York).
[50] The hemoglobin level indicates the level of the available red blood cells in the body. The normal level is 12- 14gms/dl.
[51] 331 F2d 1000 (D.C.Cr 1964).
[52] The baby in utero should be in a cephalic position (head down facing the birth outlet (vagina). In the instant case, the baby is lying transversely and so the head is not facing the birth outlet, hence poor progress in labour.
[53] [1992] 4 All E.R 671-72.
[54] About 2/3 of her blood volume was lost, this condition requires urgent blood transfusion to save her life.

6. Conclusion

In medical practice, there is a fundamental principle that every individual has the freedom to choose what happens to his or her body, and the government has an obligation to defend such rights[55]. A person must therefore provide express consent before any surgery is performed on them; additionally, that individual has the unrestricted right to accept or decline treatment. The only exception is in an emergency or when there is great public interest.

It has been noticed that consent to treatment in Nigerian medical practice is grossly inadequate since important information is withheld from patients, and some necessary knowledge or details are assumed. The reason given for this gap is the poor educational status of many Nigerian patients. There is also the issue of the patient's trust in the physician, which leads to a strong reliance on the physician's choice. Poverty, family influence, and religious beliefs are all factors that have a negative impact on consent in Nigerian medical practice. The landmark decision in *Medical and Dental Practitioner Disciplinary Tribunal v Okonkwo*[56], the Supreme Court of affirmed the necessity of consent, ruling that the choice of a competent adult with sound mental faculties should be respected and that the patient's consent is crucial in doctor-patient relationships.

It is critical that the physician provide a detailed description of the process, as a patient has the right to know what procedure he plans to undergo. All important facts, risks, benefits, and complications of any procedure or treatment should be presented so that the patient can make an informed decision. Furthermore, factors that impede the practice of informed consent in Nigerian health care delivery services, such as low educational status and poor economic status, should be addressed, and religious beliefs that prevent people from seeking medical care should be eliminated in order to encourage the practice of informed consent. This article also recommends that Nigeria should implement legislation to make medical practitioners' duty to obtain the patient's permission a mandatory legal requirement. This would increase the enforcement of this right for patients.

[55] Ibid (n 37) 325.
[56] (2001) 7 NWLR (Part 711) 206.