

Contemporary Issues in
**Education, Health
and Sports**

The Way Forward

BOOK OF READING IN HONOUR OF PROF. J. A. AJALA

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Edited by

B. O. Ogundele
O. A. Moronkola
J. F. Babalola

Contemporary Issues in Education, Health and Sports: The Way Forward

(BOOK OF READING IN HONOUR OF PROF. J.A. AJALA)

B.O. Ogundele, O.A. Moronkola & J.F. Babalola

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Section A

Issues in General
Education

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Discharged but Detained – The 25 Dilemma of Patient Rights

Jadesola O Lokulo-Sodipe

Abstract

A normal hospital practice is the discharge of patients from admission after due care. What is not normal is the post-discharge detention of a patient in the hospital by hospital authorities because of inability to pay hospital bills. This practice is common in Nigeria, but the hierarchies of the health and justice sectors tend to "look the other way". Healthcare providers are often faced with a dilemma between two issues: observing the oath to "do no harm" even after the period of care, as may be suggested by the unlawful post-discharge detention of a client; and ensuring that there is continuous finances to sustain health services for the common good. Issues raised here include, the physician/patient relationship; patient's rights versus that of the healthcare providers; accessibility and availability of healthcare. The key players in this scenario are the physician/hospital management; the nurses and the patients. This paper examined the judicial and human rights implications involved and provide suggestions for striking a balance between the rights of the patient and the duty/right of the healthcare providers. In doing this, the healthcare policy in Nigeria, vis-à-vis its accessibility, affordability and availability are examined.

Introduction

It is a known fact that over the past few years, both public and private hospitals in Nigeria have detained hundreds of patients who are unable to pay hospital bills. A patient can be said to

have been discharged when the Consultant or Medical Officer in charge of the case is satisfied that the patient has had optimal recovery from his/her ailment and is either fit to go home permanently or return on appointment for subsequent outpatient management.

Patients who are unable to pay their hospital bills on discharge are routinely held for several weeks or months. They are kept in wards guarded by hospital staff on duty. Detained patients without money (who more often than not have been abandoned) go hungry and are fed by the charity of others. They are sometimes forced to vacate their beds and sleep on the corridors of the hospitals to make space for paying patients. Often, indigent patients do not receive further medical treatment once the bill had reached a large amount, even though they need additional medical care. Most detained patients have had surgery following accident or birth complications, while others suffer from chronic diseases. The patients are very poor, and often belong to vulnerable groups like orphans, widows, single parents, and low income population. Some are forced to sell their last belongings in order to pay, sometimes wealthy people or charities come to their aid.

Detention on the grounds of non-payment of bills has been justified as being necessary as hospitals would be forced out of business. The detention of patients unable to pay their bills result from and draws attention to broader problems of healthcare delivery in Nigeria.

The Health Sector In Nigeria

The set up of the healthcare system in Nigeria include the following:

- a) The hospitals which are government owned, private hospitals and specialists hospitals owned by both government and private and teaching hospitals.
- b) Clinics which are mostly privately owned.

- c) Local government health centers.
- d) Maternity homes and trado-medical health centers.

This set up though it appears adequate in operational standards, has a number of setbacks. The government owned institutions suffer the ills of inadequate funding (funding for state and local hospitals still on 20% of the overall health funds in Nigeria), staffing, maladministration, and lack of personnel motivation, brain drain, obsolete and malfunctioning of vital equipments, unstable water and electricity supply, non-availability of essential drugs and dressings, poor sanitation and others. The system is over-commercialized, thereby depriving the people of needed medical care.

The 2009 budget for health is 39.6 billion Naira (about 5% of the capital budget)². In view of the inadequacy of government contributions to healthcare delivery system, individuals bear the heaviest burden in the health sector financing. The human resources for the health sector in Nigeria is as follows: 88% of doctors practicing in Nigeria work in hospitals; 74% work in private hospitals, while 12% work in private and public sector primary healthcare³. It is noteworthy that, the private sector provides 65.7% health care delivery in Nigeria⁴.

From all indications, the healthcare sector in Nigeria is highly deplorable. This sector has been aptly described on the website of Nigeria Health Watch as follows,

"when your neighbor dies from measles, during childbirth, in a car accident, rather than conclude it was as 'God wanted it', quickly think, ask and act on the failures; the missed chances at vaccination, inadequate ante-natal care or non-existent emergency services that might have prevented these deaths. The alternative would be to conclude that God really has a problem with us Nigerians; why else would He not let so many

of us die from causes no one else is dying from? We will ask the hard questions⁵.

Detention in Hospitals

The act of detaining a patient following discharge is unlawful detention which has both legal and human rights implications. The Doctor/Patient relationship is contractual in nature. It is one which can be classified as an implied contract. An implied contract is one in which the terms are not expressed but are implied from the conduct or position of the parties. Consequently, when an individual goes into a healthcare institution and consults with a healthcare provider, obtains treatment for his ailment, the law will imply a contract from the very nature of the circumstances, and he will be obliged to pay. The healthcare provider on his part, contracts to provide the best healthcare available, whilst exercising a duty of care appropriate in the profession.

This relationship is also of a fiduciary nature, in the sense that, the healthcare provider owes the patient a duty of care in the discharge of his/her duties to the patient. The doctor is under a duty to abstain from whatever is harmful or mischievous to the patient⁶. While the patient has the right to best available care, the healthcare provider also has the right to remuneration for services rendered. As noted earlier, when a patient presents him/herself for treatment, there is an implied term/expectation that he/she will pay for services obtained. On discharge, the duty to pay arises and the hospital bill becomes a debt incurred by the patient. When he/she fails to pay, there is said to be a breach of this contract.

A breach of contract entitles the injured party to an action for damages; a refusal of further performance; action on quantum meruit; action for specific performance; action for an injunction and of these remedies, an action for damages is the most beneficial to the hospital. This is because, the common law remedy of damages is to compensate the injured party for

loss caused by breach of contract, that is, to put the injured party in the same financial position as he would have been had the contract been performed in its entirety.

This may however not be an option for the healthcare provider, whose patient is unable to pay the hospital bills. Consequently, the patient is detained.

The act of detaining a patient for non-payment of bills is however unlawful. Where an individual fails to pay an amount due to another on demand, it becomes a debt. The appropriate course of action is a civil action for recovery of the debt.

Legal Implication of Detention in Hospital for Non-Payment of Bills

Detention is the act of holding a person in a place and preventing him/her from leaving. Detention can be lawful and unlawful. Detention of patients in hospital falls under the category of unlawfully, detention or false imprisonment.

False imprisonment is the restraint of a man's liberty, in any place without lawful justification or preventing him from exercising his or her right to leave the place in which he is⁷. Legally, unlawful detention is both a crime and a tort. It is a crime at common law and it is committed when a person unlawfully causes a total restraint of the personal liberty of another. Similarly, anyone who helps to continue a wrongful detention is also guilty of false imprisonment, though he or she would not be responsible for the original wrong⁸. Consequently, hospital staff that enforces the order to detain would also be liable.

Section 365 of the Criminal Code Act⁹ provides that any person who unlawfully confines or detains another in any place against his or her will or otherwise unlawfully, deprives another of personal liberty, is guilty of a misdemeanor, and is liable to imprisonment for two years¹⁰.

A tort is a specie of civil injuries or wrong. A civil wrong is one which gives rise to civil proceedings which have as their

purpose the enforcement of some right claimed by the Plaintiff as against the defendant. As a general rule, where a person suffers unlawful harm or damages at the hands of another, an action in tort arises. The appropriate remedy for a tort is damages. In tort therefore, the patient who has been detained for inability to pay the hospital bill, is entitled to damages against the hospital management.

Human Rights Implications of Detention in Hospitals for Non-Payment of Bills.

Detention of patients who are unable to pay hospital bills and indeed all debtors is unlawful under international human rights. Article 9 of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone has the right to liberty and security of person and "*no one shall be subjected to arbitrary arrest or detention*". Detention is considered to be arbitrary if it is illegal or if manifestly disproportionate, unjust, discriminatory or unpredictable¹¹. More specifically, Article 11 of the ICCPR states, "*no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation*". This provision prohibits the deprivation of personal liberty for failure to pay a debt either by a creditor or by the state. States have an obligation to enact laws and other measures to prevent the state and private creditors from limiting the personal liberty of their debtors who cannot fulfill their contracts.¹²

The ICCPR lays out the right to humane treatment in detention. Article 10 provides that, all persons deprived of their liberty shall be treated with and respect for the inherent dignity of the human person. In its general comment, the Human Rights Committee, the international body that monitors compliance with the ICCPR, noted that, this provision applies to, "*any one deprived of liberty under the laws and authority of the state, who is held in prisons, hospital – particularly psychiatric hospitals – detention camps or correctional*

*institutions or elsewhere. State parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdictions where persons are being held*¹³. Patients held in hospitals come within the protection of Article 10. The debtor patients are detained without food and sometimes on the corridors or grounds of the hospitals. This is a violation of the human right of persons not to be detained under inhuman conditions.

The detention of patients in hospitals for inability to pay their bills violates the patient's rights to dignity of human persons and liberty, contrary to the provisions of sections 34(1) & 35(1) of the 1999 Nigerian Constitution (the Constitution)¹⁴. The Constitution, guarantees the right to dignity of human persons. Accordingly, a person shall not be subject to any form of torture or to inhuman or degrading treatment¹⁵, slavery or servitude¹⁶, or to perform forced or compulsory labour¹⁷. Inhuman or degrading treatment in this regard, implies treatment which, even if not necessarily cruel, does not accord with human dignity¹⁸.

Personal liberty is guaranteed by a constitutional declaration and affirmation of the right followed by a prohibition of its deprivation except in the cases specified, and provided that deprivation in the specified cases is carried out in accordance with a procedure permitted by law¹⁹. Personal liberty has been defined as *"the freedom of every law abiding citizen to think what he will. To say what he will on his lawful occasions without let or hindrance from any other person"*²⁰.

Within the scope of the 1999 Constitution, personal liberty connotes the right to freedom from wrongful or false imprisonment, arrest, or any physical restraint; whether in any common prison, or even on the open street without legal justification. Personal liberty is therefore, the right not to be subjected to imprisonment, arrest and any other physical coercion in any manner that does not have legal justification.

Consequences of Hospital Detention

Large hospital bills often have disastrous economic and social consequences for the recipients and their families. If patients are detained, the pressure to pay the bill increases and their ability to earn the money to pay the bills decreases. A study by Save the Children found that if poorer households managed to pay for healthcare²¹ others borrow money from friends and relatives. Detained children miss out on schooling. For some, their forced stay at the hospital is likely to have a negative long term effect on their education and consequently their livelihood prospects.

Another consequence is the fear of seeking healthcare. Detention shatters the trust of individuals detained, and others, in the health system. As knowledge of the practice becomes generally known, fear of detention may result in individuals delaying to seek care or avoiding it altogether, or going instead to traditional healers. Delaying treatment can lead to further complications and the need for more extensive and expensive care. This ultimately increases the likelihood of detention once care is sought and potential disability or even death, where care is not sought.

Way Out?

The patients' inability to pay is mainly due to their being poor and not having health insurance. Obviously, physicians and other health workers need to generate revenue from their services in order to sustain the institution/system and earn a living for themselves. The practice of asking for payment before service, though intended to ensure profit and guarantee the survival of the healthcare system is unethical as it results in loss of life and goes against the provisions of the Hippocratic Oath²². The non-payment of bill gives the physician a right of action at the courts for recovery of debt. This however has its challenges such as; financial implications, time involved as the

judicial process is slow in Nigeria, and uncertainty of the outcome of a court action. Under the Arbitration and Conciliation Act²³, alternative dispute resolution is another way of recovering money owed. This is an additional expense for the hospital. What options are then available to the healthcare provider and the patient?

The hospitals can take out insurance to indemnify them for "bad debts". This will cover situations of inability to pay hospital bills. Health is a fundamental human right enshrined in numerous international human rights instruments, including the; Universal Declaration of Human Rights (UDHR)²⁴, the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁵, the African Charter for Human and People's Rights (ACHPR)²⁶, the Convention on the Rights of the Child (CROC)²⁷, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²⁸.

In the same vein, Comment 14 of the UN Committee on Economic, Social, and Cultural Rights (CESCR) makes health a fundamental human right, indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest standard of health conducive for living a life in dignity.

Signatories to these Covenants are therefore obliged to:

- Respect the right to health of their citizens.
- Protect the right to health of their citizens.
- Facilitate and promote the right by taking positive measures, including legislative, budgetary and promotional actions, to enable and assist individuals and communities enjoy the right to health.

In ratifying these covenants, Nigeria committed herself to progressively realizing these rights. Most importantly, Nigeria was committed to ensuring that these rights are guaranteed to

all without discrimination, regardless of sex, race, language or geographical location.

Health has been defined as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity"²⁹. The right to health involves availability, accessibility, acceptability, and quality of public health and healthcare facilities, goods and services. Access and affordable in this regard means that the health services are available to all regardless of factors such as the ability to pay, pre-existing medical conditions, race, age, ethnicity, or immigration status. While, quality and appropriateness refer to healthcare which meets scientific and medical standards using evidence-based best practices.

In line with the covenants ratified by Nigeria, the government established the National Health Insurance Scheme (NHIS) by the National Health Insurance Scheme Act 35 of 1999³⁰. The Scheme was however launched in 2005.

The NHIS is a social security system that guarantees the provision of needed health services to persons on the payment of contributions at regular intervals³¹. It was established as a way out for people who would ordinarily have had difficulties in accessing, paying, and receiving appropriate healthcare services anywhere in the country. However, only employers and employees are eligible to register under the Scheme³². This is a shortcoming in the sense that the proportion of Nigerians who are in employment is negligible. Consequently, the Nigerian populace in the main, still does not have access to organized healthcare delivery. It has been said that under the scheme, only 1.8million Nigerians have access to limited healthcare³³.

The NHIS does not cover major ailments such as organ failure and transplant, fertility treatment and so on. These treatments are expensive and should be covered under the Scheme.

Another challenge facing the Scheme is that many of those championing it and the Health Management Organisations (HMOs) are divided on several opposing lines and boundaries of personal interest in the industry. This has been described as one of its most significant challenges for the realistic implementation³⁴.

It is pertinent to note that, there is nowhere in the world where health insurance is all encompassing. However, the programme is relatively new in Nigeria and the government needs to initiate enlightenment programmes to create its awareness. It should also be expanded to cover the needs of the low income who are the most vulnerable groups. The NHIS has the capacity to address the problem of healthcare delivery in Nigeria if its provisions are properly enforced. The government can make it a part of the poverty alleviation programme it is pursuing.

Similarly, the government can adopt the United Kingdom method of funding health. The UK National Health Scheme is maintained by public financing of publicly provided healthcare. It is based on the general taxation mechanism for healthcare financing and not on individual contribution thereby making healthcare accessible to all. The Nigerian healthcare delivery system is currently a mixture of public/private financing of public/private healthcare provision. Every right gives rise to a corresponding duty. The citizens' right to health gives rise to a duty on the part of the government to provide accessible and affordable healthcare delivery system. The fulfillment of this obligation in Nigeria is still unattainable.

Conclusion

Health is a right of every human being. However, the situation of the healthcare delivery system in Nigeria leaves a lot to be desired in guaranteeing this right for majority of its citizens. There is wide spread violation of this right with a consequent violation of other fundamental human rights. While

the patients and indeed everyone have the right to liberty, the healthcare providers also have the right to be paid for services rendered. It is therefore necessary to develop a policy that will absorb the rights of all concerned.

As noted earlier, the NHIS is a viable field to address the issues that pervade the healthcare sector in Nigeria. The government must however, set in motions, policies for its workability. There should be a strategy for including the poor in the scheme and ensure high levels of enrollment to the system. Any health policy reform should focus on access to basic health care for the poor and focus on the four essential elements regarding the right to health; availability, accessibility, acceptability and quality. The government should also increase funding for the health sector as this will go a long way to improve the sector. The government can progressively implement the right to health by adopting measures to improve access to healthcare for the poor.

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