

THE REALITIES SURROUNDING THE APPLICABILITY OF MEDICAL PATERNALISM IN NIGERIA

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ABSTRACT

Health matter is a growing social concern that cut across a wide range of actors and policy fields between healthcare stakeholders and patients. As human health and the delivery of effective healthcare is not a straight forward matter, their general recognition as public goods imposes on society an obligation to explore ways of improving health care outcomes. As a result of this, a variety of fields, practices, institutions and instruments have a role to play including the law. In view of this, the most paramount duty or obligation is that of the health care stakeholders who by their expertise and knowledge are meant to protect the life of their patients as regulated by law under the ethical values of paternalism. This study uses a doctrinal research methodology in discussing the concept of medical paternalism, its historical development, typology of medical paternalism, paternalism and ethical theories and arguments for and against medical paternalism, this study further recommends appropriately.

KEYWORDS: Medical paternalism

INTRODUCTION

Ethical principles are the obligations of a moral nature which governs the practice of medicine and give guidelines regulating conducts and practices of medical practice. It serves as guidelines which persons within and outside the medical profession uses as a yardstick or measurement to assess and evaluate what is considered acceptable right/honourable and wrong/unacceptable/ignorable in the profession. Ethical principles vary from communities to communities and are prone to changes with time as the morals and attitude of the society changes.

There is no doubt that ethical principles are moral principles that apply values and judgment to the practice of medicine as they vary from; Autonomy, Beneficence, Non-Maleficence, Justice, paternalism etc. The increase in diagnostic and therapeutic options over the last half century has created more medical making situations yet the process of medical decision

making remains nebulous as many decisions (example, ordering routine blood tests) are made unilaterally by physicians (paternalism) which others (e.g. elective surgical procedures, medication adherence) involve more patient choice (Autonomy). In some cases, decision may not be straight forward.

Clinicians are often faced with an inherent tension between their desire to respect and foster patient autonomy and their responsibility to act in a patient's best interest which is often called paternalism. It has indeed been customary, that in the doctor-patient relationship, patients have been seen as quasi-children seeking help from their medical quasi-parents ('A situation which has been coined as paternalistic or to substitute a non sexist metaphor which some authors prefer 'parentalistic').

It must be noted that medical professionals can by and large claim self-evident epistemic authority over their patients in medical matters; they really "do know best" in the sense

that they do possess more knowledge concerning injuries and diseases and their elimination and alleviation than most patients. It is thus intelligible and advisable that those who require medical help should succumb to this epistemic authority. Patients' rights vary in different countries and in different jurisdiction depending upon prevailing cultural and social norms. Models such as paternalistic model, informative model, interpretive model and deliberative model have been developed to represent the relationship between medical practitioners and patients.

This study amongst other salient issues, seeks to discuss the brief historical development of the principle of medical paternalism, its concept, types, challenges, and arguments for and against, bearing in mind how doctors and nurses can ascertain what the patient's values and expectations are? and whether their knowledge can sufficiently justify valid grounds for restricting or violating patient's autonomy.

BRIEF HISTORICAL DEVELOPMENT OF THE PRINCIPLE OF MEDICAL PATERNALISM

Among all the decision making processes ethics paternalism was the first to emerge. For centuries, physicians have been allowed to interfere and overrule patient's preferences with the aim of securing patient benefit and preventing harm. Paternalism becomes one of the oldest and most fundamental tenets of the medical profession saddled with the obligation of achieving patient benefit. From the days when the Hippocratic traditions were developed, generations of physicians have pledged to do their best to protect patients from harm and to restore them to health. The physician is readily recognized and accepted as the guardian who uses his specialized knowledge and training to benefit patients, including deciding unilaterally what constitutes a benefit.

Medical paternalism can be traced to article II of the 1847 American Medical Association Ethical Code entitled 'obligations of Patients to their physicians about two centuries ago when its section 6 states as follows:

The Obedience of a patient to the prescriptions of his physician should be prompt and implicit. He should never permit his own crude opinions as to their fitness, to influence his attention to them. A failure in one particular may render an otherwise

judicious treatment dangerous and even fatal.

The statement of Oliver Wendell Homes in his address in 1871 delivered to the graduating class of Bellevu Hospital Medical College has corroborated this when he said this quotation have given rise to the application of medical paternalism in the world and as such, it has been used as basis for physicians in shaping their medical decisions.

Concept of Medical Paternalism

Broadly speaking, the concept of paternalism is an action performed with the intent of promoting another's good but occurring against the other's will or without the others' consent. The concept of paternalism comes from the Latin Word "Pater" which literally means 'to act like a father or to treat another person like a child'. It is to act for the good of another person without that person's consent as parents do for their children. Therefore, in medicine, paternalism refers to acts of authority by the physicians in directing care and distribution of resources to patients as a result of the knowledge-based value judgments, apprenticeship and experience that have been gathered over the years by the physician with the sole aim of providing medical care that will benefit patients and prevent harm.

Similarly, in the context of healthcare, paternalism constitutes any action, decision, rule or policy made by a physician or other care giver, without considering the patient's own beliefs and value systems and does not respect patient autonomy.

In the same vein, Beauchamp and Childress have further describe paternalism as:

'The intentional overriding of one person's known preferences or actions by another person, where the person who overrides, justifies the action by the goal of benefiting or avoiding harm to the person whose preferences or actions are overridden in essence the overrides is the physician while the override is the patient.'

Paternalism in another way is any kind of caring control or action in the name of protecting people's own best interest against themselves. It is a behaviour by an organization or state that limits some persons or group's liberty or autonomy for what is presumed to be that person's or group's own good.

Medical paternalism is the assumption that certain health care decisions are best left to the professionals providing the health care, and not the patient. The traditional practice of medicine is thus a paternalistic affair. The operation involves the patient going to the doctor, the doctor tells the patient what to do and the patient does as ordered. The doctor plays the part of parent.

Medical paternalism has thus been seen as a philosophy that certain health decisions (e.g whether to undergo heroic surgery, appropriateness of care in terminally ill patient(s) are best left in the hands of those providing healthcare. The issue of paternalism may arise in medical contexts by the withholding of relevant information concerning a patient's condition by physicians. Paternalists advance people's interests (i.e life, health or safety) at the expense of their liberty. Medical paternalism further emphasizes that staff members (physicians) must ensure the patient's best interest in everyday care and treatment, but that decisions are to be taken by the professionals only. Thus, staff should only use their knowledge and skills for the benefit of the patient, never do harm (the 'primum non nocere' principle) and always act only in the patient's best interest.

In essence, the basis of medical paternalism principle are given as follows:

- i. Promoting and restoring the health of the patient.
- ii. Providing good care.
- iii. Prevention of patients from their own errors in judgment.
- iv. Assuming responsibility.

In view of the above definition and description of the concept of medical paternalism, efforts will be made to briefly analyse the typologies of medical paternalism.

Typology of Medical Paternalism

Medical paternalism as a concept has been divided into several forms using different yardstick such as respect for autonomy among others. Its division varies from weak/soft strong/hard and paternalism, broad and narrow paternalism, pure and impure paternalism, moral and welfare paternalism, and active and passive paternalism. But this paper will only restrict itself to weak and strong paternalism only.

- **Weak/Soft Paternalism:**

This refers to a situation in which the actor attempts to prevent without full or adequate knowledge or understanding of the

consequences by the person acting. It is a philosophy that believes the physician or the state can help one to make the choices a patient would make for himself/herself. A weak paternalist believes that it is legitimate to interfere with the means that agents choose to achieve their ends, if those means are likely to defeat those ends. E.g. giving life-saving therapy to a young child whose parents refuse such treatment. Their interventions may involve prima face violation of the recipient's/patients autonomy upon a justifiable grounds of appeal based on the recipient's best own interest on the fact that the recipient at that time was not capable of reasonable voluntary decision making and that the recipient would without the doctors intervention inflict relatively grave harm on himself/herself.

Similarly, weak paternalism is exercised when patients have severely and permanently diminished capacity such that he/she may still be able to make decision but have no way of calculating the consequences of their decisions. The application of this kind of paternalism is often justified as appropriate. Thus, where weak paternalism persists, continuing paternalism is appropriate.

- **Strong/Hard Paternalism**

This kind of paternalism seeks to prevent harm to or act for the benefit of persons by liberty-limiting measures even when their contrary choices were not capricious, were well informed and voluntary. An example of this is forcing patients who are Jehovah witnesses to be transfused. It is done ostensibly to prevent harm or to bring about what is perceived to be the good of another, it is a situation defined by the doctor or actor and not the recipient/patient.

Doctors intervention in this kind of paternalism, often involve unjustifiable violations of the recipient's autonomy. A strong or hard paternalist believes that people may be mistaken or confused about their ends and that it is legitimate to interfere to prevent them from achieving those ends. This kind of paternalism involves an individual who refuses to accept another's autonomous decision in actions or choices.

Furthermore, strong paternalism occurs where the liberty of a patient who is functionally autonomous (capable of making rational decision as to his treatment) is restricted in order to prevent self-help and to secure benefit for them. This kind of paternalism is usually judged to be

inappropriate as it is seen as infringing on the ethical principle of autonomy.

Paternalism and Ethical Theories

Efforts will be made to discuss briefly, paternalism in the light of utilitarianism and deontological ethical theories so as to better understand the philosophy behind the concept of medical paternalism.

- **Utilitarianism Ethical Theory**

This is an ethical theory which suggests that an act should be judged right or wrong according to the pleasure produced and the pain avoided. According to the principle of utility, the moral end that should be sought in all that we do is the greatest possible balance of good over evil. John Stuart Mill and Jeremy Bentham were two notable philosophers who are advocates of utilitarianism. Mill J.S. formulated 'the Greatest Happiness principle', which holds that actions are right in proportion as they tend to promote happiness, and wrong as they tend to produce the reverse of happiness 'pain'. Jeremy Bentham formulated a principle, which insists that the good for man is the attainment of pleasure and the absence of pain. Bentham was a hedonist who believed that individual happiness is based up on pleasure and pain: increase pleasure and decreased pain bring happiness while decreased pleasure and increased pain bring unhappiness. He believes that what is most fundamental in an individual's self-interest is to have pleasure rather than pain, and that the total happiness of the community is the sum total of individual happiness of its members.

In view of the above analysis as advocated by Mill J.S., Jeremy Bentham and the likes, paternalism in medical practice would be morally acceptable, if it produces pleasure or reduces pain for the greatest number of people. According to this theory, if a physician or health worker forces his or her own idea on a patient, treats or carries out a procedure on a non-consenting patient or out rightly disregards a patient's feeling, idea or wishes, it is morally acceptable so long as it is to the benefit of a greater number of people such as the patient's family or relatives, or the government at large irrespective of whether it is strong or weak paternalism.

However, if paternalistic actions by physicians and other health workers result in pain or sadness for the patients, then it is morally wrong. For example, disregarding the wishes of a

dying patient thereby causing displeasure for that patient is accordingly morally wrong.

- **Deontological Ethical Theory**

This is otherwise known as Kant's ethical theory, which focuses on the intrinsic nature of an action itself, rather than the consequences of the action. Kant's ethics can be subdivided into three categories, namely: the concept of Goodwill, concept of Duty and concept of categorical imperative.

According to Immanuel Kant, the concept of goodwill is the only one thing that is good without qualification, other things considered as good are not good unconditionally as their goodness can be bad when misused. For example, a physician can use his knowledge about the adverse effects of a drug to kill a patient. Therefore, the implication of Kant concept of goodwill in medical practice is that physicians and health workers are enjoined to always have goodwill in their dealings with their patients. It is only upon this act, that their actions can be justified in Doctors-patient relationship.

As regards the concept of Duty, Kant distinguishes two types of duty, namely; 'acting for the sake of duty' and acting according to duty'. He regards the former as perfect duty and the latter as imperfect duty. To act for the sake of duty is to perform one's duty not because of the hope to gain anything from one's actions or because of just feels like doing it or one has a natural inclination to doing such for the moral law. In other words, for an action to have moral value or to be morally praiseworthy, it must be done strictly for the sake of duty or out of respect for the moral law.

Kant's ethics also distinguishes right from wrong actions by means of the principle of universalization, which is the first formulation of his categorical imperative. To know whether an intended action is morally right, the underlying principle of the action should be considered and universalized. The second formulation of Kant's categorical imperative is that we should always act to test humanity as an end and not as a means of an end. According to Kant, every rational creature possess an autonomous self legislative will. This, including the rationality they possess, enable them to make rules for themselves, direct their actions and consider the consequences of their actions. He strongly holds the view that one must never undermine their self-respect or humiliate them for that would violate the requirement that we treat people with respect.

Paternalism according to Kant as observed from this theory must establish or show that physicians and health workers are enjoined to always have good will in their dealings with their patients, they are to perform their duty strictly for the sake of duty or out of respect for moral law and to treat humanity as an end and not as a means to an end.

In view of the above theory, soft/weak paternalism is advocated while strong paternalism is discouraged or at best subjected to rigorous test.

Arguments in Support of Medical Paternalism

There are numerous arguments that substantiate and support medical paternalism as a viable ethical practice across the globe. The arguments range from the following:

- i. Doctors and other health workers have justified their grounds in support of paternalism because their act is for the patient's own good, even though the patient himself disagrees. The physician's behavior in such cases could be justified by classical utilitarian arguments.
- ii. Doctors and other health care workers also mentioned that paternalistic restrictions are necessary because without them 'people or patients would behave irrationally' and thereby harm themselves.
- iii. Doctors, healthcare workers and other citizens have also supported paternalism because they think and opine that health laws and regulations should be used to prevent immorality. Therefore the legitimacy of this argument subsist on the legitimacy of the doctrine of legal moralism in general.
- iv. Advocates of paternalism further argue and believe that individuals can be forced into being happy against their own expressed wishes and desires.
- v. Similarly, advocates of paternalism opine that paternalism can be justified, if it provides great benefit or prevent major problems while disrespecting autonomy slightly.
- vi. Paternalism advocates maintain that paternalism is justified since medical experts have the greatest capability of making the proper decision in their field of expertise, thus doctors should be permitted to override

individual's/patient's decision in order to benefit that individuals overall health.

- vii. The advocates of paternalism have further maintain their stand, saying that paternalism enables Doctors & health care provider to right the wrongs of erroneous culture and religious practices that have found its way into medicine. Doctors and other healthcare professionals are placed in an ethical bend as to fulfilling their duties to diagnose treat and cure which at times conflict with the cultural and religious beliefs of patients. For example, Jehovah witness doctrine is against recovering blood transfusions. Also some culture believes that illness is triggered by the loss of person's soul, instead of pathogenic process believes in order to give the patient the care that western medicine has taught them to be necessary to provide the patient with diagnosis and treatment.
- viii. Finally, the advocates of paternalism are in support of paternalism because it helps to protect the sanctity of life at all cost not minding patient's autonomy or otherwise, since their aim or von cent Origo is to prevent harm and bring about pleasure or happiness.

Arguments against Medical Paternalism

Conversely, paternalism in medicine has become unpopular and non-reliable because it entails physician telling patients what is good for them, without regards to the patient's own needs and interests. In view of the above, there are numerous arguments against medical paternalism which ranges from the following:

- i. Paternalism itself is self-defeating because a life however good it might be does not have any meaning at all, if the human person is dictated upon externally.
- ii. Paternalism entails the usurpation of the right and responsibility of patient to make decision about their health treatment which ought not to be, because it infringes on patients' right to privacy.
- iii. Paternalism denies a patient's right of informed consent which is central to medical treatment.

- iv. Medical paternalism could be subjected to abuse of power entrusted to physicians which could create a dangerous but easy avenue for the powerful to dictate the chosen course of action, on the grounds that they have a more sophisticated understanding of what patients really need without really considering the mind (autonomy) of the patient.
- v. Medical paternalism is coercive and forceful in nature by restricting the liberty of patients in determining what they actually desire in the realization of their wellbeing e.g. the nature of treatment they so desire and not what seems right to the physician.
- vi. The so called paternalism of physician is no longer special and required, since the privileged position of the physician due to the possession of special knowledge has been eroded due to the availability of medical information to patients nowadays in ways that they can understand it and of which, they (patients) in turn require that such information be made available to them in a balanced way prior to the physician's decision about their treatment.
- vii. The definition of a patient's best interest used by a paternalistic approach is too narrow because such best interests are not determined by medical facts alone. The patient's views and beliefs matter too but paternalism is not ready to consider that.
- viii. Traditional paternalistic approach does not go well with the 'patient-centered' medicine now practiced by modern physicians/clinicians due to the fact that, modern approach has been informed by the principle of autonomy

CONCLUSION

By the provisions of S.1(2)© of the Medical and Dental Practitioners Act, it is one of the statutory functions of the Medical and dental Council of Nigeria to review and prepare from time to time, a statement as to the code of conduct which the Council considers desirable for the practice of the profession in Nigeria. In pursuance to this section, the Rules of Professional Conduct for Medical and dental Practitioners was made by the Medical and dental Council of Nigeria. By the provisions of these rules, a physician shall always bear in mind the obligation of preserving human life, promote the health of the patient and shall be concerned with the common good and human dignity of the individual. This Rules further permit medical and dental practitioners to determine when to give their services and the nature of the care to be given to a patient under their care. It is from the above provisions that the concept of paternalism may be deduced.

It must however be noted that medical ethics is not a prescription or set of rules to be followed blindly, they only systemize, defend and recommend concepts of rights and wrong behavior and are set to guide and assist healthcare professionals in delivering their duty and to ensure lives are preserved with utmost care and dedication.

All efforts should be made to apply the principle of medical paternalism with the aim of bringing forth happiness and pleasure to patients and preventing harm and displeasure as at when due, in an appropriate manner.

Although in paternalistic model, the best interests of the patient as judged by the clinical expert are valued above the provisions of comprehensive medical information and decision-making power of the patient, however, Paternalism by its nature has no doubt encompass in itself the respect for patient's autonomy, as it forms of the procedure that paternalism must follow if professionally executed, therefore following or making paternalism to be supreme, is balancing and complementing both paternalism and patient's autonomy into medical practice as taught by the physicians and other healthcare professionals other than patients who lacks the knowledge and expertise.

Finally, Paternalism as expected to be applied, must be predicated on beneficence, justice and non-maleficence principle which is the hall mark of physician-patients relationship, treatment, patients best interest and medical ethics.

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