Overview of the Legal Requirement of Informed Consent Within the Doctor Patient Relationship in Nigeria.

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(LLM) Degree

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Certification Page.

This is to certify that Noah O. SULAIMON with LCU/PG/005024 carried out this research work titled "Overview of the Legal Requirement of Informed consent Within the Doctor Patient Relationship in Nigeria" in the faculty of Law, Lead City University Ibadan, Oyo State, for the award of master's degree under my supervision in law and that this has not been previously submitted.

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Dedication

This thesis is dedicated to God Almighty, to the vulnerable patients, students who will come across this publication.

Acknowledgment.

I am profoundly thankful to God Almighty for the continuous gift of knowledge, wisdom, love, mercy, grace, and protection throughout the course of this work.

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I take the responsibility, for any error individually should there be any error in this thesis.

Abstract.

This research delves into the critical importance, legal and ethical necessity of consent and informed consent in the doctor-patient relationship in Nigeria. It explores the ethical and legal foundations, the significance of patient autonomy, and the implications of informed decision-making. In the realm of healthcare, the doctor-patient relationship stands as a cornerstone of trust, communication, and shared decision-making. Central to this dynamic alliance are the principles of consent and informed consent, which hold profound implications for ethical healthcare practices. This research embarks on a comprehensive exploration of the role of consent with emphasis on informed consent within the doctor-patient relationship, with a particular focus on the critical significance of informed consent as a legal requirement. Looking into the ethical, legal, and practical dimensions, this study illuminates the bulk of obligations, responsibilities, and benefits that underpin the concept of consent in modern healthcare. By analyzing historical contexts, legal frameworks, ethical considerations, communication dynamics, and patient outcomes, this research seeks to provide a holistic understanding of the necessity of consent and informed consent in the doctor-patient relationship. The findings of this study contribute to the ongoing discourse on healthcare ethics, emphasizing the fundamental importance of consent as a bedrock principle in promoting patient autonomy, ethical healthcare delivery, and patient-centered care.

Keywords: consent, informed consent, doctor patient relationship, legal, healthcare

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Slater v Baker & Stapleton 95 Eng. (1767) 860, 2 Wils. KB 359.

List Of Abbreviations.

1. CFRN – Constitution of the Federal Republic of Nigeria.
2. IC – Informed Consent.
3. MDPA – Medical and Dental Practitioners Act.
4. NHA – National Health Act.
5. NHIAA – National Health Insurance Authority Act.
6. UDHR – Universal Declaration of Human Rights.

Chapter One

1.1 Background to The Study

The doctor-patient relationship is fundamental to the practice of medicine, built on trust, communication, policies, regulations, and ethical principles.[1] Central to this relationship is the concept of consent, an expression of patient autonomy that empowers individuals to make informed choices about their healthcare.[2] Informed consent, in particular, ensures that patients have a thorough understanding of proposed treatments, potential risks, and alternatives.[3] According to Mills, a fully capable adult with sound mental faculties has complete control over their body and mind and cannot be dictated to how he uses his body or what kind of treatment to be administered on him.[4] Black's Law Dictionary describes informed consent as 'a person's agreement with a recommended medical procedure with full knowledge of the risk involved and the alternatives.[5] It is the patient's consent that gives the mandate for any form of treatment or procedure to be administered on him, every person has the right to this pivotal decision.[6] The consent required in medical cases is of very high standard, failure to obtain relevant consent will lead to liability of the practitioner irrespective of his good intentions, It's comparable to the consent mandated by international human rights instruments pertaining to indigenous rights.[7]

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[1] T. Thirumoorthy, 'Consent in Medical Practice 1: Understanding the concepts behind the practice' SMA center for medical ethics and professionalism <https://pubmed.nbci.nim.nih.gov/12645612/> accessed October 16, 2023

[2] J.P. Olejarczky 'Patient Rights and Ethics' (2022) https://www.ncbi.nlm.nih.gov/boks/NBK538279/ accessed 2 December 2023

[3] S. Creed 'Understanding Informed Consent' The medical independent (April 19, 2021) 22

[4] John S. Mills *on Liberty* (Ontario Barouche Books Limited, 2001) 13

[5] Black's Law Dictionary' (8th Edition. St Paul M.N USA) 323.

[6] Ibid

[7] J Martinez-Cobo, 'Study of the Problem of Discrimination against Indigenous Populations', UN Doc. E/CN.4/Sub.2/1986/7/Add.4 paras 379 2004) 3; *J Anaya Indigenous Peoples in International Law (Oxford University Press.*

Free, prior, and informed consent is required.[8] If voluntariness of consent is questioned, the validity of the so-called free consent is affected because free implies that consent obtained by compulsion or manipulation is invalid.[9]

This research seeks to examine the legal requirement of informed consent within this relationship, considering their ethical, legal, and practical dimensions in Nigeria. Picture, for a moment, the vulnerability of an individual who enters the halls of a healthcare institution, entrusting their well-being, and indeed, their very life, into the hands of another. This is an act of extraordinary faith, a leap into the unknown, where the healer becomes a guardian of both body and soul. In this moment, consent emerges as a beacon, guiding the way through the medical decisions, treatments, and interventions. It transforms into informed consent and illuminates the path towards healthcare choices rooted in understanding, autonomy, and shared responsibility. However, several pressing issues and challenges exist within the realm of consent and informed consent that require careful consideration. There is notable variability in how healthcare institutions and professionals approach the process of obtaining consent. This inconsistency raises concerns about the adequacy and uniformity of information provided to patients, potentially compromising the quality of decision-making into a passive participation of patients or forced decision making.

Patients from diverse linguistic and cultural backgrounds, as well as those with limited health literacy, may face significant communication barriers during the consent process, this can impede their capacity to comprehend the information presented and make informed choices most

[8] L B Fontana, J Grugel, 'The Politics of Indigenous Participation through "Free, Prior, Informed Consent": Reflections from the Bolivian Case,' (2016) 77 World Development 249 at 250.

[9] United Nations Development Group Guidelines on Indigenous Peoples Issues (U.N. Development Group Publication 2008)13; 'Preliminary Working Paper on Free, Prior and Informed Consent of Indigenous Peoples in relation to Development affecting their Land and Natural Resources' Submitted by Antoanella Lulia Motoc and the Tebtebba Foundation, UN DOC. E/CN/4/Sub.2/AC.4/2004/4 para. 20.

times. Patient who is not literate in the language of explanation by the practitioner will be disadvantage, however, there is always a requirement that the consent form in cases where it is written be signed by a witness, who attest to the fact that the document is well understood by the patient, one may therefore argue that this will cure the subject of literacy, but it does not. Vulnerable populations, including minors, the elderly, mentally incapacitated persons and individuals with cognitive impairments, may require specialized approaches to consent. Safeguarding their rights and ensuring they can provide informed consent presents unique challenges as well as upholding the best interest principle in cases where some of the above-mentioned person may not by law have the capacity to consent to medical procedure, thus, the medical professional's oath is to protect the patient's best interests; nevertheless, this notion frequently clashes with the need for permission.[10]

Advances in medical technology and treatment options have introduced intricate ethical dilemmas, such as those surrounding experimental therapies, genetic testing, and end-of-life decisions. Addressing these new challenges requires a nuanced approach to informed consent.[11]

The legal and ethical framework governing consent and informed consent is continually evolving in almost all jurisdiction this is because the concept of human rights is evolving to meet up with contemporary standard. The bedrock of the liability to be incurred by health care professionals is primarily affiliated with the rights of patients. Healthcare providers must navigate a complex web of laws, regulations, and ethical guidelines, which can be a source of confusion and potential liability. Be that as it may, Nigeria is a jurisdiction which pays little or no attention to the legal aspect of the relationship in the health care system, without legal backing and proper

[10] NHS 'Consent to treatment' Consent to treatment - NHS (www.nhs.uk) accessed 10th January 2024

[11] Melehat Akdeniz, Bulent Yardimci, 'Ethical consideration on the end-of-life Care' 2021; 9: 20503121211000918. Published online 2021 Mar 12: 10.1177/20503121211000918 accessed 1o January 2024

provision of remedy through legislative instrument the quality of this relationship will deteriorate particularly the quality of trust, patient have in their health practitioners will diminish. It will lead to a state of anarchy, which technically may lead to rise in death rather than successful treatment rate.

The influence of the law in the medico patient relationship cannot be undermine, as the practitioner owes every patient both ethical and legal duty, a breach of which will lead to a rise of a claim in a competent court or tribunal.[12]

Our contemporary era is marked by unprecedented medical advancements, where science and technology have surpassed the boundaries of imagination. In this complex landscape, consent is not merely a formality; it is the ethical structure upon which the doctor-patient relationship balances.[13] It is the legal conduit through which patient autonomy and right is respected and protected, one of the core tenets of medical law is that people should have the autonomy to make decisions regarding their own bodies and medical care.[14] In Nigeria, the issue of free, prior, informed consent in medical practice is poorly implemented, it is almost as if the principle of consent is not achievable in Nigeria. This is due to several causes.

First, there is the issue of Nigeria's low literacy rate.[15] Patients who are illiterate frequently depend entirely on the doctor's judgement. [16]

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[12] Emily Jackson 'The relationship between medical law and good medical ethics' JME4

https://doi.org/10.1136/medethics-2014-102311

[13] T Thirumoorthy, 'Core concepts of consent in medical practice' (2023 Jun; 64(6): 398–402) *MBBS MA (Healthcare Ethics and Law*) Singapore Med J. Published online 2023 May 30. doi: 10.4103/singaporemedj.SMJ-2023-044 last accessed 3rd Dec 2023

[14] Understanding Informed consent https://medisec.ie/wp-content/uploads/2021/04/Consent/-article.-pdf accessed 3rd December 2023

[15] A 2015 survey of the United Nations Educational, Scientific and Cultural Organization showed that almost 51% of Nigerians are illiterate. 'The Nigerian Vanguard' (17 December 2015)8.

[16] Benjamin Umerah, Medical Practice and the Law in Nigeria (Longman Nigeria Ltd 1989) 132

The second factor is the poor enforcement of the right to informed consent. Under Nigerian law, patients whose rights to informed consent have been violated have few or no remedy options. Moreover, bureaucracy hinders the procedures for upholding the right to informed consent. This study will also conclude that Nigeria's informed consent regulations are insufficient and should be examined to facilitate a strong practice that complies with international norms. agreement forms are used every day by hospitals and physicians in nearly every country where express agreement is necessary, particularly for surgical treatments.[17] These forms are an important part of doctors fulfilling their obligation to inform patients regarding their proposed treatment and care usually with a witness section to attest to the understanding of the patient of the procedures to be carried out.[18] In general, a doctor must tell a patient everything that would be important to a reasonable person in the patient's circumstances in order to obtain informed consent[19] or, to put it another way, all the information data required to guarantee that the patient may make an informed choice about their care.[20] Therefore, providing patients with the information they need to make an informed and best-interested treatment decision is often the goal of the informed consent procedure.[21] Informed consent forms, however, can be used to get patients to make what seem like compromises about their care

This research endeavors to investigate the multifaceted nature of consent within the doctor-patient relationship, peeling back its layers to reveal the ethical and legal foundations upon which it rests This research will capture historical journey to trace the roots of consent in medical

[17] Timothy MacDonnell 'Making an Offer that can't be refused: The Need for a Reform on The Rules Governing Informed Consent and Doctor patients Agreement' (vol 67 issue 3 09 2022)
[18] Fay Rozovsy, Consent to Treatment: A Practical guide 1–3, 2–5 (5th ed. 2014).
[19] Ward v. Schaefer, No. 16-12543-FDS, 2021 WL 1178291, at *17 (D. Mass. Mar. 29, 2021); Stuart v. Camnitz, 774 F.3d 238, 251 (4th Cir. 2014).
[20] Canterbury v. Spence, (D.C. Cir. 1972) 464 F.2d 772, 787.
[21] Daniel E. Hall, Allan V. Prochazka & Aaron S. Fink, Informed Consent for Clinical Treatment, 184 CAN. MED. ASS'N J. 533 (2012); White v. Napoleon, 897 F.2d 103, 114 n.4 (3d Cir. 1990)

practice, illuminating its evolution into informed consent and its contemporary significance. This research scrutinizes the dynamics of communication between healthcare providers and patients, assessing how the process of informed consent empowers individuals to actively engage in their healthcare journey.

The central question that propels this research is profound: to what extent is consent, and more specifically, informed consent, an irreplaceable cornerstone within the doctor-patient relationship, and how does it influence healthcare decision-making, safeguard patient autonomy, and uphold the legal fabric of modern medicine

Through examination, analysis, and critical reflection, this research attempt to unveil the necessity of the legal requirement of informed consent within the doctor-patient relationship. With the aim not only to enhance our understanding of their ethical, legal, and practical significance but also to underscore their important role in preserving the sanctity of healthcare delivery, ensuring that the patient's voice remains at the heart of medical practice

This inconsistency raises concerns about the adequacy and uniformity of information provided to patients, potentially compromising the quality of decision-making into a passive participation of patients or forced decision making.

This study does not suggest that this relationship is strictly legal, hence positioning the doctor patient relationship as only a legal relationship.

Finally, the growing prevalence of digital health technologies, telemedicine, and remote monitoring has introduced novel considerations for obtaining and documenting consent, the evolvement of technology has posed a serious concern on the validity of consent obtained through this means, the illiteracy in technology is a prevailing reason for this concern. It is therefore necessary to ensure that patients fully understand the implications of these technologies.

Assessing a patient's decision-making capacity, particularly in cases involving mental health or cognitive impairment, poses significant challenges. Balancing respect for patient autonomy with their best interests in such situations is a complex ethical issue.

1.2 Statement of Problem.

Failure to obtain consent in medical procedure is a breach of a fundamental human right and may also lead to an action in battery against the medical practitioner. Conducting any medical procedure without informed consent of the patient falls short of the world standard of practice acceptable in the medical world. Patients ought not to be strangers in the determination of the process and procedure for any medical procedure or treatment to be carried out on them, irrespective of whether the procedure is in their own interest.

Adults with capacity should not be treated as if they do not know what is best for them; the decision to undergo any medical treatment is solely an individual decision and ought not to be influenced at any point. In Nigeria the term informed consent is usually a myth as medical practitioners have refused to adhere to the ethical and legal obligation that compels them to first inform patients or clients of the procedure and ensure they understand the information given before consenting to such procedure.

This study focuses on the issues relating to and involving informed consent: the necessity, the consequence of failure to obtain consent, the remedy, the challenges, and the recommendations

1.3 Aim and Objectives of The Study:

The aim of this study is to comprehensively examine the legal requirement of informed consent within the doctor-patient relationship in contemporary healthcare settings in Nigeria.

The research has the following objectives:

i. To assess the current practices and variations in obtaining consent among healthcare providers and institutions.

ii. To analyze the legal requirement and complexities surrounding medical law, and informed consent in healthcare setting in Nigeria.

iii. To identify communication barriers and their impact on patient understanding and participation in the consent process.

iv. To investigate approaches to obtaining and documenting consent for vulnerable populations, including minors, the elderly, and individuals with cognitive impairments.

1.4 Research Questions:

i. How do healthcare institutions and professionals currently approach the process of obtaining consent, and what variations exist?

ii. How does legal requirements influence the practice of consent and informed consent in healthcare?

iii. What are the key communication barriers that affect patient understanding and active participation in the consent process?

iv. What specialized approaches are employed to obtain and document consent for vulnerable populations, and what are the associated challenges?

1.5 Methodology

The methodology adopted and explored in this study is the mixed method of research a combination of qualitative and quantitative method of research. The materials employed in the research includes the primary and the secondary sources of law they include statutes, regulations, text books, case laws, magazines, publications, articles online publications, opinions of specialist

and practitioner, finding of an online survey through a questionnaire, the finding of which will be presented in qualitative analyses, all of which are expected to add value to the quality of the work.

1.6 Significance of The Study

Legal scholars have written on and answered the question of consent. This study holds significant importance for several key reasons: by addressing the challenges and variations in consent practices, the study aims to contribute to the promotion of patient-centered care, where patients are active participants in their healthcare decisions. Understanding and addressing the ethical dilemmas related to informed consent is essential for upholding the principles of autonomy and beneficence in healthcare. Investigating the legal and ethical complexities surrounding consent is crucial for healthcare providers to ensure compliance with evolving regulations and guidelines. Identifying and addressing communication barriers can lead to improved patient-provider interactions, ensuring that patients receive information in a manner that can be easy for patents to comprehend. Specialized approaches for obtaining consent for vulnerable populations can contribute to greater equity and fairness in healthcare delivery.

Overall, this study aims to shed light on the issues surrounding legal obligation informed consent in the doctor-patient relationship, ultimately contributing to knowledge in the area of health law in the society.

1.7 Scope of The Study

The scope of the study will cover the issues informed consent in medical practice especially in Nigeria, analyzing the trends on patient autonomy, what is obtainable in the relationship between health care practitioner and patients, the ethical and legal obligation that arises from the fiduciary relationship and the patients' rights in Nigeria.

1.8 Limitation of The Study

Accessibility to materials is one of the major concerns on medical law, materials for the build of this research is not impossible to get, however because this area of law is developing in Nigeria, resources are very scarce, only a few resources are available in hard copies, other resources have to the sought for online.

1.9 Definition of Terms

- Consent: This is defined as the voluntary and revocable agreement of a competent individual to participate or not tr participate in a procedure or research. in politics is an act or permitting something to be done or of recognizing some kind of authority or permitting what would otherwise be illegal. Consenting means that the person intends to allow, approve, agree, or is willing to comply with something, it is a person's behavior, including words and conduct, both actions and inaction that communicates willingness to participate in something.
- Informed consent: The ethical and legal principle known as "informed consent" (IC) simply means that any medical intervention, whether it be diagnostic, therapeutic, preventive, or connected to scientific research, should only be carried out after a patient or research participant has been fully informed about the nature, risks, and consequences of the intervention and has given their free consent[22]

  You have the right to help decide what medical care you want to receive. By law, an health care providers must explain the health condition of his patient and treatment choices to patient concerned and allow the patient make informed decision. In a

[22] Encyclopedia of Applied Ethics (Second Edition), 2012

healthcare setting, informed consent allows you to participate in your own medical care. It enables a patient to make a choice on the kind of treatment they want to receive.

By encouraging collaborative decision-making, which is a moral and legal requirement for healthcare providers, informed consent also enables an individual to make decisions with their healthcare provider.

- Doctor: A key component of healthcare and medical practice is the doctor-patient relationship. When a doctor attends to a patient's medical requirements, typically with the patient's consent, a doctor-patient relationship is established. Trust, respect, communication, and a shared knowledge of the doctor's and patients' perspectives are the foundations of this partnership. The doctor trusts the patient to share any information that might be pertinent to the situation, and the patient trusts the doctor to protect their privacy and not share this information with third parties. This connection is based on mutual trust.
- Patient: Anybody who receives medical services or advice from medical professionals is considered a patient. Most frequently, the patient is sick or hurt and need medical attention from a doctor, nurse, optometrist, dentist, veterinarian, or other healthcare professional
- Patients' rights: The rights assigned to an individual seeking medical care are known as patients' rights. In general, a patient's rights include being fully informed about their condition, the expected diagnostic and treatment procedures, and the documented documentation of their care.[23] When it comes to healthcare delivery, patient rights include the freedom from discrimination, torture, and harsh, inhuman, or humiliating treatment; they also encompass the right to privacy, information, life, and excellent

[23] World Health Organization, 'Patient Rights and Responsibilities' (2002)

care.[24] The patient should have the right to respectful, thoughtful care that is provided in response to their request for services, in a way that ensures continuity of care, and in compliance with the relevant standards. Regarding payment for services, the patient is responsible for the payment the regardless of the method of payment, the patient is entitled to view and understand the bill.[25] In Nigeria, doctors and other healthcare professionals are expected to respect the rights of their patients.

Some of these rights are the following.

1. Right to information, He must be well-informed about his illness, the nature of treatments, likely outcomes and side-effects, if any.

2. The right to informed consent: His consent should be duly obtained before a surgical operation is carried out or any other special treatment is to be given to him. If he does not give his consent to a treatment, his decision must be respected. He may even reject blood transfusion. However, his caregiver has a duty to ensure that the patient is making an informed decision by explaining the likely consequence of his rejection of a prescribed treatment on his health.

3. The right to confidentiality: His medical records and other sensitive personal information should be kept confidential, though they may be disclosed to a third party with his consent.

4. The right to considerate and respectful care: The patient must be given quality services, subject to available medical facilities. He must be treated with care, professionalism and

[24] Universal Declaration of Human Rights (1948) UNGA Res 217 A (III)

[25] Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition. © 2003 by Saunders http://medicaldictionary.thefreedictionary.com/patient

undivided attention. This means that a physician or any caregiver must not be negligent in attending to him. Treatment should be based on accurate diagnosis[26].

1.10 Structure of The Work

Chapter one of this work focuses on the introduction of the work, the statement of problem, background of the study, the scope of the study, significant of the study, aims and objectives, limitation of the study, chaptalization, definition of terms, structure of the study.

Chapter two of this work focuses on the literature review and theoretical review. It introduces the subject matter, consent and informed consent, the origin of the doctor patient relationship, patients' rights and autonomy.

Chapter three discusses the legal and institutional framework for informed consent in Nigeria, institutional framework on medical practice and acceptable ethics, medical and dental practitioner act, the 1999 constitution, National health act, nursing and midwifery council code of Nigeria, Medical and dental disciplinary tribunal, court, case laws and other operational law in Nigeria, including current variations in the practice of informed consent in Nigeria.

Chapter four focuses on the finding of the survey (capacity to consent, and communication barriers) conducted for the purpose of this research, capacity to consent, various factor contributing to the abuses of informed consent in the implication of procedures without consent, patient rights to consent, the necessity for informed consent and informed consent, the importance of adherence to the legal obligation of consent, emergency and other related matters, lack of capacity to consent, best interest principle.

Chapter five focuses on the findings of the work, conclusion, proposal recommendation, and summary.

[26] Kehinde Adegbite, 'Learning the Law in Nigeria' www.gettipsforeveryday.blogspot.com accessed January 10, 2024.

Chapter Two

Literature Review.

2.1. Doctor-Patient Relationship

The doctor-patient relationship is one of the most significant professional partnerships in society.[27] Suzanne opined that since the days of Hippocrates, it has been acknowledged as a unique bond. The Hippocratic Oath, which is still commonly taken by doctors worldwide, explicitly declares this trust-based relationship.[28] Melisa bailey, explains that this Oath embodies the commitment to benefit patients and abstain from any harm or wrongdoing. It emphasizes the doctor's duty to maintain confidentiality and treat all information concerning patients as sacred secrets.[29]

Kaba, opined the Oath goes beyond the simple principle of "do no harm."[30] It also pertains to the point at which the relationship is established, which is a significant concern in both legal and medical ethics.[31] This question requires an examination of state-specific laws, some general guidelines can be outlined.[32] Generally speaking, when a doctor treats a patient, a doctor-patient connection is established.[33] This can be as simple as an examination or consultation.[34] It should be noted that this relationship is consensual, meaning both the doctor and the patient mutually

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[27] Suzanne Conell, 'Breaching the Sexual Boundaries in the Doctor-Patient Relationship: Should English Law Recognise Fiduciary Duties?' (206–07 2016) 24 *MED. LAW. REV*. 206,.

[28] Melissa Bailey, So long, Hippocrates. Medical Students Choose Their Own Oaths, STAT (Sept. 21, 2016), https://www.statnews.com/2016/09/21/hippocratic-oath-medical-students-doctors/ [https://perma.cc/RBT7-BQ5R] Accessed February 21 2024

[29] Riyaz Kaba & Prasana Sooriakumaran, 'The Evolution of the Doctor-Patient Relationship' (57, 58 2007 (5)) *INT'L J. SURGERY* (alteration in original).

[30] Ibid.

[31] Valarie Blake, 'When Is a Patient-Physician Relationship Established?' (14 2012). Am. Med. ASS'N J. Ethics 403

[32] Ibid

[33] Ibid

[34] *White v. Harris*, (2011) 36 A.3d 203, 206–07; *Kelley v. Middle Tenn. Emergency Physicians,* (2004) P.C., 133 S.W.3d 587, 593; *Woodruff v. Gitlow,* (2014) R.I. 91 A.3d 805

agree to be a part of it.[35] A patient cannot be forced to receive care, and a clinician cannot be forced to treat a specific patient.[36]

Both sides have responsibilities while establishing a doctor-patient relationship. The laws and regulations of the state in which the care is being given must be followed by the physician. They must also offer care and treatment that meets or exceeds the standard prescribed by the regulatory body for the circumstances. Informed consent, the patient's agreement to the proposed treatment after understanding its details and possible risks, becomes an important aspect within this relationship. Failure to obtain consent can lead to disciplinary actions or potential malpractice claims for the doctor.[37] Also the patient is obligated to provide reasonable compensation for the care received, even without an explicit contract.[38] Additionally, there may be situations where a doctor is held to a standard of care for an individual,[39] even in the absence of an implied contract or traditional doctor-patient relationship.[40] This can occur when a doctor is specifically hired to analyze pre-employment x-rays for a company.[41]

2.2. Consent

In general, consent is an understanding, agreement, or compliance between the patient and his healthcare provider—whether it be an individual or an organization.[42] Consent has always been defined as either expressed or implicit. The patient's behavior gives implied consent, which is given without being said out loud or in writing. It is a legitimate form of permission for standard clinical assessment and treatment in the majority of our clinical or hospital practices. For

[35] *Walters v. Rinker*, [1988] 520 N.E.2d 468, 471; *Ahnert v. Wildman*, (1978376 N.E.2d 1182, 1185.
[36] *Castillo v. Emergency Med. Assocs*. 648 4th Cir. [2004]
[37] *Hughes. v. Olin,* [2005] 69 Va. Cir. 46, 47–48
[38] *Midwest Neurosurgery, P.C. v. State Farm Ins*. Cos., [2004] 686 N.W. 2d 572, 578.
[39] Midwest Neurosurgery, P.C., 686 N.W.2d. at 578.
[40] *Green v. Walker*, 910 F.2d 291, 295–96 5th Cir. [1990].
[41] *Stanley v. McCarver*, [2004] 92 P.3d 849, 851–52; *Woodruff v. Gitlow*, [2014] 91 A.3d 805, 805–16
[42] Kravitz RL, Melnikow J. Engaging patients in medical decision making. Br Med j; 323 (7313): 584 - 5.

instance, a patient attending a clinic to treat a sore throat, common cold, etc.[43] For standard clinical examinations in these situations, implicit consent would be adequate; however, specific consent would be needed for more sophisticated examinations, such as those of the female breast or private areas. Written or verbal permission are both considered forms of stated consent. To ensure that the expression is objective in the event that the doctor is accused of anything, it should be performed in front of an impartial third party.[44] According to Buchanan, The conventional understanding of consent has undergone significant modification in light of the constantly evolving new therapeutic and diagnostic approaches as well as complex research methodologies.[45] Lantos, Informed consent is now the norm in modern medicine, sufficiently satisfying the ethical and legal requirements of modern medical practice.[46]

Consent is not a formality; rather, it is a legal prerequisite for medical practice. Simply signing a document does not constitute consent.[47] Tijani explained that when someone is hurried or forced to sign a permission form without receiving enough information, the consent could be void, the validity is not in the signature but in the information given earlier despite the signature. This is because a consenting person must be fully aware and must understand the risks and benefit associated with the procedure and alternatives if any, of what he or she is consenting to. Medical personnel frequently disregard or lack knowledge of the conditions necessary for a valid consent

[43] Frewer LJ, Salte B r, Lambert N. *Understanding patients' preferences for treatment: the need for innovative methodologies* (Qual Saf Health Care 2001; 10 90001) : i50 - 4.
[44] Bhushan Parikh. *Consent.In: Parikh's textbook of medical jurisprudence and toxicology.* (6th ed. Delhi: CBS; 1999:38-40)
[45] Buchanan RGN. *Enabling patients to make informed decisions*. Nurs Times. 1995; 91 (18): 27-9.
[46] John Lantos. Informed consent: the whole truth for patients? Cancer. 1993;72 (suppl): 811-5.
[47] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4697240/ last accessed January 3, 2024

and its legal ramifications.[48] n trials involving medical malpractice, situations in which consent was either invalid or not acquired have been scrutinised by the courts. Legally, when two or more people agree on the same item in the same sense, that is considered consent.[49] Consent is a sacred and essential part of the doctor-patient relationship, and it must be secured before any medical operation is performed on a patient. The patient's behaviour may indicate or express it. When a patient visits a hospital to see a doctor, it is assumed that he is there for treatment and consents to a general physical examination.[50] Express consent, written or verbal is particular and typically comes from the patient. In the presence of a witness, express verbal agreement may be obtained for specific minor examinations or operations[51] Since express written consent is the most dependable and indisputable form of consent, it must be obtained before any significant diagnostic or surgical treatments.

Cambridge dictionary explains that, to consent is, in its most basic form, to agree or grant permission for something to happen.[52]

It goes without saying that agreement in this broad sense has always existed in human social life and precedes more formal methods or consent conventions such as medical limits, voting booths, and research participation forms. However, to comprehend what makes contemporary consent

[48] Tijani Nurudeen, "Physicians, patients and blood: Informed Consent Medical Treatment and Fundamental rights" in Legal Principles and Policies. Essay in Honour of Justice Chukwunweike idigbe, Emeka Chianu (ed), Lagos, District Universal, 2006, 359 at 390.

[49] Indian Contract Act, Sec 13; 1872. Available from: http://www.indianlawcases.com/Act-Indian.Contract.Act,1872.-2386 Accessed on January 2 2024.

[50] https://scholar.google.com/scholar_lookup?journal=Indian+J+Neurosurg&title=Legal+sanctity+of+consent+for+surgical+procedures+in+India&author=G+Sharma&author=V+Tandon&author=PS+Chandra&volume=1&publication_year=2012&pages=139-43& accessed January 22 2024

[51] Rao NG. *Textbook of Forensic Medicine and Toxicology*. (2nd ed. New Delhi: Jaypee Brothers Medical Publishers (P) Ltd.; 2010) Ethics of medical practice; pp. 23–44. https://scholar.google.com/scholar_lookup?title=Textbook+of+Forensic+Medicine+and+Toxicology&author=NG+Rao&publication_year=2010& accessed 22 January 2024

[52] Cambridge dictionary https://dictionary.cambridge.org/dictionary/english/consent Accessed 24th January

practice and theory unique, it is important that we realize the shifts in the ways, reasons, and purposes for which consent has been requested from individuals.

Tom O'Shea explained the fundamental contrast between the two basic types of consent—originating and permissive this will aid us in understanding this idea. Consent that is permissive serves as a waiver, guaranteeing that an action that would otherwise be unlawful is not.[53]

For instance, if a patient is competent but unwell, the surgeon's actions might be regarded as morally and legally acceptable (as opposed to an invasive battery) if the patient gives their agreement.[54] As a result, consent may serve as a waiver to excuse behaviour that would be illegal otherwise. Consent, however, can also originate, introduce, and change. For instance, we might think that the authority[55]of a state's statute law comes from the consent of a state's citizens, or that new moral and legal rights and obligations related to the social function of marriage are based on the consent of people getting married.[56] While originating consent can provide or revoke legitimacy from certain of these norms alone, permissive consent often lends legitimacy to certain behaviours in regard to certain background norms. Although most ancient cultures did not place as much emphasis on permission in its now-familiar forms as do most modern communities, emerging types of consent were by no means non-existent. However, despite pervasive systems of dominance, ranging from imperialism to deeply rooted patriarchy, consent-seeking did start to take root in connection to several activities.[57]

Looking at the early history of consent in civil law, medical law and politics, One notable instance of consent being foreground in early religious texts is the Biblical story of the covenant

[53] Tom O'Shea, *The Essex Autonomy Project 'consent in history, theory and practice'* (University of Essex)
[54] Ibid
[55] Ibid
[56] ibid
[57] Ibid

that Yahweh and the Israelites established at Mount Sinai.[58] Although scripture establishes that commands had previously only been given to the Israelites, in this covenant, consent is sought and given for some new aspect of the Israelites' relationship to Yahweh. This means that the Mosaic covenant involves originating consent.[59] By binding themselves to religious regulations instead of just obeying or respecting them, this assent modifies the nature of the authority exercised over the Israelites. To be sure, we are yet a long way from the modern liberal tradition's conception of individual consent. The elders, who speak for the people, are the only ones Moses can consult in order to obtain the Jews' collective assent rather than their individual approval.[60] Furthermore, it is obvious that there is no room for discussion on the parameters of the covenant or the boundaries of divine authority, even as God requests the Jews' assent to it and they continue to do so.[61] However, this narrative indicates a crucial realization that authority can be legitimated in a unique way through agreement.

Additionally, no skewed image of medical practice is presented. Medical professionals such as Henri de Mondeville, who wrote that patients should follow their surgeons' instructions in all matters pertaining to their recovery[62] in the late thirteenth century, are examples of paternalists. He has no qualms about suggesting that physicians exaggerate their patients' positive prognoses to aid in their recovery; nevertheless, this hardly seems like a good foundation for cooperative engagement. Though he does issue a warning regarding forced therapy, this is mostly due to

[58] Exodus 19:5-8 (New International Version).
[59] Exodus 19:5-8 (New International Version)
[60] Ibid
[61] Ibid
[62] Henri de Mondeville, *On the Morals and Etiquette of Surgeons, '*as entitled and reprinted in S.J. Reiser, A.J. Dyck, and W. J. Curran (eds.), *Ethics in Medicine: Historical Perspectives and Contemporary Concerns* (Cambridge, MA: MIT Press, 1977), 15.

concerns about his reputation and the efficacy of such treatments.[63] There are times when medical consent is used for purposes that are familiar, despite the apparent ethical indifference to it. This can be observed by examining a recurrent, incipient consent ritual that was created by physicians to shield themselves from unwarranted punishment. The first recorded use of it dates to the late sixth century, when Byzantine physicians were hesitant to perform surgery on the gravely ill Emperor Justin II for fear of being held accountable for his passing. Even though the emperor had assured them they would not face consequences, they allegedly asked him to personally give them the scalpel as a blatant sign that he wanted to be operated upon. According to modern medicine, consent serves as a kind of "flak jacket" that shields the consent-giver from culpability. In this context, consent functions as a kind of protection that shields the one seeking consent as well. The High Middle Ages' church marriage laws give us an even better example of how consent was starting to take on significance in society. The uninfluenced consent of both the bride and groom was declared both required and sufficient criteria for marriage by papal reforms that started in the eleventh century. Prior to this, the married couple's families, masters and lords were usually parties to the union. William of Pagula, lays out the new terms: "Marriage is contracted by consent of the parties involved alone through words in present tense, as when a man says: "I take you to be my wife," or a woman says: "I take you to be my man or husband." Therefore, under the reformed conception of marriage, consent alone is important and required, rather than a priest or religious ritual.[64] Consent had to be freely given, and the Church could not ensure this. In addition to annulment, there was the threat of withdrawing sacraments from those

[63] Ibid

[64] T O'Shea, *The Essex Autonomy Project: Consent in History, Theory and Practice* (University of Essex 2020) https://www.essex.ac.uk/centres-for-autonomy/research/essex-autonomy-project accessed 10 January 2023.

that are making them consent by force, so that a father, for example, might be denied forgiveness on his death bed if his daughter refused to follow his instructions and marry.

Slater v. Baker and Stapleton, which occurred in 1767 and involved doctors resetting a femur fracture without the patient's consent or adequate information as to risk, is a notable case in English medical law.[65] Given that doctors were expected to get consent, the judge determined that the surgeons had acted irresponsibly by not doing so.[66] It was only necessary to inform the patient about the procedure so they could "take courage," rather than requiring informed consent that complied with modern standards.[67] However, it is noteworthy that the courts acknowledged that the established practice of obtaining medical consent imposed certain legal obligations to respect treatment decisions. To comprehend why consent became a crucial matter in all these diverse domains, we must also examine the interpretation of freedom that is highlighted in numerous contemporary notions of the ideal life. Autonomy is a fundamental principle, and the concept of individual self-determination is important in any legal, political, and professional discussion. Frequently, this interpretation is quite limited, meaning that the person ought to be liberated from the coercive influence of others and ought to receive assistance when they are gravely lacking in their ability to make decisions. In the words of the US Supreme Court

> *"No right is held more sacred or is more carefully guarded [...] than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."*[68]

[65] *Slater v Baker & Stapleton* (1767) 95 Eng Rep 860, 2 Wils KB 359.
[66] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 583.
[67] *Sidaway v Bethlem Royal Hospital Governors* [1985] AC 871.
[68] *Cruzan v Director, Missouri Department of Health* 497 US 261 (1990) 110 S Ct 2841 quoted in *Ms B v An NHS Hospital Trust* [2002] EWHC 429 (Fam) [21].

Consent will be an essential prerequisite for a variety of interpersonal interventions if the freedom from external interference is a fundamental right and consent serves as the primary means of guaranteeing that acts are not coercive in this way[69]. When stated thus bluntly, some of the justification for strict statements regarding the necessity of permissive consent becomes evident, such as the assertion that the patient has the legal right to make decisions for themselves regardless of whether those decisions are made for known, unknown, irrational, or nonexistent reasons.[70]

2.3 Consent and Information

The language of informed consent is common, yet the relationship between consent and information is important because of the degree of scrutiny it bears.[71] Consent is hinged on information in two main ways: it allows for specification of consent and provides for grounds for adequate decision-making. For permissive consent to have the legal and ethical force, both must be met, though the quantity of information supplied.

If someone is to consent in the first place, they must first understand what it is they are consenting to. Consent has an intentional nature since it is focused on an action (or description of an activity); hence, it cannot be given freely everywhere; it must be given specifically in a lab or between a solicitor and a client at her desk. However, there are some similarities among these circumstances that allow for the formulation of some broad generalizations that apply to several of these cases.[72] For instance, giving my consent to marriage requires that I know who I want to marry and have some idea of what marriage entails. In a similar vein, a person cannot consent to

[69] Supra.
[70] Supra.
[71] A Maclean, 'The Doctrine of Informed Consent: Does it Exist, and Has it Crossed the Atlantic?' (2006) 24 Legal Studies 386.
[72] Faden R and Beauchamp T, *A History and Theory of Informed Consent* (1986) 274.

participate in a clinical study for tuberculosis treatment if he is not aware of the trial or that he will be accepting treatment. Thus, to specify and subsequently direct permission, adequate information is required. People may not have all the information necessary to make an informed or capable decision, even when they have enough knowledge to express their agreement. Imagine, for example, that when the researchers ask for your permission to join in a clinical trial, they describe the investigation's vast scope but omit to mention the non-negligible risk of lifelong liver damage, which would have made you decline. Consent may be void in certain situations where crucial information is missing, such as dangers or likely outcomes. Since the middle of the 20th century, modern permissive consent theory has tended to highlight these more stringent informational criteria, and this is frequently indicated using the term "informed consent."[73] In any professional setting, disclosure is the fundamentals of consent that is making sure that consent is sufficiently informed. one of the elements of the relationship between professionals and those they seek consent is the quantity of information available to them; and it is usually as a result of the expertise and skills, that professionals possess which support their claim to authority.[74] For example, this could be the solicitor with knowledge of the law pertaining to estates and wills, the psychiatrist with knowledge of mental disorder and the likely success of a suggested treatment, or the scientist with knowledge of the nature of their research and any risk it poses to human subjects.

Conversely, when considering political, religious, or sexual consent, for example, disclosure is typically not the primary means of obtaining well informed agreement. True political assent depends on a knowledgeable public, supported by institutions like a vibrant media, but there is no defined place for knowledgeable professionals with unique knowledge that they can provide

[73] Ibid
[74] Ibid

in a way that is comparatively noncontroversial.[75] Civic professionals have significant authority in the consent process because of knowledge gaps, and there is natural pressure on them to share this power with the people they are asking for consent from (not least because of the modern antipathy to paternalism). It is up for debate, though, whether and how this should be done. We could insist on fully informed permission, but that quickly leads to issues. If the genuineness of consent depended on the availability of all decision-relevant knowledge, then any discrepancies in our understanding regarding the nature or implications of activities we consented to would render it invalid. Requiring complete information would involve disregarding or undervaluing people's generally well-informed decisions, as we never, if ever, have all the information that is important to our decision-making. In fact, it has been convincingly argued by some philosophers that complete knowledge is "neither definable nor achievable."[76] To put it briefly, the complete information standard raises the bar excessively. If obtaining complete information is an impractical criterion, we may try to substitute it with the data that the individual is interacting with researcher, healthcare team, caregiver, or attorney. However, there are a lot of practical challenges here, particularly since comprehension may depend on technical skills and the capacity to interpret complicated facts that are outside the purview of most non-specialists. Think about the mental abilities and education required to fully comprehend the intricate details of a grave medical prognosis or a complex legal point.[77]

2.4 Purpose of Consent

Consent is important because the major orles it plays in safeguarding individual autonomy. In McLean words: the law of consent is the medium by which respect for patients' autonomy is

[75] N Manson and O O'Neill, *Rethinking Informed Consent in Bioethics* (Cambridge University Press 2007) 13.
[76] O O'Neill, *Autonomy and Trust in Bioethics* (Cambridge University Press 2002) 44.
[77] N Manson and O O'Neill, *Rethinking Informed Consent in Bioethics* (Cambridge University Press 2007) 13.

translated into law.[78] Nonetheless, there isn't much development on the relationship between autonomy and consent. Given the abundance of accounts of autonomy, this poses issues. The term "autonomy" is famously ambiguous, and proponents and opponents alike frequently lament that it has come to signify so many diverse things sometimes even contradictory meanings. These include freedom, restraint, dignity, sincerity, and the ability to respond to logic, among many other things.[79] Upon closer inspection, the underlying ideology of most persons who invoke autonomy in relation to consent is usually libertarian. A person's choices are protected and respected by consent insofar as they are made by someone who is at least somewhat competent and educated. However, if this is the rationale behind requesting and honoring consent, then it requires explanation, which hasn't been provided.[80] Nonetheless, consent can be used for a wide range of purposes besides fostering autonomy.

Manson and O'Neill offer the most advanced recent alternative.[81] According to them, giving someone permission to do something is equivalent to waiving rights and duties that would otherwise be owed to them.[82] This means that consent is no longer seen as a means of defending decision-making for its own sake, but rather as a tool to uphold common ethical standards like non-deception and non-coercion. This method has the advantage of not requiring justification for respecting minimally rational decision-making, all the while satisfying our intuition that consent ought to play a crucial role in most aspects of contemporary life. In addition, O'Neill has maintained that obtaining informed consent is one way to foster trust among clients and

[78] A McLean, *Autonomy, Consent and the Law* (Hart Publishing 2009) 38.
[79] J A Coleman, *The Theory and Practice of Autonomy* (Cambridge University Press 1988) 6.
[80] O O'Neill and N Manson, *Rethinking Informed Consent in Bioethics* (Cambridge University Press 2007) 20.
[81] ibid
[82] Ibid

professionals as well as public confidence in institutions in general.[83] This non-autonomist justification for requesting consent thus has two facets: it is a tool for upholding morally neutral standards as well as for fostering confidence. Again, it might be helpful to highlight the range of situations in which consent is requested so that we are aware of the numerous functions it may fulfill. In fact, some have cautioned against using certain consent practices—such agreement for medical treatment—as templates for other consent procedures, like consent for social research.[84] Asking about the aim of consent is probably going to be most effective only if it is linked to a particular type of consent as opposed to looking for a generic response that would apply to all types. However, it might not be too difficult to recognize the widespread appeal of methods that uphold competent and informed decision-making, protect individual liberty, and aim to minimize coercion.

2.5. Contextualizing Patient-Informed Consent

The medical industry places a great deal of importance on the worldwide acknowledgment of the patient's freedom to refuse any offered medical treatment from medical professionals. It is a legitimate precondition to the medical staff's right and jurisdiction to treat the patient in a legitimate manner. Nonetheless, the question would arise as to whether a patient's mere presence at a hospital is sufficient evidence that he or she presumably consents in trust to any medical treatment to be administered by the medical staff attending to him or her, provided that the patient presents to the doctor voluntarily and that the patient is informed of the benefits, drawbacks, and potential adverse consequences of the procedure the patient's understanding of

[83] O O'Neill, *Autonomy and Trust in Bioethics* (Cambridge University Press 2002) ch 7

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[84] M M Burgess, 'Proposing Modesty for Informed Consent' (2007) 65 *Social Science and Medicine* 2284.

the language. This permission is consequently required by the principle of the individual's right to choose and decide the circumstances of his health.[85]

Mills argued that a mentally sound adult had complete control of their body and mind. Free, previous, and informed consent is required. The word "prior" also suggests that the consent must be obtained sufficiently beforehand of any authorization from medical or hospital authorities or the start of any hospital activity that impacts the patient's health, and that it cannot be obtained by assumption or after the treatment has been administered.[86] In order for a patient to be considered duly and completely informed, their consent must only be requested following a complete and legally compliant disclosure of all relevant information regarding the proposed medical operation. It is imperative that the information disclosed to the patient is in a format that is easily comprehensible and accessible. This includes details about the type, extent, timing, possible hazards, and anticipated consequences of the medical procedure. Thus, "a person's agreement with a recommended medical procedure with full knowledge of the risk involved and the alternatives thereof prior to such consensual agreement" is the contextual definition of informed consent.[87] It is so underlined that the authorization for the patient to receive any kind of therapy or medical procedure from the accompanying medical staff comes from his consent.[88] In medical instances, permission is necessary and must meet very high standards. The consent required by international human rights instruments on indigenous rights is comparable to this, as it assumes the existence of a set of group rights belonging to individuals who are deemed to be "original inhabitants" or "aboriginal" of the territory on which a State is located, as opposed to other citizens of their States who are regarded as foreign settlers on the territory

[85] Ibid
[86] J A Dada, *Legal Aspect of Medical Practice in Nigeria* (Princeton Publishers, Lagos 2016) 23.
[87] *Black's Law Dictionary* (8th edn, St Paul, MN 2004) 323.
[88] F Emiri, *Medical Law and Ethics in Nigeria* (Malthouse Press Limited, Lagos 2006) 71.

Three key requirements make up a basic model of permissive consent: voluntariness, competence, and information.[89] In other words, when someone has relevant information and the capacity to utilize it to inform their decision-making, and when the decision they make is independent of outside influence, they can legitimately provide their consent—or refuse it. These consent requirements are typically interpreted to place obligations on professionals to protect individuals from coercion, to verify that individuals possess the minimum level of mental capacity required by law, and to inform (e.g., by divulging specialized knowledge). Each of these conditions will be looked at one at a time.[90]

The necessity for informed consent is based on the respect for individual autonomy principle.[91] Giving a patient the information they need to make an educated decision about their course of treatment satisfies the ethical duty to respect their autonomy. Here, clinical judgment is required. How much information is too much or too little? One way to conceptualize legal guidelines for adequate disclosure for informed consent is to provide information that a reasonable doctor would reveal or information that a reasonable patient would desire to know.[92] State-specific regulations may differ, but these recommendations can assist medical professionals in deciding what information should be disclosed to patients and when they must obtain consent.

Although "informed consent" is a widely used term, the relationship between information and consent is nuanced and requires careful examination.[93] Information is necessary for consent in two basic ways: it lets us express our preferences and gives us a foundation on which to make appropriate decisions. Permissive consent often needs to satisfy both legal and ethical

[89]Faden R and Beauchamp T, *A History and Theory of Informed Consent* (1986) 274.
[90] Ibid
[91] T L Beauchamp and J F Childress, *Principles of Biomedical Ethics* (4th edn, Oxford University Press 1994) 438.
[92] Ibid
[93] A Maclean, 'The Doctrine of Informed Consent: Does it Exist, and Has it Crossed the Atlantic?' (2006) 24 *Legal Studies* 386.

requirements to be valid, however the second requirement's threshold can vary significantly depending on the situation.

People may not have all the information necessary to make an informed or capable decision, even when they have enough knowledge to express their agreement. Imagine, for example, that when the researchers ask for your permission to join in a clinical trial, they describe the investigation's vast scope but omit to mention the non-negligible risk of lifelong liver damage, which would have made you decline. Consent may be void in certain situations where crucial information is missing, such as dangers or likely outcomes. Since the middle of the 20th century, permissive consent theory has tended to emphasize these stronger informational requirements, and this is frequently indicated using the term "informed" consent.[94]

Common law recognized Lord Donaldson position called, the effect of outside influence, whilst remaining sensitive to the important role that friends and families can play in the consent process.[95] Donaldson claims that it is not the strength of influence that matters so much as the nature of the decision it leads to. In this way, the legitimacy of rigorous persuasion and argument is maintained, alongside the possibility that the influence can become overbearing. However, the meaning of individuals decision to be independent is relatively sketchy. Donaldson said, the real question in each such case is, Does the patient really mean what he says or is he merely saying it for a quiet life, to satisfy someone else or because the advice and persuasion to which he has been subjected is such that he can no longer think and decide for himself? In other words, is it a decision expressed in form only, not in reality?[96]

[94] Ibid.
[95] Ibid
[96] Ibid.

Patient-informed consent is widely considered an ethical principle. The UNESCO International Bioethics Committee (IBC) report on consent makes the argument that "autonomy implies responsibility," meaning that having the freedom to make one's own decisions entails accepting responsibility for those decisions, which can have far-reaching effects, particularly in health-related matters.[97] Individual must be adequately informed about the specific consequences of their choice, which prompts the consideration of the circumstances under which consent is obtained. To respect individual autonomy while accepting responsibility for individual decisions is in alignment with Article 1 of the Universal Declaration of Human Rights (UDHR), which states that "all human beings are born free and equal in dignity.[98]" They ought to behave kindly toward one another because they are gifted with reason and conscience. One could contend that the concept of informed consent has developed into a legal requirement dictating that no therapeutic or diagnostic procedure should be carried out on a patient without first providing consent and fully disclosing all associated risks and alternatives.

There does not appear to be anything special about the local way of life or social structure in Nigeria that affects the laws governing informed consent. This is hardly shocking considering Nigeria's cosmopolitan and pluralistic society as well as the nation's colonial past.

The Nigerian Code of Medical Ethics governs the professional conduct of medical professionals. Rule 19 of Part A addresses informed consent.[99] The code's requirements and the concepts of autonomy and human rights it upholds are like those of any developed Western nation. The Nigerian Code of Medical Ethics is also the primary regulatory framework established to

[97] International Bioethics Committee, *Report of the International Bioethics Committee of UNESCO on Consent* (UNESCO 2008) SHS/EST/CIB08-09/2008/1.
[98] Universal Declaration of Human Rights (1948) UNGA Res 217 A (III)
[99] Medical and Dental Council of Nigeria, *Codes of Medical Ethics in Nigeria* (Petruvanni Co. Ltd 2004) 26.

promote, encourage, and maintain patient-informed consent in Nigeria.[100] It acknowledges that consent may be obtained from the patient, their relatives, or the public authority, depending on the circumstances. While Nigerian patients have the primary right to information regarding their medical care, consent can be given by a next of kin for minors and those incapable of giving consent. When no relative is available, the most senior doctor in the institution can give an appropriate directive to preserve life.[101]

In certain situations, a court order might be required. Discussions and documentation of consent ought to be observed. According to code 24, a valid informed consent must contain the following elements:[102]

(1) the procedure's advantages and disadvantages.

(2) suitable expert advice on available options.

(3) the patient's selection of their chosen option; and

(4) permission for the doctor to start treatment by filling out the form.[103]

The code acknowledges a patient's inalienable rights to their body and life. Although the policy recognizes several forms of permission, such as a voluntarily self-offer for treatment, it maintains that specific interactions require clearly stated and recorded approval. It offers a typical consent form and ignores any customized forms that specific doctors may use.[104]

While the British law serves as the foundation of the Nigerian legal system, most procedural cases in that system are drawn from it. When compared to developed nations, medical practice in

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[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] E Ezeome and P Marshall, 'Informed Consent Practices in Nigeria' (2009) 9 *Developing World Bioethics* 138 https://doi.org/10.1111/j.1471-8847.2008.00234.x. accessed January 1oth 2024

Nigeria is comparatively free of malpractice lawsuits.[105] The Medical and Dental Council of Nigeria, which oversees the regulation of professional medical practice in the country, has a disciplinary committee that handles most of the cases involving accusations of medical negligence, incompetence, and unethical or unprofessional behavior. Although such cases are rare, the disciplinary committee's decision may be appealed in normal appeal courts.[106]

The patient gives their general agreement to be assessed and treated when they first enter a health care partnership. This general agreement covers routine, extremely low-risk operations. Both parties should have additional discussions about minor adjustments that pose a higher risk, touch on a particularly delicate topic, or could significantly impact the patient's life.[107]

Examples of specific procedures that need to be discussed are lumbar puncture (as opposed to venipuncture), administering blood products (as opposed to IV fluids), and testing for HIV in blood (as opposed to normal blood draws). There is a noticeable distinction between these technically comparable procedures: the risks are different, the human ramifications are higher, or the practitioner needs more training and expertise.

A patient should be able to comprehend, process, and make decisions after being informed about the risks, benefits, and available options. Except a patient indicates to request a review or to withdraw consent, therapy can continue after it has begun without additional consent talks.

Reentering the permission process with the patient is necessary for anything that alters the balance of risks, benefits, alternatives, comprehension, or capacity for decision-making. Consent needs to be reviewed because the possibility for benefit has altered, such as when a patient does not respond well to therapy, and it seems doubtful that he or she would benefit from the

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106 Ibid.

107 *Virtual Mentor* (August 2008) Vol 10 493 <www.virtualmentor.org> accessed 28 January 2024

prescribed course of action. Patients must determine how to balance the increased risk of complications within their own values if a complication increases the likelihood of developing new ones while receiving therapy.[108]

The concept of informed consent has experienced significant development both in medicine and the law. It carries both ethical and legal obligations for healthcare professionals.[109] The basic necessity of informed consent requires healthcare professionals to explain the reasons behind a suggested treatment, provide a description of the suggested treatment itself, outline the benefits and risks of the treatment, discuss alternatives and their benefits and risks, and explain to the patient of the likely consequences of refusing the treatment or alternatives.[110] Despite the widespread acceptance of informed consent in both medical and legal realms, its enforcement mechanisms do not fully align with its objectives and values.

Numerous authors have addressed the origins of informed consent in medicine and how it has transformed the doctor-patient relationship from a paternalistic model to an autonomous one.[111] The earlier paternalistic approach empowered the doctor to make healthcare decisions while the patient played a largely passive role.[112] This approach can be traced back to ancient Greece,[113] where keeping patients unaware of their true medical condition was considered the norm in fear of harming them.[114] However, this paternalistic approach has given way to the autonomy of patients as the predominant model in the United States.[115]

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[108] Ibid.
[109] R Faden and T L Beauchamp, *A History and Theory of Informed Consent* (1986) 4.
[110] Supra
[111] Ibid
[112] B Rich, 'Medical Paternalism v. Respect for Patient Autonomy: The More Things Change the More They Remain the Same' (2006) 10 *Michigan State University Journal of Medicine and Law* 87, 106.
[113] Ibid.
[114] Ibid
[115] Ibid.

Different scholars attribute the origins and evolution of informed consent to various historical events and social movements. Some suggest that the origin can be traced back to Alexander the Great, who publicly consented to medical treatment as a means of alleviating physicians' fears of unfavorable outcomes.[116] Others associate its development with the refusal of an ancient doctor to perform surgery on Emperor Justin II without being entrusted with the scalpel.[117] Some even link the rise of informed consent to broader political and social movements, such as the influence of Locke's theory of government consent.

In the United States, the earliest cases addressing informed consent involved allegations of assault and battery.[118] Two cases in particular, Mohr v. Williams[119] and Pratt v. Davis,[120] are the earliest significant informed consent cases in the United States.[121] Both cases were civil actions for battery brought against surgeons who conducted unauthorized procedures.[122] In Mohr, the doctor was supposed to operate on a patient's right ear and after the patient was under anesthesia, the doctor determined that the left ear was more severely affected by the patient's conditions, so he operated on that ear.[123] In Pratt, a doctor conducted an unauthorized hysterectomy.[124] Although both actions involved no harm to the patient, the courts focused heavily on the violation of the patient's autonomy as the patient was not informed about the process to be carried out.[125] In both cases the courts explained, that the free citizen's greatest right, which

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[117] T O'Shea, *Consent in History, Theory and Practice* (2012) 9–10

[118] L Bazzano, J Durant, and P R Brantley, 'A Modern History of Informed Consent and the Role of Key Information' (2021) 21 *Ochsner Journal* 81, 82.

[119] *Genzel v Halvorson* [1957] 80 N.W.2d 854, overruled in part by *104 N.W. 12* (Minn. 1905).

[120] *Mohr v Williams* [1905] 118 Ill. App 161.

[121] Ibid

[122] *Mohr v Williams* 104 N.W. at 13.

[123] Supra

[124] Supra

[125] *Pratt v. University of Chicago* [1905] 118 Ill. App. 166; *Mohr v Williams* 104 N.W. at 14–15.

above all others is the right to the inviolability of his person; in other words, his right to himself . . . ."[126] In Schloendorff v. Society of N.Y. Hospital, Justice Cardozo reaffirmed the rulings of the courts in Mohr and Pratt, upholding the legality of trespass and violence charges against a physician for performing surgery without permission.[127]

The concept of informed consent developed over the course of the twentieth century. The years 1905–1930 have been referred to as the Era of Consent by one author, and 1957 onward as the Era of Informed Consent.[128] In place of a battery approach, an increasing number of courts over time acknowledged an informed consent theory based on negligence.[129] A doctor-patient relationship between the plaintiff and defendant; the doctor's failure to disclose certain information; the materiality of the information withheld (based on the jurisdiction); the patient's (or a reasonable patient's) refusal to consent to the treatment if they had known the undisclosed information; and the failure to disclose was the proximate cause of the injury are all grounds for a negligence theory claim. Courts have distinguished between medical battery and a cause of action under informed consent, even though the former is nonetheless recognized as a cause of action.[130] When applying the negligence standard in an informed consent cause of action, there is dispute over how to evaluate the materiality of information and causation.[131] In certain jurisdictions, materiality is determined by considering what a doctor would have disclosed if they

[126] Supra
[127] *Schloendorff v Society of New York Hospital* [1914] 105 N.E. 92 (N.Y.).
[128] A Szczygiel, 'Beyond Informed Consent' (1994) 21 *Ohio Northern University Law Review* 171, 175, 190
[129] B Warren, 'Pennsylvania Medical Informed Consent Law: A Call to Protect Patient Autonomy Rights by Abandoning the Battery Approach' (2000) 38 *Duquesne Law Review* 917, 929–33
[130] *Cooper v Mandy* 2020 WL 6748795 No M201901748COAR9CV (Tenn Ct App, 17 November 2020), appeal granted (7 April 2021), rev'd 639 S.W.3d 29 (Tenn 2022)
[131] Evelyn M. Tenenbaum, Revitalizing Informed Consent and Protecting Patient Autonomy: An Appeal to Abandon Objective Causation, 64 OKLA. L. REV. 697, 713–17, 736–37 (2012).

were acting reasonably prudent.[132] Some courts apply the materiality criteria set down in the landmark Canterbury v. Spence case[133], which asks what a reasonable patient would want to know.[134] Whether a plaintiff can prove causation of damages determines the divide in causation. This requires the patient-plaintiff to prove that, had they been aware of the facts withheld before providing their informed consent, a reasonable person would not have consented to the surgery or procedure.[135]

Protecting the patient's autonomy and right to self-determination when it comes to making decisions about their health is the main rationale behind the switch from simple assent to informed consent.[136] The patient must be provided with clear information to aid him in making an informed decision about his course of treatment to grant meaningful and fair consent. Consent is not the same as signing a consent form.[137] Three crucial components of informed consent are lack of compulsion[138], trust[139] and information[140]. When a patient is admitted, the consent process often begins with the patient being informed of the implicit rules of involvement and communication. Prior to surgery while in the ward, signing a permission form usually serves as a confirmation of the same. Modern law places a strong emphasis on patients' permission to treatment through both liability for negligence and liability for uninvited touching (such as

[132] B*ryant v HCA Health Services of Tennessee* (2000) 15 S.W.3d 804.
[133] L*argey v Rothman* [1988] N.J. 540 A.2d 504, 507–08
[134] Supra
[135] *Consent*, MERRIAM-WEBSTER https://www.merriam-webster.com/dictionary/consent [https://perma.cc/Z7EP-FR] accessed 2 March 2024
[136] L Doyal, 'Good Clinical Practice and Informed Consent Are Inseparable' (2002) 87 *Heart* 103–5
[137] S Resnick, 'The Consent Form Revisited' (1993) 153 *Archives of Internal Medicine* 1170–2
[138] J Wing, 'Ethics in Psychiatric Research' in S Bloch, P Chodoff, and S A Green (eds), *Psychiatric Ethics* (3rd edn, Oxford University Press 1999) 461–77
[139] T Davies, 'Consent to Treatment: Trust Matters as Much as Information' (1997) 21 *Psychiatric Bulletin* 200–1
[140] D P J Osborn, 'Research and Ethics: Leaving Exclusion Behind' (1999) *Current Opinion in Psychiatry*

criminal assault and/or civil battery).[141] Traditional informed consent is being given new meanings, and legislative provisions pertaining to public education campaigns are being reexamined in light of consent-related concerns like disclosure, advance directives, substitute decisions, developing therapies, and advocacy.[142]

Informed consent is a critical aspect of ethical and legal practice in various fields, including healthcare, research, and legal proceedings. To ensure that the person in question can completely understand the nature of their involvement and make an educated decision on their participation, it is imperative that certain broad information be disclosed. Simply put, complete disclosure is required. the diagnosis, the patient's prognosis if left untreated, alternative procedures, the success rate of each option, the risks and benefits of the planned procedure, and the patient's right to exercise veto power over a doctor's decision are all generally accepted components to be disclosed to obtain informed consent from a legally competent patient.[143]

[141] B Dickens and R Cook, 'Dimensions of Informed Consent to Treatment' (2004) 85 *International Journal of Gynecology and Obstetrics* 309–14.

[142] P Singer, S Choudhry, and J Armstrong, 'Public Opinion Regarding Consent to Treatment' (1993) 41 *Journal of the American Geriatrics Society*

[143] M Saaiq and K-U-Zaman, 'Casual Consent to Treatment: A Neglected Issue in Our Health Care System' (2006) 2 *Annals of Pakistan Institute of Medical Sciences* 207–12

Chapter Three.

Legal Framework on Medical Law in Nigeria.

Nigerian legislations regulating healthcare in Nigeria is said to be inadequate in the discourse of medical law and health care, compared to other jurisdictions across the nations of the world. This in turn gives rise to a wide range of medical malpractice cases and concerns that are often not remedied due to lack of enabling regulations and legislations. This area of law is therefore developing, and this research aims to enable a wider reach of literacy on the subject matter. There are however laws and regulations that cover this field: these will be discussed in this chapter.

3.1 Constitution of Federal Republic of Nigeria, 1999 (as Amended).

The Federal Republic of Nigeria's (CFRN) 1999 Constitution states that "the state shall direct its policy towards ensuring that" and protects the right to health. (c) All employees' health, safety, and welfare are protected and not jeopardised or mistreated; (d) Everyone has access to sufficient medical and health facilities.[144] Although the right to health is derived from Chapter 2 of the Constitution, which is generally non-justiciable,[145] the constitution also gave lawmakers the authority to enact laws on the topics listed in the Exclusive Legislative list, which is in Part 1 of the Second Schedule to the Constitution.[146] as stated in item, 60(a)[147] the legislators are authorized "to enforce the observance of the fundamental Objectives and Directive Principles contained in this Constitution." The National Assembly can use this authority by repealing s. 6(6)(c) to grant the court jurisdiction or by proposing legislation that makes chapter II of the

[144] *The Constitution of the Federal Republic of Nigeria 1999* s 17(3), Cap C LFN 2004.
[145] *CFRN 1999* s 6(6).
[146] *CFRN 1999* s 4(2).
[147] *CFRN 1999*, Second Schedule, Legislative Powers, Exclusive Legislative List, Part 1

constitution legally enforceable and justiciable.[148] The legislature has the authority to adopt new laws by domesticating a treaty that Nigeria is a party to or by using the legislative process. Any one of the three choices will give Chapter 2 of the Constitution the power of justiciability. In 2014, the National Assembly passed Nigeria's first health bill in accordance with its constitutional mission and powers.

Although the Right to Health as guaranteed by the CFRN is not justiciable as rightly said earlier, some key terms in medical law found their root from the provision of Chapter IV of the Constitution[149]. Such provisions are enforceable and can give rise to an action in the court of law. The Federal Republic of Nigeria's Constitution outlines several rights that are unalienable simply because we are human.[150] The rights to life, human dignity, and freedom from discrimination, as well as the right to personal liberty, are all pertinent to this subject. The right of a patient to be informed about a procedure and to consent or refuse to consent to the proposed treatments or their alternatives is another significant right that is not specifically mentioned in the Nigerian Constitution but is derived from the provisions of the right to private and family life, the freedom of thought, conscience, and religion, established medical practices, professional code, and common law recognition.[151] These right guaranteed in the constitution contains legal and ethical issues in the health care provider-patient relationship each of these rights will now be examined.

3.1.1 The right to life.

The Nigerian Constitution's Section 33 protects everyone's right to life. Therefore, no one may be purposefully deprived of their life unless to carry out a court order related to a crime for

[148] O Nnamuchi, 'Kleptocracy and Its Many Faces: The Challenges of Justiciability of the Right of Healthcare in Nigeria' (2008) 52 (1) *Journal of African Law* 3.
[149] *CFRN 1999 s 18.*
[150] *Ogba v The State* [1992] LLJR SC.
[151] *CFRN 1999* s 37, 38.

which they have been proven guilty.[152] This provision has the effect of granting everyone, including patients, the constitutionally guaranteed right to life. As a result, everyone, including healthcare providers, is required to treat patients with reasonable care and to make sure that their treatment does not result in death. However, a patient will not be forced to receive treatment simply because they have the right to life. They also have the freedom to choose whether to receive treatment, even if doing so will likely result in death.[153]

In the same vein, a patient should not be subjected to any medical experiment which can result in the death of the patient. Health care providers have an obligation to respect patients' right to life by not acting in a way that would deny them that right. Depending on the specific facts and circumstances of the case, a medical professional may face charges of manslaughter or other offences if their negligence during treatment results in the death of a patient.

3.1.2 The right to human dignity

Section 34 of the Nigerian Constitution which guarantees everyone the right to respect for their own dignity, no one shall be tortured or subjected to cruel or humiliating treatment.[154] Even in the practice of medicine, the right to human dignity and its constitutional position must be emphasised. The right to dignity is just as significant as all other fundamental rights. The recognition of the value of human beings and their right to be treated with respect and care is reflected in the right to dignity. The right to human dignity serves as the cornerstone for numerous other constitutional rights.[155] It also requires medical professionals to respect their patients' personhood and worth; they cannot treat their patients cruelly, inhumanely, or degradingly. A patient, regardless of his health status, has the right to be treated with dignity and

[152] *CFRN 1999* s 33.
[153] Okonkwo
[154] *CFRN 1999* s 34(1)(a).
[155] *S v Makwanyane* [1995] (3) SA 391.

respect because of this right. He must never be subjected to cruel or dehumanising treatment, and his medical staff must always uphold this right; if they do not, the patient may file a claim for a violation of his right to human dignity while he is being treated. Notable is the part this privilege plays in the widespread discrimination against people with HIV in the hospital. It is well-established that a patient has the right to personal dignity regardless of his or her health or the type of illness they are suffering from. The patient must be treated with dignity and without prejudice. Therefore, it is argued that some medical professionals may ignore HIV/AIDS patients or may even directly or indirectly distance themselves from receiving priority attention when performing their duties, which amounts to a form of stigmatisation, discrimination, and assault on the patient's dignity. In Hoffmann v. South African Airways, the South African Constitutional Court addressed an airline policy that prohibits hiring HIV-positive individuals as cabin attendants due to their condition and denounced such an action as unlawful. In describing prejudice against HIV-positive individuals, the court determined that additional discrimination against HIV victims is a new form of stigmatisation and an attack on their personal dignity[156] the court declare such act illegal, and the court addressed an airline regulation that prohibits hiring people with HIV as cabin attendants according to their status. In describing prejudice against HIV-positive individuals, the court held that additional discrimination against HIV victims is a new form of stigmatisation and an attack on their personal dignity.[157] In addition, the court ruled that this kind of discrimination was unfair because it was founded on ignorance about HIV and could not be justified. A general policy of not hiring anyone with HIV is not justified by the possibility that some HIV-positive individuals may not be well enough to serve as cabin

[156] *S v Makwanyane* [2000] 11 BCLR 1235.
[157] Supra

attendants[158] Under President of Nigeria, Goodluck Ebele Jonathan regime the HIV/AIDS (Anti-Discrimination) Act 2014 was signed into law, this law seek to protects the rights and dignity of people living with HIV.[159] Discrimination against individuals with HIV on the basis of their status is prohibited by the act. Additionally, it forbids employers, individuals, or organisations from requiring HIV testing as a condition of employment or access to certain services. According to figures from 2015, over three million Nigerians were HIV positive.[160] It is against the law and a violation of these patients' right to health to discriminate against them and refuse to treat or accept them.[161]

3.1.3 Right to personal liberty.

he right to personal liberty is guaranteed by Section 35 of the 1999 Nigerian Constitution. It states that everyone has the right to their own personal freedom and that it can only be taken away in certain situations and in compliance with legally allowed procedures.[162] The constitutionally protected right to personal liberty includes the freedom from incarceration, arrest, and other forms of bodily coercion in any way that lacks legal basis. [163] By virtue of this clause, the Constitution grants people the right to personal liberty, which cannot be violated, either within or outside of a hospital, unless doing so is permitted by the law. A patient's right to personal liberty is not violated when they are kept in a hospital bed or on hospital property to get medical care. For the sake of community care and treatment or protection, there is an exemption

[158] Supra
[159] HIV/AIDS (Anti-Discrimination) Act 2014 (Nigeria) s 4.
[160] UNAIDS, 'Nigeria Passes Law to Stop Discrimination Related to HIV' http://www.unaids.org/en/resources/presscentre/featurestories/2015/february/20150211_nigeria_law accessed May 10 2024.
[161] *Code of Medical Ethics of Nigeria* (HIV and AIDS (Anti-Discrimination) Act 2014) appendix 3B Article A, 79; s 3(1) & (2).
[162] *CFRN 1999* s 35.
[163] A V Dicey, *Constitutional Law* (9th edn, Macmillan 1996) 207–8

to this rule in cases where a person is deemed to be vagrants, mentally ill, or suffering from an infectious or contagious disease.[164] Furthermore, a patient cannot be unilaterally held in the hospital, for instance, to make them pay a hospital bill. The hospital administration, medical professionals, and other relevant parties are required under this right to release a patient as soon as they are deemed medically fit. Since restriction of personal liberty for the enforcement of hospital bills is not recognised as an exemption to the right to personal liberty recognised under the Constitution, it may amount to wrongful incarceration when the management refuses to release a well patient. Medical expenses ought to have been covered while the patient was receiving treatment. Health care practitioners are prohibited by law from using custody or denying patients their personal freedom to enforce of bills.[165]

3.1.4 Right to private and family life and freedom of thought conscience and religion.

Section 37 of the Constitution guarantees the privacy of citizens, their residences, and their correspondence, thereby ensuring the right to a private and family life. Additionally, S. 38 of the Constitution states that everyone has the right to freedom of conscience, religion, and thought, including the ability to alter one's beliefs or faith.[166]

The basic right to freedom of thought, conscience, and religion, as well as the right to privacy and family life, are the sources of the term "informed consent." In this context, it is argued that an individual can decide what should be done to them and has the freedom to do whatever they want with their body.[167] In Schloendorff vs. Society of the New York Hospitals,[168] Cardozo, CJ stated as follows:

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[164] *CFRN 1999* s 35(1)(e).
[165] Ibid
[166] *CFRN 1999* s 38.
[167] D C Thomasma and G C Graber, *Euthanasia: Toward an Ethical Social Policy* (Continuum, New York 1990) 192
[168] *211 NY* 125, 105 N.E. 29 (1914)

> "Every human being of adult years and sound mind has a right to determine what shall be done with his own body."[169]

Human autonomy and self-determination are acknowledged and safeguarded by the long-standing common-law principle. This principle serves as the foundation for the common law concept of informed consent, which is frequently used to support arguments that a person has the right to choose the medical care they want. The Common law position on the right to give informed consent in medical treatment or medical experimentation applies in Nigeria, even if this right is not expressly stated in the country's constitution. This is demonstrated in certain determined cases. This implies that a patient has control over his body, can decline the finest medical advice or treatment, and cannot be forced to receive mandatory medical care unless he consents.[170] In the Medical and Dental Practitioners Disciplinary Tribunal vs. Dr. John E. N. Okonkwo case, the Nigerian Supreme Court upheld a patient's right to be judged in light of their freedom of conscience, religion, and thought. This decision reaffirmed the long-standing common law view that a person's right to refuse necessary medical care, including life-sustaining procedures like blood transfusions and artificial feeding and hydration, is guaranteed by the constitution. The patient in the instance, Mrs. Martha Okorie, her husband and Dr. John Emewulu Nicholas Okonkwo are all members of the Jehovah's Witnesses, a religious group that maintains that blood transfusions are against God's will

[171] The patient was a twenty-nine-year-old woman who had given birth and spent nine days in the Kenayo Specialist Hospital due to significant pain in her pubic area and difficulties walking. She had a critical illness for which a blood transfusion was advised, according to the results of the diagnosis, but she refused to consent to the procedure. On that basis, the physician at Kenayo

[169] *211 NY* 125, 105 N.E. 29 (1914)
[170] Ibid
[171] [2001] 2 MJSC 67

Hospital released her with a note stating that she had refused a blood transfusion despite pleas and threats of death. After her husband brought her to Jeno Hospital, she presented Dr. Okonkwo (the respondent) with a card that was signed by the patient and witnessed by her uncle and husband. It read, "Medical Directive/Release." She requested on that card that no blood transfusions be administered to her, even though the doctors believed they were essential to her survival. She said that the instruction was consistent with her views as a Jehovah's Witness and her rights as a patient. She absolved physicians, anaesthesiologists, the hospital, and its staff from liability and accepted any additional risk that the rejection would entail. In another document that he signed, the husband gave his wife instructions not to have blood transfusions and absolved the hospital and its staff of any responsibility on the matter. The patient passed away even though the response followed her explicit and unambiguous request to not get a blood transfusion. The Medical and Dental Practitioner Disciplinary Tribunal charged the respondent with two counts of negligence and acting against his oath as a medical practitioner, resulting in his notorious professional conduct that violated the Medical and Dental Practitioner Disciplinary Act. The respondent was suspended from his profession for six months after the Tribunal judged him guilty on both counts. The Court of Appeal heard the respondent's appeal and granted it. The Supreme Court was then appealed to by the Medical and Dental Practitioner Disciplinary Tribunal. The Supreme Court dismissed the appeal unanimously.

held inter alia:

> "The patient's constitutional right to object to medical treatment or, particularly, as in this case, to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 Constitution as follows: (i) right to privacy: section 34; (ii) right to freedom of thought, conscience and religious: section 35. All these are preserved in section 37 and 38 of the 1999 Constitution respectively. The right to privacy implies a right to protect one's thought conscience or religious belief and practice from coercive and

> unjustified intrusion; and one's body from unauthorized invasion. The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's life, religious belief. The limits of these freedoms, as in all cases, are where they impinge on the rights of others or where they put the welfare of the society or public health in jeopardy. The sum of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary…"[172]

On his part, per Uwaifo, JSC added:

> "I am completely satisfied that under normal circumstances no medical doctor can forcibly proceed to apply treatment to a patient of full age and sane faculty without the patient's consent, particularly if that treatment is of a radical nature such as surgery or blood transfusion. So, the doctor must ensure that there is a valid consent and that he does nothing that will amount to a trespass to the patient. Secondly, he must exercise a duty of care to advise and inform the patient of the risks involved in the contemplated treatment and the consequences of his refusal to give consent." [173]

According to the court's ruling in Tega Esabunor & Others vs. Dr. Tunde Faweya & 4 Others,[174] a doctor is instructed by the medical profession's code of ethics, also known as the published code of ethics, to refrain from letting factors like negligence or religion stand in the way of his relationship with his patients. Medical professionals are therefore burdened by the code in that they are unable to support a citizen's decision to permit a child to die due to his personal religious convictions. However, certain religious groups may provide patients cards to wear on their bodies; these cards indicate that the patient does not consent to specific medical procedures, such as blood transfusions. If such a card is discovered, It is still up to the doctor to decide whether or not to give a transfusion because the code of medical ethics requires that the practitioner always take reasonable and legal actions that result in the patient's life being

[172] *Per Ayoola, JSC* at pp 103-104
[173] *Sidaway v Board of Governors of Bethlehem Royal Hospital* [1985] 11 AC 871; *Esterhuizen v Administrator, Transvaal* [1957] (3) SA 710 (T)
[174] *[2008] 12 NWLR 1102* [799]–[810]. *Nigerian Code of Medical Ethics* s 22(1)(c)

preserved and that nothing, including religion, should stand in the way of his relationship with his patient.[175]

3.2 Universal Declaration of Human Right (UDHR)

One of the key documents that articulates human rights is the Universal Declaration of Human Rights, which has played a significant role in establishing the concept of human dignity in international law, offering a moral and legal foundation for higher standards of care based on our fundamental obligations to one another as members of the "human family," and offering crucial direction on important social, legal, and ethical issues.[176] The following are a few of the provisions:

Article 1: All people are equal in their rights and dignity from birth. Since they have conscience and reason, they need to treat each other with fraternity.[177]

Article 2. Regardless of race, colour, sex, language, religion, political or other beliefs, national or social origin, property, birth, or any other position, everyone is entitled to all rights and freedoms.[178]

Article 3. declares that no one should be denied their right to life, liberty, or personal security.[179]

Article 4. stipulates that no one shall be subjected to slavery or servitude; it further clarifies that all types of slavery and the slave trade are forbidden.[180]

Article 5. says that no one shall endure cruel, inhuman, or humiliating treatment or punishment, including torture of any sort.[181]

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[175] *Nigerian Code of Medical Ethics* s 22(1)(c).
[176] *Universal Declaration of Human Rights* (1948).
[177] Ibid
[178] Ibid
[179] Ibid
[180] Ibid
[181] Ibid

Article 6. Everyone has the right to recognition everywhere as a person before the law.[182]

Everyone has the right to a standard of living sufficient for their own and their families' health and well-being, including access to medical treatment, according to the Universal Declaration of Human Rights. However, because of factors like how health is defined, what minimum rights are included in a right to health, and which institutions oversee guaranteeing a right to health, there is still some international variance in how the right to health is interpreted and applied.[183]

3.3 National Health Act, 2014

The National Health Act, which established and supplied a framework for standards and regulations of health services in Nigeria, is the first of its type in the country's healthcare industry;[184] In other words, to offer a structure for the creation, control, and administration of the National Health System.[185] Being the first piece of law to govern the health of Nigerian citizens, the Act established the legislative framework that will enable the country to provide high-quality healthcare. The Act established the right to health to guarantee residents "the highest attainable standard of health" and to comply with the World Health Organization's duties on member nations as a basic right.[186] The Act's sections on the responsibilities and rights of health providers and consumers are its most important components[187] and that of health providers.[188] By these provisions, both the patients and physician's health rights are guaranteed. The Act also created the National Health System, which consists of the Federal and State Ministries of Health, to

[182] Ibid
[183] http://www.un.org/en/universal-declaration-human-rights/
[184] *National Health Act 2014* s 1(1)
[185] Long Title to the *National Health Act 2014*.
[186] Preamble to the *Constitution of the World Health Organisation*, Nigeria became a member on 25 November 1960
[187] *National Health Act 2014* s 20 and 23.
[188] *National Health Act 2014* s 21, 22, and 23.

guarantee the best possible adherence to these rights and responsibilities[189]and National Health Council, which is the highest policy making body in matters relating to health in Nigeria.[190] The National Tertiary Health Institutions Standards Committee was created under the Act to oversee its implementation. Its main responsibility is to "establish minimum standards to be attained by the various tertiary health facilities in the nation and also to inspect and accredit such facilities."[191] Therefore, by establishing a legal and institutional framework—exemplified by its guidelines—to promote growth and appropriate organisation, the Act establishes an operational space for the Nigeria Health System to flourish.[192] In most cases, a patient may refuse treatment if he is capable of making sound decisions, or he made that choice when he was of sound mind through written expression. Section 23[1]d NHA,2014[193] Although the NHA made some provisions for the donation of organs for therapeutic purposes in living individuals, medical student training, health research, the production of therapeutic, diagnostic, or preventative substances, and the advancement of health services, it did not consider or legally document the decisions that patients may make regarding how their lives will end.[194]

In Nigerian healthcare, the NHA's institutional and legislative framework is like a universal law that does not specifically address patient safety. Nonetheless, the Act aims to guarantee the availability, accessibility, acceptance, affordability, and quality of current health services—all of which are crucial components of the right to health. In other words, the Act does not specifically address patient safety, but it implicitly supports the cause.

[189] *National Health Act 2014* s 1 and 2.
[190] *National Health Act 2014* s 2, 4, and 5.
[191] *National Health Act 2014* s 9 and 10.
[192] Y Olomojobi, *Medical and Health Law* (Princeton & Associates Publishing Co. Ltd, Ikeja 2019) 62
[193] *National Health Act 2014* s 23(1)(d)
[194] *National Health Act 2014* s 56(1)

3.4 National Health Insurance Authority Act, 2021.

In 2021, the National Health Insurance Act, Cap. N42, LFN, was repealed by the National Health Insurance Authority Act (NHIAA).[195] According to Section 2 of the Act, the NHIAA's goals are to: (a) promote, regulate, and integrate health insurance; (b) enhance and leverage private sector involvement in the delivery of healthcare services; and (c) take any other action that will help the government achieve universal health coverage for all Nigerians.[196] Another patient safety drive achieved by this Act, is the provision of coverage for vulnerable persons under the state health insurance and contributory scheme through the health care provision fund as established by Insurance scheme. The "Authority" mandated that all Nigerian citizens enrol in health insurance programs to advance high-quality healthcare in the country.[197] The Act limited each resident's ability to choose whether to enrol in the state health program. Enrolment in the health program is required as soon as a person moves into a state.[198] The Act created the Vulnerable Group Fund to help lessen the financial burden on those who are most in need of healthcare to guarantee equity in access[199] Government funding for disadvantaged individuals must come from the Basic Health Care Provision budget, development partners, or non-governmental organisations (NGOs) if existing programs do not cover it..[200] In general, the goal of this act is to guarantee universal health coverage in Nigeria. The goal of NHIAA is still to provide healthcare services that are equitable, affordable, and accessible. In the Nigerian healthcare system, the Act subtly encourages patient safety.

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[195] *National Health Insurance Authority Act (NHIAA), 2021*, long title.
[196] *NHIAA 2021*, ss 14(1), (2), (3) and s 3(b).
[197] *NHIAA 2021*, s 13(7).
[198] *NHIAA 2021*, s 14(3).
[199] NHIAA 2021, s.25
[200] NHIAA 2021, s.31 (2) (3)

3.5 Child's Rights Act, 2003

The Child' Right Act[201] Every child has the right to the best possible level of physical and mental health, as guaranteed by the Child's Rights Act.[202] Every government, parent, guardian, institution, service, agency, organisation, or body in charge of the child's care is required under the Act to ensure that the kid has the best possible health.[203] The operative word is "shall"[204] which means that the parties mentioned in the act are required to make sure the child's health is achieved. The Act also makes it illegal for parents or any of the above-mentioned organisations to violate this clause; they will be punished with a fine or even imprisoned.[205] The goal of the Childs Rights Act is to ensure that "the child" has access to safe, high-quality healthcare. In this regard, it left all levels of government with the mandatory responsibility to lower the child mortality rate, provide all children with the necessary medical and health care services, provide adequate nutrition and safe drinking water, provide good hygiene and environmental sanitation, employ appropriate technology to combat disease and malnutrition within the framework of primary healthcare, provide appropriate healthcare for expectant and nursing mothers, and support the mobilisation of national and local community resources in the development of primary healthcare for children through technical and financial means.[206] The Child's Rights Act, encourages the provision of healthcare services throughout the nation. In relation to Nigerian children, it controls health services. The requirements of this Act apply to Nigerian doctors and other medical professionals. When the Act's provisions are put into practice, Nigerian children will receive safe, high-quality healthcare.

[201] Child's Rights Act (CRA) 2003.
[202] Child's Rights Act (CRA) 2003, s 13 (1).
[203] CRA 2003, s 13 (2).
[204] CRA 2003, s 13 (2).
[205] CRA 2003, s 13 (5).
[206] CRA 2003, s 13(3).

3.6 Medical and Dental Practitioners Act,

Medical and Dental Practitioner's Act[207] The actions of Nigerian physicians and dentists are governed by the Medical and Dental Practitioners Act. By making sure that all practitioners completely follow the Act's rules, the main goal of this Act is to encourage high-quality healthcare. The Medical and Dental Council of Nigeria was founded to best accomplish its goal "for the registration of the Medical Practitioners and Dental Surgeons and to provide for a Disciplinary Tribunal for the discipline of members"[208] who might not follow medical practice guidelines. The council is made up of respectable professionals,[209] They are passionate about advancing high-quality healthcare in Nigeria. Only competent individuals who have completed the necessary training and passed the authorised courses at authorised institutions are registered as members of the profession, according to the Council.[210] The Council's supervisory responsibilities include making sure that the guidelines and tests that lead to authorised credentials are properly followed.[211] The individual will work under the direct supervision and direction of one or more fully registered practitioners in the practice of surgery, midwifery, medicine, or dental surgery for a predetermined amount of time after receiving an accepted medical and dental qualification.[212] To demonstrate the importance of human life and high-quality healthcare, the individual's supervisor may refuse or postpone issuing the Certificate of Experience. To register as a professional member, you must first obtain the certificate of experience.[213] Following registration, each member is required to renew their practise licence for

[207] Cap. M8, LFN 2004.
[208] Medical and Dental Practitioners Act (MDPA) cap. M8, LFN 2004 "Preamble".
[209] Ibid, s 2
[210] Ibid, ss 8 and 9.
[211] Ibid, s 10.
[212] Ibid, s 11.
[213] Ibid, ss 12 and 13.

the year and pay their annual practicing fee.[214] Any member who does not pay the practice fee will be found guilty of a crime and will be required to pay twice or ten times the fee upon conviction.[215] All of these actions are taken to guarantee that patients receive high-quality healthcare. A Disciplinary Tribunal and Investigation Panel was established to guarantee the protection of patients among medical professionals.[216] This aligns with the advancement of patient safety and high-quality healthcare standards. A registered practitioner may be found guilty of professional misconduct by the Disciplinary Tribunal if they have engaged in infamous behaviour, been found guilty by a court of competent jurisdiction, or registered fraudulently.[217] A medical professional who is found to have engaged in professional misconduct may be punished under the Act by having their name removed from the register of members, being suspended from practicing medicine, or receiving admonition. The purpose of all these measures is to motivate medical professionals to keep patient safety at the forefront of their minds[218] and the Act makes it plain that anyone who poses as a certified medical practitioner and is caught doing so will face consequences all of these are to deter quacks from entering the field.[219] This Act's goal is to guarantee that medical professionals practise effectively and to motivate them to provide patient-centred care when carrying out their responsibilities to patients

3.7 Compulsory Treatment and Care for Victims of Gunshot Act, 2017.

According to the Act, hospitals in Nigeria, whether public or private, are required to treat anyone with a gunshot wound right away, with or without police approval.[220] The goal of this Act is to

[214] Ibid, ss 14.
[215] Ibid, s 14(5)(a) (b).
[216] Ibid, s 15.
[217] Ibid, s 16(1) (a) (b) (c).
[218] Ibid, s 16 (2) (a) (b) (c)
[219] Ibid, s 17.
[220] *Compulsory Treatment and Care for Victims of Gunshot Act 2017* s 1.

advance patient safety. It was passed to address the challenges of denial and administrative roadblocks that surrounded gunshot wound victims' access to care at Nigerian hospitals. The purpose of this Act was to address the shortcomings of the Robbery and Firearms (Special Provision) Act of 1986,[221] It made it illegal for any healthcare establishment or anyone to treat, admit, or give medication to someone who may have been shot without first notifying the police and getting their consent. Most victims bled to death before the police clearance was ready, making it a challenging process. The Compulsory Treatment and Care for Gunshot Victims Act was passed to preserve lives and encourage victims to receive treatment right away. Although the Act encourages patient safety, it mandates that the incidence be reported to the authorities within two hours of the doctor starting treatment.

3.8. Forms of Consent

In Nigeria, there is no law that specifies the types of consent. Though, permission to a medical operation might be either express or implied. The individual giving consent must be competent to do so, freely provide their consent, be fully informed, not be forced to give it, and understand it. Unless they are emancipated minors, patients under the age of eighteen may never be granted authorisation. Ask people with mental illnesses or those who have been institutionalised in the criminal justice system about their legal competence. When a patient is not of legal age to give consent, a parent or legal guardian must. The participant can still provide their assent
.[222]

[221] *Robbery and Firearms (Special Provisions) Act 1986* s 4.

[222] Ibid.

3.8.1. Express consent

When a patient gives his or her written or verbal assent to a medical procedure or treatment that will be performed on him, this is known as express consent. These days, doctors can get consent orally or in writing. Both are acceptable, but they work differently in different circumstances. When a procedure or condition carries a risk, express agreement is crucial. For example,

1. Surgery, either with or without the use of anaesthesia.
2. A process that entails thorough gynaecological exams.
3. Major diagnostic procedure cases.

Written consent is preferred in the circumstances, but it's also critical to provide sufficient information and an explanation of the process. Therefore, the practitioner must have provided the pertinent facts for the patient to be considered to have made an educated choice. Therefore, a witness is needed in such a situation. The witness must confirm to the information and that the person in question understands it before giving their agreement; they could be a neutral third party, a member of the hospital staff, or a family member.[223]

3.8.2. Implied Consent

Implied consent is usually obtained by the conduct of a patient by which it implies that he has agreed to an examination or treatment.[224] Implied consent is frequently used in medical practice. Consent is implied for the purposes of the examination when a patient enters a hospital, complains, and approaches the doctor for an examination without saying anything but only acting. The patient has only given their approval for small examinations, which is a limited type of consent because it only covers minor operations and examinations. When a patient must

[223] Y Lawal and others, 'The Doctrine of Informed Consent in Surgical Practice' (2011) 10 *Annals of African Medicine* 1–5
[224] Ibid

undergo an intrusive surgery or examination, written agreement must be acquired after the patient has been fully informed of the procedure's or treatment's necessity. However, verbal consent is necessary when implied consent is unclear.[225]

3.8.3 Extra verbal consent.

Extraverbal consent is defined as consent that is not solely given orally; it is typically recorded and occasionally consists of both express and inferred assent. It must be gained when implied consent is questionable, particularly when private and delicate bodily parts like the breast or genitalia are being examined.[226]

The following procedures require extra verbal consent:

1. Urethral catheter insertion.
2. X-ray of the chest
3. Intravenous cannula insertion
4. Dressing the wound
5. Genital, breast, or rectum examination

A close family or guardian in locus parentis may sign on behalf of a minor or another person who is mentally or physically incapable, but the minor's best interests must always come first. The lack of a legislation specifying the type of consent that healthcare providers must get suggests that disagreements regarding consent will be resolved in accordance with accepted professional practice rather than the provisions of the law.[227]

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[225] Ibid

[226] Y Lawal and others, 'The Doctrine of Informed Consent in Surgical Practice' (2011) 10 *Annals of African Medicine* 1–5

[227] National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research* (US Government Printing Office 1979) https://www.hhs.gov/ohrp/sites/default/files/the-belmont-report-508c_0.pdf accessed 4 August 2024.

3.9. Element of Informed Consent.

The following are the six fundamental components of informed consent:

1. A reasonable description of the steps to be taken, together with their goals, including identifying any experimental procedures.
2. An explanation of any risks and pain that are realistically anticipated both during and after.
3. An explanation of any benefit that could be expected.
4. An explanation of any other operations that could benefit the patient, particularly if they refuse.
5. A suitable response to any questions about the processes.
6. A notification that the individual may revoke consent and stop taking part in the activity at any moment without affecting the subject.[228]

Meeting all the requirements for informed consent is not difficult. Even if it takes a lot of time, it could seem unreasonable, particularly if the patient is too ill to care or is not intelligent enough to comprehend what is being said.[229] The patient (or their family member) must first identify themselves and state that they have consented to the examination, therapy, or surgery. The medical team that may be involved in the patient's procedure must be disclosed to the patient. In cases where a patient refuses, they must be informed of the risks involved. *Truman vs Thomas*,[230] Following a thorough examination, a doctor advised the claimant to have a Pap smear; she declined, and as a result, she eventually acquired cervical cancer. She filed a lawsuit, arguing

[228] http://www.brandeis.edu/ora/hrrp/special-topics/consent/elements-informed-consent.html Accessed February 2nd, 2024
[229] D Sokol, 'Medicine as Performance: What Can Magicians Teach Doctors?' [2008] (101) *Journal of the Royal Society of Medicine* 443–6
[230] *Truman v Thomas* [1980] 24054 (SF) Supreme Court of California.

that he had a duty to warn her of the dangers of declining the Pap smear. This case is commonly known as the theory of informed refusal since the court upheld her claim and found the defendant accountable.

3.10 Validity of Consent

Three requirements must be met by an individual for their informed consent to be valid: disclosure, voluntariness, and capacity. Stated differently, the following constitutes a legitimate consent.

3.10.1 Disclosure

It is the provision of all information required to enable a patient to make informed and independent decision. To ensure that patients understand everything, healthcare professionals must take reasonable steps to ensure comprehension.[231] These steps include giving written instructions, asking questions to determine whether patients fully understand the nature and implications of the decision at hand, and explaining things simply and clearly. Disclosure is useless if the patient does not understand everything.[232]

3.10.2 Voluntarism

This refers to the patient's freedom to make decisions on their own terms, free from outside pressures like coercion, manipulation, or undue influence. The American College of Gynaecologists (ACOG) provides the following explanation of the significance of voluntariness in the exercise of informed consent: An intentional, voluntary decision that grants someone else permission to act in a particular way is known as free consent. Within the field of medicine, it refers to the act of a person voluntarily consenting to a medical intervention in her life, be it

[231] M. Burgess, "Proposing Modesty for Informed Consent" (2007) 65 *Social Science & Medicine* 2284–2295
[232] A Maclean, "The Doctrine of Informed Consent: Does it Exist, and Has it Crossed the Atlantic?" (2006) 24 *Legal Studies* 386–413

treatment, research involvement, or medical education. Free consent cannot coexist with coercion or unwilling pressure from outside sources. For consent to be deemed legitimate, it must be freely offered and given, free from coercion or any improper influence that could lead the subject to accept or reject treatment.

In addition, healthcare professionals, partners and family members may also put pressure on a person. To ensure that the decision is genuinely the patient's, practitioners should be aware of this possibility and, where necessary, schedule a private appointment with the patient.

It must be shown that the person affected was weak or vulnerable for there to be legal proof of undue influence. This is usually the consequence of an established relationship with a dominance, dependency, or trust-based influencer.[233]

3.11 Capacity

The patient's capacity is defined as his or her ability to understand the information provided and make a logical choice based on the potential consequences.

The ability to make a particular decision at the appropriate moment, rather than the ability to make generic decisions, is the basis for evaluating someone's capacity. One cannot determine whether they are incapable of doing one or more of the following:

- Comprehend the information.
- Keep it in mind to help them make decisions.
- Utilize the information or consider it while making decisions.
- Express their choice.

The decision-maker must be capable of making decisions after receiving sufficient information for their consent or refusal to grant consent to be considered valid. The capacity to provide

[233] Ibid

informed consent may be questioned in situations where one's capacity for rational decision-making is restricted. As a result, status and capacity are the two factors that decide it. It is possible for a patient to be mentally incompetent but physically competent. The cases are evaluated for competence and capacity when the patient is unconscious, a minor, or in a mentally disturbed state.

The general principle of law is that patients reserve the right to determine what treatment is to be administered to them.[234] In Chester v. Afshar, Lord Steyn proposed that a rule requiring a doctor to refrain from performing an operation without the patient's informed consent serves two purposes: it aims to prevent physical harm that the patient is not willing to accept, and it also guarantees respect for individuals and the preservation of each patient's autonomy and dignity. Once more, the common law has long acknowledged each person's right to self-determination, including:[235] "the right of every person to have his or her bodily integrity protected against invasion by others."[236] According to English law, a patient's autonomy cannot be considered retained unless his permission is "informed." Additionally, it must be demonstrated that the patient can give consent and that they did so willingly after being informed of the nature of the therapy.[237] An obstetrician was sued in Montgomery v. Lanarkshire Health Board for failing to disclose the dangers of a natural birth. Her pregnancy was complicated, and the child was delivered with cerebral palsy. The claimant, who was short in size and had diabetes, said that she would have chosen a caesarean section if she had been fully advised of the risks associated with a normal birth. The defendant was found to be at liable, and the ruling upheld the law's stance on the importance of patient autonomy and the need for physicians to consider the needs of the

[234] J Herring, *Medical Law and Ethics* (4th edn, Oxford University Press 2012) 149
[235] [*2004] UKHL 41*, para 18.
[236] J K Mason & G T Laurie, *Law and Medical Ethics* (9th edn, Oxford University Press 2013) 70–71
[237] Ibid

"particular patient" while recommending possible treatments. Additionally, in April 2015, Spencer v. Hillingdon NHS Trust[238] After a hernia operation, the patient was diagnosed with bilateral pulmonary emboli; nevertheless, he did not seek treatment right away since he was not aware of the symptoms or the risk. After considering the Montgomery verdict, the judge concluded that there had been a breach of the duty of care in this case since the patient had not been informed or advised.

In Shaw v Kovac[239] The transaortic valve was still undergoing clinical trials and had not yet received complete approval when the patient in Shaw v. Kovac passed away in 2007 following its placement. To seek damages for the loss of life without informed consent, the claimants used the Montgomery verdict. The court disregarded the rule, concluding that the Montgomery decision established a legal threshold for the obligation to disclose but did not establish a right to informed consent as a stand-alone cause of action. The claimants in Mrs. A v. East Kent Hospitals University NHS Foundation Trust used intracytoplasmic sperm injection to have a child with a chromosome problem. The claimant alleged that the defendants' failure to warn of this potential constituted negligence. Using the Montgomery test, the court determined that the danger was not material, stating that neither the patient nor a reasonable patient would have given it any weight. As a result, doctors are not held accountable for any disclosures that a patient later objects to.[240]

There is a balance between protecting the incompetent patient from possible damage and allowing the patient to exercise autonomy and self-determination. When a patient is competent,

[238] *Spencer v Hillingdon Hospital NHS Trust* [2015] EWHC 1058 (QB).
[239] *Shaw v Kovac* [2015] EWHC 3335 (QB).
[240] *Mrs A v East Kent Hospitals University NHS Foundation Trust* [2015] EWHC 1038 (QB).

their decision-making abilities are sufficiently intact to ensure that their choices are respected.[241] This is necessary for anyone to provide valid informed consent; nevertheless, informed consent necessitates more than power, such as trust and the absence of force; consent obtained under duress is not consent. The comprehension of what is being accepted to is more crucial.[242]

3.12 Importance of consent in Nigeria.

The doctrine of informed consent has become can be linked to a fundamental right and is firmly rooted in constitutional doctrine, under Section 37 and 38 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended.[243] The privacy of citizens, their residences, letters, phone calls, and telegraph communications is protected under Section 37. Every individual has the right to freedom of thought, conscience, and religion, including the ability to change one's faith or beliefs, according to Section 38 (1). US courts have acknowledged that a patient's constitutionally protected right to privacy includes the freedom to refuse medical care.[244] In the case of Medical and Dental Practitioner Disciplinary Tribunal vs. Okonkwo, [245] the Supreme Court acknowledged the significance of consent when it ruled that a patient's relationship with a doctor is based on consensus and that an adult patient's choice to refuse medical treatment must be respected, in the absence of state intervention through the legal system, which renders the practitioner powerless to force a treatment on the patient.

Nigeria is not the only country that recognises a patient's right to consent. Every person's right to physical integrity and protection from others' treatment was acknowledged by the English

[241] Ibid
[242] C W Staden and C J Krüger, 'Incapacity to Give Informed Consent Owing to Mental Disorder' (2003) 29 *Med Ethics* 41.
[243] Constitution of the Federal Republic of Nigeria (1999).
[244] Ibid
[245] [2001] 7 N.W.L.R. (PT 711) 206

Common Law.[246] In the Scholoendorf v. Society of New York Hospital case, Carloso J[247] argued that a person of legal age and sound mind has the right to decide what should be done to his body and that it is crucial for a patient to have sufficient knowledge about his or her health.[248]

The court provided the following explanation in the Canadian case of Malette v. Shulman:[249] A competent adult has the right to refuse a particular treatment, even if doing so puts them in danger, could result in death, or would be viewed as an error by the medical practitioner or by others. The patient has the last word over whether to receive the treatment, regardless of the doctor's viewpoint.[250]

[246] 105 N.E. 92, 211 N.Y. 125
[247] Supra
[248] 105 N.E. 92, 93 (N.Y. 1914)
[249] [1990] 72 O.R. (2d) 417 (CA); 1991 (2) Med LR 162.
[250] Supra.

Chapter 4

Findings

4.1 Analysis of Survey Findings.

Table 1: Gender distribution: counts and percentage

GENDER	COUNT	PERCENTAGE
Male	47	34%
Female	92	66%

Table 2: Age distribution: counts and percentage

AGE	COUNT	PERCENTAGE
17-OCT	10	7%
18 - 21	50	36%
22 - 30	71	51%
30 - 60	8	6%

Table 3:Distribution by state of residence counts and percentage

State of Residence	COUNT	PERCENTAGE
Abuja	4	3%
Adamawa	1	1%
Delta	4	3%
Ekiti	2	1%
Kwara	1	1%
Lagos	47	34%
Nasarawa	1	1%
Ogun	11	8%
Ondo	4	3%
Osun	5	4%
Oyo	57	41%
Rivers	1	1%
United Kingdom	1	1%

Table 4: Distribution by participants' hospital treatment

Have you received treatments in the hospital?	COUNT	PERCENTAGE
Yes	121	87%
No	18	13%

Table 5: Distribution by participants' consent

Have you ever been asked to consent before receiving any medical procedure or treatment?	COUNT	PERCENTAGE
Yes	82	59%
No	57	41%

Table 6: Distribution by participants' access to treatment's information

If yes, were you given sufficient information about the nature and purpose of the procedure or treatment?	COUNT	PERCENTAGE
Yes	69	50%
No	70	50%

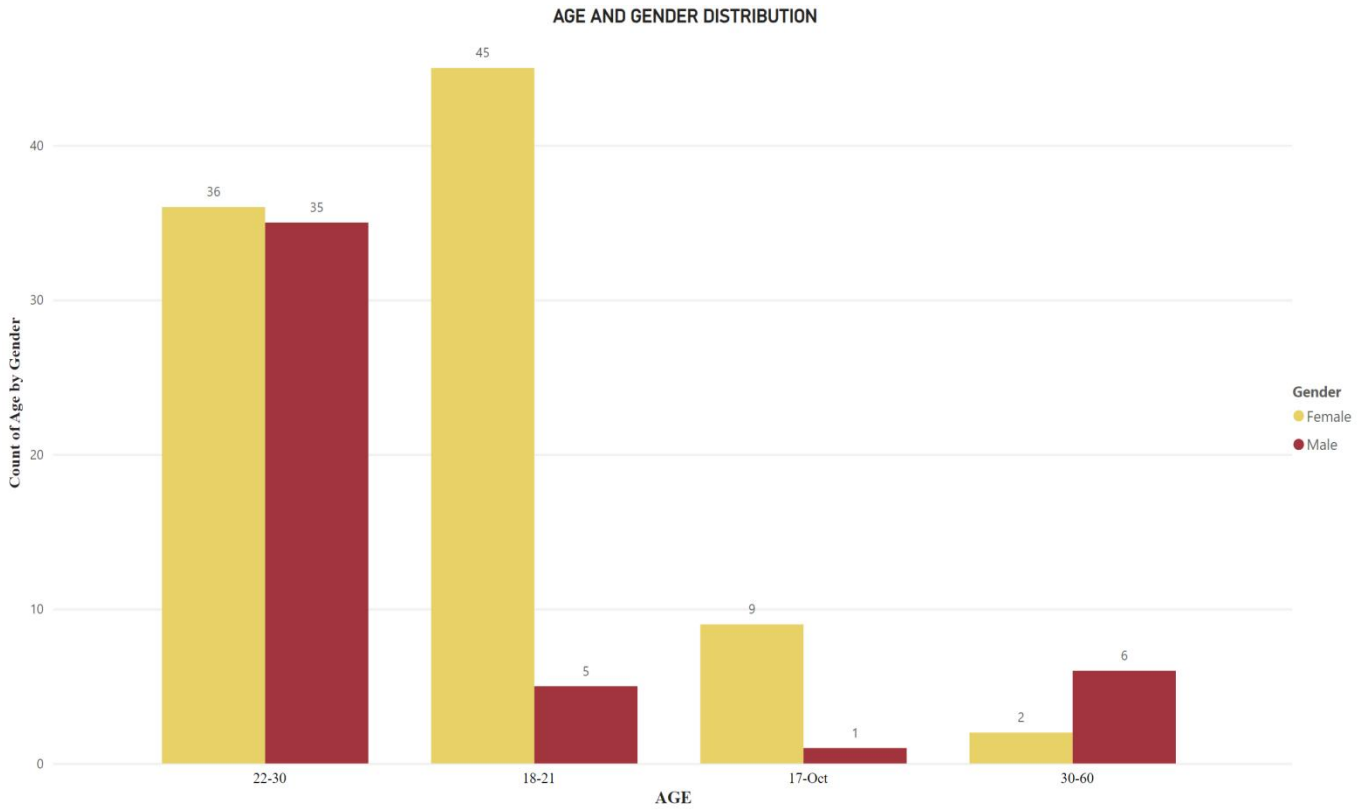

Figure 1: Gender distribution by age

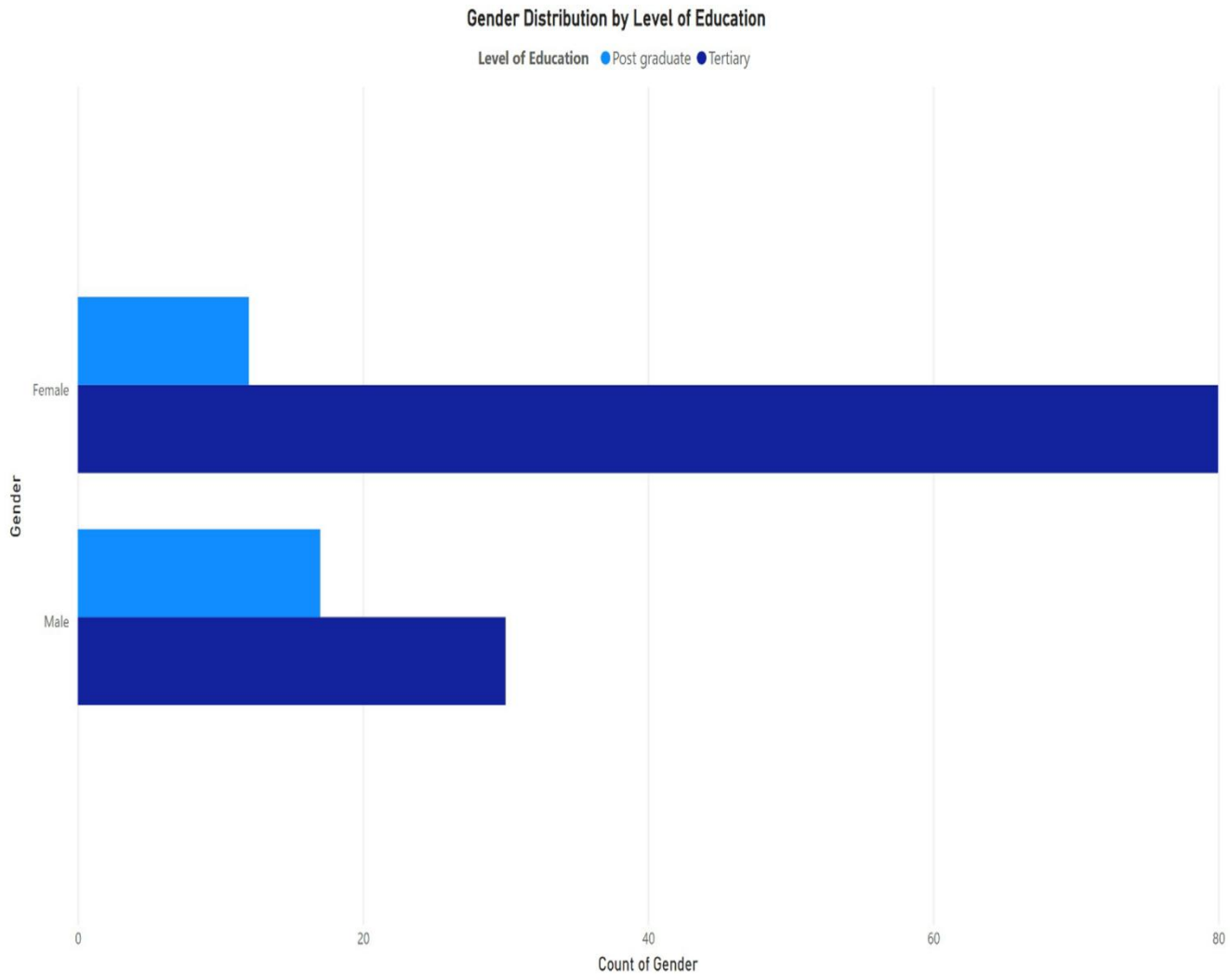

Figure 2:Gender distribution by level of education.

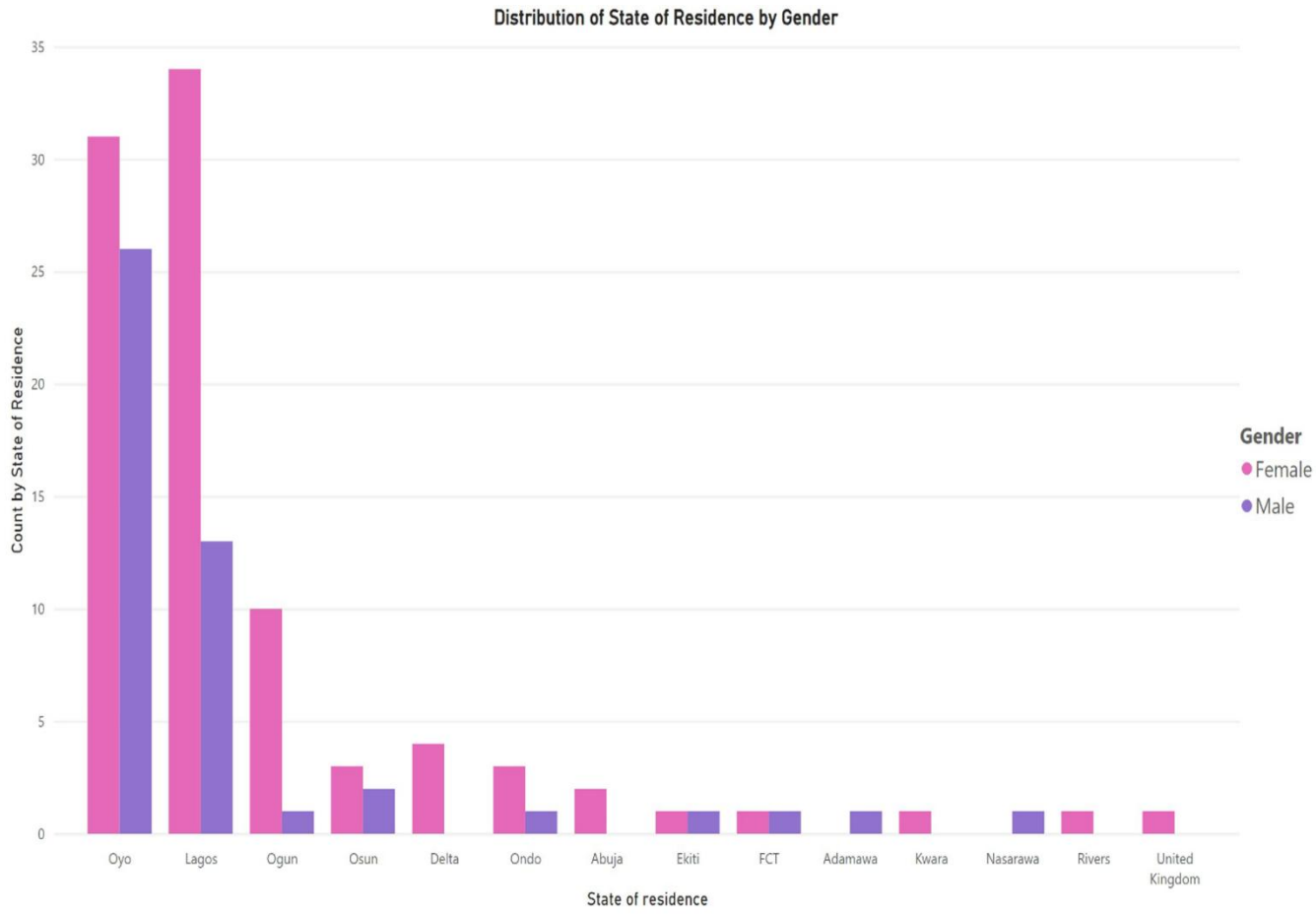

Figure 3:Distribution of state of residence by gender.

4.1.1 Descriptive analysis.

A descriptive analysis of the online survey informed consent in Nigeria conducted for the purpose of this study comprises various questions addressing the awareness, understanding, and practices related to informed consent among patients. Thirty four percent male and sixty six percent female filled the questionnaire, with the age range minor ten percent while the ninety percent cut across the adults. Most respondents had received treatment in hospitals, indicating a relevant sample for assessing informed consent practices, eighty seven percent of which have been treated in the hospital with thirteen percent who has not received treatment in the hospital. These thirteen percent of people have not experienced directly the Doctor patient relationship. Although we cannot trace the category or age group of those who have not received treatment in the hospital. Many reported not being asked for consent before procedures, highlighting a significant gap in practice, among the eighty seven percent, forty-one percent were not asked to give consent, they were treated without consenting to the procedure that was carried out on them.

A majority felt they were not given adequate information about the procedures, indicating a lack of transparency in communication. Fifty percent of people were not given sufficient information on the treatment they were to undergo, the risks the benefit and related matters, which means that in addition to forty-one percent that was not asked to give consent, nine percent of people were asked to consent without adequate information on the medical procedure. Respondents often reported insufficient information regarding the potential risks and benefits, which raises ethical concerns. A significant percent was unaware of their right to withdraw consent, suggesting a lack of patient empowerment.

4.1.2 Legal contextualization.

National Health Act (2014), Section 23 guarantees the right to informed consent, practitioners are under the obligation by this act to obtain informed consent, before treatment. Nigerian Constitution, Section 37 further guarantees the Right to private and family life, in essence a person has the right to his body and must choose what kind of treatment is administered to his person. The NHA makes it mandatory in section 23 for patients to be provided with complete and relevant information (in a language the patient understands) pertaining to their state of health. The following details must be included in the information:

The patient's health status, the variety of diagnostic tests and treatment options that are available to them, and the advantages, disadvantages, costs, and repercussions of each treatment option and the patient's right to decline medical treatment and the consequences of doing so

From the above provisions the law places the following rights and duties.

Patients must be informed of the nature of the treatment, patients must be informed of the risks and benefits of the treatment, patients must be informed that they have the right to withdraw consent at any time.

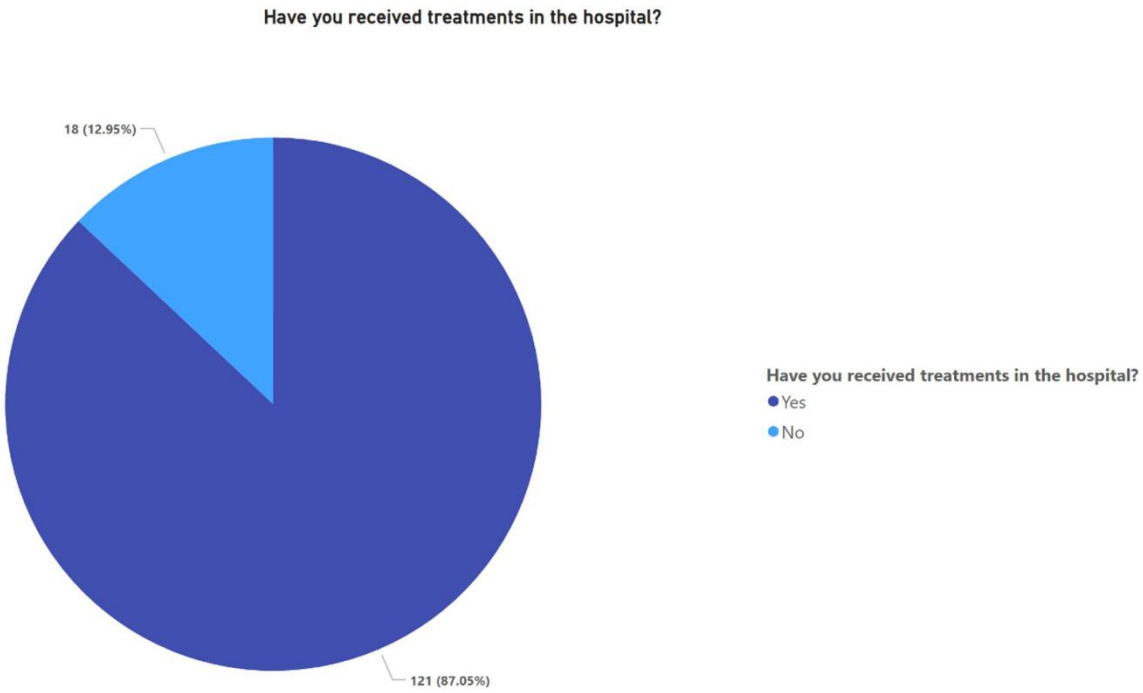

Figure 4:Distribution of state of residence by gender.

Question 2 "Were you informed about the potential risks and benefits of the procedure?"

From the result of the survey seventy-seven percent of people were not informed sufficiently about the risk associated with the procedure to be undergone at the hospital this further buttress the shortcomings of the medical practitioners or the current obstacles in obtaining informed consent in the doctor patient relationship and an express contradiction of the National health Act, which strictly requires that the practitioners inform the patients or every important details**.**

In addition to that Several respondents reported witnessing or hearing about instances where informed consent was not obtained, indicating systemic issues. Many believe there is insufficient awareness of informed consent among healthcare providers, suggesting a need for training. Improvement Measures: Suggestions for improvement included public education, better communication, and regulatory measures to enforce informed consent practices.

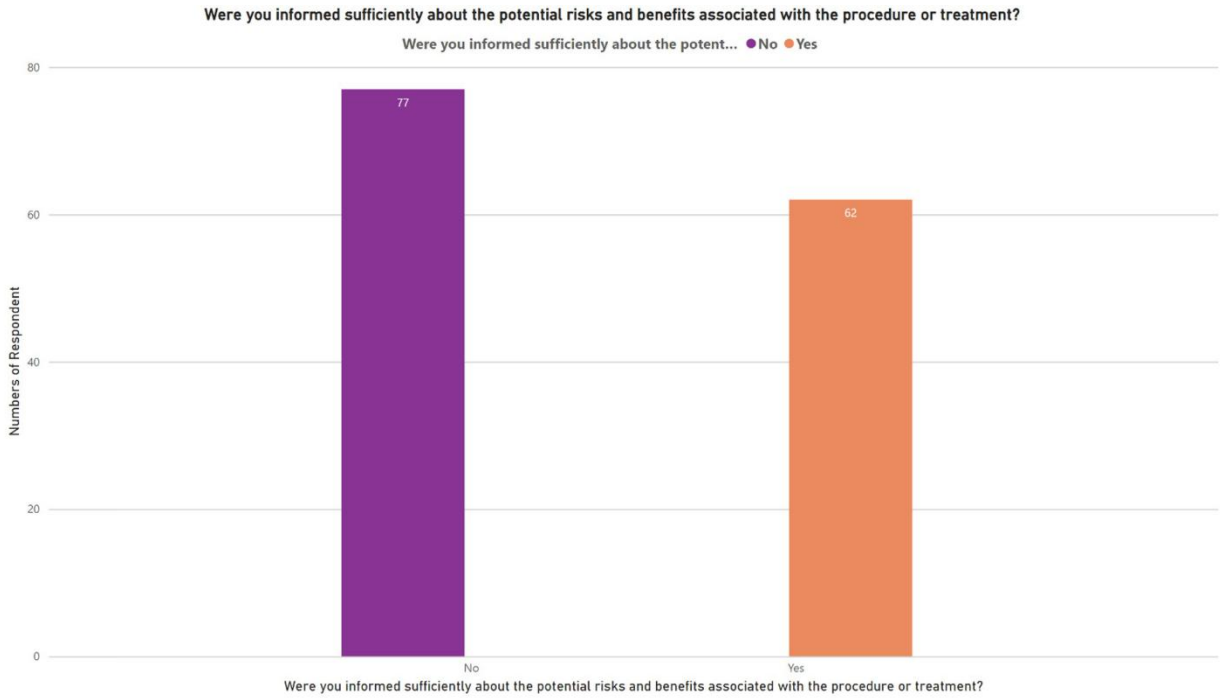

Figure 5:Sufficiency of information provided to participants about the potential risks and benefits associated with the procedure or treatment

Question 3: "Were you informed that you have the right to withdraw consent?"

For a consent in medical practice to be valid it ought to be informed, where patients claim not to have been sufficiently informed then it is safe to assert that the doctrine of informed consent is poorly administered. Responses indicated confusion or lack of understanding regarding the information provided, emphasizing the need for clearer communication. A significant number felt they did not have the chance to ask questions, which is crucial for informed consent.

The doctrine of informed consent categorizes the doctor patient relationship as that of a shared decision making. At such the responses have alighted that participants in this survey were not given an opportunity to be part of the decision-making process in the health-related matter.

The NHA sets a standard in S 23(d) that the patient has the right to withdraw consent which must be made known to the patient before consenting to a medical procedure, from the findings below it becomes clear that the percentage of people who were not informed of their right to withdraw consent is significantly high.

Patients understanding on their right to withdraw consent, is legal and backed up by law. Although, the practice of it is shallow, the result of question is shown below ninety nine percent of the respondent were not informed that at any point they have the right to withdraw from a procedure if they so wish.

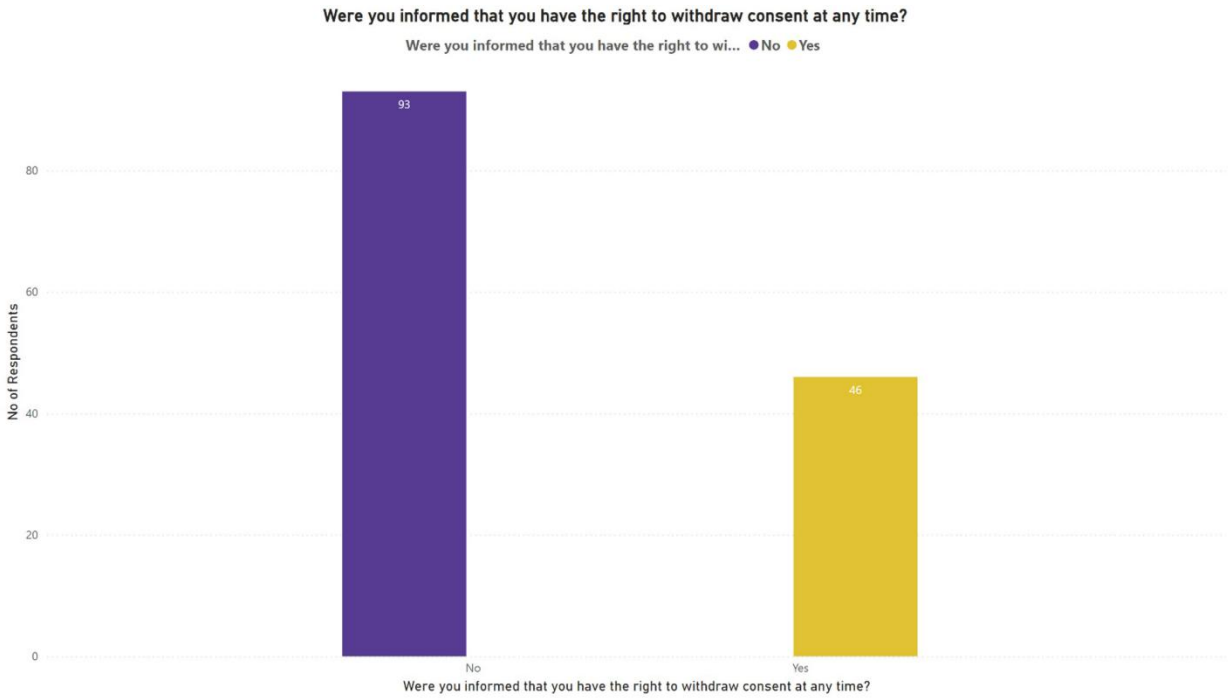

Figure 6:Awareness of right to withdraw consent among participants

4.1.3 Qualitative analysis

The open-ended questions in this online survey intend to gather third parties' opinions and view on informed consent practices and how it can be improved upon. This analysis explains the result of the opinion of the respondents.

Question 1: Have you ever witnessed or heard of instances where informed consent was not obtained before a medical procedure or treatment in Nigeria?

Participants observed that they have witnessed incidents that a person is treated without knowing what they were being treated for or without obtaining proper consent from the concerned person. This perception will drastically reduce the trust in the doctor patient relationship.

Although the medical practitioners may have had several circumstances that led to their inaction, which will be discussed later pointing out certain communication barriers, that might have contributed to the shallow practice of informed consent in Nigeria.

Below is the chart that explained participant awareness of instances where consent is not obtained before a medical procedure.

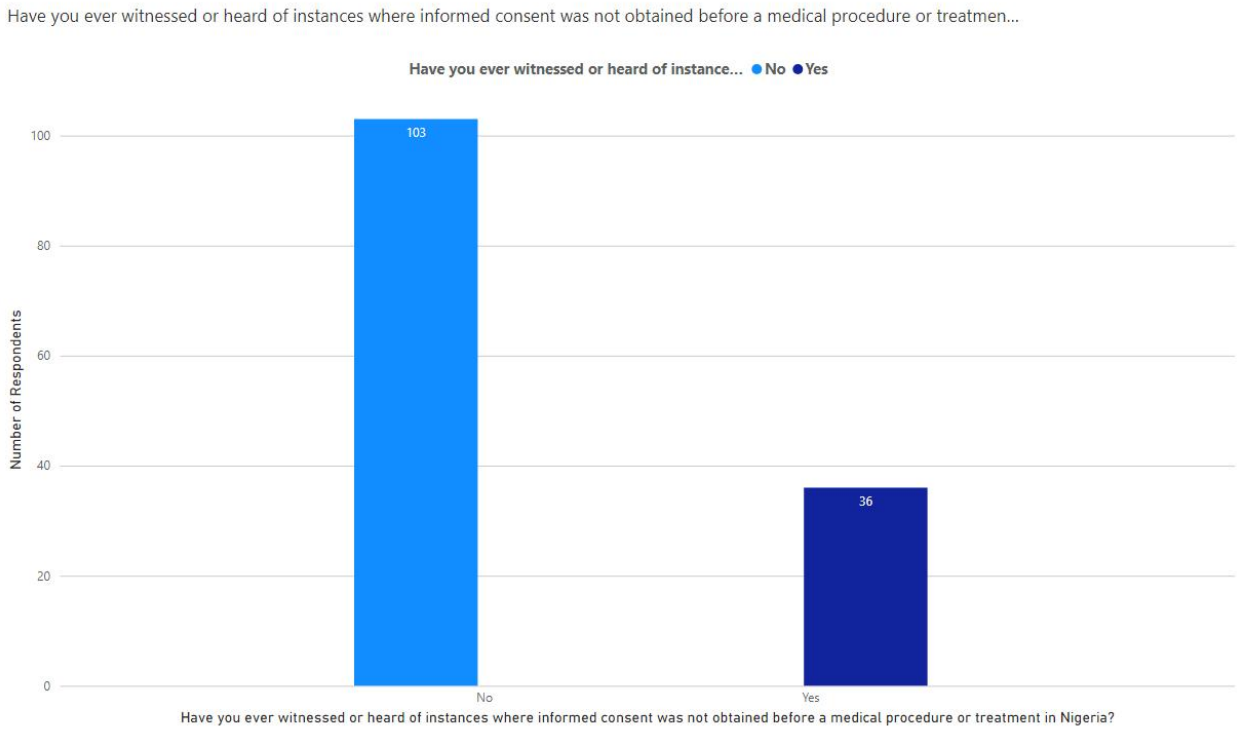

Figure 7:Participants' awareness of instances where informed consent was not obtained

If yes, please describe the circumstances and consequences of the lack of informed consent.

The responses to the question pointed out several repeating subjects:

- **Lack Of Proper Communication:** Many respondents indicated that healthcare providers often assume consent is implied when patients seek treatment, without explicitly asking for it.

Example: "They actually never ask for consent, I guess it is assumed since we go to them for treatment."

- **Inadequate Information Provided:** Several instances were reported where patients were not given sufficient information about the procedures, risks, or benefits.

Example: "A patient was not properly informed before she was asked to consent. It was an invasive procedure. While doing the procedure, she was harmed and probably traumatized for the rest of her life."

- **Mental And Psychological Unfitness:** There were cases where consent was sought from individuals who were mentally unfit or had psychological problems, raising ethical concerns.

Example: "The lady they were asking for consent was mentally unfit and had psychological problems."

- **Pressure And Coercion:** Some respondents felt pressured or coerced into giving consent, often due to the urgency of the situation or the authority of the healthcare provider.

Example: "Someone taken to the hospital with guardian completely down with lower abdominal pain… they agree to whatever the doctor suggests he has to do."

- **Negligence And Errors:** Instances of medical negligence, such as performing the wrong procedure or leaving surgical items inside patients, were reported.

Example: "I once heard of a gynecologist who removed a woman's womb, rather than the fibroids in it."

- **Cultural And Age-Related Factors:** Younger respondents felt their opinions were often disregarded, with decisions being made on their behalf without proper consent.

Example: “Due to my age range, most stories usually linger around the fact that our opinion as young adults are irrelevant and they’re doing what’s best for us.”

Question 2: Do you think that there is sufficient awareness and understanding of the concept of informed consent among healthcare providers in Nigeria?

Below is the chart that explains the responses of the respondents, among the one hundred and thirty-nine respondents, ninety-nine indicated No, whereas forty indicated Yes. This means majority of respondents felt that healthcare providers in Nigeria lack awareness and understanding of informed consent. This response is borne out of the experiences of the participants in the survey.

The responses are an indicator that respondents are of the opinion that the medical practitioner is not sufficiently equipped with the knowledge of informed consent or that the practitioners unethically ignored the practice thereby presenting themselves as the final authority to determine the treatment or procedure to be administered to the patient.

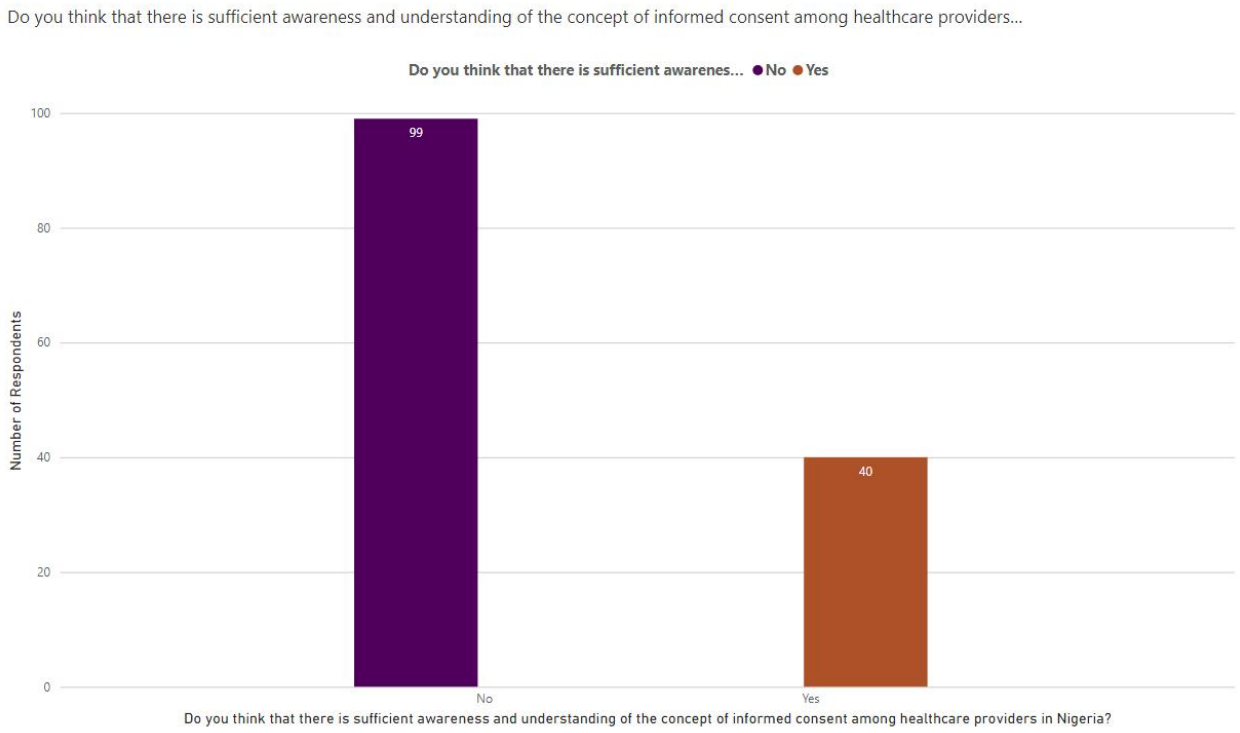

Figure 8:Participants' perception regarding the concept of informed consent

Question 3: What measures do you think can be taken to improve the process of obtaining informed consent in Nigeria?

Various respondents emphasized the need for more awareness and training for both healthcare providers and patients regarding informed consent. The findings reveal significant failure in the informed consent practices in Nigeria, championing the need for reforms to enhance patient rights and ethical medical practices**.**

Based on the responses, many main themes emerge about the steps that may be made to improve the process of getting informed consent in Nigeria. These themes emphasize a multifaceted strategy that includes education, communication, public awareness, regulatory actions, and improvements to healthcare infrastructure.

1. Education and training for healthcare providers. It is critical to educate healthcare providers about the notion and value of informed consent. This includes providing training on the repercussions of failing to get consent, as well as ensuring that they are well-informed and capable of successfully explaining procedures and patient rights.

2. Public awareness and sensitization: Using social media, public orientation, health education initiatives, and radio discussion programs can increase public knowledge and compliance with informed consent.

3. Clear communication and detailed explanations: - Provide information in patient-friendly language and format, such as visual aids or simplified terminology. This ensures that patients fully understand the information offered to them. Healthcare practitioners should provide thorough explanations of treatments or services, including benefits, drawbacks,

probable outcomes, and adverse effects. Patients should have adequate time to ask questions and make educated judgments.

4. Regulations and policies: - regulations like the Patient's Bill of Rights can help achieve informed consent legally.

   Mandatory Awareness: Creating rules that require awareness and adequate procedures for getting informed consent, as well as penalties for non-compliance, can help standardize practices across healthcare facilities.

5. Documentation and evidence: - Written documentation is essential for proving permission. This includes providing full information about procedures and ensuring that patients and their families are informed and have given their consent.

6. Bio data and contacts: Collecting full bio data, including contact information for the patient's relatives, will help ensure consent is given by the relevant individuals, and from necessary persons particularly when the patient is not competent to consent themselves.

7. Use of influencers and media: Using doctor influencers to raise awareness of informed consent can effectively reach a larger audience and educate the public.

   Educational Content: Creating and sharing educational content on social media platforms can assist educate the public about the ideas and importance informed consent. Improving Healthcare Infrastructure: - Trained professionals: Using trained professionals instead of auxiliary staff for informed consent processes can enhance the quality and reliability of consent gained.

8. Improving healthcare infrastructure: - Trained professionals: Using trained professionals instead of auxiliary staff for informed consent processes can enhance the quality and reliability of consent gained.

   Monitoring and Oversight: Having monitors at healthcare institutions to oversee the informed consent process and handle any issues that occur can help to improve compliance and accountability.

By resolving these issues, the process of getting informed consent in Nigeria can be considerably improved, ensuring that patients' rights are protected and that they are fully informed about their healthcare decisions.

4.2 Discussion of Findings

It is trite, that the patient must give the medical professional permission to do any medical operations (such as examinations or treatments).[251] Consent (to procedure) is the power granted by the patient receiving the medical procedure. The type of consent given might vary depending on the risk involved, ranging from signing a legal document to merely nodding.[252] Consent as defined by Merriam Webster dictionary mean "to give assent of approval".[253] Considering the risk associated with various procedures in medical practice, before given consent, a person is expected to have a full understanding of the procedure or treatment involve, it's risk, benefits, alternate procedures and danger for refusal.[254]As a result, it is essential that the medical professional give the patient the information mentioned above. After receiving this information,

[251] J.K. Mason & G.T. Laurie, '*Law and Medical Ethics*' (9th edn, Oxford University Press 2013) 350-411
[252] Ibid
[253]Merriam-Webster, 'Consent' https://www.merriam-webster.com/dictionary/consent accessed March 1st, 2024
[254] Ibid

the client has the option to provide (or withhold) consent; this is known as informed consent. Informed consent is the permission given with full awareness of the potential outcome. This is usually the case when a patient gives permission to a medical practitioner for treatment while being aware of the potential dangers and advantages. [255]All medical operations require consent; however, there are occasional exceptions, such as in an emergency. Additionally, some people are incapable of giving their consent for medical operations that affect them, but this does not mean that clients in that group shouldn't be asked for their consent.

In the doctor patient relationship, it is important that patients' right to agree to any proposed medical treatment are recognized on a global scale.[256] This permission is required by the principle of self-determination of the individual to select and determine his health-related conditions.[257] Mills explained, that a person who is an adult and is in good, mental health, condition has full control over their of their mind and has the right determine what happens to their body.[258] The concept of free, prior and informed consent in medical practice is not well adopted in Nigeria. Several factors contribute to this; there is the issue of Nigeria's low literacy rate. Patients with low literacy skills typically depend solely on their doctor's judgment;[259] the second factor is the low enforcement of the right to informed consent.[260] People whose rights to informed consent was violated in Nigeria may not have little legal precedents to look up to as a means of getting justice for this unjust action.

[255]https://www.dictionary.com/browse/informed-consent accessed March 1st, 2024
[256]S Pattison, *Medical Law and Ethics* (Sweets & Maxwell 2006).
[257]*Cutan Pathol*, 'Informed Consent: An Ethical Obligation or Legal Compulsion' [2008] (1) *Journal of Cutaneous and Aesthetic Surgery* 33–38
[258]J S Mill, *On Liberty* (Barouche Books Limited 2001).
[259]B C Umerah, *Medical Practice and the Law in Nigeria* (Longman 1989).
[260]bobo Patience and Oke-Chinda Mercy, 'An Analysis of the Doctrine of Informed Consent in Nigeria's Health Care Services' (2018) 69 *Journal of Law, Policy and Globalization* 15–25

Only an adult can give consent; this individual's consent is material. If the adult is not cognizant or mentally sound, however, consent may be sought from the parent, legal partner, or nearest relative.[261] A form is provided for patients to fill out if they wish to designate another person (durable power of attorney) to give informed consent on their behalf during a particular procedure. This assigns the patient's power of consent to the designated person regardless of their relationship or the presence of a significant other. A minor, someone who is 17 years and younger, is generally considered not competent to make informed consent decisions. Therefore, the informed permission for treatment is given by the minor's parents or legal guardian. However, there are some circumstances in which this rule will not apply, such as when a minor is married such minor is presumed to now have capacity, when the minor becomes pregnant, when the minor is deemed to have "emancipated"[262], or when the minor is a matured minor.[263]

In an emergency, consent is presumed, and treatment is given irrespective of absent instructions to the contrary. If the patient, including a juvenile, is unable to offer their own agreement, it is also possible to administer examinations and treatments without consent in cases of contagious diseases.

4.3 Communication Barriers.

Informed consent is significant in medical practices, in Nigeria medical practitioners does not fully follow this legal and ethical obligation due to so many things that form part of the limitation of informed consent. As presented in the figures above, this can be partly attributed to patient education and literacy; knowledgeable patients are occasionally denied consent because

[261] J Dada, *Legal Aspect of Medical Practice in Nigeria* (University of Calabar Press 2013, 2nd edn).
[262] A Maradiegue, 'Minor's Rights Versus Parental Rights: A Review of Legal Issues in Adolescent Health Care' [2003] (3) (1) *Journal of Midwifery and Women's Health* 48 http://medscape.com/viewarticle/456472 accessed 24 February 2024
[263] J Dada, *Legal Aspect of Medical Practice in Nigeria* (University of Calabar Press 2013, 2nd edn)

some medical professionals fail to put into consideration the ethical and legal consequences of consenting to treatment. It has occasionally been reduced to nothing more complicated than signing a paper that is then tucked away in the patient's file.

Nigeria is a multiethnic nation, and the socio-cultural and religious beliefs of its people have an impact. These circumstances, which include low socioeconomic status, lack of education, trust, the myths surrounding illnesses, religious convictions, and familiar influences, have a significant impact on how the public views the use of informed consent in Nigeria's healthcare system.[264]

Certain factors hinder the practice of informed consent to medical procedure and are to be discussed as follow

4.3.1 Low educational background / illiteracy

Over half of Nigeria's population is reportedly illiterate. In the nation's health care delivery system, this high rate of illiteracy also affects patients' ability to comprehend and make knowledgeable decisions about their health.[265]Education aids in lessening the influence of social and cultural norms on decisions pertaining to health. When treating educated patients, doctors have been shown to use greater caution than when dealing with fewer or uneducated individuals. The explanation makes sense; a well-informed patient would have done a great deal of study on their ailment and would be prepared with a long list of questions for their doctor. By applying the prior research to comprehend the reasons, benefits, risks, and alternative treatments, if any, patients can make an informed choice and consent to operations or treatments that are anticipated of them at that moment. However, if the doctor goes beyond what is reasonable for him at that

[264]I Gbobo and M Oke-Chinda, 'An Analysis of the Doctrine of Informed Consent in Nigeria's Health Care Services' (2018) Online Vol 69 *Patricia Journal of Law, Policy and Globalization*.

[265]K A Agu, E I Obi, B I Eze, and O O Okonwa, 'Attitude Towards Informed Consent Practice in a Developing Country: A Community-Based Assessment of the Role of Educational Status' (2014) 15 *BMC Medical Ethics* 77 https://bmcmedethics.biomedcentral.com/articles/10.1186/s12910-014-0077- 1 accessed 1 September 2024

time, this privilege could be abused. The uneducated patient, on the other hand, is ignorant of their medical condition and so fully depends on the doctor to make the best option for them. It is argued that after receiving thorough knowledge about health conditions, a patient's educational background will impact the decision-making process. Low-educated patients might not be able to comprehend the information their doctors provide them, which would prevent them from making wise health decisions.

4.3.2 Poor economic status.

Economic hardships faced by patients in Nigeria's health care system make it difficult for patients to provide informed consent. Research indicates that those in low-income situations are more likely to follow instructions without question.[266] The expense of filing a lawsuit can be prohibitive, even in situations where a breach of consent is discovered. This could keep the individual from acting appropriately to remedy the violation. Nigeria is currently experiencing a recession, making it difficult for the typical citizen to achieve their basic needs. Is it possible for someone who violates the right to consent to sue for it? However, when patients' right to informed consent is violated, their ability to go to court to seek restitution will be less difficult due to improved economic standing.

4.3.3 Trust.

In the interaction between a doctor and patient, trust is essential. Any type of medical care depends on the patient's ability to trust his doctor to do what is right.[267] It is true that the problem of physician abuse of trust gave rise to the problem of autonomy while providing health care

[266] K P Virk, 'Clinical Trials in South Africa' cited in O Aniaka, 'Patients' Rights and Socio-Cultural Challenges to Informed Consent in Nigeria' <www.languageconnections.com/descarges/clinical_trials_in_South_Africa.pdf> accessed 2 September 2024.

[267] D A Axelrod and S D Goold, 'Maintaining Trust in the Surgeon-Patient Relationship: Challenges for the Millennium' (2000) 135 *Archives of Surgery* 55.

services. It is stated that patient trust in physicians has not decreased despite their mistreatment of it; on the contrary, patient faith in physicians has increased.[268]Trust is the complete faith, assurance, or sense of security that the doctor will make the best choice for the patient. In this way, preserving the patient's autonomy or right to self-determination and removing any informational obstacles that could exist between the patient and the physician are the primary objectives of informed consent. Many Nigerian patients don't question such judgements since they lack knowledge and have a lot of faith in their doctor to work in their best interests.[269] The degree to which patients rely on their doctors determines the efficacy of informed consent in Nigeria's healthcare system.[270]

4.3.4 Autonomy or self-determination

The freedom an individual has, to decide what happens to his or her body or life is known as autonomy or self-determination. The right to autonomy can be influenced by several things, such as religious practices, culture, and socialisation. The difficulty faced by a someone who has been denied autonomy and gender socialised is resolving to have others make decisions for them, even if they are not mentally or physically incapable. This idea has an impact on informed consent's efficacy and quality not just in Nigeria but also in other traditions where men predominate.[271]

The degree of autonomy is also diminished in cases involving minors, unconscious patients, and mentally ill patients; nonetheless, the doctor must make sure that the best interest principle is given top priority.

[268]A Mark, F Comacho et al, 'Trust in the Medical Profession: Conceptual and Management Issues' (2002) 37 *Health Services Research* 1419; *Journal of Law, Policy and Globalization* (Paper) ISSN 2224-3259.
[269]R Emmanuel and A P Marshall, 'Informed Consent Practice in Nigeria' (2009) 9(3) *Developing World Bioethics* 133–148.
[270] Ibid.
[271] Ibid.

4.3.5 Religious beliefs

Religious belief in a superior entity (God) who has ultimate authority over both the living and the dead is quite strong in Nigeria. Humans are clearly God's creation, according to the sacred texts. However, the practice of informed consent in the delivery of health services in Nigeria is also challenged by the belief in the existence of the adversary.[272] Because of norms and traditions, it is believed that deities, who are frequently considered gods in some places, can cause health issues that might negatively impact a person's life. It is simple to attribute illness to abstract entities due to the reliance on supernatural beings. This idea undermines the goal of informed consent, which is to empower patients to take charge of their circumstances by participating in life decisions rather than leaving their fate in the hands of a higher power. A person is unlikely to seek traditional care if he thinks that a higher power is to blame for his ailment. This concept goes against the rationale behind informed consent and undermines the importance of its application, which is to guarantee that patients are at the centre of decisions regarding their health rather than embracing every suggested course of treatment as the will of the Almighty. A person cannot consider any suggested remedy if they believe that every health issue is the result of a spiritual entity attacking them. Instead, they accept it without understanding the consequences, which could result in a worse outcome than the one they started. encourages individuals to accept both positive and negative medical outcomes as God's will, especially in cases when glaring errors have been made.

[272] R Emmanuel and A P Marshall, 'Informed Consent Practice in Nigeria' (2009) 9(3) Developing World Bioethics 133–148.

Before undergoing surgery, patients seek the advice of their ministers and other spiritualists to ensure that it is in accordance with God's will as well as for prayers and blessings.[273]

4.3.6 Family influence.

In Nigeria, the family system is one of the most important, customs and traditions plays a significant role in this.[274] In contrast to the individualistic nature of families in any western country, the family is communal in nature. Decisions that impact each family member's life and health are typically made with input from the family.[275] Relatives participate in decisions that impact a family member's life while they are unwell since they are all involved in the patient's care, especially when it comes to paying for the treatment. Since the patient is the one who will be affected by the operation or treatment, they should be free to consent to it voluntarily and without family pressure. The family system ion Nigeria is built on respect for elders, leaders and gratitude to parents, it will amount in the face of a typical African man as disobedience if a child wants to contribute when the elders are taking a decision, even if the decision will ultimately affect the child. Thus, medical decisions of a child (even when it is the case of a matured minor) and those slightly above 18 are taking by solely by their parents or guardian for the respect for elders.[276]

4.3.7 Legislations.

The laws that regulate the Nigerian health sector are insufficient. Medical professionals are therefore not legally required to obtain the patient's consent, and if they do not, the patient has

[273] Ibid
[274] R Emmanuel and A P Marshall, 'Informed Consent Practice in Nigeria' (2009) 9(3) Developing World Bioethics 133–148.
[275] J M Breshi, 'Autonomy and the Role of the Family in Making Decisions at the End of Life' (2005) 16 *J Clin Ethics* 11.
[276] Ibid

few options for redress. The laws governing the health industry are constantly changing in the US and the UK, and there are multiple regulations pertaining to consent. Even though the National Health Act[277] was signed into law in 2014, there are no clear laws pertaining to informed consent. Because of this, medical professionals do not feel fully legally required to obtain the patient's consent, and in cases where they do not, the patient has few options for redress. The laws governing the health sector in the US and the UK are always changing, and there are several legislations that deal with informed consent[278]. In practice, not much information is shared with patients because Nigerian courts have not established the boundaries of the doctor's duty of consent beyond the Okonkwo case.[279], the courts in Nigeria have not defined the limits of the duty of consent on the physician and, thus, not much information is disclosed to the patients in actual practice. Although the Okonkwo case [280] was the first of its kind and made headlines in the Nigerian medical community, its full impact on doctors' informed consent was not fully captured because many people only saw it as a case involving the religious group Jehovah's Witnesses' right to refuse a specific procedure and to continue treating patients without consent.

4.3.8 Gender issues

Nigeria, like the majority of Africa, has a cultural milieu that establishes family dynamics and gender roles. A lady is subservient to her husband because he is the head of the family.[281] In medical practice, this has also been subtly embedded, when a woman's consent is sought from

[277]National Health Act 2014.
[278] Mental Capacity Act 2005
[279] *Dr Okonkwo* v *Medical and Dental Practitioners Disciplinary Tribunal* [2011] 8 NWLR (Pt 1249) 187
[280] *Dr Okonkwo* v *Medical and Dental Practitioners Disciplinary Tribunal* [2011] 8 NWLR (Pt 1249) 187
[281]E Amadi, *Ethics in Nigerian Culture* (Heinemann Educational Books Ltd 1982).

her father, sibling, or spouse.[282] female patients who were slated for surgery were only told their diagnoses by their husbands[283]. Approval for assisted deliveries or caesarean sections is frequently acquired from the husband rather than the patient.[284]

Marshall and her colleagues discovered that gender was a significant predictor of the incapacity to read the informed consent form in a Nigerian rural hamlet. Female patients frequently internalize the oppression of women, which makes it common for them to ask their spouses for permission before accepting medical treatment even in cases where the medical community chooses to treat them directly.[285]

4.4 Competency in consent.

To investigate approaches to obtaining and documenting consent for vulnerable people it there is a need to identify whether those people are competence to consent to a medical procedure without some form of protection.

Incompetence is a status of an individual, defined by the come circumstances which includes mental illness, mental retardation or other mental condition, sufficiently great that suggest that a person cannot meet the demand of specific decision-making[286]. The primary factor that determines a patient's ability to offer informed consent is their comprehension of the facts regarding the treatment, its risks, and its advantages.[287] It goes without saying that the legislation places a strong emphasis on the patient's comprehension of the facts regarding the suggested

[282]N J Jebbin and J M Adotey, 'Informed Consent: How Informed Are Patients?' (2004) 13 *Niger Journal of Medicine* 148–151.
[283]N J Jebbin and J M Adotey, 'Informed Consent: How Informed Are Patients?' (2004) 13 *Niger Journal of Medicine* 148–151
[284] Ibid
[285] Ibid
[286]T Grisso and PS Appelbaum, *Assessing Competence to Consent to Treatment: A Guide for Physicians and Other Health Professionals* (Oxford University Press 1998) 211.
[287]Law Commission, *Mental Incapacity* (Consultation Paper No 231, HMSO 1995)

course of treatment, its possible dangers and advantages, and the repercussions of not receiving it..[288] Consequently, if someone is thought to be incapable of taking a decision another person with capacity (relatives or the court) can make the decision on his behalf.[289] Patients who practise a certain religion may still be able to comprehend the advantages and disadvantages of a drug, but they may not recognise or accept those advantages.[290]

4.4.1 Unconscious patient (emergency):

According to the theory of necessity, a patient who is unconscious and unable to give his or her consent will be treated as though he or she would if he or she could to save their life. [291] Legally speaking, the idea of necessity gives legal standing to an activity that would otherwise be illegal, but it is necessary to take it to preserve a human life.[292] worthy of note is that the procedure whatsoever must be necessary to save life and must be urgent. Thus, if a physician carries out a procedure or treatment on an unconscious patient who cannot obviously give consent to save his/ her life he would not incur criminal liability, as this is done by necessity.[293] However, a doctor cannot use a patient's condition to perform a procedure that is more involved than what is immediately necessary to save the patient's life.

In Barnett v. Bacharach,[294] the court stated that a patient who complained of stomach discomfort and was diagnosed with a tubal pregnancy consented to have the ectopic pregnancy removed surgically.

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[288]Department of Health and Welsh Office, *Code of Practice: Mental Health Act 1983* (HMSO 1993)
[289] Ibid
[290]H J Bursztajn, H P Harding Jr, T G Gutheil, and A Brodsky, 'Beyond Cognition: The Role of Disordered Affective States in Impairing Competence to Consent to Treatment' (1991) 19 *Bull Am Acad Psychiatry Law* 383–388
[291] Ibid
[292]J K Mason and A McCall Smith, *Law & Medical Ethics* (7th edn, Oxford University Press 2006) 350–411.
[293]D W Brock, 'Children for Health Care Decision Making' in J A Dada, *Legal Aspect of Medical Practice in Nigeria*.
[294]4 A.2d 626 (D.C. 1943)

the surgeon determined that the patient's symptoms were caused by acute appendicitis rather than an ectopic pregnancy. He then determined that removing the appendix was in the patient's best interest, and an appendectomy was carried out. After recovering, the patient refused to pay for the surgery, arguing that the treatment was illegal because informed permission had not been acquired beforehand. Given the severity of the patient's condition, the court determined during the trial that the surgeon had behaved appropriately. The court further stress that: What was the surgeon to do? Should he have left her on the operating table, her abdomen exposed, and search of her husband to obtain express permission to remove the appendix? Should he have closed the incision and subjected the patient, pregnant as she was, to maximum danger of a quick spread of the poison in her system, or to the alternative danger and shock of a second, independent operation to remove the appendix? Or should he have done what his professional judgment dictated and proceed to remove the offending organ.[295]

In Marshall v. Curry, the plaintiff sued a physician who removed a testicle during a hernia operation for battery. According to the surgeon, if the infected testicle was not removed right away, it would endanger the patient's life. The surgeon's intervention was deemed necessary at that moment by the court.[296] But in Murray v. McMurdy, [297] a battery action, the surgeon performed a caesarean section on a female patient and sterilised her by removing her uterus without her consent. According to the ruling, sterilisation is not harmful to the patient's life and can be agreed upon with the patient's agreement.[298] While it is allowed to act in an emergency,

[295]K M Hartman and B Liang, 'An Exception to Informed Consent in Emergency Medicine' (1999) *Perspectives in Legal Medicine and Health Law*
[296]{1949} 2 DLR 442.
[297](1935) 2 ZACC 157.
[298] Supra

the extent of the intervention is restricted to what is urgent and required; there is no unrestricted right to examine a patient's body

Two requirements established by Lord Goff must be met to use the doctrine of necessity to support a medical procedure performed without permission[299]

1. When communication with the individual is impossible, action must have been required. 2. The conduct must be reasonable, meaning it must be in the best interests of the individual and something that a reasonable person would do under all circumstances. Permission can be provided on behalf of a patient in their "best interests" when they have been found incapable of giving their own permission".[300]

4.4.2 Children and minors

As demonstrated in the case of B Local Authority v. RM, the Child's Rights Act is the governing law with relation to children. According to English law, children are divided into two groups: those under 16 and those between 16 and 17. This is an effort to strike a balance between the custom that everyone under the age of 18 is considered a child and the reasonable recognition that defining the boundary between childhood and maturity may eventually be difficult.[301] According to the study, this is admirable since it provides an additional means of avoiding a rigid definition of "lacking capacity" in relation to age. But in this sense, the Gillick v. West Norfolk and Wisbech Area Health Authority [302] case has been far more radical, as it has expanded the possibility of ability to include minors under the age of sixteen. By adopting the idea that some situations, such exposure, family history, and the context of decision-making, could boost

[299] Ibid
[300]Medical Protection Society, (2013). Also, Mental Capacity Act 2005.
[301][2010] EWHC 3802.
[302][1986] AC 112; [1985] 3 All ER 402

capacity regardless of age, this approach has found a balance between the traditional age for assessing wisdom. Finding adolescents who are competent enough to give their own consent for medical procedures safeguards anyone older than 15 who could have trouble making decisions and allows a capable 14-year-old to make decisions on their own.[303] In practice, it is more difficult to apply the competence criterion than an age-based splitter. The idea of competence is derived from case law that governs medical care. Case law is based on a precedent-based system, wherein decisions made in court cases are frequently applied to like situations. The legislation governing a minor's consent to medical research has not yet been explicitly examined in any case.[304] According to Gillick competence, an individual under the age of sixteen may give their permission for medical treatment if they are mature and intelligent enough to use and consider this knowledge while deciding. Current case law is ambiguous over whether 16–17-year-olds must be evaluated as competent to give consent or if this can be assumed.[305] Even yet, the law presumes that 16 and 17-year-olds can give their permission.[306] According to recent case law, a seventeen-year-old young person may be covered by the Gillick competence notion.[307] Accordingly, minors between the ages of sixteen and seventeen need to be able and competent to give their permission. Although they might be able to provide their consent, children between the ages of sixteen and seventeen might not necessarily be capable.[308] Furthermore, it's possible that

[303]F G Davies, H Fisher, and G M Birchley, 'Young People Consenting to Medical Research' (2024) 109 *Archives of Disease in Childhood* 349, 350 https://doi.org/10.1136/archdischild-2023-325692

[304]Ibid

[305]*Gillick v West Norfolk and Wisbech AHA* [1985] UKHL 7 (17 October 1985) https://www.bailii.org/uk/cases/UKHL/1985/7.html accessed 20 September 2024.

[306]*Mental Capacity Act 2005*, c 9 https://www.legislation.gov.uk/ukpga/2005/9/contents/enacted accessed 4 September 2024.

[307]*E & F (Minors: Blood Transfusion)* [2021] EWCA Civ 1888 (14 December 2021) https://www.bailii.org/ew/cases/EWCA/Civ/2021/1888.html accessed 9 March 2024

[308]U Arinze, 'Decisions Made on Behalf of Those Who Lack Capacity (in the Medical Context) Under the English and Nigerian Legal Systems' (2005) 6 *NAUJILJ* 186 <available at [insert URL]> accessed 29 September 2024

the Gillick test allowed for cognitive strength differences that are prevalent among individuals in the same age range as well as the possibility that a youngster who lacks capacity in one situation might have capacity in another.[309]

Also, the Federal Republic of Nigeria's constitution specifies that a citizen must be 18 years old to exercise their right to vote, but this does not mean that the statutory age of majority alone determines a person's capacity to agree.[310] The best interests of the kid must also be the primary consideration when making decisions on their behalf under the Nigerian legal system, not just the child's age. This is covered by the Child's Right Act and Article 4 (1) of the African Charter on the Rights and Welfare of a Child, specifically:[311]

> *"In every action concerning a child, whether undertaken by an individual, public or private body, institutions of service, court of law, or administrative or legislative authority, the best interests of the child shall be the primary consideration".*[312]

Some minors are competent to consent to any medical procedure or treatment; these minors may be younger than the legal majority age and can do so as long as they are fully informed and comprehend the consequences of their choice to accept or reject the treatment or procedure.[313] likewise, parents are not the only ones with the legal authority to decide on some medical treatments, such as deciding whether to grant a minor the right to die or remove a living child's

[309]U Arinze, 'Decisions Made on Behalf of Those Who Lack Capacity (in the Medical Context) Under the English and Nigerian Legal Systems' (2005) 6 *NAUJILJ* 186 <available at accessed 29 February 2024.
[310]Constitution of the Federal Republic of Nigeria 1999.
[311]African Charter on the Rights and Welfare of a Child, ACRWC, July 1999.
[312]Child's Rights Act 2004 (Cap C50 LFN 2004).
[313]Cave E, Wallbank J, 'Minors' Capacity to Refuse Treatment: A Reply to Gilmore and Herring' (2012) 20 Med Law Rev 423. doi:10.1093/medlaw/fws003

essential organs for donation.[314] Even though the plaintiff's aunt approved of the treatment, the court ruled the doctor guilty for battery in Dr. Rom Okekearu vs. Danjuma Tanko because the defendant amputated the plaintiff's 14-year-old boy's finger, without his consent. In the case of Re Ernestine Gregory, [315] a 17-year-old Jehovah Witness named Ernestine was admitted due to leukaemia. youngster Welfare Officials in Chicago filed a lawsuit against the mother for medical negligence after the youngster refused a blood transfusion because it was against his faith. The trial court then ordered the blood transfusion. The Court of Appeal upheld the mature minor's ruling after the patient filed an appeal. Because the patient has demonstrated that he can make such a decision and cannot be coerced into undergoing a blood transfusion, the Supreme Court upheld the court of appeals' ruling and overturned the trial court's decision. He has the right to decide what kind of treatment should be given and his decision must be respected.

This position has repealed the tradition that only the parent has the right to make decision for minors who have not attained the age of majority, minors who are matured can be competent enough to understand procedure and its consequences have the right to make medical choices irrespective of their age or the decision of their parents.[316]

It is also a well-established common law principle that parents have the authority to make all decisions pertaining to the health and wellbeing of their children, provided there is no neglect or other circumstances.[317] There are some factors that need to be considered when applying the best interest concept. These include:

a) Will the patient's health improve because of the decision?

[314]Emiri F O, *Medical Law and Ethics in Nigeria* (Malthouse Press Ltd 2012) 304
[315]133 IU 2d 985, 49 NE 2d 322 (1989)
[316] Ibid Dada 2013
[317] J.A Dada (N 14) 223

b) Will the child's condition not worsen more because of the treatment?

c) Does the treatment offer more advantages than disadvantages for the child?

d) Is a less intrusive therapy option available?

A parent or guardian may offer consent on behalf of a child under sixteen who lacks the capacity to do so (i.e., is not Gillick competent), if the situation falls within the "zone of parental control"[318] or consent can be given by the court. Anyone providing consent on behalf of a kid must, now, be acting voluntarily, be well informed, and have the capacity to consent to the intervention in question, much like when patients are giving consent for themselves. The "welfare principle," which states that the child's "welfare" or "best interests" must come first, must guide the exercise of the consent authority. Involving children as much as possible in the decision-making process is a good idea when they lack the mental capacity to offer consent for themselves. When a child parent gives their consent instead of the kid, the child may feel less active or involved in the process and less interested in the research that the parent or consenting guardian has compelled them to participate in.[319] The majority of advisory bodies now recommend that researchers get parental approval and teenage assent when a young person is unable of giving their own consent.[320] Unlike consent, assent introduced in this sense is not defined by law. It is used to explain a person who is considered a youngster agreeing to take part in a research project after being given information. It can be challenging to determine whether a young child is expressing what they think their parents want them to say or doing something significant when they assent. Since the young person is not the one making the decisions,

[318] Ibid

[319] Nuffield Council on Bioethics, *Children and Clinical Research: Ethical Issues* (2015).

[320] Annett RD, Brody JL, Scherer DG, Turner CW, Dalen J, Raissy H, 'A Randomized Study of a Method for Optimizing Adolescent Assent to Biomedical Research' (2017) 8 AJOB Empir Bioeth 189. doi:10.1080/23294515.2016.1251507

researchers might not completely explain the research's specifics to them, and they might be less inclined to interact with the data.[321] According to authors, since parents can still offer their consent, acquiescence is essentially worthless.[322] The courts have the authority to overrule a parent's objection when required.[323] Even if those with parental responsibility agree to the procedure proceeding, it is advised that some significant issues, such sterilisation, blood transfusions, and similar matters for contraceptive purposes, be addressed to the courts for assistance.

The European Court of Human Rights explained in Glass v. United Kingdom,[324] that failing to refer such cases to the court is not only a violation of professional guidance but also potentially a violation of the European Convention on Human Rights. In this case, doctors treated a child against his mother's wishes without a court order. [325] The court should get involved to determine whether a proposed treatment or not receiving treatment is in the child's best interests when there is ongoing disagreement or conflict between the doctors and those in charge of the child's care and the child is incapable of giving consent. It is only possible to override parental objection in an emergency.

Instead of assent, Australia's strong legal system addresses these issues by demanding both a young person's and their parents' consent before a medical procedure can be performed.[326] The

[321]Baines P, 'Assent for Children's Participation in Research is Incoherent and Wrong' (2011) 96 Arch Dis Child 960. doi:10.1136/adc.2011.211342

[322]National Health and Medical Research Council, *National Statement on Ethical Conduct in Human Research* (2007, updated 2018) https://www.nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-2007-updated2018#toc__1195 accessed 12 September 2024

[323] *Oritsejafor* v *Kachikwu* [2015] 8 NWLR (Pt 1462) 135

[324]*Marper v. United Kingdom* 61827-00 [2004] ECHR 103

[325] European Convention on Human Rights, 4 November 1950, 213 UNTS 222.

[326]**National Health and Medical Research Council (NHMRC).***National Statement on Ethical Conduct in Human Research (2007) - Updated 2018*. Accessed May 12, 2024.

child would not be enrolled in the medical procedure or treatment if there was no agreement. A process where the parent, the practitioner, the child, and the court agree on what procedure to follow with the child may be more successful, or a scenario where the parent and child are acknowledged as being jointly involved in giving consent may be a more accurate representation of what occurs

4.4.3 Mentally Incapacitated Persons

All adults can make their own judgements under English law. Like other countries in the world, South Africa and Nigeria assume that a person who is in good physical and mental health can give their permission.[327] Patients with mental illnesses, however, might not be able to give their permission for medical operations or treatments. Dementia brought on by aging-related brain degenerative processes may potentially be the cause of mental impairment. Davis categorised incompetence as either transitory (in youngsters), transient (in patients who are unconscious), or permanent (in certain patients with mental disabilities, unless they are in a state of lucidity where they can fully comprehend the knowledge).[328]

A person's ability to make choices and conduct acts that have a direct impact on their lives is referred to as capacity in legal parlance. It is important to determine whether an adult lacks capacity.[329] It is difficult to determine whether a person can make decisions in the real world; practitioners and researchers must objectively evaluate a person's comprehension and capacity to remember pertinent knowledge and use it to make an informed decision. To access capacity, a

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https://www.nhmrc.gov.au/aboutus/publications/national-statement-ethical-conduct-human-research-2007-updated2018#toc__1195

[327]A. Mark, F. Camacho, et al, 'Comparative Perspectives on Informed Consent'

[328]**Davies, M.***Textbook on Medical Law*. London: Blackstone Press Ltd, 1998, pp. 131-139.

[329]**British Medical Association.** (n.d). *Medical Students' Ethics Toolkit*. Retrieved from https://www.bma.org.uk/advice/employment/ethics/medical-students-ethics-toolkit (Accessed September 1, 2024)

variety of approaches have been used; some are culturally specific, while others are targeted at certain patient groups or decisions.[330] Before an adult can be deemed unable, two requirements must be met: first, it must be proven that the adult in question is experiencing a mental illness or impairment at the time. This encompasses elements like mental sickness. This could also refer to a transient situation, such severe alcohol or hard drug intoxication.[331] Second, it must be proven that the individual was unable to make a logical decision at the time.[332]

1. Have a sufficient comprehension of the data pertinent to his decision-making
2. Possess the ability to retain information to make decisions based on it.
3. The capacity to use and analyse information effectively.
4. Use all available channels to convey the decision.[333]

Where a patient cannot fulfil the above condition, he is deemed to lack capacity to consent.

The following are the circumstances through which a person can be treated lawfully without consent:

1. In cases where there is no one to decide on his behalf, treatment can be provided if it serves the patient best interests decision.
2. In cases where a person has been nominated to provide consent on behalf of the person.

[330]Pennington, C., Davey, K., Coulthard, L., ter Meulen, R., & Kehoe, P. (2018). Tools for testing decision-making capacity in dementia. *Age and Ageing*, Article afy096. Advance online publication. https://doi.org/10.1093/ageing/afy096 (Accessed September 12, 2024).

[331] Ibid 221

[332] Pennington, C., Davey, K., Coulthard, L., ter Meulen, R., & Kehoe, P. (2018). Tools for testing decision-making capacity in dementia. *Age and Ageing*, Article afy096. Advance online publication. https://doi.org/10.1093/ageing/afy096 (Accessed September 12, 2024).

[333] Ibid 323

3. By the decision of the court through the appointment of a deputy.[334]

4.4.4 Consent to a particular procedure/set of procedures

Regardless of the type of consent given, it typically pertains to a specific procedure or set of procedures. Blanket consent is no longer deemed acceptable. Consequently, the scope of the procedure(s) must be restricted to what the patient has agreed to and must not extend beyond what the consents to.[335] As decided in Mohr v. Williams,[336] the accompanying physician consented to operate on the patient's right ear. While the procedure was being performed, it was discovered for the first time that the left ear was in worst condition than the right ear, which led to him operating on the left ear without obtaining the consent of the patient, in the defence that the patient had consented to treatment from the physician was held liable by the court. [337]

The court observed in Dr. Rom Okekearu v. Danjuma Tanko [338] that the word "treatment," the court noted that the term "treatment," in this context, refers to the substances or methods used to address medical conditions and is somewhat broad and unclear. The Supreme Court further explained that general consent to "treatment" might not be considered valid. For consent to be valid, it must clearly specify the procedure to which the patient is agreeing to.

4.4.5 Consent to a professional or team of professionals

The health professional in charge of the procedure is responsible for making sure the patient gives informed consent. This means the patient must agree to let that specific professional (or the leader of the team) perform the procedure.[339] Where there is a change in professionals, It is

[334] Ibid
[335] Ibid
[336] **Mohr v. Williams**, (1905) 108 N.W. 818
[337] **Mohr v. Williams**, (1905) 108 N.W. 818
[338] Dr Rom Okekearu v Danjuma Tanko [2020] 15 NWLR (Pt 1234) SC 45.
[339] J.K. Mason & G.T. Laurie, *Law and Medical Ethics* (9th edn, Oxford University Press 2013)

necessary for the new professional involved to obtain new consent if the previously obtained consent was for a procedure that was intended to be performed by another professional and not by him.[340] This can be explained as permission given to a professional does not imply permission to all professionals, the patient also has the right to withdraw consent at any time.[341]

This can be seen in the case of *Perna vs Pirozzi,*[342] whereby the New Jersey Supreme Court ruled that a patient who gave permission for surgery performed by one surgeon but was operated on by another had a medical malpractice or battery suit.[343]

4.4.6 Refusal of treatment

Patient in any condition have the right of self-determination[344]. The ability to refuse medical intervention is another aspect of self-determination, and it should only be exercised when a patient is fully aware of and comprehends a particular medical procedure.[345] Patient has also a right to choose between two available medical treatment procedures irrespective of which is better.[346] Even if a doctor has recommended a particular procedure, a patient may still refuse it. The patient has the right to choose whether to undergo treatment, regardless of the medical professional's level of experience.[347] However, Doctor's have a duty to explain the probable consequences of refusal in case of such and benefits of treatment, it is then the sole prerogative of the patient to decide the further action. Such informed refusals must be recorded as

[340] G Köhler, *Arztrecht* (5th edn, C.H. Beck 2020)
[341] National Health Act 2014 (Nigeria) s 23
[342]Perna v Pirozzi (2003) 69 NSWLR 697
[343]*Byrne v. Boadle* (1983) 92 N.J. 446
[344] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 37
[345] Beauchamp T L and Childress J F, *Principles of Biomedical Ethics* (7th edn, Oxford University Press 2013)
[346]Rakesh Mondal, 'Patient's Right of Informed Consent: New Challenge in Medical Practice' (2017) 4 *International Journal of Multidisciplinary Research and Development* 4-0
[347] Ibid

documentary evidence.[348] If a proposed treatment is refused by the refusal is binding and the decision must be respected by the Doctors and legal relatives as much as possible.[349]

Any treatment, even one that could save their lives, can be refused by the patient.[350] This position was established in *A.G of British Colombia vs Astaforuff*[351] The case of A.G. of British Colombia v. Astaforuff established this stance. When an inmate refused to eat, the jail warden had him eat to keep him from killing himself. The court decided that the jail administration lacked both legal and moral justification to make a prisoner eat against his choice. In a similar vein, declining therapy is not suicide but rather a decision about one's way of living.[352] Refusing therapy and suicide are two different issues that shouldn't be handled interchangeably [353] Refusing treatment is just a decision about how one wants to live, whereas suicide is the act of taking one's own life. In Bland v. Airedale NHS Trust[354] The judge ruled that "if the patient has the ability to decide whether to permit treatment or not, his choice must be obeyed, even if on any objective view it is contrary to his best interest." Therefore, if a patient undergoing life-sustaining therapy decides it would be better to die, they must be allowed to do so, if every effort has been made to make sure that this is what they genuinely want to do.[355] A patient has the right to make decisions that may affect his or her life, even whether it appears unreasonable, harmful, or otherwise.[356] His decision must be respected over and above state interest to preserve the sanctity of life. However, for a

[348]M Burgess, 'Proposing Modesty for Informed Consent' (2007) 65 Social Science & Medicine 2284
[349] T L Beauchamp and J F Childress, *Principles of Biomedical Ethics* (7th edn, Oxford University Press 2013)
[350] T L Beauchamp and J F Childress, *Principles of Biomedical Ethics* (7th edn, Oxford University Press 2013)
[351]*Reid v. The Queen* (1983) 6 WWR 322, On Appeal [1984] 4 WWR 385.
[352] Reid v. The Queen (1983) 6 WWR 322, On Appeal [1984] 4 WWR 385.
[353]*Bovia v Supreme Court* (1986) 225 Cal Rptr 297 (Cal CA) per Beach J.
[354]*R v. Secretary of State for the Home Department* (1993) 1 All ER 821
[355] *R v. Secretary of State for the Home Department* (1993) 1 All ER 821
[356] R Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (Vintage Books 1994)

patient to legally refuse treatment, both the patient and the doctor must fill out a Refusal of Treatment Form, which is often kept on file at the hospital.[357]

[357] Medical and Dental Practitioners Act 2004 (Nigeria) ss 2, 16.

Chapter Five.

Summary, Conclusion, And Recommendation

5.1 Summary

A basic knowledge of the doctrine of informed consent exposes that the patient should not as a matter of principle be a passive participant in the determination of the health procedures to be carried out on them, the patient at the centre of their health decisions is the major proposition of the doctrine of informed consent. However, in Nigeria we found that so many circumstances contributed to the shallow practices of informed consent in Nigeria. This study has exposed the irregularities and unfair practices in the doctor patient relationship. This study further strengthen research on the area medical wrong. By examining the legal frameworks available area of medical law.

In chapter one of this work I introduced the work, the statement of problem, background of the study, the scope of the study, significant of the study, aims and objectives, limitation of the study, chaptalization, definition of terms, structure of the study. With the aim of providing an insight into all that will be treated during the research.

In chapter two of this work, I focused on the literature review and theoretical review, it introduces the subject matter, consent and informed consent, the origin of the doctor patient relationship, patients' rights and autonomy.

In chapter three I discussed the legal and institutional framework for informed consent in Nigeria, institutional framework on medical practice and acceptable ethics, medical and dental practitioner act, the 1999 constitution, National health act, nursing and midwifery council code

of Nigeria, Medical and dental disciplinary tribunal, court, case laws and other operational law in Nigeria. Current variations in the practice of informed consent in Nigeria.

Chapter four stressed on the capacity to consent, and communication barriers, finding of an online survey conducted for the purpose of this research, capacity to consent, various factor contributing to the abuses of informed consent in the implication of procedures without consent, patient rights to consent, the necessity for informed consent and informed consent, the importance of adherence to the legal obligation of consent, emergency and other related matters, lack of capacity to consent, best interest principle.

5.2 Recommendations

Consequent upon all that has been canvassed and for the right of every Nigerians as regards health and patient autonomy to be fully enforced, the following recommendations has been put forward.

1. Proposing a patient autonomy act, enacting this will produce clear rights of patients spelt out patient rights Patient's Bill of Rights, with easy and feasible mechanism for enforcing the regulations can help achieve informed consent legally. Such as the Netherlands patient autonomy act[358] this act guarantees the complete autonomy of patients in their relationship with their health practitioners.
2. A complete reform by means of legislation addressing issues surrounding health and its implications of the society.
3. Introduction of digital health and technologies to obtain consent in the doctor Patient relationship, the idea of the technology is to record adequately the conversation between both the patients and the practitioners.

[358] *Wet op de autonomie van de patiënt* (Patient Autonomy Act) 1994, Stb. 1994, 111

4. Compulsory Primary health education in all primary schools, (public or private) with a review of the syllabus to enhance the student's ability and sufficiently equip them from a younger age to understand that they have the autonomy to decide what their health status may end up looking like.
5. Sponsor campaigns and awareness, conferences, village meetings, public and private meetings aimed at educating the society on the need to be part of the decision making in their health, and patient autonomy to refuse a treatment. Using social media, public orientation, health education initiatives, and radio discussion programs can increase public knowledge and compliance with informed consent.
6. Creating a commission that regulates the affairs of the patients and their medical practitioners in Nigeria.
7. Adopting the Australian model of assent to of adolescents in matters relating to the health of a child particularly when a child is matured.[359]
8. A review of court process by the judiciary in a bid to ensure trust and confidence of the public to pursue a remedy when a wrong is done.
9. Education and Training for Healthcare Providers. It is critical to educate healthcare providers about the notion and value of informed consent. This includes providing training on the repercussions of failing to get consent, as well as ensuring that they are well-informed and capable of successfully explaining procedures and patient rights.
10. Clear Communication and Detailed Explanations: - Provide information in patient-friendly language and format, such as visual aids or simplified terminology. This ensures that patients fully understand the information offered to them. Healthcare practitioners

[359] Children and Young Persons (Care and Protection) Act 1998 (NSW)

should provide thorough explanations of treatments or services, including benefits, drawbacks, probable outcomes, and adverse effects. Patients should have adequate time to ask questions and make educated judgments.

11. Documentation and Evidence: - Written documentation is essential for proving permission. This includes providing full information about procedures and ensuring that patients and their families are informed and have given their consent.
12. Establishing a compensations model for victims of battery and other related medical wrong because of unlawful interference with patients' bodies strictly regulated and monitored by the relevant agency.
13. Licensing, and building a data-based cloud computing technology where patient can keep record of their health history in case of any health emergencies that would require consent to a particular procedure for example blood transfusion.

5.3 Conclusion

The idea of consenting to medical procedure is not merely an ethical principle but a legal obligation which has found its root in constitutional doctrines and precedents of courts. Which necessitated this study to ensure that adequate knowledge is available on the principle of informed concept in Nigeria It is evident from the `overview of the practice of informed consent in the doctor patient relationship in Nigeria, that there is a significant gap and a loophole in not having considerable legislations that addresses the issue of informed consent in medical practice in Nigeria.

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This is to certify that the thesis by Noah Okikiayo SULAIMON with the matriculation number LCU/PG/005024 in the faculty of Law, Lead City University Ibadan, Oyo State, Nigeria. Is in full compliance with the approved university format and style.

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