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Informed Consent to Medical Treatment and Fundamental Rights

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ABSTRACT: If a patient goes for medical treatment, he has the right to be informed of the nature of treatment, procedure, and the prescription. The risks associated with the treatment must be disclosed. The patient will then be able to consent or withhold consent to the treatment. Can the doctor override the decision of the patient when he withholds consent to a medical treatment on the cover of medical ethics without liability for breach of fundamental rights and damages in tort? This paper discusses the legal position in Nigeria and other common law jurisdictions to evaluate the responsibility and limit to the discretion of the doctor. It examines the peculiar cases of minors. While adopting a doctrinal methodology, this paper discusses the need for respect of the fundamental rights of the patient and the balance of the conflicting interest of the patient and that of the medical ethics, the state interest in public health and welfare. It posits that where a doctor disregards the decision of the patient, he will be liable for breach of fundamental rights or damages in tort irrespective of whether he perceives such decision unreasonable.

KEYWORDS: Informed Consent, Medical ethics, Fundamental rights, Medical Negligence, Minor, Implied consent.

INTRODUCTION

A patient who goes to a medical practitioner for treatment has both, at Common Law and under the Constitution a right to object to a form of treatment. Therefore, his consent must be sought before treatment is administered. This is referred to as obtaining the informed consent of the patient. What is the Common Law view of this concept of informed consent? Are there constitutional safeguards?

Sometimes, doctors in treating certain patients tend to override their objection to certain forms of treatment based on medical ethics. This paper shows that a doctor who disregards the opinion of the patient would be liable in the tort of assault and battery and for infringement of the fundamental right of the individual as preserved under Sections 37 and 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). This is also true in other Common Law jurisdictions including the United States of America and Canada. A doctor does not know it all. Medical knowledge is not sufficiently advanced to enable a physician to predict with unerring certainty who will live or die upon the performance or non-performance of certain medical procedures. In fact, it would be the height of arrogance for doctors to presume that they know what is 'good' or 'best' for a particular patient. Indeed, there is no basis for presuming that a doctor can always prescribe and enjoin what is in the overall interest of a patient. The only way to know whether an intervention is good medicine is to ask the patient. The patient may then give an informed consent.

Doctrine of Informed Consent

At Common Law, consent to medical treatment may be expressed or implied. A patient's consent is express where he authorizes the medical practitioner orally or in writing that he consents to that form of treatment. In most cases, however, consent to medical treatment is implied. A patient who holds out a hand for an injection or he is on the couch for an examination impliedly consents to that procedure. This implied consent however is limited to what is agreed. In other words, there must be a *consensus ad idem* (meeting of the minds) between the doctor and the patient on the scope of treatment or examination.

Consent in whatever form must be informed. Informed consent is that by a person of sound mind seized of the entire information necessary to make up his mind as to whether he would or would not accept a form of medical treatment. This will include information as to the diagnosis, the method of treatment to be adopted, the benefits and disadvantages of the said method and possible side effects. Therefore, consent obtained by fraud, under the influence of drugs or anaesthetics, from an insane person or without giving sufficient information about the ailment, the treatment proposed and the attendant risks to enable the patient to understand the position fully and make an intelligent decision is not informed consent.

If a patient refuses to give informed consent, the law is that the medical practitioner who proceeds to administer the medical measure or treatment, surgery, or blood transfusion, will be liable for assault and battery. He would be liable even where no injury is occasioned, since trespass is actionable *per se*. It will not be an answer that an emergency has arisen. The question whether there was enough disclosure to the patient to enable him give informed consent is matter of fact. The doctrine of informed consent is said

to have been developed in the United States of America. This was explicitly stated by Lord Scarman in *Sidaway v Board of Governors of Bethlem Royal Hospital*:

A doctor who operates without the consent of his patient is, save in cases of emergency or mental disability, guilty of the civil wrong of trespass to the person; he is also guilty of the criminal offence of assault The existence of the patient's right to make his own decision which may be seen as a basic human right protected by the common law, is the reason why a doctrine embodying a right of the patient to be informed of the risk of the surgical treatment has been developed in some jurisdictions in the U. S. A. and has found favour with the Supreme Court of Canada. Known as the 'doctrine of informed consent', it amounts to this: where there is 'real' or a 'material' risk inherent in the proposed operation (however competently and skilfully performed) the question whether and to what extent a patent should be warned before he gives his consent--

In the Canadian case of *Malette v. Shulman,* a medical practitioner administered blood to a Jehovah's Witness patient, though he had been informed of a Medical Alert Card in the purse stating that she did not desire blood transfusion under any circumstance. When she recovered, she sued the medical practitioner for battery. The doctor argued that it was an emergency which required an urgent lifesaving need for blood. This argument was rejected and damages for trespass was awarded against him. The court said:

A competent adult is generally entitled to reject a specific treatment or to select an alternative form of treatment, even if the decision may entail risk as serious as death and may appear mistaken in the eyes of the medical profession or of the community. Regardless of the doctor's opinion it is the patient who has the final say on whether to undergo the treatment.

In the case of *Sidaway v. Board of Governors of Bethlem Royal Hospital,* a patient brought an action against her doctor claiming that he failed to warn her about some inherent hazards in a form of treatment which the doctor proposed and applied to her. The action was in respect of the personal injuries which she suffered because of a surgical operation performed upon her by a neurosurgeon on 29 October 1974. Her case was that the risk materialised with the result that she suffered, and continues to suffer, serious personal injury and that had she been warned, she would not have consented to the operation. The House of Lords held that since the treatment involved a substantial risk of grave consequences the doctor ought to have warned her. Lord Scarman in his judgment stated:

In my view the question whether or not the omission to warn constitutes a breach of the doctor's duty of care towards his patient is to be determined not exclusively by reference to the current state of responsible and competent professional opinion and practice at the time, though both are, of course, relevant considerations, but by the court's view as to whether the doctor in advising his patient gave the consideration which the law requires him to give to the right of the patient to make up her own mind in the light of the relevant information whether or not she will accept the treatment which he proposes.

The above two cases were approved and followed by the Nigerian Supreme Court in *Medical & Dental Practitioners Disciplinary Tribunal v. Okonkwo.* On informed consent, Uwaifo JSC said:

I am completely satisfied that under normal circumstances no medical doctor can forcibly proceed to apply treatment to a patient of full and sane faculty without the patient's consent, particularly if the 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.

The effect of the above decisions is that consent of a patient is critical to the right of the doctor to treatment.

Can the consent be implied by the nature of the relationship with the patient and the circumstances of the case such as an emergency?

It can be asserted that in an emergency, it would be impossible to obtain the consent of the patient. What constitutes emergency will be a matter of fact and should not be dependent on the individual opinion of the doctor but by accepted medical practice. Of course, this will be subject to decision of court. Otherwise, the profession will be a 'judge in its own cause' Secondly, some patients have on them a document which indicates that under emergency, named persons can make decisions on their behalf. The consent of such agents must be sought and obtained. It is the duty of the doctor to obey the instructions.

Implied consent must be unequivocal. In the case of *Okekearu v. Tanko*, a medical doctor amputated the left centre finger of a 14-year-old boy without his consent. In the boy's action for damages for battery, the doctor's defence was that he obtained the consent of the plaintiff's aunt who was the closest relative present at the material time before he amputated the finger. The trial court gave judgment for the plaintiff and awarded him the sum of ₦100,000 as general damages for permanent incapacity, negligence and battery resulting from the amputation of his finger. The defendant's appeal to the Court of Appeal failed; only the general damages was reduced from ₦100,000 to ₦50,000.

Tobi, JSC in his concurring judgment stated:

The main issue is whether the Appellant had the consent of Tanko Danjuma before the finger was amputated. Consent, which is the act of giving approval or acceptance of something done or purposed to be done, is an exact conduct flowing from the person giving the consent. While consent could be implied in certain situations, it is my view that consent to amputate a part of the body should be exact and unequivocal. There should be no doubt that Tanko Danjuma, the amputee, gave his consent that his finger be amputated.

Informed Consent to Medical Treatment and Fundamental Rights

Informed Consent of Incompetent Adult and Minor

An incompetent adult is a person who suffers from a disease of mind or natural mental infirmity which impairs his reasoning powers or ability to decide whether to take a form of medical treatment or not. He is unable to understand the nature, purpose and effects of the medical treatment proposed. Where an incompetent adult, by reason of, for example, mental illness, is unable to give consent, the court may authorize the treatment. Nothing stops a family member or parent, as next of kin, from making such decision rather than the court.

A patient with mental disability cannot give consent. The same is true of a child who have no capacity to enter a contract of service such as medical treatment. The consent will invariably be taken by the parent, next of kin or guardian. Where, consent is valid and unequivocal, the doctor will not be liable for trespass to the person, battery, or criminal assault or breach of fundamental rights.

In the case of a minor, the parents or guardian are usually the ones to give the consent. A person below the age of 14 years would qualify as a minor in Nigeria. But age cannot be the overriding consideration in deciding the question of who a minor is going by the decision of the Supreme Court in *Okekearu v. Tanko*. The Court held on this point that a 14 year-old whose finger was amputated ought to have been asked for his consent even before seeking the consent of the aunt. This position of the court is more realistic as a child of 14 years today can make a rational informed decision. Tobi, JSC in coming to this view stated that the 14-year-old was not in coma, and he even gave lucid evidence at the trial.

From the above exposition, the Common Law position of informed consent is not only applicable in other jurisdictions, but it has also been judicially accepted in Nigeria.

Six basic elements of informed consent have been identified. They are:

1. A fair explanation of the procedure to be followed, and their purposes including identification of any procedures which are experimental.
2. A description of any attendant discomfort and risk reasonably to be expected.
3. A description of any benefits reasonably to be expected.
4. A disclosure of any appropriate alternative procedures might be advantageous to the patient subject.
5. An offer to answer any inquiries concerning the procedures.
6. An instruction that the person is free to withdraw his consent and to discontinue participation in the project or activity at any time without prejudice to the subject.

Overriding Informed Consent

Sometimes, medical doctors tend to override the informed consent of adults on the basis that they know what is 'best' for the patient. Various learned writers have criticized this 'know-all' attitude of doctors.

A patient has a right to determine his own medical treatment and that right is superior to the physician's duty to provide necessary care. No medical ethics can derogate from this position.

Where a competent adult refuses consent to a medical treatment or procedure, the doctor is expected to respect that opinion. Some judicial authorities are to the effect that in cases of emergency, the doctor may override the informed decision. It is submitted that allowing the doctor to classify a medical situation as an 'emergency' for the purpose of overriding his consent will be a way to disregard the opinion. This should not be so. What constitutes emergency should be determined by the court. As rightly held by Lord Scarman in *Sidaway*, it will be allowing the doctor to be a judge in his own cause.

Emerging scenario is the overriding of informed consent by parents or guardians on behalf of a minor. In such cases the doctor approaches the court by an application (usually *ex parte*) for leave to perform the operation and override the refusal of consent by the parent. This was the procedure adopted in the case of *Esabunor v Faweya*. In this case, the 2nd appellant was the mother of the 1st appellant, a baby born at Chevron Clinic, Lekki Peninsula Lagos State Nigeria. Within a month of birth, the 1st appellant fell gravely ill. Upon examination, the 1st respondent found that he was suffering from severe infection and anaemia. Despite the treatment, the 1st respondent observed that the health had not improved. The 1st appellant had poor colour, was convulsing, and was not breathing well. The 1st respondent concluded from his observation that the 1st appellant urgently needed blood transfusion to stay alive. The 2nd appellant and her husband (parents of the 1st appellant) clearly told the 1st respondent that on no account should the 1st appellant be given blood transfusion. Their reasons were that: (a) blood transfusion would expose the child to several health hazards such as Aids, hepatitis etc and (b) as Jehovah's Witnesses, their religious belief required them to abstain from blood transfusion (Acts 15: 29).

The 1st respondent did not agree with the 2nd appellant and her husband on their objection to blood transfusion for the 1st appellant. He reported the matter to the police (4th respondent) who filed an originating motion *ex parte* before the Magistrate Court presided over by Chief Magistrate M. Olokoba (5th respondent). The application sought an order that the medical authorities of the clinic of Chevron Nigeria Limited be allowed and permitted to do all and anything necessary for the protection of the life and health of the 1st appellant. The application was granted, and blood transfusion administered on the 1st appellant. Later, the 2nd appellant filed an application on notice before the Magistrate Court for an order setting aside the order granting leave to administer blood

transfusion. The application was dismissed by the learned magistrate. The appellants were dissatisfied with the refusal of the magistrate to set aside the order. They filed an application for judicial review by way of order of *certiorari* to quash the proceedings before the magistrate. They also sought damages for the blood transfusion, and for preventing the 2nd appellant from having access to the son (1st appellant). The High Court dismissed the application on the ground that the blood transfusion had taken place. The appeal to the Court of Appeal was dismissed. The further appeal to the Supreme Court was dismissed.

We disagree with the decision of the courts in this case. The order of court to transfuse blood and override the non-consent of the appellant was obtained without the hearing of the appellant. This was a ground for asking that the order of court be set aside. We are of the view that it was a misdirection by the Magistrate and confirmed by the High Court, the Court of Appeal and Supreme Court that because the transfusion had been done, it could not set aside the order and that there was no breach of fair hearing. The absence of hearing goes to the jurisdiction of the court to entertain the application. We are also of the opinion that the application before the court was a civil matter/application. The civil rights and obligations of the appellants, including right to fair hearing, was in issue. The courts including the Supreme Court were, with respect, wrong to classify the matter as a criminal case at the stage of the application to grant leave to administer blood transfusion. The mere allegation in the application that it was for the purpose of 'prevention of commission of crime' under sections 339 or 341 of the Criminal Code and that if the child eventually dies, the 2nd appellant (Rita Esabunor) would have committed murder does not derogate or change the character of the application. It is a civil application. The parents ought to have been given a hearing before making the order. The reasons for objection to the blood transfusion should have been considered. In *Re President of Georgetown College Inc* the Judge called the husband of the woman whom the clinic sought to administer blood transfusion and heard his religious objection. Fair hearing was given before a critical decision was made.

We submit that the courts overlooked the parental right over a minor child in decision making that will affect the right of the child to freedom of thought, conscience, and religion. Sections 7, and 20 of the Child's Right Act (CRA) give statutory backing to the parental role in decision making by the child which should be respected by doctors and the court. By section 7(1), every child has a right to freedom of thought, conscience and religion, and section 7(3) provide that the parent or legal guardian shall provide guidance and direction in the enjoyment of the right. Such guidance or direction shall be respected by all persons, bodies, institutions, and authorities. Therefore, where a parent gives direction on the refusal of blood transfusion, this ought to be respected by the doctors. Hence, it is surprising that the court had to override the refusal by the child's parent-2nd appellant to the blood transfusion. The Supreme Court did not consider these provisions when it held:

All adults have inalienable right to make any choice they may decide to make and to assume the consequences. When it involves a child, different considerations apply, and this is so because a child is incapable of making decisions for himself and the law is duty bound to protect such a person from abuse of his rights as he may grow up and disregard those religious beliefs. It makes no difference if the decision to deny him blood transfusion is made by his parents. ---When a competent parent or one in *loco parentis* refuses blood transfusion or medical treatment for her child on religious grounds, the court should step in, consider the baby's welfare, i.e saving the life and the best interest of the child, before a decision is made. Those considerations outweigh religious beliefs of the Jehovah's Witnesses.

With respect, the Court while recognising that the parent can make the decision, turned around to hold that such decision can be overridden. This negates section 7(3), CRA. The parent should be able to decide what is the best interest of the child. No situation arose to warrant overlooking a right accorded the parent under the law.

Another flaw in the decision of the Supreme Court was that the parental responsibility to give consent can be overridden in life threatening situations. Who determines life threatening situations? What information or facts were before that court? If there are alternative treatment, was the parent allowed to suggest? Was another expert called by the 1st respondent? Did the court determine that in the instant case? A life-threatening emergency means the sudden and unexpected onset of a condition which threatens life, limb, or organ system and requires immediate medical or surgical intervention, but in no case later than twenty-four (24) hours after onset. This was not determined in this case. It will be allowing doctors to blatantly override the non-consent of a parent on the ground of an emergency or life-threatening situations. It is recommended that two or more experts should be called to give an informed opinion on the situation before the order is made by the court. The parent must be heard before making the order.

Okonkwo, while explaining the sanctity of consent as it relates to blood transfusion and Jehovah's Witnesses and the options open to a doctor asserted that:

Members of the religious sect known as Jehovah's Witnesses object to blood transfusion as a matter of religious belief. If after explaining the pros and cons of a transfusion to a patient of that sect and it is refused by the patient, a doctor is free to reject the patient. The doctor should not force a transfusion upon the patient otherwise the doctor may be liable for battery. On the other hand, if, despite the refusal of transfusion, a doctor decides to operate on such a patient knowing very well the probable risk of death he may be liable in negligence if the patient dies. In such a case, the doctor should obtain the patient's written undertaking acknowledging the risk and waiving any legal rights against the doctor. It should be stated however that if in an emergency a transfusion is necessary to save life and a doctor administers despite the patient's refusal, an action against the doctor would hardly succeed. And should that ever be the case, the court would not be disposed to award more than nominal damages.

While agreeing with the position that if the options explained by the doctor is refused, he is free to reject the patient, the assertion that in case of emergency an action for negligence could hardly succeed is, with respect, wrong. In *Malette,* it was case of emergency, yet the patient succeeded in her action and damages were awarded for trespass to person. Secondly, a reliance on 'emergency' is to give a doctor a safe way of overriding the refusal of consent. As shown above, the doctor or even the court should not rush into a decision without considering alternative medical treatment or the opinion of other medical experts. Is the choice of treatment tested and proven and likely to save life? Are there possibilities that the result of the treatment may result in future heath challenges? Several possibilities must be considered before a decision is taken otherwise the doctor will be liable in trespass and breach of the constitutional right of the patient.

Informed Consent, Criminal Conduct, and Negligence

It is asserted that there is a difference between informed consent and professional responsibility of the doctor. Will the giving of consent mean that the doctor will not be liable for negligence in carrying out the treatment on the doctrine of *volunti non fit injuria?* Consent to medical treatment still calls for professional responsibility to exercise the duty of care to the patent. In the same vein, the consent cannot be a cloak for illegality. Thus, it will not be a defence that the patient consented to an abortion if that was not done for therapeutic reason or that he will kill the patient to show mercy.

Informed Consent and Fundamental Rights

The doctrine of informed consent has become entrenched in our Constitution as a fundamental right under Sections 37 and 38 of the Constitution of the Federal Republic of Nigeria 1999, as amended. Section 37 provides that: 'The privacy of citizens, their home, correspondence, telephone conversations and telegraphic communication is hereby guaranteed and protected'. Section 38(1) reads:

> Every person shall be entitled to freedom of thought, conscience, and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice, and observance.

These provisions are constitutional safeguards to the right of a patient to reject a form of medical treatment based on religious beliefs. Therefore, a Jehovah's Witness can based on Sections 37 and 38 of the 1999 Constitution object to a blood transfusion on religious ground. A blood transfusion against the consent of the patient would be an invasion of his right to privacy. This is irrespective of the fact that the doctor is of the opinion that such blood transfusion would have the effect of prolonging life or that the refusal of blood transfusion seems unwise, foolish, or ridiculous to others. The courts in the United States have recognized that the constitutionally guaranteed right to privacy of a patient encompassed his right to decline medical treatment.

In *Re Yetter*, the court held that the constitutional right of privacy includes the right of a competent, mature adult to refuse treatment that may prolong one's life even though that refusal may seem unwise, foolish, or ridiculous to others. In *Re Osborne,* the court affirmed the lower court's order refusing to appoint a guardian to give consent for the administration of a blood transfusion to a patient who had refused it on religious ground and the physician feared would die without blood, upon evidence that the patient had validly and knowingly chosen this course, and upon the lower court's finding that there was no compelling state interest which justified overriding the patient's decision to refuse blood transfusion.

Factors to Consider When the Decision is to Override Patient Who Objects to Medical Treatment on Religious Ground.

In the case of *MDPDT v Okonkwo*, Ayoola, JSC identified the following as the factors to be taken into consideration and stressed the need to balance those interests:

a. The constitutionally protected right of the individual.
b. State interest in public health, safety, and welfare of the society.
c. The interest of the medical profession in preserving the integrity of medical ethics and thereby its own collective reputation.

We intend to examine these conflicting interests and show that the constitutionally protected right of the individual patient should always be paramount and agree with his Lordship to the extent that to give undue weight to the other interests over the right of the competent adult would constitute a threat to the liberty of the individual and his right to self-determination.

We are of the opinion that no compelling state interest in the public health, safety and welfare of the society would justly override the decision of the patient to refuse a medical treatment, for example, blood transfusion. It is a personal decision of the patient that does not affect the public. A citizen's right cannot be abridged for the purpose of protecting himself. Section 45(1) of the 1999 Constitution provides:

Nothing in Sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society –

(a) in the interest of the defence, public safety, public order, public morality, or public health; or
(b) for the purpose of protecting the rights and freedom of other persons.'

From the above constitutional provision, it is clear that:

1. Only a law duly passed can derogate from or restrict the fundamental rights protected under Sections 37 and 38 of the 1999 Constitution.

2. Such a law is limited to those which are reasonably justifiable in a democratic society and must also either be:
a. in the interest of defence, safety, public order, public morality, or public health; or
b. for the purpose of protecting the rights and freedoms of other persons.

We do not foresee the right of refusal of blood transfusion or any medical treatment as affecting the rights and freedom of other persons. It cannot also affect 'the defence, public safety, public order, public morality, or public health' in any way. If, for instance, in case of an epidemic the state requires a form of medical treatment that involves blood transfusion, the citizen can refuse the blood transfusion as part of his fundamental right. Any law passed to derogate from this right will not be one that is 'reasonably justified in a democratic society'. Rather, it would be one justified in a totalitarian society. There is no compelling state interest which can justly override the patient's decision to refuse blood transfusion.

One of the factors stated by Ayoola, JSC to be taken into consideration is the 'interest of the medical profession in preserving the integrity of medical ethics and thereby its own collective reputation'. With respect to his Lordship, this is not a relevant factor vis-a-vis the constitutionally protected rights of the individual. The interest of a particular profession cannot override provisions of the Constitution.

We submit that as there is no constitutional basis for elevating the medical professional ethics above the fundamental, constitutionally guaranteed right of a patient in Nigeria, there is no basis for subjecting a patient's right to such a factor as 'preserving the medical ethics and medical reputation'. Therefore, where there is a conflict between a patient's and a doctor's values or ethics, it is the patient's values or ethics that control.

In the case of *Randolph v City of New York*, it was held that: 'A patient has a right to determine his own medical treatment and that right is superior to the physician's duty to provide necessary care'. Also, in *Rivers v Katz* it was stated *inter alia:*
The state's interest . . . in maintaining the ethical integrity of the medical profession, while important cannot outweigh the fundamental individual rights here assessed. It is the need and desire of the individual, not the requirement of the institution that is important.

Apparently based on the postulation that the constitutional right of the patient needs to consider the interest of the medical ethics, profession and reputation and the helplessness of the doctor where there is no consent to a form of medical treatment including blood transfusion, Ayoola, JSC in *MDPDT v Okonkwo* suggested a judicial intervention' in such cases to override the patient's decision. He stated:
This is why, if a decision to override the decision of a competent patient not to submit to blood transfusion or medical treatment on religious grounds is to be taken on the ground of public interest or recognized interest of others, such as dependant minor children, it is to be taken *by the Courts*. (Italics mine)

He stated further (professing it to be a gratuitous opinion) that the solution to whether patient's decision should be overridden should be 'shifted to the Courts which are the proper forum for such decisions'

We submit that his Lordship's *dictum* cannot stand in this present setting where the Constitution is the grundnorm. The interpretation by the Court will have to respect the informed decision of the patient in line with Sections 37 and 38 of the 1999 Constitution.

CONCLUSION

Both under Common Law and the Nigerian 999 Constitution, the medical practitioner must respect the informed decision of a patient to a form of medical treatment even if such decision seems to him 'ridiculous' or 'irrational'. The patient has a right of self-determination and constitutional rights to privacy and freedom of thought, conscience and religion preserved by Sections 37 and 38 of the Constitution. Where a patient refuses a form of medical treatment on basis of religious belief, the doctor must respect the objection otherwise he would be liable for battery and for breach of the patient's fundamental rights.

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4) Sidaway v Board of Gov. of Bethlem Royal Hospital (1985) 2 WLR 480
5) ibid at 488
6) (1990) 47 DLR (4th ed) 18
7) ibid at 24
8) (1985) 2 WLR 480
9) Ibid at 483
10) (2001) 7 NWLR (Part 711) 206
11) ibid at 255 C-D

12) John Ademola Yakubu, 'Medical Law in Nigeria' (Demyaxs Press Limited, 2002) 44
13) Sidaway at 488F
14) A Medical Alert Card as in Malette, a Durable Power of Attorney (DPA) Card. In MDPDT v Okonkwo (2001) 7 NWLR (Pt 711) 206 (SC), the card used was titled 'MEDICAL DIRECTIVE/RELEASE'. The content is set out on page 226. A 'Release from Liability' was also signed by the patient's husband restating the refusal of blood transfusion releasing the hospital from responsibility and liability from the effect of the decision.
15) (2002) 15 NWLR (Pt 791) 657
16) ibid at 670-671
17) See O F Emiri, Medical Jurisprudence (Jeroiliromah Press Lagos) 196 - 212
18) Esabunor v Faweya (2019) 7 NWLR (Pt 1671) 316
19) In taking out an action in our Courts, for instance, actions are commenced by next friend and may be defended by Guardian ad litem appointed for that purpose under the Civil Procedure Rules. See: Order 13 Rules 11 & 12, High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018; Order 14 Rules 9 and 10 High Court of Lagos State (Civil Procedure) Rules. Order 9 Rules 10 & 11, Federal High Court (Civil Procedure) Rules 2019. Section 2, Children and Young Persons Act defines a 'child' as a person below 14 years. In the USA, the doctrine of 'mature minor' has been developed to deal with the question of informed consent of minors to medical treatment. Where it can be shown that a minor is mature enough to make an informed decision or to appreciate the nature, extent and consequences of his action, the Courts have treated such persons not as minors but mature minors with a right to determine the type of medical treatment they wish to be subjected to. See the case of Re: Ernestine Gregory 133 III 2d 98, 549 NE 2d 322 (1989) noted by O.F. Emiri (ibid), at p. 200.
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35) https://www.lawinsider.com/dictionary/life-threatening-emergency assessed 04/11/2022
36) CO Okonkwo, 'Medical Negligence and the Legal Implications' in B C Umerah (ed), Medical Practice and the Law in Nigeria (Longman Press) 131 at 133
37) Grace Abraham Ahiakwo, 'Case Comment on Esabunor & Anor v Faweya & 3 Ors' (2022) Vol.8 (1) International Journal of Law 40 at 44
38) 'Abortion' is a criminal offence under section 328, 'Aiding suicide' is an offence under section 326, 'Euthanasia' is an offence under section 311, Criminal Code Act, Cap C38 LFN 2004
39) John Ademola Yakubu, 'Medical Law in Nigeria' 45, Bolan v Friern Hospital Management Committee (1957) 1 WLR 583
40) MDPDT v Okonkwo Per Ayoola, JSC at 244 - 245
41) See the following cases: Re: Osborne (1972) Dist. Col App 294 A 2d 3726; Re: Yetter (1973) 62 Pa D & C 2d 619 noted with approval by the Supreme Court in Okonkwo (Ibid) at 245 - 246.
42) ibid at 244A
43) 501 NYS 2d 837, 841 (App. Div. 1986) See also: Superintendent of Belchertown State School v. Saikewicz 370 N.E. 2d 417, 426 - 27 (Mass 1977) referred to and approved in MDPDT v. Okonkwo (Ibid) 245.
44) 495 N.E. 2nd 373, 343 n-6 (N.Y. 1986)

45) ibid at 245A.
46) ibid at 247C. This is an obiter dictum