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THE MEDICO-LEGAL PRINCIPLE OF CONFIDENTIALITY IN DOCTOR-PATIENT RELATIONSHIPS IN NIGERIA

Ibitoye, T. Revelation¹

Abstract

The bedrock of a doctor-patient relationship is confidentiality, and every person has the right to keep his/her personal information private and confidential from the public. The effect of confidentiality on patients is that it helps patients seeking medical advice to be open with their doctors and trust same that the latter would keep such information secret and will not disclose such to others. However, the duty of confidentiality is not absolute. It can be disclosed where a patient gives his/her consent; or as required by the court of law, statutes; or public interest. Hence, this paper shall define the related concepts of privacy and confidentiality; examine the statutory framework of confidentiality in Nigeria; discuss the principles of confidentiality; instances when confidentiality can be disclosed/waived; and conclude by submitting recommendations on how confidentiality in a doctor-patient relationship can be effectively maintained in Nigeria.

Keywords: Confidentiality, Disclosure, Doctor-Patient Relationship, Privacy

1.1 INTRODUCTION

Medico-legal principles are the principles that involve medical jurisprudence (a branch of medicine), and medical law (a branch of law), that is, both medical and legal aspects. These principles are ethical in nature, in other words, they are moral principles governing the practice of medicine. They include autonomy, beneficence, non-maleficence, justice, and fidelity. However, the focus of this study will be on confidentiality, a sub-section of fidelity.

Confidentiality is an ethical principle of fidelity that is central to the preservation of trust between doctors and their patients because it helps to improve a patient's welfare and public health while failure to adhere is

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detrimental and may result in substandard treatment. The formal recognition of the principle dates back to 1948 when the World Medical Association² adopted the Hippocratic Oath, also known as, Declaration of Geneva, which is traditionally sworn to by newly licensed Medical Practitioners/Doctors. It states thus:

...Whatever, in connection with my professional practice or not, in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret...

Another version provides that 'I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know.'³ Similarly, the newest revised version provides that 'I WILL RESPECT the secrets that are confided in me, even after the patient has died.'⁴ It is based on this principle that patients seeking medical advice or help entrust their medical personal information to their doctors based on the believe that the latter would keep such information, either seen or heard, as secret and will not disclose such to others. Furthermore, the information held as secret will be respected, protected and used exclusively for the benefit of the patient not only during the patient's existence, but, forever, including, after his death.

Unfortunately, in developing countries like Nigeria, the principle of confidentiality is less observed by doctors due to some conditions in the hospitals. Also, some of them are not aware of their ethical duties/responsibilities while at the same time, majority of patients know little of nothing of their medical rights, including the right to have one's information protected and kept secret by one's physician. According to the result of a research conducted on Patients' Perception and Actual Practice of Privacy and Confidentiality in Surgical Out-Patient Departments (SOPDs) of twelve (12) General Hospitals (GHs) in Kaduna State, Sixty-three percent (63%) of patients in the hospitals under study were accorded some degree of

² Adams, F. 1849. Hippocratic Oath. *Encyclopaedia Britannica*. Retrieved November 27, 2017 from <https://www.britannica.com/topic/Hippocratic-oath>

³ Tyson, P. 1964. The Hippocratic Oath Today. Written in 1964 by Louis Lasagna, Academic Dean of the School of Medicine at Tufts University. Retrieved November 27, 2017, from <http://www.pbs.org/wgbh/nova/body/hippocratic-oath-today.html>

⁴ World Medical Association (WMA). Declaration of Geneva. The Physician's Pledge. Retrieved November 27, 2017, from <https://www.wma.net/policies-post/wma-declaration-of-geneva/>

privacy.⁵ Of this number, 47.3% were female patients. Adequate privacy was maintained in 13.6% of patients while confidentiality was maintained only in 9.9% of the cases in the hospitals. Informed consent, privacy and confidentiality were less practiced in the hospitals than was expected by patients. There was marked disparity between the patients' perspective of these ethical practices and the assessment of the practice obtained in General Hospitals.

Therefore, the statistics above reflect that the principles privacy and confidentiality are often neglected during patient care and treatment in Nigeria. One of the horrifying conditions of the hospitals is the consulting rooms that are built in form of cubicles rather than individual rooms, with incomplete demarcation and free spaces above and which allow transmissible echoes from other cubicles. Alternatively, some consulting rooms are built to accommodate many doctors attending to patients concurrently some with inadequate facilities and screens. The breach of privacy and confidentiality thus discourage patients from freely providing all necessary information that may help in their treatment.

Hence, this paper shall define two related concepts of privacy and confidentiality; examine statutory framework of confidentiality in Nigeria; discuss the principles of confidentiality; deliberate on instances when confidentiality can be disclosed or waived; and conclude by submitting recommendations on how the principle of confidentiality in a doctor-patient relationship can be effectively sustained in Nigeria.

2.1. DELINEATING RELATED CONCEPTS

Privacy and Confidentiality are principles of medical practice essential for the protection of human dignity and autonomy. Although, both principles prima facie look similar as they relate to personal information of a patient, they are different with their own distinct characteristics. The distinction between them lies in the nature of the breach and the action which breaches the obligations imposed on the duty bearer.

2.1.1. Privacy

⁵ Makama, J. G, Joshua, I. A., Garba, E. S. 2016. Patients' Perception and Actual Practice of Privacy & Confidentiality in Surgical Outpatient Departments of General Hospitals, Kaduna, Nigeria. *Med Law*. 35:451-464.

Though not always so regarded, privacy is now widely recognized as a fundamental human right. The expectation that certain things we do ought not be the concern of others – in short, ‘nobody’s business’ – is innate to humanity. Entitlement to a ‘private space’ is a universally shared value, observed even in primitive societies. The necessity for clothes, whether approached from Christian or secular morality, was informed by concern for privacy of certain body parts. Designed to protect individuals in the conduct of their personal affairs, privacy is seen as a core element of human autonomy, the essence of human freedom.⁶ The term ‘privacy’ originates from the Latin word: ‘privatus,’ meaning ‘cut off from others; apart from the state...peculiar to one’s self...not public; retired from observation; secret...’⁷ also, the case of *Entick v. Carrington*⁸ firmly established privacy as a protected interest under common law. As Lord Camden explained:

The great end, for which men entered into society, was to secure their property. That right is preserved, sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole...By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing...

Furthermore, privacy was held in the case of *Boyd v. United States*⁹ as:

It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence, it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment.

⁶ Iyioha, I. O. and Nwabueze, R. N. 2016. *Comparative Health Law and Policy: Critical Perspectives on Nigerian and Global Health Law*. 2nd ed. New York: Routledge. 113.

⁷ *Osborn v. United States* (1966) 385 U.S. 323.

⁸ (1765) 19 Howell’s State Trials 1029.

⁹ (1886) 116 U.S. 616.

Subsequently, in the middle of the twentieth century, the right to privacy was expanded to protect not only property but also people.¹⁰ Presently, in Nigeria, a citizen's informational privacy right is enshrined by section 37 of the Nigerian Constitution¹¹ which states that 'the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.' Furthermore, the Nigerian Constitution recognizes and respects a patient's medical information, also known as, medical report/case note as a private information which has to be protected.

Therefore, the right to privacy in medicine can be defined as 'the ability to preserve physical appearance, particularly the private parts of the body from an unauthorised viewer during consultation in a health care environment.'¹² It may also be a form of violation committed by an unauthorized person by gaining entrance to a record room or by unlawfully accessing the data bank of a health facility. Thus, the invasion of a patient's privacy may involve his physical exposure to unauthorised viewers or the gaining of unofficial access to a patient's medical records by unauthorized persons.

2.1.2. Confidentiality

Confidentiality is a broader facet of privacy. To warrant confidentiality protection, the information, transaction or conduct in respect of which the claim is made must be of a private nature. In other words, only private matters merit confidentiality protection.¹³ As Lord Goff asserted in *Attorney-General v. Guardian Newspapers (No.2)*:¹⁴

[A] duty of confidence arises when confidential information comes to the knowledge of a person (the confidant) in circumstances where he has notice, or is held to have agreed, that the

¹⁰ *Katz v. United States* (1967) 389 U.S. 347.

¹¹ *The Constitution of the Federal Republic of Nigeria 1999, as amended 2011, Cap. C23, Laws of the Federation of Nigeria, 2004.*

¹² WMA. World Medical Association Declaration of Helsinki: Ethical Principles of Research Involving Human Subjects. Retrieved November 28, 2017, from <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>

See also Jon, C. O., Brian C. and Bridget C. O. 2008. Emergency Department Design and Patient's Perception of Privacy and Confidentiality. *The J Emerg Med.* 35: 317-320. See also Mlinek, E. J. and Pierce, J. 1997. Confidentiality and Privacy Breaches in a University Hospital Emergency Department. *Acad. Emerg. Med.* 4.12: 1142- 1146.

¹³ Nnamuchi, O. Physicians' Handling of Patients' Health Information: Ethics and Law of Confidentiality, Retrieved November 28, 2017, from <https://lawexplores.com/physicians-handling-of-patients-health-information-ethics-and-law-of-confidentiality/>

¹⁴ [1990] 1 AC 109.

information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others.

This means that a physician (confidant) who comes across a patient's information knows and have indirectly consented to keep such information as private and confidential from the public. Furthermore, confidentiality is defined as the ability to shield patients' vital information from unauthorised listeners or users and is paramount and an important ethical principle in medical practice.¹⁵

The doctrine of confidentiality was founded by the case of *Campbell v. Mirror Group Newspapers Ltd.*¹⁶ In that case, the claimant appealed against the denial of her claim that the defendant had infringed her right to respect for her private life. She was a model who had proclaimed publicly that she did not take drugs, but the defendant had published a story showing a picture of her leaving a drug addiction clinic, along with details of her addictions and the treatment she had received. It was held by Green MR that:

The information, to be confidential, must, I apprehend, apart from contract, have the necessary quality of confidence about it, namely, it must not be something which is public property and public knowledge.

Thus, it is disheartening and betraying for one's physician whom one trusts and who knows of one's darkest secret to expose such to the public. Such a doctor has breached his duty of confidentiality to the patient, irrespective of whether there exists a contract or an express term of confidentiality between them or not. Also, the case of *Coco v A N Clark (Engineers) Ltd*¹⁷ where a claim was made for breach of confidence in respect of technical information whose value was commercial, developed the three traditional requirements of the cause of action for breach of confidence. First, the information must itself have the necessary quality of confidence about it. Secondly, that information must have been imparted in circumstances importing an obligation of confidence, and thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it. Therefore, it is submitted that medical information of a patient is confidential in nature; it is normally communicated to a physician in circumstances importing an obligation of

¹⁵ Sankar, P., Mora S. and Merz J. F., 2003. Patient Perspectives of Medical Confidentiality: A Review of the Literature. *J Gen Intern Med.* 18: 659-69.

¹⁶ [2004] UKHL 22.

¹⁷ [1969] RPC 41.

confidence; and it must be kept secured from unauthorised use at the expense of the patient. Where a physician fails to keep a patient's medical information secured, he is guilty of breach of confidence.

Additionally, confidentiality obligation can arise in various forms and contexts. The most common is where the parties enter into a contract and the terms require them to keep information exchanged between them secret. Such contracts can be explicit or implied. In clinical practice, the duty to maintain confidentiality of patient information is not explicit; instead, it is implied by the nature of the relationship (fiduciary) between patients and physicians. In consideration for payment made by the patient, the physician implicitly covenants to render services with due diligence and reasonable care, including safeguarding confidential information, failing which an action for breach of contract may lie against him.¹⁸ Hence, the obligation of confidentiality may be imposed by law or otherwise.

Further, the duty of confidentiality imposes a responsibility on health care providers to ensure that information about the patient's case is not disclosed without his permission. The health care providers also have a duty to properly keep and secure the patients files and to deny access to others outside the healthcare providers.¹⁹ Hence, a physician is not permitted to expose a patient's medical secret, report or case file to a third party without obtaining the latter's consent. This is because a patient whose confidentiality is breached may feel betrayed by such breach, have inhibitions in sharing his/her most intimate information or may no longer open up to his/her physician.

It should be noted that the professional duty of confidentiality covers not only what patients may reveal to doctors, but also what doctors may independently conclude or form an opinion about, based on their examination or assessment of patients. Confidentiality covers all medical records (including x-rays, lab-reports, etc.) as well as communications between patient and doctor, and it generally includes communications between the patient and other professional staff working with the doctor.²⁰ Thus, the duty of confidentiality is not limited to doctors alone but also extends to all members of staff working with the doctor, also known as, medical team.

Summarily, privacy and confidentiality are two similar but different concepts in medical practice. While privacy relates to the protection of the physical body of a patient or his medical records from exposure to unauthorised

¹⁸ Op. cit. 11.

¹⁹ Agbasi, M. N. 2015. Examination of The Principle of Confidentiality of Patients under Medical Law. *International Journal of Health and Medical Information*, 4.1: 29.

²⁰ US Legal. Doctor Patient Confidentiality. Retrieved November 28, 2017, from <https://healthcare.uslegal.com/doctor-patient-confidentiality/>

viewers/persons; breach of confidentiality occurs when a doctor fails to protect a patient's personal information in his care or when he deliberately discloses such information without the consent of the patient.

3.1 STATUTORY FRAMEWORK OF CONFIDENTIALITY IN NIGERIA

There exist several international, regional and national laws on the protection of patients' confidentiality in doctor-patient relationships. Some of them are examined below.

3.1.1 INTERNATIONAL TREATIES

3.1.1.1 *The Hippocratic Oath*²¹

The foremost international provision safeguarding a patient's confidentiality is the Hippocratic Oath sworn to by medical practitioners on the day of induction. As discussed earlier, a doctor is bound by the Oath to protect his patient's secret/privacy information from the public, that is, unauthorised third parties, even till after a patient's death. However, violation of this Oath invokes the opposite of the enjoyment of life, art, and perpetual honour with fame among all men on the negligent physician.

3.1.1.2. *Constitution of the World Health Organization*²²

The Preamble of the Constitution provides principles are basic to the happiness, harmonious relations and security of all peoples worldwide:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

²¹ Adams, F. Hippocratic Oath., and WMA. Declaration of Geneva. The Physician's Pledge.

²² World Health Organisation (WHO). 1946. *The Constitution of the World Health Organization*. Retrieved November 29, 2017, from <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>

The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.

The achievement of any State in the promotion and protection of health is of value to all.

Therefore, the enjoyment of the highest attainable standard of health is a fundamental right of a person which results in the attainment of peace and security in the society. Hence, where a doctor violates the principle of confidentiality, his patient is deprived of the enjoyment of the highest attainable standard of his health which will eventually erode the society of peace and security. Furthermore, the attainment of peace and security or achievement and advancement of the highest attainable standard of health in a society is the duty of everyone, viz-a-vis, the doctor, his patient, all citizens and the government at large.

3.1.1.3. *The Universal Declaration of Human Rights*²³

This is the first international document that sets out the fundamental human rights of people and how such rights are to be universally protected. Article 12 of this Declaration states that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Thus, every patient has an inalienable right to have his privacy (nakedness) shielded from the public during clinical examinations. Also, all medical correspondence/communication between a doctor and a patient must be protected from interference by the physician. It can be concluded that correspondence here includes information contained in case files, e-mails, fax, telephone conversations, e.t.c.

3.1.2. REGIONAL LAWS

The regional law to be discussed is the African Charter on Human and Peoples Rights (ACHPR).²⁴ Article 4 provides that every African is entitled to respect

²³ The United Nations. 1948, *The 1948 Universal Declaration of Human Rights (UDHR)*. Retrieved November 29, 2017, from http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

for his life and the integrity of his person which cannot be arbitrarily deprived of him. Also, Article 5 provides for every individual to have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. It prohibits all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment. It is implied from that provision that confidentiality breach by a doctor is included as part of 'inhuman or degrading...treatment.' Furthermore, Article 16 states:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Thus, analogous to the Preamble of the Constitution of WHO is the right of every patient to enjoy the best attainable state of physical and mental health in his treatment by his physician. This feat will be achievable when the government takes all necessary measures to protect the health of her people. Necessary measures can take the form of sensitizing the citizens about their medical rights, re-educating and reminding doctors of their ethical codes of conduct; increasing/developing medical facilities and services available in Nigerian hospitals; and constructing more hospitals.

²⁴ The African Union. 1981. *The African Charter on Human and Peoples' Rights (African Charter)*. Retrieved November 29, 2017, from http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

3.1.3. NATIONAL LAWS

3.1.3.1. *The National Health Act*²⁵

According to section 25 of the Act:

...the person in charge of a health establishment shall ensure that a health record containing such information as may be prescribed is created and available at the health establishment for every user of health services.

Furthermore, section 26 states:

1. All information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment confidential.
2. Subject to section 27, no person may disclose any information contemplate in (1) unless –
 - a. The user consents to that disclosure in writing;
 - b. a court order or any law requires that disclosure; or
 - i) in the case of a minor with the request of a parent or guardian; and
 - ii) in the case of a person who is otherwise unable to grant consent upon the request of a guardian or representative.
 - c. Non-disclosure of the information represents serious threat to public health.

Additionally, section 27 positions:

A health care worker or any health care provider that has access to the health records of a user may disclose such personal information to any other person, health care provider or health establishment as is necessary for any legislative purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interest of the user.

From the above provisions, the principle of patient confidentiality is expressly protected by the law in health establishments, such as, hospitals, in Nigeria.

²⁵ The Nigerian National Assembly. 2014. *The National Health Act*. Retrieved November 29, 2017, from <http://www.publichealth.com.ng/wp-content/uploads/2017/10/The-Official-Gazette-of-the-National-Health-Act.pdf>

Also, medical records of patients are mandated to be kept and available in all hospitals for medical purposes. Similarly, a health care worker, such as, doctor, is expected to protect his patient's confidentiality, but disclose personal information of his patient only in circumstances where it is necessary for any legislative purpose within the scope of the doctor's duties, or in the interest of the patient.

In spite of the above provisions, the National Health Act can be amended to include the six (6) principles of the Data Protection Act 2018²⁶ on the processing of an individual's personal information by organisations, businesses and the government. By applying the principles to the National Health Act, firstly, the processing of a patient's personal data/information must be lawful and fair.²⁷ Secondly, the purpose for which a patient's personal data is collected on any occasion must be specified, explicit and legitimate, and it must not be processed in a manner that is incompatible with the purpose for which it was collected.²⁸ Thirdly, in situations where a patient's personal data is to be processed, it must be adequate, relevant and not excessive in relation to the purpose for which it is processed.²⁹ The fourth principle is that the processing of a patient's personal data must be accurate and, where necessary, kept up to date, and every reasonable step must be taken to ensure that personal data that is inaccurate is erased or rectified without delay.³⁰ The fifth principle is to the effect that a patient's personal data must be kept for no longer than is necessary for the purpose for which it is processed, and appropriate time limits must be established for the periodic review of the need for the continued storage of personal data.³¹ Lastly, the processing of a patient's personal data must be done in a manner that ensures appropriate security³² of the personal data, using appropriate technical or organisational measures.³³

²⁶ Legislation.gov.uk. *Data Protection Act 2018*. Retrieved December 17, 2018, from <https://www.legislation.gov.uk/ukpga/2018/12/part/3/chapter/2>

²⁷ Section 35 of the Data Protection Act 2018.

²⁸ Section 36 of the Data Protection Act 2018.

²⁹ Section 37 of the Data Protection Act 2018.

³⁰ Section 38 of the Data Protection Act 2018.

³¹ Section 39 of the Data Protection Act 2018.

³² 'Appropriate security' includes protection against unauthorised or unlawful processing and against accidental loss, destruction or damage).

³³ Section 40 of the Data Protection Act 2018.

3.1.3.2. *The Freedom of Information Act 2015*³⁴

The Act recognizes as privileged information professional communication between health workers and clients,³⁵ and also permits a public institution, like hospitals, to deny an application for such privileged information.

Further, section 14 of the Act states:

(2) A public institution shall disclose any information that contains personal information if -

(a) the individual to whom it relates consents to the disclosure; or

(b) the information is publicly available

(3) Where disclosure of any information referred to in this section would be in the public interest, and if the public interest in the disclosure of such information clearly outweighs the protection of the privacy of the individual to whom such information relates, the public institution to whom request for disclosure is made shall disclose such information subject to Section 14 (2) of this Act.

This provides exceptions to confidentiality of a patient's information. So, a hospital may disclose a patient's information where the patient permits, that is, gives his consent; and/or where the disclosure of such information is in the interest of the public, that is, outweighs the protection of the privacy of the patient to whom such information relates.

³⁴ The Nigerian National Assembly. 2015. *The Freedom of Information Act*. Retrieved November 29, 2017, from <http://www.nigeria-law.org/Legislation/LFN/2011/Freedom%20of%20Information%20Act.pdf>

³⁵ *Section 16 of the Freedom of Information Act.*

3.1.3.3. Code of Medical Ethics in Nigeria³⁶

The Medical and Dental Practitioners Act empowers the Medical and Dental Practitioners Council of Nigeria with the power of 'reviewing and preparing from time to time a statement as to the code of conduct which the council considers desirable for the practice of the profession in Nigeria.'³⁷ Thus, the Council produced the Code of Medical Ethics in Nigeria³⁸ which provides for ethical guidelines required of physicians in the treatment and care of their patients.

Rule 44 of the Code takes seriously the issue of professional secrecy. It adds that any information about a patient that comes to the knowledge of a physician during a doctor-patient relationship constitutes a secret and privileged information which must not be divulged by him to a third party. Examples of such secrets are information on criminal abortion, venereal disease, attempted suicide, concealed birth and drug, and dependence. Similarly, a doctor's duty of confidentiality out-lasts his employment, and it extends as well to his employees, who are banned from accepting subsequent employment which involves, or may involve the disclosure or use of these confidences, without the patient's knowledge and consent. This duty subsists even after the patient has died. Also, doctors are enjoined to maintain adequate records on their patients so as to be able, if such a need should arise, to prove the adequacy and propriety of the methods, which they had adopted in the management of the cases.

Furthermore, a patient's privileged information may be requested for a wide variety of purposes including education, research monitoring and epidemiology, public health surveillance, clinical audit, administration and planning. In such cases, a doctor should follow some principles before disclosure. Firstly, he should seek the patient's consent whenever possible, whether or not he judges that the patient can be identified from the disclosure. Alternatively, he can anonymise the data where unidentifiable data will serve the purpose; and in all cases, he should keep disclosures to the minimum necessary.

Finally, Rule 44 provides that where a doctor is accused by his patient, he is not precluded from disclosing the truth with respect to the accusation. He may

³⁶ *The Medical and Dental Practitioners Council of Nigeria. 2014. The Code of Medical Ethics in Nigeria. Retrieved November 29, 2017, from <http://www.mdcnigeria.org/Downloads/CODE%20OF%20CONDUCTS.pdf>*

³⁷ *Section 1 of the Medical and Dental Practitioners Act, Cap M8, Laws of the Federation of Nigeria 2004.*

³⁸ *The Code of Medical Ethics in Nigeria.*

also make disclosures of intention of a patient to commit a crime³⁹ as may be necessary to prevent the act or protect those against whom it is threatened.

4.1. PRINCIPLES OF CONFIDENTIALITY

Confidentiality is both a patient's right and a doctor's duty, and its bedrock is founded on some basic principles which are discussed below.

4.1.1. A Physician Is Primarily Responsible For the Proper Protection Of A Patient's Medical Information

As a result of the fact that the relationship between physicians and patients is built on fidelity, certain promises are implicit in the relationship and must be kept. In return for full and truthful disclosure of illness and other information that might have a bearing on the illness, the patient expects that the information would be secure in the physician's custody, that the physician would faithfully guard against the possibility of the information falling into the wrong hands or wrong ears.⁴⁰ Without assurances about confidentiality, patients may be reluctant to give practitioners the information they need in order to provide good care. Also, this duty is perpetual because it survives a doctor's employment, extends to his employees, and also outlives a patient.⁴¹ So, where a doctor resigns from an employment and takes up a new appointment, he is bound to keep the confidential information of all his patients in the former employment and not disclose any either for his own private advantage or his employees, or to the disadvantage of his patient without the patient's prior knowledge and consent. Also, where a doctor's duty of confidentiality to a surviving or deceased patient is in conflict with the former's employment, he should decline from accepting the employment, or resign where he has already taken up the employment.

4.1.2. Disclosure of Information Other Than For Treatment of the Patient

Where a doctor is faced with disclosure of information other than for treatment of the patient, for purposes such as education, research monitoring and epidemiology, public health surveillance, clinical audit, administration and planning; he is duty-bound, whenever possible, to obtain the patient's consent

³⁹ *Tarasoff v. Regents of the University of California* (1976) 17 Cal. 3d 425.

⁴⁰ Nnamuchi, O. Physicians' Handling of Patients' Health Information: Ethics and Law of Confidentiality.

⁴¹ Rule 44, the Code of Medical Ethics in Nigeria.

to disclose any of his information, whether a doctor judges that the patient can be identified from the disclosure or not.⁴² A doctor is also expected, whenever a patient wants to give consent to disclosure of his information, to make sure that his patient understands what will be disclosed about him, the reasons for disclosure, the likely consequences, and the fact that he has the opportunity to withhold permission. Also, while giving consent, a patient must possess the necessary capacities, for instance, he must be an adult, of a sound mind, etc. In practice in Nigeria, the obtaining of a patient's consent is evidenced in writing, in order to protect the interest of a doctor in case the patient or his family denies that they authorised the disclosure.

4.1.3. Anonymisation of Data Where Unidentifiable Data Will Serve the Purpose

In situations where disclosure is required, the principle states that a doctor should anonymise the data where unidentifiable data will serve the purpose,⁴³ that is, a doctor/hospital management can make the data or information of a patient untraceable or unidentifiable by the recipient of the information. The name, address, and other personal details with which a patient can be identified would be removed. There can also be cryptic utilization of anonymised clinical material for teaching or publication in professional journals. However, where a patient's data/information has been fully anonymised, it is not personal data, and does not require to be kept confidentially.

4.1.4. Keeping of Disclosures to the Minimum Necessary

Lastly, a physician/ hospital management must keep disclosures to the minimum necessary.⁴⁴ Not all information about a patient must be disclosed except those in line with the purpose of the disclosure.

5.1 DISCLOSURE/WAIVER OF CONFIDENTIALITY

In law, to every general rule, there is always an exception, consequently, the duty of confidentiality has some exceptions when a doctor can disclose a patient's information without being found guilty of breaching his ethical duty

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

of trust to the latter. In *Attorney-General v. Guardian Newspapers (No.2)*,⁴⁵ Lord Goff reiterated:

[A]lthough the basis of the law's protection of confidence is that there is a public interest that confidences should be preserved and protected by the law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. This limitation may apply ... to all types of confidential information. It is this limiting principle which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure.

In view of this, section 27 of the National Health Act⁴⁶ listed instances in which confidentiality can be waived, and disclosure can be made, for instance, where the patient gives his consent in writing; where a court order or any law requires that disclosure; or in the case of a minor with the request of a parent or guardian; in the case of a person who is otherwise unable to grant consent upon the request of a guardian or representative; or where non-disclosure of the information represents serious threat to public health. Similarly, section 14 of the Freedom of Information Act⁴⁷ also stipulates some exceptions, namely: in situations of approval of consent by the concerned; where the information is publicly available; or where disclosure would be in the public interest.

5.1.1. Disclosing Information with Consent in Writing

Seeking a patient's consent to disclosure of information shows respect, and is part of good communication between doctors and patients.⁴⁸ In a claim for breach of confidentiality, evidence that the patient consented to the disclosure of her medical information would completely absolve the physician of any wrongdoing. Consent, as an exception, echoes the common law doctrine *volenti non fit injuria* (no injury can result to one who consents), a doctrine that shields a person accused of wrongdoing from liability on the basis that the person claimed to have been wronged did in fact consent to the 'wrong'. Consent may be direct (as where the patient personally authorizes disclosure)

⁴⁵ Op. cit. 12.

⁴⁶ *The National Health Act.*

⁴⁷ *The Freedom of Information Act.*

⁴⁸ General Medical Council (GMC). 2009. *Confidentiality*. p. 12. Retrieved November 29, 2017, from https://www.gmc-uk.org/Confidentiality_0513_Revised.pdf_52090934.pdf

or indirect (through the patient's surrogates)⁴⁹ or where there is a need for a doctor to share a patient's information with his health care team members in order to provide for his care.

The express consent of a patient would be required by a physician before disclosing identifiable information for insurance, employment or governmental purposes. However, the physician has to abide by some important rules⁵⁰ such as: he must be satisfied that the patient has sufficient information about the scope, purpose and likely consequences of the examination and disclosure, and the fact that relevant information cannot be concealed or withheld. He must also obtain written consent to the disclosure from the patient or a person properly authorised to act on the patient's behalf. A physician should not disclose the whole record but only factual information he can substantiate, presented in an unbiased manner and relevant to the request. Further, a doctor may offer to show his patient, or give him a copy of, any report he writes about the patient for any purpose before it is sent, unless: the patient has already indicated that he does not wish to see it; or where disclosure would likely hurt the patient or anyone else; or where disclosure would likely reveal information about another person who does not consent.

5.1.2. A Court Order or Any Law Requires That Disclosure

At times, a doctor's duty of confidentiality may collide with the demands of the court or provision of the law, and where this occurs, the imposition of disclosure by court order or the law will supersede the obligation of confidentiality. For instance, a judge in a court of law, or a tribunal may compel a doctor to disclose a patient's medical information, but, the doctor should be wary in disclosing irrelevant information like information about a patient's relative who is not involved in the proceedings to the court. In the case of *NJ v. Australian Red Cross Society*,⁵¹ the Supreme Court of Victoria ordered the Australian Red Cross to name two people who had recently donated hepatitis B infected blood after several people were infected by contaminated blood transfusions. The court however protected the donors from any legal action and made the plaintiff's suitors give an undertaking not to disclose names or identifying details to anyone else.

⁴⁹ Nnamuchi, O. Physicians' Handling of Patients' Health Information: Ethics and Law of Confidentiality.

⁵⁰ General Medical Council (GMC). 2009. *Confidentiality*. p. 14-15.

⁵¹ *Unreported No 6498/94, 26 June 1996, Vic SC.*

Also, a patient's medical information should not be disclosed to third parties like a lawyer, police officer or officer of a court without the patient's express consent, unless it is required by law or can be justified in the public interest.

Furthermore, the law may require disclosure where it involves the promotion of public health, especially, relating to the detection and control of communicable diseases. But, whenever practicable, the doctor should inform patients about such disclosures, unless it would undermine the purpose, even if the latter's consent is not required.⁵² For instance, in a situation where a patient has a communicable disease, his information may be released by his doctor or hospital, as required by statute, without his consent and the latter would not be held to be in breach of confidentiality. For instance, in July 2014, there was an outbreak of Ebola virus in Lagos, Nigeria. The disease was brought into Nigeria by Patrick Sawyer, a Liberian-American financial consultant who denied exposure to Ebola. He was treated for presumed malaria after suffering from a fever, vomiting and diarrhoea. Eventually, after some days, medical tests revealed he actually had Ebola. His physician, Dr. (Mrs) Adadevoh did the needful. She called officials of the Federal Ministry of Health and National Centre for Disease Control to inform them in a bid to protect the public from danger. She also went online, downloaded information on Ebola and printed copies, which were distributed to the nurses, doctors and ward maids. Protective gear, gloves, shoe covers and facemasks were provided for the staff while a wooden barricade was placed at the entrance of the door to keep visitors and unauthorised personnel away from the patient.⁵³ Hence, in line with the exception of the promotion of public health, the identities of Patrick Sawyer and Dr. (Mrs) Adadevoh, including information about the nature of the communicable disease were released to the public in order to protect same. Also, there was strong public awareness campaigns about ebola and its prevention. However, government withheld the identities of other primary and secondary contacts they came across, but, conducted an in-person follow-up visits on 18,500 contacts in order to find any new case of Ebola among them. Fortunately, the government, through 'contact tracers' and with all sense of confidentiality, tracked down each of the individuals, hereby removing social stigma around the disease.⁵⁴ Recently, there was the

⁵² General Medical Council (GMC). 2009. *Confidentiality*. p. 10.

⁵³ Anon. July 20, 2015. FLASHBACK: How Sawyer Passed Ebola on to Dr. Ada Igonoh... and How She Survived. *The Cable*. Retrieved November 29, 2017, from <https://www.thecable.ng/how-i-survived-ebola-2>

See also Mark, M. August 4, 2014. Ebola Outbreak: Doctor who treated Nigeria's First Victim Contracts Virus. *The Guardian*. Retrieved November 29, 2017, from <https://www.theguardian.com/world/2014/aug/04/doctor-nigeria-ebola-victim-lagos>

⁵⁴ Courage, K. H. October 18, 2014. How Did Nigeria Quash Its Ebola Outbreak So Quickly? *Scientific American*. Retrieved November 29, 2017, from

notification of a suspected monkeypox outbreak⁵⁵ on the 22nd of September, 2017 in Bayelsa State, and the Minister of Health, Prof. Isaac Adewole, reported that the virus outbreak has spread to 11 states with 74 suspected cases.⁵⁶ Similar efforts employed against Ebola virus were also put in place by the Federal Ministry of Health through the Nigeria Centre for Disease Control (NCDC) to ensure the outbreak is brought under control and to limit further spread.

5.1.3. A Minor or a Person Who Is Unable To Grant Consent upon the Request of a Guardian or Representative.

According to Child's Right Act 2003, a minor/child means every human being below the age of 18 years.⁵⁷ Consequently, a doctor dealing with a minor or a person who is unable to grant consent upon the request of a guardian/representative has to be cautious of his relationship with him, especially where his duty of confidentiality contradicts the need to disclose to the minor's parents or the person's guardians. When faced with such challenge, the doctor should make the care of the patient his first concern; respect the patient's dignity and privacy; and support and encourage the patient to be involved, as far as they want, in decisions about disclosure of their personal information. Furthermore, a doctor should consider whether the patient's lack of capacity is permanent or temporary and, if temporary, whether the decision to disclose could reasonably wait until they regain capacity. Also, he should consider any evidence of the patient's previously expressed preferences; the views of anyone the patient asks him to consult, or who has legal authority to make a decision on their behalf, or has been appointed to represent them (e.g. a parent/guardian). The views of people close to the patient on the patient's preferences, feelings, beliefs and values should also be

<https://www.scientificamerican.com/article/how-did-nigeria-quash-its-ebola-outbreak-so-quickly/>

⁵⁵ Monkeypox is a rare viral zoonosis (a virus transmitted to humans from animals) with symptoms in humans similar to those seen in the past in smallpox patients, although less severe.

⁵⁶ Nwafor, P. October 18, 2017. Monkey Pox cases increase to 74 in 11 states – FG. *Vanguard*. Retrieved November 30, 2017, from <https://www.vanguardngr.com/2017/10/monkey-pox-cases-increase-74-11-states-fg/>

See also Government of Nigeria. October 9, 2017. Press Release: Update on Suspected Monkeypox Outbreak, October 2017. *Reliefweb*. Retrieved November 30, 2017, from <https://reliefweb.int/report/nigeria/press-release-update-suspected-monkeypox-outbreak-9-october-2017>

⁵⁷ United Nations. 1990. Convention on the Rights of the Child. Retrieved November 30, 2017, from https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf f?_ga=2.154803192.1997517491.1512134727-2043350886.1512134727

considered; and whether they consider the proposed disclosure to be in the patient's best interests. Finally, what a patient and the rest of the health care team know about the patient's wishes, feelings, beliefs and values can be well-thought-out.

For instance, a physician must carefully weigh up the harm to the rights of children and young people of overriding their refusal against the benefits of treatment, so that decisions can be taken in their best interests.⁵⁸ In *Gillick v. West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security*,⁵⁹ the claimant had young daughters. She challenged advice given to doctors by the second respondent allowing them to give contraceptive advice to girls under 16, and the right of the first defendant to act upon that advice. She objected that the advice infringed her rights as a parent, and would lead to what would be an unlawful assault. It was held that the law recognises that there is a right and duty of parents to determine whether or not to seek medical advice in respect of their child, and, having received advice, to give or withhold consent to medical treatment; however, the policy was capable of being lawful. A court could correct unlawful advice given by a government department. A doctor could give such advice to a girl under 16 where she would understand it, where she could not be persuaded to involve her parents, she was likely to have sex irrespective of advice, her health was at risk, and it was in her best interests. A parent's rights of control over a child diminished as that child's understanding grew approaching adulthood.

Subsequently, in the case of *The Queen on the application of Sue Axton v. The Secretary of State for Health (The Family Planning Association: intervening)*,⁶⁰ the applicant sought declarations that (a) a doctor is not obliged to keep confidential any advice or treatment to an underage person concerning contraception, sexually transmitted infections and abortion and must therefore not provide such advice and treatment without the parents' knowledge; and (b) a document published by the Department of Health entitled 'Best Practice Guidance for Doctors and other Health Professionals on the provision of Advice and Treatment to Young People under 16 on Contraception, Sexual and Reproductive Health' ('the 2004 Guidance') is unlawful. Silber J found that, following *Gillick*, the medical profession is entitled to provide advice without the parent's consent provided that, the young person understands all aspects of the advice; the young person refuses to inform her parents and refuses to allow the medical profession to do so; the young person is likely to

⁵⁸ GMC. 2007. *0-18 years: Guidance for All Doctors*. Retrieved December 01, 2017, from https://www.gmc-uk.org/static/documents/content/0_18_years.pdf p. 15.

⁵⁹ [1985] 3 All ER 402.

⁶⁰ [2006] EWHC 37 (Admin).

have sexual intercourse; the young person's physical or mental health is likely to suffer if no advice or treatment is given; and it is in the best interests of the young person to receive such advice.

Where a patient gives his doctor permission to disclose his medical information to his parents, friends or representatives, or where there is an overriding need for a doctor to disclose his information to enable him to assess the patient's best interests, he should remember that the disclosure does not mean that the patient's parents, friends or representatives have a general right of access to the patient's records or to have irrelevant information about, for example, the patient's past healthcare.

5.1.4. Serious Threat to Public Health or Public Interest

Confidential medical care is recognised in law as being in the public interest. However, there can also be a public interest in disclosing information: to protect individuals or society from risks of serious harm, such as serious communicable diseases or serious crime; or to enable medical research, education or other secondary uses of information that will benefit society over time. Thus, personal information may be disclosed in the interest of the public, without a patient's consent; and in exceptional cases, a patient's information may be disclosed, if the benefits of the disclosure outweigh both the public and the patient's interest in keeping the information confidential, even in a situation where he/she has earlier withheld consent.⁶¹ For example, in *W v Edgell*,⁶² the patient was a prisoner in a secure hospital following convictions for killing five people and wounding several others. He made an application to a mental health tribunal to be transferred to a regional unit. An independent psychiatrist, Dr Edgell, was asked by W's legal advisors to provide a confidential expert opinion that they hoped would show that W was no longer a danger to the public, but, Dr Edgell was of the opinion that in fact W was still dangerous. W's application was withdrawn. Dr Edgell, knowing that his opinion would not be included in the patient's notes, sent a copy to the medical director of the hospital and to the Home Office. The patient brought an action for breach of confidence, and the Court of Appeal held that the breach was justified in the public interest, on grounds of protection of the public from dangerous criminal acts. However, the Court said the risk must be 'real, immediate and serious'.

⁶¹ General Medical Council (GMC). 2009. *Confidentiality*. p. 16.

⁶² [1990] 1 ALL ER 835.

Similarly, the term disclosure in favour of 'public interest' will include a single individual, hence, in *Tarasoff v. Regents of University of California*,⁶³ Prosenjit Poddar murdered Tatiana Tarasoff. Plaintiffs, Tatiana's parents, contended that only a short time prior, Poddar had expressed his intention to do so. This, they alleged, he had confided to his therapist, Dr. Lawrence Moore, a psychologist employed by University of California. They further alleged that Dr. Moore had warned campus police of Poddar's intentions, and that the police had briefly detained him, but then released him. The Plaintiffs sued for the failure to confine Poddar, in spite of his expressed intentions to kill Tarasoff, and failure to warn Tarasoff or her parents. The plaintiffs succeeded.

In spite of the balancing of public interest with private right, a doctor may be found guilty of breach of confidentiality where he fails to protect his patient's interest, and instead favours disclosure to the public. In *Duncan v Medical Practitioners Disciplinary Committee*,⁶⁴ a bus driver had undergone a triple bypass operation on his heart and then applied for a bus driver's licence. Dr Duncan was the patient's general practitioner who referred him for surgery. Dr Duncan tried to have the bus driver's licence revoked, told people in the community not to ride in his bus as it was too dangerous and complained to the police and media. It was held that telling the police, media and bus passengers that their driver had a heart condition and shouldn't drive (despite being certified fit to drive by his surgeon) was a breach of confidentiality.

In order for a doctor to play safe when faced with the challenge of disclosure, it is advisable for such to seek medical advice from senior colleagues, his health institution (hospital), or better still, the Medical and Dental Practitioners Council of Nigeria for the proper step to take. This is because 'the permissibility of breaching confidentiality depends on the details of each case.'⁶⁵ For instance, the issue of disclosure of the status of People Living With HIV/AIDS (PLWHA) looks tricky as some may argue that it is a notifiable disease of which a physician is legally bound to report to the relevant authorities in favour of public interest. However, the confidentiality of a person's HIV status is important because PLWHA face discrimination when other people find out they have HIV. Thus, the only ground on which people will get tested and treated for HIV is if there is an assurance that their HIV status will be kept private.⁶⁶ But, where a doctor is aware that a HIV-

⁶³ *Tarasoff v. Regents of the University of California*.

⁶⁴ [1986] 1 NZLR 513.

⁶⁵ Bord, J., Burke, W. and Dudzinski, M. D. 2013. Confidentiality: Ethical Topic in Medicine. Retrieved December 02, 2017 from <https://depts.washington.edu/bioethx/topics/confiden.html>

⁶⁶ AIDS Law Project of Pennsylvania. Confidentiality of HIV-Related Information. Retrieved December 02, 2017 from <http://www.aidslawpa.org/get-help/legal-information/confidentiality/>

positive patient has not informed his/her sexual partner, the former may disclose such information, however, he should tell the patient before making the disclosure, and must be prepared to justify his decision to disclose personal information without consent. Also, the information must not be disclosed to others, such as, relatives who have not been and are not at risk of infection.⁶⁷

Thus, in *Z v Finland*,⁶⁸ the defendant appealed against his conviction for manslaughter and related offences by deliberately subjecting women to the risk of being infected by him with HIV virus. The applicant, Z, had been married to the defendant, and infected by him with HIV. The applicant's doctors were required to give evidence about her medical condition in spite of their, and her, objections to the disclosure of this information, and the police seized her medical records, including laboratory tests and information about her mental state. The police copied these and the Court included them in the case file. In its holding, the court considered the making of an order for the disclosure of medical records:

In this connection the court will take into account that the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection those in need of medical assistance may be deterred, when revealing such information of a personal and intimate nature as may be necessary in order to receive the appropriate treatment, from seeking such assistance thereby endangering their own health but, in the case of transmissible diseases, that of the community. The domestic law must therefore afford appropriate safeguards so there may be no such communication or disclosure of personal

⁶⁷ British Medical Association (BMA). 2009. Confidentiality and Disclosure of Health Information Tool Kit. p. 51. Retrieved December 02, 2017 from <http://www.bma.org.uk> > pdfs > ethics

⁶⁸ (1997) 25 EHRR 371.

health data as may be inconsistent with the guarantees of Article 8 of the Convention.

Furthermore, in the case of *X v. Y*,⁶⁹ complaint was made that defendant newspapers were to publish confidential medical records of patients suffering Aids. An injunction was sought to prevent use of records given to a journalist by a hospital employee. The records related to doctors in general practice. The newspaper said it intended to do so in a way which would not allow identification of the doctors. The injunction was granted and the court emphasised the importance of confidentiality for medical health records.

Unfortunately, in Nigeria, doctors are not playing their responsibilities well when it comes to them keeping the confidential information of PLWHA private. Consequently, a female PLWHA has this to say:

Everybody in that hospital, from the doctor to the cleaner, knew I had HIV. Some of them come to my room masked, gloved, and gowned, as if HIV flies in the air. No matter their fear, I cannot forgive them for keeping me on the delivery couch unattended to for over two hours after my delivery because no one was willing to suture my episiotomy and clean my baby and me up. My mother did the cleaning, and my episiotomy was never sutured. I paid dearly with recurrent infection and heavy antibiotics. I feel very bitter about the way I was treated.⁷⁰

These horrific experiences of PLWHA in Nigeria are the direct consequences of breach of confidentiality by their doctors in their doctor-patient relationships. The major cause is the fact that there is no express legislation expressly requiring doctors to protect the confidential information of PLWHA patients. It is high time the lacuna is addressed by the Nigerian government.

6.1. CONCLUSION AND RECOMMENDATIONS

All doctor-patient relationships strive in an atmosphere of openness and trust which invariably improves patients' welfare and public health in a society.

⁶⁹ [1988] 2 All ER 648.

⁷⁰ The Centre for the Right to Health for the POLICY Project. 2003. HIV/AIDS and Human Rights in Nigeria. Background Paper for HIV/AIDS Policy Review in Nigeria. p. 19. Retrieved December 02, 2017 from <file:///C:/Users/LENOVO/Downloads/HIV%20AIDS%20articles/HIV%20AIDS%20and%20Human%20Rights%20in%20Nigeria%20.pdf>

However, the obligation of disclosure may sometimes outweigh a doctor's duty of confidentiality to his patient, for instance, where it is necessary to protect public interest or prevent harm. Thus, this paper has examined the concepts of privacy and confidentiality; the statutory framework protecting a patient's confidential information; and disclosure of a patient's information in a doctor-patient relationship. Regrettably, the statistics and few instances discussed above reflect that the principle of confidentiality is often neglected during patient care and treatment in Nigeria, and in view of this, some solutions are recommended below.

First is a call for amendment of the National Health Act to include some principles of the Data Protection Act 1998 (a UK law) on the processing of an individual's personal information by organisations, businesses and the government. It should also contain provisions that will protect the confidentiality of PLWHA in Nigeria.

Secondly, the society, that is, patients, should be educated (e.g., through governmental health awareness programmes) and enlightened about their rights on the confidentiality of their medical information, and when a doctor can be guilty of unlawful disclosure of such. People's attitude to litigation should also change. Patients whose confidentiality right have been breached should apply to the court for redress. This action will also serve as warning to other doctors to be more careful in protecting their patients' personal information and hospital records.

Conversely, physicians need a re-orientation about medical ethics generally, and duty of confidentiality particularly. For instance, they should be informed about the importance of consent forms required to be signed prior to disclosure of confidential information (which is for their own protection), and such forms should be readily accessible in hospitals. Further, in situations where a patient's consent can be dispensed with, a doctor should be trained that it is courteous to inform his patient in order to reduce the shock of disclosure of such confidence if he is totally unaware of it. Thus, if both parties are sensitized, there will be less breaches of privacy and confidential information, consequently, people's access to medical treatment and public health will improve.

Finally, another major step to be taken by the government is to provide more health institutions, especially, to those living in the rural areas; renovate existing structures of health institutions to allow for privacy whenever doctors are attending to their patients; and also provide adequate facilities for patients' treatments.