



The Jurist

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Essays

In Honour of

His Excellency

Judge Bola Abduljabbar Adesumbo

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CONSENT – PATIENT'S RIGHT TO SELF DETERMINATION – AN APPRAISAL

N.A.O Ijaiya*



INTRODUCTION

It is difficult to succinctly define the concept of consent in relation to medical and dental treatment. It is simply more than an agreement to treatment. Lord Diplock described consent as:

..A state of mind personal to the patient whereby he agrees to the violation of his bodily integrity.

A basic, though far from complete, definition of the concept of consent to treatment is the voluntary submission to treatment following an understanding of the nature, purpose and consequences of that and alternative treatments.

According to the Nigerian Supreme Court in *Okekearo v. Tanko*,¹ Consent was described as:

The act of giving approval or acceptance to something done or proposed to be done and in conduct flowing from the person giving the consent

Also, According to Dada², he described consent as:

An understandable communication between the physician seeking the authorization or consent and the person

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¹ (2002) 15 NWLR (Pt. 791) 657SC

² Dada, J.A. *Legal aspects of medical practice in Nigeria* (University of Calabar Press, Calabar 2002) 160

entitled by law to grant that person.

Onuora Oguno Azubike Chinwuba decides to take a descriptive approach. He said:³

A person under 16 years consents to medical and dental treatment can only be given by a parent or legal guardian. Consent must be both informed and effective. To be informed, a person must be given information about the procedure relevant to the individual situation, to be effective; the person should be able to demonstrate in his or her own words their understanding of the treatment.

According to the Stroud's Law Dictionary:⁴

Consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side.

To John Wiley, Chichester⁵, consent is:

A voluntary uncoerced decision, made by a sufficiently competent or autonomous person, on the basis of adequate information and deliberation, to accept or reject some proposed course of action which will affect him/her.

It is therefore an important principle that in treating, providing of health service, diagnosis and advice of a patient and handling of

³ *The Jurist* (Vol. 10 Essay in honour of Hon. Justice Umaru Farouk Abdullahi, 2005)

⁴ John, S. J. *Stroud's Judicial Dictionary of words and phrases* (5th ed, Sweet and Maxwell Limited, London 1986) 510

⁵ David, C.S. *Consent To Treatment*, <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779959/>> accessed on 4 June 2012

the patient's records the consent of the patient must be sought and obtained. This is very fundamental in the administration of health care services. The importance of this principle has been stated in the *Nigerian case of Medical and Dental Practitioner's Disciplinary Committee v. Okonkwo*. Their lordships observed⁶:

The patient's consent is paramount....(accordingly), the patient's relationship (with a doctor) is based on consensus, it follows that the choice of an adult patient with a sound mind to refuse informed consent to medical treatment, bearing state intervention through judicial process, leaves the practitioner helpless to impose a treatment on the patient

It was also established in the above case that the right to self-determination is inherent in the Nigerian Grundnorm. This can be found in section 34 of the 1999 Nigerian Constitution which provides that every individual is entitled to respect for the dignity of human person.

Also in *Sideway v Royal College Bethlehem Hospital*⁷, Lord Templeman said that:

The patient is free to decide whether or not to submit to treatment recommended by the doctor... if the doctor making a balanced judgment advises the patient to submit to the operation, the patient is entitled to reject the advice for reasons which are rational or irrational.....

Another case often cited in the importance of the principle of

⁶ (2001) FWLR (Pt. 44) 542

⁷ (1985) 1 All. E.R at 655