



ISSUES IN MEDICAL CONFIDENTIALITY AND PROTECTION OF PUBLIC INTEREST IN MEDICAL PRACTICE: CASE STUDY OF COVID 19 PATIENTS

By

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Abstract

Medical confidentiality and disclosure of information in the public interest in medical practice is always a difficult situation to manage by all medical practitioners. Hence, there is need for explicit and clear understanding of it within the context of the existing legal framework for medical practice. The paper examines legal and ethical issues of medical confidentiality as it affects medical practice and the protection of public interest in Nigeria, particularly in doctor – patient relationship. It discusses conceptual analysis of medical confidentiality in medical practice. It examines the issue of doctor – patient relationship(DPR) and how the relationship protects medical confidentiality. The study thereafter analyses the types of public interest that exists in medical practice and the protection of public interest, with cases of situations where conflict exists between the public interest and medical confidentiality especially as it relates to COVID 19 patients. The study concludes that in case of conflict between the public interest and the medical confidentiality, the former shall prevail within context of the existing rules and legal framework in medical practice.

Keywords: Medical confidentiality, Doctors, Patients, Issues, COVID 19, Medical Practice and Public interest.

1.0.

Introduction

Medical confidentiality is a fundamental principle of medical practice that ensures the protection of the rights of the patient presented to the hospital for treatment. Information about the patient should not be divulged to third parties.¹ Where such information with the medical practitioner about the patients,

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¹Olusegun, O, and Adejumo, O “Legal Prescription for Medical Practitioners, a Handbook of medico – legal Issues and Rights Protection in Nigeria” Kraft Book Limited (2023) p. 42.

including those ones in the medical records are revealed to someone other than the medical practitioners, who are not supposed to have access to such information, the medical practitioner who divulges such patient's medical information shall be civilly or criminally liable depending on the facts of the case.²The Code of Medical Ethics³ in Nigeria provides that "privileged information divulged to the practitioner in the course of treatment must not be revealed to a third party". It is important to note that failure to maintain medical confidentiality may make a patient from being hesitant to reveal private or sensitive information that may be required by the medical practitioner in order for adequate treatment to be administered on such patient.⁴ A physician has a legal and ethical duty to keep the information of relating to the medical history of the patient and not to disclose it to a third party without the express consent of the patient, unless such disclosure is allowed by law or under ethical or contractual obligations.⁵ Sometimes, health professionals may want to disregard the privacy of their patient thereby making such patient liable to a certain injury.⁶

To succeed in an action for breach of medical confidence, it must be shown to a logical conclusion by the patient that (i) that the information in the circumstances given or received was meant to be treated as confidential (ii) that the obligation to keep information confidential was breached by the doctor.⁷ The duty to maintain the confidence of the patient is not peculiar to medical doctors alone but extends to all forms of fiduciary relationships which affect, lawyers, priests, and company directors.⁸

The protection of private communication in all manners, whether in relation to the medical practice or in any other forms is well protected under the law. The 1999 constitution of Federal Republic of Nigeria made clear provision for the protection of private and family life of all the citizenry, which as a matter of fact does not preclude the right to protect the medical information of patients in medical practice.⁹ Doctor therefore has an ethical and legal duty with respect to the patient confidentiality. This responsibility of the physician to respect and keep the confidentiality of patients has been in existence since time immemorial through the Hippocratic Oath which was written in the 5th Century.¹⁰ This oath in its workings seems to be putting the medical practitioner in more trouble than ever before.¹¹ As a self-regulatory mechanism, the medical profession imposes a moral and ethical duty on its members to respect and keep the medical secret of patients.¹²

²Ibid.

³See Section 44.

⁴Sean Owens, et.al, Irish Glas Toolkit for Medical Practitioners, 2023<<http://www.icgp.ie/sp>> accessed 22nd June, 2023.

⁵Ibid.

⁶American Speech-Language-Hearing Association,<http://www.asha.org>. <practice- ethics – confidentiality> accessed 21st June, 2023.

⁷Emiri F.O *Medical Law and Ethics in Nigeria* (Malthouse Limited 2012) 354

⁸*Hunter vs. Mann* (1974) 2 All ER 44 at 47 – 48. See also *Goddard vs. National Building Society* (1963) 3 All ER 264 at 271.

⁹Section 37 of the 1999 Constitution of the Federal Republic of Nigeria Cap C7 LFN 2010 as amended in 2018

¹⁰J O Beien and C Chandler 'Confidentiality and the Duties of Care' *Journal of Medical Ethics*(2003) 36-40.

¹¹ Ibid.

¹²Ibid.

The ethical duty to keep and respect the medical confidentiality of a patient is copiously contained in the Hippocratic Oath, both the Old and the Modern version to the effect that whatever doctor hears or sees in the course of the treatment or even outside the treatment with respect to the life of men i.e. patient, which on no account must not be spread to a third party or any other person, must be kept to the mind of the doctor thereby holding such information a shameful act to be shared or spread.¹³ In other words, the doctor is under the ethical duty to keep such information as secret to himself. However, the General Medical Council (GMC) in its struggle to publicise new guidance for medical practitioners was challenged with legal actions by patients' group on the ground that its new guidance for protecting the medical information of a patient was too flexible in relation to its usage by General Practitioners (GP), and other doctors thereby undermining patients' trust in the confidentiality of medical records.¹⁴ The final guidance which requires doctors to seek consent where applicable and to inform patients about the use of data, was greeted with anger by researchers, epidemiologists, and doctors working in public health, whose fear was that it would damage research and epidemiology.¹⁵ The issues relating to medical confidentiality is that it is rarely challenged with all the ethical and legal provisions in the statutes guiding its protection.¹⁶ This was an issue accepted by doctors and patients as the thrust of the relationship between them.¹⁷

It should be noted that various existing statutes have given rights to privacy and protection of confidentiality to patients. In Britain, it is sacrosanct to respect the right to private life.¹⁸ Public interest may however, override this right.¹⁹ In the United Kingdom, there are certain laws that protect the right of individuals in terms of access to their data, access to know the data and the use of it and control of the data in various situations.²⁰ Under the common law, it regarded all the medical information obtained from the patients as secret that must be kept and the common law gave the same recognition to certain disclosure of data.²¹ It has been argued vehemently that patient confidentiality is an absolute issue which absolutism should not be broken in any manner.²² To prevent the patient from being harmed, there is need for proper understanding of patient confidentiality which is an essential medical and ethical issue so as to prevent a third party from causing needless harm on the patient.²³

Doctors are to note that they are not to disclose patient's personal information by virtue of the relationship that exist between them without obtaining the patient consent.²⁴ But it may be difficult to obtain such a consent where a patient suffers certain impairment or condition that would make the patient lack the capacity to

¹³The Modern Oath of Hippocrates, <http://www.imagerynet.com/hippo.original/> accessed 23rd June, 2023.

¹⁴General Medical Council "Confidentiality Protecting and Providing information", London. (2000)

¹⁵Peterson, A.E, 'Consent to cancer Registration and unnecessary Burden' *British Medical Journal* 32 (2001) 1130

¹⁶Ibid.

¹⁷Ibid.

¹⁸Article 8 American Human Right Act.1998

¹⁹Ibid.

²⁰General Data Protection Regulation Act and Human Rights Act, 1998. See also Data Protection Act 2018.

²¹J O Brien, and C Chandler (n 10) 148

²²O O Crook, 'The risk of absolute medical confidentiality' *Science Engineering Ethics* (2013) 107

²³Ibid, 109

²⁴Ibid.

grant the consent.²⁵ A difficult situation may arise where a patient is unfit to give adequate consent to the necessary treatment required for him or her, may be due to immaturity, illness and mental incapacity, in which efforts had been made to persuade the patient but was aborted.²⁶ But where the disclosure of the information is in the patient's medical interest, such information may be divulged to a particular person or authority, all to serve the interest of the patient.²⁷

Sustaining the public interest while ensuring that medical confidentiality is protected is a herculean task that usually results in conflict which must always be resolved one way or the other. Therefore, patient personal information may be obtained either because it is required by law or due to the need of that information for the interest of the public. Therefore, to determine which of the interest will prevail between the patient medical confidentiality and that of the public interest underline the essential of the existing exceptions to the general rule of disclosure of patient confidentiality in medical practice.²⁸

The concept of confidentiality makes it explicit that patient personal medical information must not be disclosed to a third party, and such third party may include but not limited to a solicitor or a police officer. This is however subject to the following;

- a. the patient's express consent or
- b. is required by law or
- c. is in the public interest that the information is to be disclosed.

However, it has been argued by the parliament that protection of confidentiality of patient medical records must be given more protection over the prevention and investigation of serious crimes.²⁹ But where a doctor decides to cooperate with the police authority as a matter of public duty and responsibility, such a doctor may produce such a medical record, only under the condition that the physician is ready to defend the production of such medical record before the court of law.³⁰ Unlike the disclosure being compelled by the legislation, the disclosure of patient medical secret can be compelled by the court of law which can be either by document production or during evidence and cross examination of a party to an action.³¹

It is a general knowledge that in the bid to protect the medical confidentiality of a patient as against the public interest, thereby creating a clash situation between the physician and the public interest.³² Where such clash or conflict arises a

²⁵National Health Scheme United Kingdom, 'Overview Consent to treatment' <<https://www.nhs.uk/conditions/consent-to-treatment/>> accessed 23 June, 2023.

²⁶Marc Stauch, M and Kay Wheat B "Source Book on Medical" Cavendish Publishing Limited (1988) p.23

²⁷Ibid, 23

²⁸O O Crook (n 22) 148

²⁹*R vs. Cardiff Crown* (1993) 16 BMLR 76 at 80

³⁰*R vs. Singleton* (1995) 1 Cr App. R 431, (1995) Crime LR. 236

³¹ Mason et al, Law and Medical Ethics (6th Edn Butterworth (UK) (2002) p. 239

³²Ibid, 240

regard or preference is expected to be given to the public interest regardless of the opinion of the patient about such disclosure.³³ This is because public interest is for the entire people in the public which needs to be well guided and protected over and above the particular interest of an individual in the society.³⁴

2.0. Conceptual Analysis of Medical Confidentiality

The various text books and legislations have given vivid conception about the medical confidentiality for adequate understanding. The term ‘confidential information’ conceptually refers to any kind of information between the patient and the doctor which reveals something of a private nature with respect to an identifiable particular person.³⁵ A legal duty exists when a person gives information to someone in such a circumstance that it is reasonably expected that such information will automatically be kept secret.³⁶ The duty to keep such information secret starts when a doctor starts to receive such information until the time he starts to make use of such information, store such information, share it and till he gets rid off it, which definitely applies to spoken and written information.³⁷

According to the British Medical Council, medical confidentiality is said to be “*the legally protected rights afforded to and duly required of a specially designed health care professional not to disclose information discerned or communicated during consultation with patients*”³⁸

It may be referred to certain secrecy with respect to medical information that affects the patient.³⁹ Some other authors are of the opinion that it is mandatory for a doctor to keep the medical secret of the patient even though such medical information is not absolute as there are certain limitation to its disclosure.⁴⁰ Such authors opined that medical confidential nature must be traced to the Hippocratic Oath which stated that “*all that may come to my knowledge in the exercise of my profession ...I will keep secret and never reveal*”.⁴¹

Trust is very important in the issue of medical confidentiality to the extent that if the medical information is not well protected, the patient may not believe in the physician such that the doctor – patient relationship would be diminished.⁴² By this, the patient would not be willing to share sensitive information that may impact on their care with the physician.⁴³ But a doctor will not be liable in doctor –patient relationship, where the medical disclosure is permitted by the patient or

³³Ibid, 241

³⁴Ibid p. 241

³⁵Patient Confidentiality – Your Role and Responsibility <<http://www.nhsaa.net>> accessed 27 June, 2023.

³⁶Ibid.

³⁷Ibid.

³⁸Stedman, D.H, *Medical Dictionary for the Dental Professional* (Cambridge Press, United Kingdom 2009) p. 5

³⁹Saunders, E *Saunders Comprehensive Veterinary Dictionary* (Elsevier Press, United States of America, 3rd edn 2007) 45

⁴⁰ P.N Kassim, ‘Law and Ethics Relating to Medical Profession’ (International Law Book Services, Laser Press Retalling, Jaya. Malaysia 2009) 46

⁴¹Ibid, 48

⁴²Jessica, W.B and Birke, W “Confidentiality Ethics in Medicine” (University of Washington School of Medicine, 2003) 107

⁴³Ibid, 108

the court of competent jurisdiction allowed the disclosure or the disclosure is meant to protect the interest of the public.⁴⁴

On the other hand, while the keeping of the medical information is central to the protection of the trust in the doctor – patient relationship with the patient, the main focus in this regard is to enhance or improve the welfare of the patient in all situations.⁴⁵ There is communal consideration on the issue of protection of confidentiality as the purpose of the confidentiality is not only to guard the interest of the public but to protect it as well without any prejudice.⁴⁶ But the inability to ensure this kind of obligation of protecting the public interest may lead to inappropriate treatment for the patient.⁴⁷ In the United Kingdom, the British Medical Council (BMC) has strongly warned the medical practitioners against the effects of violating the medical information of the patient and compare it to the destructive effects it would have on the professional relationship between the doctor and patient which may jeopardise the trust reposed by the public in keeping confidentiality.⁴⁸

Under the common law of England, the conceptualization of medical confidentiality has been predicated on the principle that a responsibility of confidence is when one person who has the custody of the medical secret of a patient makes disclosure to another person i.e. a patient to a doctor, in such a situation where the information was expected to be confidential.⁴⁹ Incidentally, there has not been on record, whether under common law or any other legislation, a situation whereby a criminal conviction was sustained for breach of rules of medical confidentiality.⁵⁰ But there were situations of civil claims against the issue of negligence in which several damages were awarded by the court.⁵¹

The keeping of medical records is highly essential in medical practice. Hence, the foundation of the legal elements of health records is medical confidentiality.⁵² The kind of information shared with a doctor is not the real issue but the capacity to ensure such information is kept private.⁵³ There are so many situations of breaches in clinical practice with respect to the breaches of confidentiality as a result of negligence, indiscretion or sometimes intentional

⁴⁴Section 6 National Health Act, 2014 (Act No. 8 2014)

⁴⁵Blightman, K “Patient Confidentiality: When can breach be justified? *Oxford Academic Journals* (2014) 14(2) 53

⁴⁶Ibid, 54

⁴⁷X vs. Y (1992) 3 BMR 1

⁴⁸British Medical Association Confidentiality and disclosure of health information tool kit (2009) December <<http://bma.org.uk/practical-support-at-work/ethics/confidentiality-tool-kit>> accessed 8 July, 2023.

⁴⁹Department of Health Confidentiality: NHS Code of Practice, 2010. Supplementary Guidance: Public Interest Disclosures <http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@en/@ps/document> accessed 8 July, 2023.

⁵⁰Cornelius vs. Taranto (2001) BMR 62.

⁵¹Ibid.

⁵²Adeleke I, et al “Knowledge, attitude and practice of confidentiality of patients’ health records among health care professional at Federal Medical Center, Bida Niger” *Journal of Medicine* (2011) 20(2) 229

⁵³Ibid, 230

jeopardise of a duty inherent in the relationship between the patient and the doctor⁵⁴

In Nigeria, protection of medical secrets of patient is as important as the patient in the treatment procedures in medical practice. No matter the situation, no doctor is allowed, just as contained in Hippocratic oath, to disclose the medical confidentiality of the patient to a third party because such information is privileged.⁵⁵ This is both the legal and ethical duties already sworn to by the medical practitioners.⁵⁶ The duty is not absolute as the duty allows for disclosure of information which otherwise would have been confidential under necessary situation.⁵⁷ Within the Nigeria context, medical privacy refers to privacy in the health care industry which is the conscious protection of medical history of a patient from any form of disclosure of any or all the personal health data, in any form, belonging to the patient.⁵⁸ Here, it is a form of restriction placed on the use of information obtained from a patient.⁵⁹ This allows for free expression of autonomy by patient in the manner that the patient will have the right to choose the particular medical personnel that may have direct access to a particular medical information, on one hand, and equally choose who will be privy to the medical secret of the patient.⁶⁰

3.0. Doctor – Patient Relationship (DPR) vis –a- vis Medical Confidentiality

The core element that is so important in medicine and medical practice is the issue of doctor – patient relationship (DPR).⁶¹ DPR arises in a situation where the physician attends to the medical need of the patient either through check-ups, diagnosis, and treatment in manner agreed to be administered.⁶² As a result of this relationship, the doctor is under obligation to carry out the treatment on the patient.⁶³

The idea of medical confidentiality as it relates to doctor –patient relationship has its origin from the common law of England well established based on ethics and not law since the time immemorial of the Roman Hippocratic oath taken by physicians.⁶⁴ The issue of medical confidentiality is not restricted to what patient may disclose to the doctor, it extends to those independent conclusion, which usually is based examination or assessment of patients by doctor.⁶⁵ Medical confidentiality in relation to doctor – patient relationship (DPR) covers all the medical records which includes, x –rays, lab reports, etc. with all the

⁵⁴Masresha Derese Tegegne, et al “Health Professionals’ knowledge and attitude towards patient confidentiality and associated factors in a resource-limited setting: A cross – sectional study” *MBC Medical Ethics* (2022) 23, 4

⁵⁵Okeke M, “Medical Practitioners’ Duty of Confidentiality in Nigeria: The Legal perspective” SSRN: <<https://ssrn.com>>accessed 9 July, 2023.

⁵⁶Ibid.

⁵⁷Section 26 Nation Health Act (Act No.8 2014)

⁵⁸Adeleke I.T, Adekanye A.O, Adefemi A.O, et al “Knowledge, Attitudes and Practice of Confidentiality of Patients’ Health Records among Health Care Professionals at Federal Medical Center, Bida” *Nigeria Journal of Medicine* (2011) 20 (2), 228

⁵⁹Ibid.

⁶⁰Ibid.

⁶¹Yolanda, S “Doctor – Patient Relationship” News Medical Life Sciences <www.news-medical.net>accessed 9 July, 2023.

⁶²Ibid.

⁶³Ibid.

⁶⁴Masresha Derese Tegegne (n 54).

⁶⁵Ibid.

communication between patient and communication between the patient and other professional staff working with the doctor.⁶⁶

The relationship between doctor and patient is usually essential for the smooth enjoyment of adequate care. Without this, patient may be under serious threat of good medical care. It is the interpersonal interaction between the patient and physician that entrenches the duty of care on the patient by the doctor.⁶⁷ The situation of real doctor – patient relationship is a situation when a doctor is readily available to attend the need of a patient most importantly with the consent of the patient.⁶⁸

In relating medical confidentiality to doctor patient relationship, it is a requirement which prescribes that the privacy of the patient must be ensured without any access of such information to the third party.⁶⁹ Therefore, confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed by the physician under any condition.⁷⁰

However, looking at the complexity in managing the various information at the physician's disposal, it has been argued that there is herculean challenge faced by doctor in ensuring the sanctity of keeping such medical records. Hence, there is the need to redefine the principle of confidentiality in relation to the doctor – patient relationship in the twenty – first century.⁷¹ Confidentiality is therefore a principal concern in relationships between patients and medical professionals and trainees, medical research and participant recruitment and pharmacy records.⁷²

4.0. Public Interest in relation to medical confidentiality

Public interest to be treated as an overriding consideration for disclosure of medical confidentiality is an issue that must be properly examined within the context of various existing legal and ethical framework.⁷³ It is important to note these legal and ethical framework in relation to the provisions of common law with respect to medical confidentiality and the various exceptions created thereto under General Medical Council for example.⁷⁴ There are similar exceptions created in other jurisdictions as well.⁷⁵ According to General Medical Council, public interest is said to be:

⁶⁶Ibid.

⁶⁷Longnecker, J.F “Doctor – patient communication: A review” *The Ochsner Journal* 10 (2010) 1 p.38

⁶⁸Patient – physician relationship, American Medical Association accessed on the 9th day of July, 2023

⁶⁹C Kamma, “What is the confidentiality clause between a patient and doctor? Experts Answer” *Indian Express Journalism of Courage E paper* (2023) <www.indianexpress.com> accessed 9 July, 2023.

⁷⁰Ibid.

⁷¹Marley E. Burn, “Defining the limits of Confidentiality in the patient – physician Relationship” *AMA Journal of Ethics* 14 (2012) 9, 685

⁷²Ibid.

⁷³S Paul, ‘Confidentiality and public interest disclosure: A framework to evaluate UK healthcare professional regulatory guidance’ *Sage Journals, Medical Law International*, (2022) 22 (1) <www.journals.sagepub.com> accessed 12 July, 2023.

⁷⁴Ibid

⁷⁵Section 6 National Health Act, 2014 (Act No. 8 2014)

*...there can be a public in interest disclosing information if the benefits to an individual or society outweigh both the public and the patient's interest in keeping the information confidential...such as from serious communicable diseases or serious crime.*⁷⁶

Also, the Department of Health Code of Practice in the UK that contains the supplementary Guidance clearly states:

...exceptional circumstances that justify overruling the right of an individual to confidentiality in order to serve a broader societal interest. Decisions about the public interest are complex and must take account of both the potential harm that disclosure may cause and the interest of society in the continued provision of confidential health services.⁷⁷

The National Health Act of Nigeria provided to the extent that all information concerning a user, including information relating to his or the health of the status of that person, or the one that really concerns the treatment or even the actual one that concerns the actual stay in a health of any kind of health establishment is and must be treated as confidential.⁷⁸ However, the Act provides for few exceptions:⁷⁹ ‘...no person may disclose any information contemplated in subsection (1) unless;

- a. the user consents to that disclosure in writing
- b. court order or any law requires that disclosure; or
- c. in the case of a minor with request of a parent or guardian; and
- d. in the case of a person who is otherwise unable to grant consent upon the request of a guardian or representative
- e. on disclosure of the information represents a serious threat to public health

The Act in the marginal note specifically provided for the access to health records⁸⁰ and access to health records by health care provider with certain exceptions.⁸¹ The first provision provided that a health 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 except:

- ‘...a. treatment with the authorisation of the user; and
- b. study, teaching or research with the authorisation of the user, head of the health establishment concerned and the relevant health research ethics committee’.⁸²

⁷⁶General Medical Council ‘Confidentiality: Good Practice in Handling Patient Information’ <<http://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality>> accessed 12th July, 2023.

⁷⁷Department of Health, ‘Confidentiality: NHS Code of Practice – Supplementary Guidance: Public Interest disclosure, 2010’ <http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/200147/confidentiality-NHS-code-of-Practice-Supplementary-Guidance-on-Public-Interest-Disclosures> accessed 12th July, 2023.

⁷⁸Section 26 (1) of the National Health Act (No.8) 2014

⁷⁹Ibid. Section 26 (2)

⁸⁰Ibid. Section 27

⁸¹Ibid. Section 28

⁸²Ibid. Section 28 (1)

2. 'If the study, teaching or research under section (1) (b) of this section reflects or obtains no information as to the identity of the user concerned, it is not necessary to obtain the authorisation contemplated in that section.'⁸³

5.0. Cases of Conflict between public interest and medical confidentiality and which one prevails in cases of conflict.

The issue here is that there are certain situations that may arise in which keeping medical information of a patient may be detrimental to the interest of the public to the extent that if such disclosure is not allowed, it will occasion danger on the public. The following is the general likely circumstances medical confidentiality can be disclosed regardless of the general rule of the sanctity of the medical confidentiality. Sections 26 (1) and 27 of the National Health Act, 2014 provides for the right of medical confidentiality of a patient.

The right in the above section is however not absolute right, but a qualified right, this is because there are other circumstances under which the right of confidentiality can be breached. These are circumstances captured as exceptions to the general rule of medical confidentiality. These exceptions are itemised under subsection 2 of section 26. The subsection provides that:

Subject to the provision of section 27 of the Act, no person may disclose any information contemplated by Subsection (1) except as follows:

- a. With patient consent – it has been said that with the existing public interest, where the patient expressly permitted or legally authorised surrogate decision maker makes a decision on his behalf, such persons include but not limited to parent, guardian or other designated individuals for that purpose by the directive of the doctor, there shall be a disclosure of the medical information of such a patient.⁸⁴
- b. With court order – where an order of court of competent jurisdiction is given for the purpose of release of the medical information of a patient, such information must be divulged subject to such court order, only that the order must be have been issued by a judge and a response to a subpoena.⁸⁵
- c. For continued treatment of a patient –The information about the health of a patient may be released for the purpose of continued treatment of such a patient. This is however limited by the rule of limited disclosure.⁸⁶
- d. In compliance with the existing statutes – Medical information of a patient may be revealed if the situation warrants a quick response to certain mandatory reporting statutes for example child abuse, law enforcement or administrative agency investigation, business operations and other such lawful purposes.⁸⁷
- e. For the purpose of communicating a threat – where a threat is likely to emanate from the patient which is in form of doctor's duty to protect others from the violence by a patient, the medical information can be revealed. This is the principle expounded in the Tarasoff case where the supreme court held that

⁸³Ibid. Section 28 (2)

⁸⁴Philip Merideth, MD "The Five C's of Confidentiality and How to Deal with them" Journal of National Library of Medicine (2007) 4(2) 28

⁸⁵Ibid.

⁸⁶Health Insurance Portability and Accountability Act of 1996

⁸⁷Philip Merideth(n 84) 29

doctors who are in charge of treatment of patient with mental health are under obligation to ensure the protection of any individual who is being threatened with bodily harm by a patient.⁸⁸The health professional in this regard may carry out this responsibility by getting the police authority informed or by warning the intended victim or by taking any other reasonable steps with a view to ensuring the protection of the threatened individual.⁸⁹

Therefore, where the totality of the interest of the public to be protected extremely outweighs that of an individual or group in protecting medical confidentiality, the public interest shall be given consideration.⁹⁰

An example of disclosure in cases of public interest is in situations of infectious or communicable diseases where people would have to be protected from contracting such diseases. Appropriate authorities would thus have to be informed that the patient has been diagnosed with such disease so that further actions like contact tracing, quarantine and treatment can be taken. However, a breach of the duty of confidentiality will only be justified if the information is divulged to the relevant and responsible statutory body and not to mere random third parties.⁹¹Furthermore, Rule 44 of the Code of Medical Ethics states that while making disclosures in respect of communicable diseases, data can be anonymised where unidentifiable data will serve the purpose and disclosures can also be kept to the minimum.

Relating Discussed Exceptions in Medical Confidentiality to cases of COVID 19 patients in Nigeria.

From the above discussion, it is safe to state that disclosing name of COVID-19 patients⁹² can be justified in certain circumstances. The first of such circumstances is where the patient consents to the disclosure. The second is where a court ordered for such disclosure or there is a law that provides for it. The third situations are where the consents of the minor or incompetent adults were obtained via their representatives. The fourth circumstance is where the disclosure is to prevent the public against any risk.

⁸⁸*Tarassof vs Regents of the University of California* 17 Cal. 3d 425, 551 P.2d 334, 331 Cal Rptr.14 (Cal. 1976)

⁸⁹*Ibid.*

⁹⁰General Medical Council 'Confidentiality: Good Practice in Handling Patient Information' <<http://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality>> accessed 12 July, 2023.

⁹¹Emiri F.O, *Medical Law and Ethics* in Nigeria, (Lagos, Malthouse Press Limited, 2012), 358; see *Duncan v Medical Practitioners Disciplinary Committee* (1986) 1 NZLR 513 NZ.

⁹² Coronavirus disease (COVID-19) is an infectious disease caused by the SARS-CoV-2 virus. Most people infected with the virus will experience mild to moderate respiratory illness and recover without requiring special treatment. However, some will become seriously ill and require medical attention. Older people and those with underlying medical conditions like cardiovascular disease, diabetes, chronic respiratory disease, or cancer are more likely to develop serious illness. Anyone can get sick with COVID-19 and become seriously ill or die at any age. See www.who.int/health-topics/coronavirus accessed 31 July 2023

Due to the current situation the world found itself, the categories of exceptions that will permit the disclosure of the confidentiality of COVID-19 patients are : (a) where the order of court or written legislation permits it, and (b) where the disclosure will prevent public harm.

In subsection (b) of section 26 of the National Health Act, 2014, the law provides for situations under which the confidentiality of a COVID-19 patient can be disclosed by the order of court. The proviso empowers the court to order for the disclosure of confidentiality of a patient where circumstances demands. However, while it is clear that the Act did not specify circumstances under which the identity of a patient could be disclosed by the court; in such situation it is the public policy and public interest that will guide the discretion of the court in granting such orders. Therefore, where a patient has severe communicable disease and is posing risk to others, the court may, grant such orders divulging his confidentiality when called upon to do so by appropriate authorities.

On the second leg of the exception the law provides that where any statute specifically provides for disclosure of medical confidentiality, the disclosure will be valid in the eyes of the law. Some of the laws that regulate the disclosure of confidentiality are section 26(2) (e) National Health Act, 2014 and section 22(3) of the Statistics Act, 2007 CAP S 10 LFN, 2004.

The National Health Act, 2014, in section 26(b) provides for the disclosure of confidentiality.

These statutory authorities will apply in a situation in which a COVID-19 patient escaped quarantine and got diffused in the public. In this situation, the identity of such person can be revealed in order to save others. In the same vein, where such persons has been apprehended as an offender and will be prosecuted, his name shall be disclosed before the court of law. It is in compliance with this position that section 22(3) of Statistics Act, 2007 provides that confidentiality of an individual can be breached where he is to be prosecuted for any unlawful act.

Disclosure in the interest of public health is another very important exception to the privacy of COVID-19 patient. This is in agreement with the principle of no harm in health law. Global communities have been attributing the origin of COVID-19 to China because it failed to disclose certain information to WHO (World Health Organisation) on time. The basis of disclosure is to forewarn the public from coming into contact with any infected person. This appears to be necessary measures with states who are having their first index case. Such disclosure may sometimes put the public on red alert to be more sensitive to the reality of Covid 19. It also helps in dispelling the superstitious and reckless worldview that COVID-19 is unreal and that it is a big man disease”. ” Intuition and instinct, naturally call for quick actions in such circumstances.

The Code of Medical Ethic, 2008 which also provide for confidentiality of patients under Section 44, states that doctors should do anything professionally competent to preserve the confidentiality of their patients. However, Rule F of section 44 of the said Code of Ethics, 2008 provides for” discretionary breach of confidentiality to protect the patient and the community” from imminent danger.

In a situation where a COVID-19 patient who was in quarantine, escaped from detention and got diffused into a healthy population, declaring his identity will be of immense help in protecting the public from danger. This will also help the public to assist the law authorities in apprehending such a person. In health law where the privacy of individuals is likely to impact negatively on the public, such privacy will be breached in public interest. Some of the cases buttressing this fact are of W.V Egdell (1984) 2 ALL ER 417 (CA) and R V Crozier (1990) 1 ALL ER 649.

The Code of ethics governing medical laboratory scientists in Nigeria also has a rigid legal regime in protection of medical confidentiality because the law didn't envisaged public health as a ground upon which medical confidentiality can be breached. Section 22 of the Rules of Professional Conduct of Medical Laboratory Scientists, 2018 states that all Laboratory Scientists should uphold confidentiality of their clients or patients. Subsection 3 of section 22 only provides for the consent of the patient, prevention of the patient from committing crime, request by court order and prevention of to the scientists as the only grounds for divulging the confidentiality of a patient/client.

As regards COVID-19, since the law governing medical laboratory science does not include " public health" as ground for breaching medical confidentiality. The only situation allowed for divulging patients' privacy is where he commits crimes such like cases of COVID-19 patients who, evade quarantine. This development is now becoming a popular trend in Nigeria where persons suspected to be COVID-19 patients are running from being quarantined. In such situations, divulging their confidentiality will prevent them from committing a crime.

Associated with public interest, is the fact the medical confidentiality of patients can be disclosed in order to protect even their family members from infection. The security of such a family is another reason where medical confidentiality may be breached.

6.0. Conclusion and Recommendations.

The paper has examined the various issues about the subject matter of medical confidentiality vi-a-vis the public interest. This paper has given further understanding to the existing exceptional situations where the rule of protecting medical information can be relaxed especially as it relates to COVID 19 cases and patients This has equally justified the serious need by the various authorities in medical industry to ensure the medical data and information are well stored in the computer system. For example, the Federal Government of Nigeria has mandated all the public health institutions to begin the process of automation of all medical records with a view to ascertaining their certainty and to ensure they are well protected

Giving the interest of the public a priority in cases of medical confidentiality will remove any sense of selfishness of interest on the part of the individual patient and place the need for such information at the overall interest of the generality of the people.

The position of this paper in respect of COVID-19 patients is that while the medical confidentiality of patients is a private right, it is however still subject to public safety, public health and public morality. The current trend of COVID-19 therefore necessitates more emphasis being laid on the compelling public interest. There is therefore the need to give better and greater attention to public health rights than personal rights of individuals in cases of health emergencies like Covid-19. Therefore medical confidentiality may be a privilege and not a right in COVID 19 cases, considering the overwhelming interest of public safety.