

LEGAL ISSUES IN MEDICAL
PRACTICE
BY
Dr. JADESOLA LOKULO-SODIPE

INTRODUCTION

- Discussing some areas of medical practice and their legal implications.
- There is no area of medical practice that does not have legal implications.
- Law provides a means for resolving ethical dilemma.
- Law brings to medical practice an attention to rights and procedure.

OUTLINE

- NMA Code of Medical Ethics
- Medicine and Litigation
- Advance Directives
- Organ Donation and Transplantation
- Incompetent Patients
- Intellectual Property Rights

NMA CODE OF
MEDICAL ETHICS –
Professional
Negligence

- Guides medical and dental practice in Nigeria.
- Provisions in relation to medical/professional negligence - **sections 28-30.**
- Negligence: doing or omitting to do something which a reasonable medical practitioner would/would not have done in any given circumstance.
- There must be in existence a duty of care, which must have been breached by the medical practitioner and the breach must have resulted in harm.
- Test – **the reasonable man test**, i.e. would a reasonable Dr do this?
- The Dr must possess a reasonable degree of diligence, commensurate with his/her grade and experience.

NMA CODE OF MEDICAL ETHICS cont'd

- Rules guiding biomedical research involving human subjects – **Section 31.**
- Professional Malpractice – **(Sections 32-35)** - failure to meet the professionally accepted standards, methods or decorum.
- Confidentiality
- Conviction for alcohol and drug related offences.
- Fitness to practice- ailment/habit that may impair practice, alertness or judgment.

MEDICINE AND LITIGATION

- Litigation arises in the following areas of law:
 - Tort (a wrong) – negligence
 - Contract
 - Informed consent
 - Confidentiality
 - Domestic issues such as determining the paternity of a child or assisted reproductive technology procedure
 - Medical procedures such as abortion and euthanasia

- These can lead to criminal actions and civil actions such as battery, negligence and breach of contract.

MEDICINE AND LITIGATION cont'd

- Litigation arises as a result of the following subject matters:
 - Medical Errors
 - Adverse Effect of medication
 - Malpractice and/or
 - Negligence.

DEFENCES

- Contributory Negligence
- Respectable Minority
- Good Samaritans
- Statute of Limitation.

AVOIDING LITIGATION

- Adherence to medical practice policy or clinical practice guidelines.
- Observe the law and various Codes of Medical Ethics and Declarations have been enacted to regulate medical practice in Nigeria e.g
 - Medical and Dental Practitioners Act, Cap LFN 2004; Hippocratic Oath;
 - Declaration of Geneva;
 - Declaration of Helsinki; and
 - the International Code of Medical Ethics.

ADVANCE DIRECTIVES

- Advance directives centre around the principles of the rights to autonomous decision making, are legally binding and prepared in advance of incompetence.
- TYPES include:
 - Living will,
 - Durable Power of Attorney for health care which is given to a trusted person to make decision(s) on one's behalf, and
 - Do not resuscitate orders.
 - Mental Health Treatment Declaration

ADVANCE DIRECTIVES cont'd

- It may be invalid, if
 - it is not signed, or
 - there is reason to doubt its authenticity,
 - it is felt that there was duress or
 - there is doubt as to the person's state of mind (at the time of signing).

ORGAN DONATION AND TRANSPLANTATION – Legal Issues

- When can death be said to have occurred?
- Brain death criteria
- Opt in / Opt out
- No legal obligation to donate – must be voluntary. Therefore donation cannot be compelled.
- If a life donor, there will be the need to determine whether the donation is altruistic or commercial.
- Given our extended family setting, donors are in ample supply. However, are these totally free from subtle or explicit coercion?*

ORGAN DONATION AND TRANSPLANTATION –Ethical Issues

- Consent - opt-in (explicit); opt-out (presumed).
- Coercion – related living donor.
- Commodification (Financial) - unrelated living donor.
- Confidentiality – disclosure of information obtained during the process.
- Fairness and equity - care in selection of donor and donee.
- Quality assurance and safety (beneficence and non-maleficence) – competent team and safe hospital.

ORGAN COMMODIFICATION AND TRANSPLANT TOURISM (TT)

- Organ commodification also known as organ trade is global and illegal.
- Donors are often cheated out of their agreed payment, and given little or no after care.
- TT is where patients travel out of their usual country of residence to be transplanted elsewhere.
- TT raise issues –
 - How can the safety of donor and recipient, and quality of OTCs be ensured.
 - Risk of post – transplantation infections and malignancies.
- Patient Safety – overall benefit should outweigh the risk, as well as maintaining availability.

IS THE PHYSICIAN
LIABLE IN THE
EVENT OF ORGAN
COMODIFICATION?

- Mediation or facilitation of commercial organ donations by third parties is often prohibited, globally.
- Physicians who support patients or donors with the purchase or sale of organs could be held criminally accountable.

Cont'd

- The Ekweremadus organ harvesting case. The defendants, except the daughter have been convicted and are awaiting sentencing.
- Lokulo-Sodipe, J O. 2022. Organ Transplantation Tourism: Upholding the Donee's Right to Qualitative Health Care

<https://www.scirp.org/journal/paperinformation.aspx?paperid=117683>

CASE STUDY

- Mr A has a 5 year old daughter with kidney problem. He has been told that he is a potential donor for her. He is however scared to donate his kidney. He has come to you as his doctor to cover up for him, that is, not to tell his wife that he is scared. He also wants You to tell his family that he was not a compatible match.

- **QUESTIONS:**
 - To whom does the doctor owe a duty of care in this scenario?
 - To whom does the doctor owe a duty of confidentiality?
 - Could the father be forced to donate a kidney since he agreed to undergo compatibility testing?

CASE STUDY cont'd

- Having submitted to consultation and testing, the father and doctor have a doctor/patient relationship. The doctor therefore owes his patient a duty of care.
- It follows that the Doctor owes the father a duty of confidentiality.
- Undergoing a compatibility testing does not mean that the father has agreed to donate a kidney – See the American case of **Mc Fall. v. Shrimp**, where a cousin refused to undergo bone marrow transplantation after compatibility was established.

The court held that although his actions were morally indefensible, there was no legal requirement to take part in such an act of positive beneficence.

Close relationship may impose a moral obligation of beneficence on a person.

INCOMPETENT PATIENTS

- A patient who is unable to take a decision for himself in relation to medical treatment because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- Lacks capacity for making autonomous choice.
- Unless there is in existence a valid and applicable AD or a lasting power of attorney, the decision on how and whether to treat an incompetent patient will be made by the relevant medical professional in accordance with what he considers to be in that patient's best interest.
- Can acute pain, poverty or illiteracy qualify one as being incompetent?
- Assessment of the patient's ability to make decisions at the material time.

INTELLECTUAL PROPERTY RIGHT (IPR)

- ❑ IP - Creations of the Mind
- ❑ IP Rights - A bundle of exclusive rights over creations of the mind.
- ❑ TYPES:- Copyright and related rights, Patent, Industrial Designs, Trademarks, Geographic Indications, Trade Secrets, Traditional Knowledge.
- ❑ INFRINGEMENT:- using without the owner's permission.
- ❑ DEFENCES:- fair use and honest mistake.
- ❑ REMEDIES:- Anton Pillar Orders, Damages.

