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An Appraisal of Medical Confidentiality Under the Cameroon Medical Law and Ethics

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Abstract: This paper makes an appraisal of medical confidentiality under the cameroonian law. Hence, it examines the duty of confidentiality and how the principle of confidentiality operate in Cameroon? What are the justifications for medical confidentiality? How can medical confidentiality be breached? How is medical confidentiality terminated? Based on the ensuing above, the paper examines the origins and concept of medical confidentiality. It further investigates the justifications of medical confidentiality and circumstances which medical confidentiality comes to an end. Findings reveal that the duty of medical confidentiality remains sacrosanct principle in medical professional-patient secrecy relationship in Cameroon. This is buttressed by the need to preserve the moral and integrity of patients, re-enforce patient doctor trust. This duty is breached where information with the quality of confidentiality is being divulge, where the information given in confidence and an unauthorized use of information. The study presents redress through criminal, civil administration and disciplinary sanctions against the offender. However, medical confidentiality is not absolute but qualified in Cameron due to consent of the patient, medical experts, legal requirement and further medical research.

Keywords: Medical medical Professional, Patient, Secrecy, Confidentiality

Introduction

Medical confidentiality is as old as mankind, traces of its origin can be found in ancient Greece. *"I swear by Appollo, doctor by Asclepius, by Hygeia and Panacea, by all the gods and goddesses, and to take to witness that (……) what I may hear or see in the course of the treatment or even outside of the treatment as regard to the life of men, which on no account should be spread abroad, I will keep it as a secret to myself"*[1] It is in these terms that the medical profession drew inspiration for this doctrine of medical confidentiality. This oath of Hippocrates is a moral obligation which medical professionals undertakes to respect before they start the practice of medicine. Medical confidentiality per Boreham J. in *Hunter v. Mann*,[2] entails that… *"the doctor is under a duty not to disclose, without the consent of the patient, information which he, the doctor, has gained in his professional capacity."* This view was further adumbrated in the very significant case of

W v. Egdell,[3] when the court accepted that the existence of an obligation of confidentiality between a psychiatrist and his subject, an obligation which counsel further submitted that it was based not only on equitable grounds but also on an implied contract. Most recently, the House of Lords has confirmed in *Campbell v. Mirror Group Newspapers Ltd*[4], that details of one's medical circumstances are obviously private and deserving of the full protection of the law of confidence. The Human Right Act of 1998 and the Data Protection Act of 1998, further enhances protection of individuals with regards to the processing of personal data and more especially on the protection of medical information.

Evolution And Basis Of This Principle In Cameroon

The basis of medical confidentiality in Cameroon is the Hippocratic Oath which states that "*whatever thing seen or heard in the course of medical practice ought not to be spoken of, I will not, save for weighty*

[1] Adna Ebude Enang (2017), *The Responsibility of Medical Doctors under Cameroonian Law,* PhD Thesis, Faculty of Law and Political Science, University of Yaoundé II Soa, p.257.
[2](1974)QB767 at 772.

[3](1990) 1 ALL ER 835.
[4] (2004) 2 AC 457, (2004) 2 ALL ER 995.

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reasons, divulge." The Declaration of Geneva amended in Sidney in 1968, Venice 1983, and Stockholm in 1994 imposes much same obligations on medical professionals to respect the secrets which are confided in them, even after the patient is death.[5]

The Cameroon Code of Medical Ethics stipulates in part 1 sub section 4 that *professional secrecy shall be binding on all doctors, unless otherwise provided that in all conscience it is not harmful to the interest of the patient.*[6] Section 4 of Law No. 90 equally provides *"A physician in service in the administration or in the private sector shall be bound by: 'professional secrecy' the Code of Ethics adopted by Cameroon Medical Association and approved by the Supervisory Authority; and the statutory provisions of the association."*[7]

Equally, *section 40 of the Code of Medical Ethics is to the effect that a specialist must, before undertaking any operation of assessment, informed the person he is to examine of his mission. Section 41(2)*[8] *provides thus; in his report, the specialist must only reveal the information to serve as replies to the question in the decision appointing him and must not reveal any other information he might have learnt.* From the reading of the above provisions, medical professionals are under a duty not to divulge confidential information concerning the status of a patient to third parties even if the patient is death except provided for by the law. This is understood as a right and it is an essential prerogative of human persons which requires legal protection based on the need to safeguard the privacy of the patient.[9]

Reasons For Medical Confidentiality

The following reasons accounts for non-disclosure of medical information to third parties:

The desire to preserve the physical and moral integrity of the patient

In all civilised societies, the protection of individual's reputation occupies a very important place. This basic requirement contrast with democratic societies wherein the cardinal principle is the guarantee of freedom of speech without which democratic societies cannot evolve. The concept of non-disclosure in medical law comes in to strike a balance between the protection of individual's reputation and the guarantee of freedom of speech. This is because in as much as a medical practitioner is free to speak, he or she is not permitted to say things that will injure the physical or moral integrity of the patient in the eyes of right thinking members of the society.

The need to re-enforce the pact of trust between the doctor and the patient

The desire to re-enforce the pact of trust between the doctor and patient is another reason for non-disclosure of patients' information's to third parties. This is true because confidentiality gives the patient the courage to tell the practitioner everything that is disturbing him or her. Xaviera H, reveals in her book that her father a medical doctor does not talk about his patients same too as the prostitute is not supposed to talk about her Johns.[10] This is in a bit to enforce the pact of trust and confidence between the doctor and the patient, which if destroy patients would be deterred from confiding on doctors for fear of communications at a later date. The rationale for this head is for proper diagnosis and treatment of the patient. The ideal professional relationship is one in which there is mutual trust and truthfulness. At times, patients can be less than frank, especially if worried about how their information might later be used, but health professionals should always be open and should act with integrity. Patients can lose trust in them if they feel they have not been given accurate information.

What Amounts To Breach Of Medical Confidentiality?

To constitute breach of medical confidence, three essential elements have to be established. First, the information divulged must have the necessary quality of confidence about it; secondly, the information must have been imparted in circumstances importing an obligation of confidence; and thirdly, they must be unauthorised use of the information[11]

[5] Mason & McCall Smith's, (2006), *Law and Medical Ethics*, 7th edition, Oxford University Press, New York, p.254.
[6] Decree No. 83- 166 of 12 April 1983 on the Cameroon Code of Medical Ethics.
[7] Law No.90-036 of 10th August 1990 relating to the Organisation and Practice of medicine in Cameroon.
[8] Decree No. 83- 166 of 12 April 1983 on the Cameroon Code of Medical Ethics.
[9] Nonga J. M.,(1990*), « Le Secret Medical »*, A maitrise dissertation in Private Law, University of Yaoundé, Faculty of law and Economics. P. 1.
[10] Xaviera Hollander (2007), *The Happy Hooker's Code of Ethics*, Wash Post, p.5.
[11] See the dictum of Justice Megarry in *Coco v A N Clark Engineers* Ltd (1969) RPC 41 at 47.

ISSN NO: 2770-0003
Date of Publication: 20-01-2022

Qualified nature of medical secrecy

Everything is confidential, nothing is confidential. We all want privacy at the same time that we clamour for openness. People have strong impulses to share even their most private information, but they also unrealistically expect their shared conversations to be kept secret.[12]

An Overview Of Medical Confidentiality

The foundation of medical practice is the issue of medical secrecy. This is a vital issue in the medical profession because it promotes trust in the professional of medical science-patient liaison, helping to redress the imbalance between the expert medical knowledge, and associated power, of the doctor compared to the relative medical ignorance and vulnerability of the patient. The understanding that medical professionals must respect secrecy gives patients greater confidence to be open and honest, revealing personal and sensitive information in order to ease efficient and effective diagnosis and treatment. Secrecy can be look upon as an essential element of what Pellegrino (2003) terms the 'internal morality of medicine', the ethical principle distilled from the main healing purpose of the doctor-patient connectedness.

In Britain, medical secrecy has long been recognised as an essential component of ethical medicine, and the professional duty to respect patients' secrets has been explicitly acknowledged in many sources. It is highlighted in codes of medical ethics, regulations and professional advice issued by the British Medical Association (BMA) and the General Medical Council (GMC): books of medical deontology and medical law; as well as specific statutory instruments, judicial opinion and obiter dicta. However, in Cameroon, just like in Britain, professional medical secrecy is a qualified, rather than an absolute principle. Statute and common law, public policy, regulatory guidance and professional ethics all recognised instances when medical secrecy must be breached[13].

It is a worldwide that medical professionals owe an obligation of secrecy to their patients, which this professional duty has been consistently acknowledged in judicial opinions, statutory instruments, codes of ethics and many sources all through the era under investigation. As oppose to the absolute obligation,

Standards that determines disclosure

Three different standards are available for determining which information should be disclosed: 1) the *professional standards* where the current disclosure practices of the profession itself dictate, i.e., that the duty to disclose "is limited to those disclosures which a reasonable medical practitioner would make under the same or similar circumstances,,;[14] 2) the *reasonable person standard* where the duty to disclose is dictated by what the "average reasonable person" would deem relevant or material to the decision at hand;[15] and 3) the subjective standard, which allows room for the idiosyncratic views and character of the individual patient in determining disclosure.[16]

Instances of disclosure

All the classic codes of practice imply some qualification of an absolute duty of professional secrecy. The relevance of medical confidentiality seems ahistorical, its function being as essential nowadays as at the time of its recognition within the terms of the Hippocratic Oath. Thus, the Hippocratic Oath is to the effect that: 'all that may come to my knowledge…which out not to be spread abroad, I will keep secret', which clearly indicates that there are some things which may be published. The Declaration of Geneva modifies this prohibition to: 'I will respect the secrets which are confided in me'. The GMC, while always emphasising its

[12] Ronald Goldfarb (2009), *In Confidence: When to protect Secrecy and when to require disclosure*, 1st edition, Sheridan books, USA, p.1.

[13] Angus H. Ferguson (2016). Should a Doctor Tell? The Evolution of Medical Confidentiality in Britain, Routledge. New York, USA, P. 1.

[14] See the landmark case, Nathanson v. Klein. [186 Kan. 393, 409 (1960)]

[15] Established specifically by Canterbury v. Spence, Cobbs v. Grant, and Wilkinson v. Vesey. See further explanation and citations by Faden and Beauchamp, 1986, pp. 32-33.

[16] This third standard bears mention as an option with interesting features. It does not appear to have any formal status in any jurisdiction at present, but is often mentioned in accounts of the "doctrine" of informed consent.

ISSN NO: 2770-0003
Date of Publication: 20-01-2022

firm attachment as to the rule dictating professional secrecy, outline possible exceptions to the rule which provide a sound basis for discussion[17].

The duty of medical professional secrecy is not absolute, but qualified. In Cameroon, medical secrecy is relative because of consent of the patient, medical experts, legal requirements, etc.

1 Consent

Most acknowledged limit to the rule is a situation where the patient, or his or her legal adviser, gives their consent to publish medical information concerning the patient. The circumstance is unchallenging when observed from the positive perspective. An unquestionable consent to divulge of information elides any obligation to secrecy owed by the person receiving that consent; equally, an explicit request that information should not be disclosed is binding on the doctor except in the most extraordinary cases. Such exceptional situations may concern communicable disease.

2 Legal requirements

There will be no breach of confidence if the information is requested during court proceedings Hunter v Mann (1974) Lord Widgery CJ discussed the duty of a doctor giving evidence in court. It is clear that the doctor must respond to a question, but 'if a doctor, giving evidence in court, is asked a question…which he would normally regard as confidential, he can seek the protection of the judge and ask the judge if it is necessary for him to answer. The judge, by virtue of his overriding discretion to control his court which all English judges have, can, if he thinks fit, tell the doctor that he need not answer the question. Whether or not the judge would take that line, of course, depends largely on the importance of the potential answer to the issues being tried'. The doctor is prevented from liability for a breach of confidence because of the absolute immunity of the witness (Watson v M'Ewan (1905) HL). This immunity, however, would not extend to a request for information from a solicitor.[18]

3 Sharing information with others providing care

Though this point has raised much debate in recent years, the General Medical Code (GMC) recognises this stand. Many patients have been wondering whether those other than the doctors providing medical care should be informed about their health situation or information. Many questions abound. How many patients know whether the person standing with the consultant at the bedside is another doctor, a social worker or just an interested spectator? Would they have consented to their presence if they had been informed? The consultant may be responsible if, consequently, the duty of confidence was not respected, which is a means of appeasing the patient who feels that his right has been infringed. It is palpable that such technical breaches must exist and generally are accepted in practice because a modern hospital cannot function well except as a team effort and new doctors have to be trained, the return for a technical loss of patient autonomy being access to the best identification and healing assistance available. The essentials of this is the sharing of information with other practitioners who assume responsibility for clinical management of the patient and to the extent that the doctor deems it relevant for the performance of their particular duties, with other health care professionals who are collaborating with the doctor in his patients' management. The repercussion cannot, however be taken for granted particularly as to the particular need for the information to be imparted. As was decided in the case of *Cornelius v De Taranto*,[19] the question of whether consent had been given to referral of a patient to a consultant was disputed; what was clear; however was that there was no justification for including information in the referral note that had no healing relevance. It was confirmed, moreover, that it is the doctor's responsibility to ensure that those entitled to information know that it is being imparted in strict professional confidence[20]. The doctor's duty is thereby limited in a reasonable way; it is difficult to see how he can be expected to carry the onus for any subsequent actions by his associates. The guidance from the Information Commissioner's Office in respect of using and disclosing health data takes practical approach. It deems there to be implied consent to processing date for essential health services from patients who present for and accept

[17] J.K. Mason & G.T. Laurie (2006), Mason & McCall Smith's Law and Medical Ethics, 7th ed, Oxford University Press, New York, USA, p. 258.
[18] Alasdair Maclean (2001), *Briefcase on Medical Law*, 1st Edition, Cavendish Publishing, UK. P.166.
[19] (2001) 68 BMLR 62, CA.
[20] *Cornelius v De Taranto*, (2001) 68 BMLR 62, CA.

ISSN NO: 2770-0003
Date of Publication: 20-01-2022

care. This also applies to the administration of records and to clinical audit but it does not apply to the use of data for clinical research.[21]

Divulging data on the patient's interest

There are instances whereby it becomes difficult to seek the consent of the patient, thus, contravention in the secrecy without a patient's consent when it is in his or her own interests to do so. The person receiving the information may be another health care professional or a close relative or as in a case where the doctor suspects that the patient is a victim of neglect or physical or sexual abuse, an unrelated third party as was decided in the case of *C v Cairns* (2003) Lloyd's Rep Med 90, QB, but it remains the doctor's duty to make every reasonable effort to persuade the patient to allow the information to be given, and to make clear to the third party that the information is given in confidence. The GMC Guidance provides that doctors''…must give information promptly to appropriate person responsible or statutory agencies…'' where he or she believes that a patient is a victim of neglect or abuse. This situation proves justified breach which is a complete defence both in civil courts and before disciplinary proceedings of the GMC, however, the GMC does stress the need for caution when the patient has insufficient understanding, by reason of immaturity, of what treatment or advice being sought involves.[22]

Disclosure for medical research

Information concerning a patient may be told if necessary for reasons of a medical research project which has been approved by a recognised ethical committee. The Department of stated that:

…when the public good that would be served by disclosure is significant, there may be grounds for disclosure of the information of patient. The key principle to apply is that of proportionality. Whilst it would not be reasonable and proportionate to disclose confidential information to a researcher where patient consent could be sought, if it not practicable to locate a patient without unreasonable effort and the likelihood of detriment to the patient is negligence, disclosure to support the research might be proportionate.[23]

For research purposes, the law has made provisions requiring or regulating the processing of patient medical data in their own medical interests or in the public interest, including research interests[24]. Patient's information could be disclosed with a view to:

1. Diagnosing communicable diseases and other risks to public health;
2. Recognising trends in such diseases and risks;
3. Controlling and preventing the spread of such diseases and risks; or,
4. Monitoring and managing;

- Outbreaks of communicable disease'
- Incidents of exposure of communicable disease;
- The delivery, efficacy and safety of immunization programmes;
- Adverse µreactions to vaccines and medicines;
- Risks of infection acquired from food or the environmental-including water supplies;

The giving of information to persons about the diagnosis of communicable disease and risk of acquiring such disease.

A right to confidentiality ceases when the patient brings a court action that necessarily requires disclosure

Hay v University of Alberta (1991) The plaintiff brought an action for medical negligence against the hospital. He refused to consent to any discussion or consultation between the defence counsel and his doctors. The defendants applied for an order that would allow counsel to consult the plaintiff's doctors. Held: the application would be refused, as the order would be inappropriate and unnecessary. However, the court also held that a patient's right to confidentiality ended when he begins a legal action involving the confidential matter and by bringing such an action the plaintiff's consent to disclosure can be implied.[25]

[21] J.K. Mason & G.T. Laurie, supra, pp. 258-259.
[22] J.K. Mason & G.T. Laurie, supra, p. 259-260.
[23] Department of Health Confidentiality: NHS Code of Practice (2003), para 34.
[24] Section 60 of the Health and Social Care Act 2001. This Act in its Section 60 states that: anything done by a person that is necessary for the purpose of processing patient information in accordance with these Regulations shall be taken to be lawfully done despite any obligation of confidence owed by that person in respect of it.
[25] Alasdair Maclean, *op cit*. P 166.

ISSN NO: 2770-0003
Date of Publication: 20-01-2022

Sanctions For Breach Of Medical Confidentiality

The breach of medical confidentiality could lead to criminal, civil, administrative and disciplinary sanctions.

Civil Sanctions

A civil action in the tort of defamation could lie against the practitioner who without authorisation or not under a legal duty divulges medical secrets to third parties. Defamation consist in any statement be it written or by way of spoken words that has the effect of lowering a person in the eyes of right thinking members of the community. This would be possible if the patient can proof that the statement made or written was defamatory, that it was referred to the patient and that it was made in public and if the court is satisfied with the patients claim, it can award financial compensation for the damage suffered.

Criminal Sanctions

Defamation is equally a criminal offence punishable under section 305 of the Cameroon Penal Code titled "defamation" it states that:

(*1) Whoever by any means described in Section 152 injures the honour or reputation of another by imputations, direct or indirect, of facts he is unable to prove shall be punished with imprisonment for from 6 (six) days to 6(six) months and with a fine of from CFAF 5000 (five thousands) to CFAF 2000 000 (two million), or with only one of the penalties.*

(2) These penalties shall equally apply to persons guilty of defamation in print and audio- visual media without prejudice of the right of reply and to the obligations to publish corrections.

(3) No proof may be offered of the truth of defamatory imputation where it concerns the private life of the person defamed; or it refers to the fact more than 10 years old; or it refers to the fact constituting an offence which has been amnestied or conviction for which has been otherwise expunged.

(4) No prosecution may be commenced without the complaint of the injured party or of his representative by law or by custom, or continued after withdrawal of the complaint.

(5) Prosecution shall be barred by the lapse of four months from the commission of the offence or from the last step in the preparation or prosecution.

(6) This section shall apply to defamation of the memory of the deceased person with intent to injure the honour or reputation of his living hairs, spouse or universal legatee.

(7) The punishment shall be halved for a defamation which is not in public and

(8) The penalty shall be doubled for anonymous defamation.

Section 310 captioned "*Professional Confidence*[26], equally provides *(1) Whoever without permission from the person interested in secrecy reveals any confidential fact which has come to his knowledge or which has been confided solely by reasons of his profession or duties shall be punished with imprisonment for from 3 (three) months to (3) three years and with a fine of from CFAF 20 000 (twenty thousand) to CFAF 100 000 (one hundred thousand).*

Disciplinary Sanctions

Disciplinary sanctions could equally be meted out against any medical professional who fails to comply with ethical and professional standards in breach of the Code of Ethics, and subject to the jurisdiction of the Disciplinary Board constituted in accordance with the law. The Disciplinary Board may be seized by the patient, professional unions, Minister of Health, or the Prosecutor. A complaint relating to the professional misconduct can only be sanctioned by the Disciplinary Board of the Association. The law provides that any infringement of the provisions in the Code of Ethics fails within the competence of the Medical Council of Association sitting as a Disciplinary Board.[27] It should be noted that any complaint made against a medical doctor must first of all be investigated by the Disciplinary Board. The Board exercises disciplinary jurisdiction at First Instance within the Medical Association[28]

Administrative Sanctions

Administrative sanction is meted to medical personnel working in public hospitals. The hospital is vicariously liable for any damage caused by its public officials including medical doctors, interns, residents and medical students. It may result to sanctions up to dismissal from the Civil Service in case the doctor is working in

[26] Law No. 2016/007 of July 2016 on the Penal Code of Cameroon.
[27] Section 58 of Decree No. 83/166 of 12 April 1983 on the Medical Code of Ethics of Cameroon.
[28] Section 41 of Law No. 90-036 OF 10 August 1990 Relating the Organization and Practice of Medicine in Cameroon,

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public hospital. As a civil servant, the medical doctor is subject to disciplinary sanctions which include; a) First group of sanctions- written warning, blames with inscription on documents; b) Second group sanctions- delay in advancement for a duration of one year, lowering of one or two grades at most; c) third group of sanctions- lowering of class and rank, temporal dismissal from service for a duration of not more than 6 months and finally; d) fourth group sanctions- dismissal.[29]

Conclusion

All in all, the study emphasized on the medical confidentiality as an absolute duty medical professionals as provided for in the General Medical Code, International Covenant on Civil and Political Rights, the Constitution of Cameroon in it preamble and the Penal code. The rational for confidentiality is for the physical and moral integrity and trust of the patient. Hence, this duty if breach attracts criminal civil, Administrative and disciplinary sanctions. The absolute duty of medical confidentiality can be qualified under the following circumstances in Cameroon; where the patient consents, in the interest of the patient, by operation of the law, to provide health care and for medical research as examined in this paper.

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8. Decree No. 83- 166 of 12 April 1983 on the Cameroon Code of Medical Ethics.
9. Law No.90-036 of 10th August 1990 relating to the Organisation and Practice of medicine in Cameroon.
10. Decree No. 94/199 of October 7, bearing the general status of the State's Public Service, section 94.

[29] Decree No. 94/199 of October 7, bearing the general status of the State's Public Service, section 94.