

## **MEDICAL ETHICS AND THE EXPECTATIONS OF A PHYSICIAN IN COURT: CONTINUING MEDICAL EDUCATION**

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### **ABSTRACT**

#### **BACKGROUND/INTRODUCTION**

It is the candid wish of the authors that medical practitioners at the end of this discourse will be handy with the principles of medical ethics, the modern Hippocratic Oath, differences between malpractice and negligence, practical examples of malpractice/negligence, the roles of medical and Dental Council of Nigeria and finally, the expectations and comportment of a doctor while in court.

#### **MEDICAL ETHICS (ME):**

Medical ethics broadly speaking refers to the medical oaths, rules, conducts and codes that regulate physicians' character, motives, duties and guide members of the medical profession in their dealings with one another, their patients and their states. There is hardly any branch of medicine that does not require ME. For instance, there are ethical issues that relate to:-

- Organ transplant and donations
- Family Planning / Birth Control
- Euthanasia
- Advertisement
- Stem cell and other researches
- Genetic Engineering
- Assaults (including sexual assault)

#### **MEDICAL ETIQUETTE:**

Medical etiquette on the hand refers to conventional laws and customs of courtesy observed among members of the medical profession. The rules/principles/ regulations are embodied in the Hippocratic Oath, Geneva Convention and Handbooks guiding professional practice.

#### **PRINCIPLES OF MEDICAL ETHICS**

A clear understanding of these basic principles will go a long way in reducing the incidence of medical litigations which is fast growing in Nigeria as the World becomes a global Village. These principles include the following:

#### **A: PATIENT'S AUTONOMY:**

This simply implies that a patient has the right to decide what shall happen to his/her body. Physicians should therefore respect the patient's wishes even if they appear unreasonable or stupid provided adequate information has been given to the patient before the decision was made by him/her

#### **B: RESPONSIBILITIES AND DUTIES OF PATIENTS AND PHYSICIANS:**

From the onset, it is essential to define what the duties and the responsibilities of each party are. If there is a breach of that duty of care, negligence is established. Even when the duty of care is established between the patient and a physician, the patient has the absolute right to insist on the discontinuation of treatment or referral to another physician. Medical ethics also permits a patient not to accede to the wish of the physician to initiate treatment *ab initio*. Conversely, a medical doctor is at liberty not to accept the care of a patient. However, before such a decision is taken by the medical doctor, he must ensure that there are other qualified doctors within the community where care could be assessed by that patient.

#### **BENEFICENCE**

The Physician at all times must act in the best interest of the patient. The right of the patient must always be respected.

#### **D: NON- MALAFECENCE (PRIMUM NON NOCERE)**

This describes the principles of not causing harm to the patient. Harm could be in form of killing/death, pain, suffering or incapacitation.

#### **E: HONESTY**

Physicians should be honest to their patients at all times. However, there may be need to weigh this against situational good; for example, when withholding information is appropriate for the context of culture, or when the patient's emotional or cognitive status does not encourage the physician to be absolutely honest at that time.

## F: CONFIDENTIALITY

This means a doctor keeping his interaction with patients secret. It is absolutely wrong for a physician to divulge the information about his patient to another person without the patient's consent. However, there are some exceptions:-

- When the information is required by other professionals in the management of the patient. For example, if a patient is HIV positive, the doctor is not in error if he tells the nurse who is doing daily dressing on the HIV-positive patient. In fact, it could be considered a gross misconduct where such a doctor fails to tell other members of the team the patient's HIV status.
- When it is a statutory requirement or when the court has ordered that the information be made public.
- When divulging such information is for public interest (e.g. communicable diseases).
- When it is in respect of an approved research.
- When the information is required for insurance and employment purposes
- When responding to press criticisms

## G. INFORMED CONSENT

Except in established emergency cases, it is mandatory for the physician to discuss the operative procedure or interventions with the patient and obtain consent. The potential hazards of the proposed treatment, the alternative to the proposed treatment, if any, and the likely result if the patient remains untreated should be made known to the patient before consent is obtained (Informed consent). In elective cases, consent obtained by a surgeon in the operating theatre just before the commencement of surgery will not be considered a valid consent since the patient hadn't enough time to think of the proposed treatment and make the right decision. This does not apply in emergency cases. The Physician must first decide whether the patient has the competence (defined by law-Gillick competence) or capacity (defined by physician) to give a valid consent.

The Nigerian law does not recognize consents given by the following group:

- A person below 18 years (minor)
- A person under the influence of drugs/alcohol
- Mentally retarded patients
- Demented/delirious patients.

Consent obtained from any of the above group is termed a vitiated consent.

Treating or operating a patient without consent is considered an assault in law.

- In few cases, minors (Those <18 years) can consent to treatment.

Such cases include:

- a. Treatment of sexually transmitted infections (STIs)/sexually transmitted diseases (STDs)
- b. Prescription of Birth Control
- c. Abortion (Where it is legalized)

Informed consent should apply to medical interventions, including prescriptions and not just procedures or operations. In minor interventions (intravenous/intramuscular injections, phlebotomy etc) consent is assumed to have been obtained when the patient subjects himself to treatment. However, in all surgical procedures, ensure that informed written consent is obtained.

## J. MEDICAL REASONABILITY

Medical reasonability implies that whatever you intend to do for a patient you must first consider whether a reasonable man/doctor, working under the same circumstance will do what you plan to do if he was faced with a similar situation. For example, if during myomectomy, you feel there is need to do hysterectomy, you must quickly ask yourself whether another reasonable surgeon working under the same circumstance will do a hysterectomy in that circumstance (The reasonable man's test / Bolam's test)

## J. PRINCIPLES OF DOUBLE EFFECT

This comes into consideration when a doctor administers treatment that would produce the desired result and at the same time produces an adverse effect. Such phenomenon must be clearly known by the patient before the commencement of treatment. A typical example is the use of cytotoxic drugs that could lead to alopecia and at the same time produce the required therapeutic effect. Prior to the administration of the cytotoxic, it is legally binding on the doctor to explain the adverse effect (alopecia) the patient should expect. Surprisingly, some female patients will prefer to die from the malignancy to losing their hair.

## K. CONTINUOUS MEDICAL EDUCATION

This should be taken seriously. Ignorance is not an excuse in law. Thus a doctor cannot go to court to say that he has forgotten how to manage diabetic ketoacidosis (DKA) and as such a patient should die. This will not be accepted in any way.

The list of the principles of medical ethics is inexhaustible.

## THE MODIFIED HIPPOCRATIC OATH (DECLARATION OF GENEVA)

This declaration which was adopted by the 2<sup>nd</sup> World Medical Assembly (WMA), Geneva in September, 1948 and amended by the 22<sup>nd</sup> Medical assembly,

Sydney, Australia in Aug, 1963 and the 35<sup>th</sup> WMA, Stockholm, Sweden in September, 1994 addresses most of the principles of medical ethics and good etiquette. In fact, the Hippocratic oath forms the denominator to sound clinical practice and ethics

**DECLARATION OF GENEVA**  
ADOPTED BY THE 2<sup>ND</sup> WMA GENERAL ASSEMBLY GENEVA, SWITZERLAND, SEPTEMBER, 1948 AND AMENDED BY THE 22<sup>ND</sup> WORLD MEDICAL ASSEMBLY, SYDNEY, AUSTRALLIA, AUGUST, 1963 AND THE 35<sup>TH</sup> WORLD MEDICAL ASSEMBLY-STOCKHOLM, SWEDEN, SEPTEMBER, 1994.

At the time of being admitted as a member of the Medical Profession;

I solemnly pledge myself to consecrate my life to the service of humanity, (responsibility and duties of care)

I will give to my teachers the respect and gratitude which is their due, (etiquette)

I will practice my profession with conscience and dignity; (honesty)

The Health of my patient will be my first consideration (Responsibility and duty of care);

I will respect the secrets which are confided in me, even after the patient has died (confidentiality);

I will maintain by all means in my power, the power, the honour and the noble traditions of the medical profession.

My colleagues will be my sisters and brothers; (Etiquette)

I will not permit consideration of age, disease or disability, creed, ethnic origin, gender, national, political, race sexual orientation, or social standing to intervene between my duty and my patient;

I will maintain the utmost respect for human life from its beginning even under threat and I will not use my medical knowledge contrary to the laws of humanity; (this paragraph emphasizes the condemnation of abortion and euthanasia)

I make these promises solemnly, freely and upon my honour.

### **MEDICAL MALPRACTICE AND NEGLIGENCE**

For a proper understanding of medical malpractice and negligence, it is advisable to differentiate crimes from torts. Crimes are public wrongs against the state or the public at large. In this case, the people bring action against the perpetrator of a crime. On the other hand, torts are private civil wrongs usually between individuals in which the remedy is a common law action for damages. Against this background, Medical malpractice is a tort that arises from the breach of legal duty one person owes another to act reasonably

in a way that will not harm another person or property. It should also be noted that gross medical malpractice may constitute a criminal offence. Medical malpractices are injuries or unprofessional treatments or culpable neglect of a patient by a doctor.

### **EXAMPLES OF MEDICAL MALPRACTICE**

1. Mis-diagnosis: A typical example is when a doctor failed to recognize cardiac tamponade in a 63 year old man and lack of treatment led to death.
2. Delayed Diagnosis: A typical example is when a doctor failed to make diagnosis at the right time and the delay lead to death. Diagnosis of bowel obstruction should be made early to avoid complications and loss of life.
3. Childbirth Injuries: An obstetrician fails to perform c/s in a timely manner and this resulted to series of injuries to the baby.
4. Medical Errors: Overdosing, wrong dosage, wrong prescription resulting to injury/death.
5. Surgical Errors: Puncturing internal organs, leaving surgical instruments in the abdomen, operating on the wrong part of the body etc are examples of surgical errors.
6. Anesthetic Errors: Failure to monitor vital signs, improper intubation, anesthetic overdose, etc are included in this list.

### **MALPRACTICE COULD BE IN FORM OF ANY OF THE FOLLOWING;**

- Failure of the doctor to follow usual practice in the community
- Lack of skill
- Ignorance
- Alcohol or drug abuse
- Failure to tell patients of the treatment risks.
- Lack of needed equipment, medicine or staff.

To prove that malpractice has occurred, the plaintiff must prove to the jury three basic elements. These elements are as follows:

- A. That there existed a doctor-patient relationship (that is, duty of care). A doctor is under no obligation to accept a patient; however, once a doctor accepts a patient, he/she has a duty to adhere to a certain level or standard of care.
- B. Breach of duty (negligence). To prove negligence, it must be shown that the doctor didn't conform to the standard of care. Standard of care is reasonable care provided by a reasonable doctor.
- C. Harm / Injury (Causation); Causation suggests that the doctor didn't conform to the standard of care and this led to harm. If the treatment or lack of treatment is not responsible for the injury/harm, the doctor is not liable.

## NEGLIGENCE

Is simply defined as the failure to act with the same amount of care that a reasonable medical practitioner would have acted within the same situation.

Gross negligence is considered as a criminal offence. An example of gross negligence is a patient who needed amputation of the left arm due to RTA and the surgeon looked at the chart carelessly believing he was a different patient and amputated the right arm.

## REGULATION OF THE CONDUCT OF MEDICAL DOCTORS:

Conduct of Nigerian Doctors is regulated by the Medical and Dental Practitioners Act Cap 221 Laws of Federation of Nigeria, 1990, which sets up the Medical and Dental Council of Nigeria (MDCN). The Medical and Dental Practitioners Disciplinary Tribunal and Medical Practitioners Investigating Panel for the enforcement of these rules are organs of MDCN. The status of these disciplinary bodies is similar to that of the High Court of Federal Republic of Nigeria. Thus, patients may go through the conventional court or the MDCN Disciplinary Committee. If not satisfied with the outcome, the doctor/patient could proceed to Appeal Court or the Supreme Court as the case may be. If a doctor is found to be at fault, a number of options by way of punishment would suffice;

- Admonishing the doctor
- Suspending the doctor for a period not more than 6months
- Striking off the practitioner's name from the register.

Nevertheless, Damages/ Compensations are only awarded by the conventional court. Criminal cases against a Doctor or cases of gross malpractice are usually handled by the court ab initio.

## A DOCTOR IN COURT

A doctor may appear in court because of the following reasons:-

- a. Charges of Malpractice / Negligence
- b. As an expert witness in a case he treated
- c. Communal / Domestic / Tenancy issues
- d. Land related issues
- e. Maltreatment meted on the doctor in which the doctor is seeking for a redress.
- f. Confirmation of cause of death (for example, after a post mortem examination)
- g. Others

For the sake of medical jurisprudence, a focus on the appearance of a doctor in court as a expert witness attracts as interest.

This process usually starts with the treatment and proper documentation of all the interactions / interventions given to the patient. During this phase, the use of medical jargons should be avoided. The report should be written in simple English free of ambiguity and signed by the attending doctor. Clean lines should be drawn across errors / mistakes and the use of pencils and tipex should be avoided. Medical reports are best written by the doctor who treated the patient. Medical reports are not issued to ascertain who is at fault. The essence is simply for the attending physician to identify, describe and document the type, site, severity and the circumstances that led to the sustenance of injury. The object(s) used in inflicting the injury should also be properly documented. The treatment received by the victim and the outcome of investigations must be properly documented. If the patient was referred, it is advisable to wait for the completion of treatment by the team to whom the patient was referred before issuing a medical report as the issuance of a medical report or completion of police proforma is never an emergency. Doctors should at all times resist the temptation of adding information and findings that were not observed due to pressure from patients or patients' relatives. Inclusion of cost of treatment is not a component of a good report. Always advise patients to ensure that receipts are collected for every financial transaction.

On receipt of the court summon, note the date and the court.

- Report to court early and inform the court clerk that a doctor is in court. This is to ensure that the doctor's interest is treated early.
- In court, there is no gender difference; everybody is a male (Sir/He).
- While in the witness box swear the oath and face the court. Introduce yourself on request by the court. Respond to questions asked by Chief-in-counsel (Plaintiff's Lawyer). This is called examination -in -chief. Your response must be simple and straight to the point. Next is cross examination by the defense counsel. Your response must not be ambiguous. At this point, there might be deliberate attempts to provoke you. Please do not succumb to this trap. Thereafter, the plaintiff's counsel might wish to ask further questions for clarification or to diffuse the points scored by the defense counsel. Ensure that you pick your responses as your submissions are being documented by the Magistrate/Judge. Always switch off your set once in court. Address the court heads appropriately;

- Magistrate Court - Your Worship
- High Court - My Lordship or My Lord

Medical ethics is as old as the medical profession as its main function is to ensure that physicians maintain the right conduct in the care of their patients. Medical litigations which were initially rare in Nigeria are fast becoming a popular event. As much as possible, medical litigation should be avoided. If a patient is mismanaged, it is preferable to opt for an alternative dispute resolution. The doctor should be alert at all times. Registration with the relevant bodies, timely renewal of practicing license and Medical insurance are valuable ingredients to a successful practice.

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