

## INTERNATIONAL HUMANITARIAN LAW AND MEDICAL CONFIDENTIALITY

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### ABSTRACT

This study focuses on appraising the right of the wounded and sick to medical confidentiality within the context of international armed conflict in International Humanitarian Law. It finds a correlation between the right to medical confidentiality and the general protection accorded to the wounded and sick in IHL. The paper argues that in hostilities, just like in peacetime, the right to medical confidentiality exists to protect the wounded and sick. However, it is the major finding of this paper that as important as the right to medical confidentiality may be, because military medical personnel owe dual loyalty, (one to the medical profession and the other to the Military), they face the dilemma of striking a balance between these responsibilities, which in turn affects their obligation to respect medical confidentiality. To address this challenge, the paper recommends greater commitment and respect by States to their obligations under IHL through the provision of adequate training for their military and civilian medical personnel on what the duty of confidentiality entails; and the stipulation of effective sanctions against the violation of this right through their domestic laws.

**Keywords:** International Humanitarian Law, Medical Confidentiality, Medical Records

### INTRODUCTION

The nature of the medical profession is such that, it puts medical personnel and patients in a relationship of utmost trust whereby patients disclose personal health information they would ordinarily not dare to disclose to any other person.<sup>2</sup> This relationship lies in the obligation of medical personnel to protect all information relating to the treatment of patients

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<sup>2</sup> MD Tegegne, *et. al.*, 'Health Professionals' Knowledge and Attitude towards Patients' (2022) 23(26) *BMC Med Ethics* 1, 2

under their medical care. This is an important aspect of medical ethics<sup>3</sup> applicable not just in peacetime but also in situations of armed conflicts.<sup>4</sup>

Medical ethics considers communications made between physicians and patients in the course of medical services as privileged information<sup>5</sup> that is not meant to be disclosed to a third party except with the patient's consent or as otherwise provided by law.<sup>6</sup> This is known as medical confidentiality. The breach of medical confidentiality is both unethical<sup>7</sup> and unlawful.<sup>8</sup>

The principle of confidentiality dates back to the Hippocratic Oath<sup>9</sup> which finds expression in the concept of *fiducia*<sup>10</sup> and likened to priest-penitent relationship.<sup>11</sup> This relationship requires patients to disclose such information that will be necessary for their medical treatment; to trust in the physician's professional ability; and to cooperate with them in the prescribed procedure for their treatment.<sup>12</sup> Physicians are also by that rule bound to use their expertise in arriving at an accurate diagnosis and treatment of their patients.<sup>13</sup> To that effect, truthful disclosure of personal information without fear of embarrassment, stigma or incrimination is expected of patients.<sup>14</sup> Hence, Kao *et. al.*, opines that "trust is a fundamental

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<sup>3</sup>M Siegler, 'Confidentiality in Medicine- a Decrepit Concept (1982) 307 (24) *N Engl J Med.* 1518

<sup>4</sup> Sandoz, Swinarski, and Zimmermann (eds) *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff Publishers, Geneva 1986) 663

<sup>5</sup> CM Beltran-Aroca, *et. al.*, 'Confidentiality Breaches in Clinical Practice: what happens in Hospitals (2016) 17 (52) *BMC Med Ethics* 1

<sup>6</sup>CM Beltran-Aroca, *et. al.*, 'Confidentiality Breaches in Clinical Practice: what happens in Hospitals (2016) 17 (52) *BMC Med Ethics* 1ne 1977 (AP I), Article 16(3)

<sup>7</sup>A Markose, R Krishnan, andM Ramesh 'Medical Ethics' (2016) 8 *Journal of Pharmacy and Bioallied Science*3; Sandoz, Swinarski, and Zimmermann (eds) 668

<sup>8</sup>API Art 16(2)

<sup>9</sup> TL Beauchamp and JF Childress (eds) *Principles of Biomedical Ethics* (Revised Edition Oxford University Press 2001)

<sup>10</sup> D Mendelson 'Medical Duty of Confidentiality in the Hippocratic Tradition and Jewish Medical Ethics' (1998) 5 *Journal of Law and Medicine* 227, 229

<sup>11</sup>*Stephens v Avery* 1988 2 All ER 482

<sup>12</sup> D Mendelson, 229

<sup>13</sup> L Edelstein, *Ancient Medicine* (Johns Hopkins University Press 1987) 6

<sup>14</sup> D Mendelson, 229

aspect of the patient-physician relationship.”<sup>15</sup> Katarzyna also reiterates that medical confidentiality is guaranteed by trust.<sup>16</sup> Medical confidentiality “supports public confidence and trust in the healthcare services more generally.”<sup>17</sup>

Medical confidentiality is in fact the patients’ right<sup>18</sup> and must therefore be respected.<sup>19</sup> This right first exists by virtue of Rule 26 of Customary International Humanitarian Law<sup>20</sup> which provides that “punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited.”<sup>21</sup> The Customary provision is also re-enforced by Article 16(2) of Additional Protocol I and Article 10(2) of Additional Protocol II applicable to international and non-international armed conflicts respectively,<sup>22</sup> which prohibit all persons engaged in medical activities from being compelled to disclose, whether to a party or to an adverse party, any medical information concerning the wounded and sick under their care.<sup>23</sup> Thus, the Commentary on the Additional Protocols states that “the spirit of these provisions is aimed at prohibiting compulsion which might be exerted on medical personnel to conduct themselves in a way that is contrary to their patient’s interests.”<sup>24</sup>

In IHL the right of the wounded and sick to medical confidentiality draws from the general protection accorded the wounded and sick not taking direct part in hostilities.<sup>25</sup> Thus, the

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<sup>15</sup>AC Kao, *et. al.*, ‘Patients’ Trust in their Physicians, Effects of Choice, Continuity, and Payment Method (1998) *JGIM*, 681, 682

<sup>16</sup> KM Zon, ‘Exceptions to the Obligation of Medical Confidentiality in the Context of the Protection of Public Health’ (2017) 15 (4) *ZdrowiePublicznejZarzadzanie* 299

<sup>17</sup> IT Adeleke *et. al.*, ‘Knowing, Attitude and Practice of Confidentiality of Patients’ Health Records among Healthcare Professionals at Federal Medical Centre Bida Niger’ (2011) 2 (2) *Nigerian Journal of Medicine* 228

<sup>18</sup> The issue of Patients’ rights has been detailed by Zutah *et al.*, 2021.

<sup>19</sup> M Norooziet.*al.*, ‘Challenges of Confidentiality in Clinical Settings: Compilation of an Ethical Guideline’(2018) 46 (6) *Iranian Journal of Public Health* 875, 879

<sup>20</sup>J Henckaerts and L Doswald-Beck (eds)*Customary International Humanitarian Law*(Cambridge University Press 2005) 86

<sup>21</sup>*Ibid*, 87

<sup>22</sup>API Art 16(3); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (APII) Article 10

<sup>23</sup>AP I Article 16(3); AP II

<sup>24</sup> Sandoz, Swinarski, and Zimmermann (eds), 669

<sup>25</sup>Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I) Articles 4 & 12; Geneva Convention (II) for the Amelioration of the Condition of Wounded,

wounded and sick must be respected;<sup>26</sup> treated humanely;<sup>27</sup> and given to the fullest extent practicable and with the least possible delay, the medical care required by their condition;<sup>28</sup> and without any adverse distinction founded on any ground other than medical grounds.<sup>29</sup> This paper, adopting doctrinal methodology and the review of relevant literature, appraises the right of the wounded and sick to medical confidentiality in IHL. It argues that in peacetime as in war, the right of medical confidentiality exists to protect the wounded and sick and their personal medical information. The study however identified certain exceptions to this right; and concludes that the right to medical confidentiality can among other things be safeguarded where parties to the conflict respect the provisions of IHL respecting disclosure of medical information.

This paper is divided into 5 parts. The first part will clarify some key terms and concepts important to understanding this paper. The second part gives the interface between the IHL rules on the right to medical confidentiality and the exceptions to this right. The next part deals with the issue of dual loyalty of military medical personnel and how this undermines the right to medical confidentiality. Finally, the paper concludes and proffers some recommendations geared towards strengthening the right of medical confidentiality in IHL.

## **CLARIFICATION OF TERMS**

### **Medical Confidentiality**

It is trite that honest disclosure of personal health information without fear of embarrassment, stigma, or incrimination is very important to patients' effective treatment.<sup>30</sup>

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Sick and Shipwrecked Members of the Armed Forces at Sea (GC II) Articles 5 & 12(1); and Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (GC IV) Article 16(1); AP I Article 10(1)

<sup>26</sup>GC I Article 12

<sup>27</sup>Geneva Conventions (GCs) common Article 3; GC I Article 12; AP I Articles 8 & 10

<sup>28</sup>Henckaerts and Doswald-Beck (eds), 400

<sup>29</sup>Ibid

<sup>30</sup> PS Appelbaum 'Confidentiality in the Forensic Evaluation' (1984) 7 (3-4) *International Journal of Law and Psychiatry* 285; CA Ford *et. al.*, 'Adolescents' Interpretations of Conditional Confidentiality Assurances' (2001) 29 (3) *Journal of Adolescent Health* 156; D Mechanic *et. al.*, 'Concept of Trust among Patients with Serious Illness' (2000) 51 (5) *Social & Medicine* 657

This finds expression in medical confidentiality. Medical confidentiality is one of the principles of medical ethics;<sup>31</sup> and an important component of patient's medical rights.<sup>32</sup> The other principles are patient's autonomy; responsibilities and duties of the patients and physicians; beneficence; non-maleficence; honesty; informed consent; medical reasonableness; best interest of the patient; the principle of double effect; and continuous medical education.<sup>33</sup>

Medical confidentiality means "keeping privileged communication secret and cannot be disclosed without the patient's authorization."<sup>34</sup> It is the restrictive use of information obtained from and about a patient.<sup>35</sup> The duty of confidentiality binds healthcare providers to take every necessary step to ensure that only authorized access to patient's health information; and by authorized persons.<sup>36</sup>

Confidentiality is important to both doctors and patients against the backdrop that it strengthens patients' confidence in their physicians by providing the enabling environment for eliciting sensitive medical information necessary for their management and treatment.<sup>37</sup> It also ensures the tracking of patients' health history and continuity of communication among health care personnel.<sup>38</sup> To that effect, Adeleke asserts that "confidentiality is the basis of the legal aspects of health records; it is the ethical cornerstone of good treatment and it is indeed essential for establishing trust between clinicians and patients."<sup>39</sup> Aderibigbe also posits that "the relationship between patient-doctor elicits the trust of confidentiality,..."<sup>40</sup> The implication is that the extent to which health care providers protect and respect medical confidentiality determines to a very large extent the quality of medical

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<sup>31</sup>C Osime 'Understanding Medical Ethics in a Contemporary Society' (2008) 10 (1) *African Journals Online* 1-5

<sup>32</sup>J Thomas, 'Medical Records and Issues in Negligence' (2009) 25 (3) *Indian J Urol* 385

<sup>33</sup>C Osime, 1-5

<sup>34</sup>MD Tegege, *et. al.*, 2

<sup>35</sup>IT Adeleke, *et. al.* 228

<sup>36</sup>JP Murray 'New Concepts of Confidentiality in Family Practice' (1986)23 (3)*J Fam Pract.* 229-232

<sup>37</sup>IT Adeleke, *et. al.* 228

<sup>38</sup>HA Flynn, Marcus, SM Kerber and N Alessi 'Patients' Concern about and Perceptions of Electronic Psychiatric Records' (2003) 54 (11) *Psychiatr Serv.*

<sup>39</sup>IT Adeleke *et. al.*, 228

<sup>40</sup>TO Aderibigbe and B Sodipo 'Patient's Medical Records, Privacy and Copyright in Nigeria: On-going Research (2017) 42 (2) 88 *University of Western Australia Law Report* 92

information they will receive in return.<sup>41</sup> Hence, without the assurance that confidentiality will be maintained of all communication made in the context of physician-patient relationship, patients will most likely not be disposed to disclosing their personal health histories or even permit full examinations and investigations.<sup>42</sup>

Although IHL protects medical confidentiality, the nature and scope of the information protected are not specified under IHL except that Article 16(3) of Additional Protocol I generally categorize such information as “any information concerning the wounded and sick who are, or have been, under his care...” However, recourse to general practice in medicine confirms that the subject matter of medical confidentiality covers such issues as what physicians may independently conclude on the basis of their examination or assessment of their patients;<sup>43</sup> any clinical record/information in relation to the diagnosis or treatment of their patients such as pictures, photograph, video, audiotape or other image, laboratory results and other records; information relating to the identity of a patient’s doctor and the clinics attended by the patient;<sup>44</sup> and any other information/ records that could disclose the identity of the patient.<sup>45</sup> The said information may be written, computerized, visual or audio recorded or simply held in the memory of medical professionals.<sup>46</sup>

The duty of confidentiality binds all medical personnel as defined in this study.<sup>47</sup> The duty continues even after patients stop seeing or being treated by their doctors and even after their death.<sup>48</sup>

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<sup>41</sup>HA Flynn, Marcus, SM Kerber and N Alessi

<sup>42</sup> DR Reilly ‘Breaching Medical Confidentiality and Destroying Trust: The Harm to Adolescents on Physician’s Rosters’ (2008) 54 *Canadian Family Physician* 834

<sup>43</sup><<https://www.encyclopedia.com/law/encyclopedias-almanacs-transcripts-and-maps...> >accessed 10 September 2022

<sup>44</sup>British Medical Association (BMA) ‘Confidentiality as a Medical Student’ <<https://www.bma.org.uk>> accessed 6 February 2023

<sup>45</sup> RA Tariq *et.al.* ‘Patient Confidentiality’ in: StatPearls (Internet). Treasure Island (FL): StatPearls Publishing LLC; 2022

<sup>46</sup> British Medical Association (BMA), ‘Confidentiality as a Medical Student’ <<https://www.bma.org.uk>> accessed 6 February 2023

<sup>47</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds)352

<sup>48</sup> General Medical Council, ‘Confidentiality: Protecting and Providing Information (2000)’ <<https://www.gmc.uk.org>> accessed 6 February 2023

Albeit, medical confidentiality is not an absolute rule rather conditional;<sup>49</sup> since it has been whittled down by certain exceptions<sup>50</sup> including but not limited to the tensions between public and individual interests, which favours disclosure of medical confidentiality for public interest.<sup>51</sup>

### **Medical/Health Records or Information**

Patients' health record is the basis of health care delivery as this facilitates the documentation of information necessary for patients' future treatment and the advancement of the practice of medicine.<sup>52</sup> On the other hand, effective communication forms an important foundation of all human interactions.<sup>53</sup> In particular, the practice of medicine is enriched by continuous flow of information; and this primarily revolves around physicians and their patients. It is an important index for patient satisfaction and service quality<sup>54</sup> as it strengthens therapeutic bonds.<sup>55</sup> Thus, meeting the objective of every health care system will among other things require 'robust hearty engagement between patients and physicians.'<sup>56</sup> The above exists by way of medical/health records or information. The above terms are used interchangeably to refer to "the documents that explain all the necessary details about a patient's history, clinical findings, diagnostic test results, *pre* and *post-operative* care, patient's progress and medication."<sup>57</sup> It 'includes all information related to the patient, their state of health, data on social contacts, their material situation or living

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<sup>49</sup> JP Murray

<sup>50</sup> Nigerian National Health Act of 2014 section 26(2)

<sup>51</sup> D Mendelson, A Rees, and G Wolf, 'Medical Confidentiality and Patient Privacy' (2018) chapter 9

<sup>52</sup> IT Adeleke *et al.*, 228

<sup>53</sup> A Grocott and W McSherry 'The Patient Experience: Informing Practice through Identification of meaningful Communication from the Patient's Perspective' (2018) 6 (1) *healthcare* 2

<sup>54</sup> S Newell *et al.*, 'The Patient Experience of Patient-centred Communication with Nurses in the Hospital Setting: A Qualitative Systematic Review Protocol' (2015) 13 (1) *JBI Database of Systematic Reviews & Implementation Reports* 76, 77

<sup>55</sup> ME Juve-Udina *et al.* 'Basic Nursing Care: Retrospective Evaluation of Communication and Psychological Interventions Documented by Nurses in the Acute Care setting' (2013) 46 (1) *j.Nurs. Scholar* 65-72

<sup>56</sup> *Ibid*

<sup>57</sup> A Bali *et al.*, 'Management of Medical Records: Facts and Figures for Surgeons' (2011) 10 (3) *j. Maxillofac. Oral Surg.* 199

conditions.”<sup>58</sup>It is immaterial whether this information exists in hard copy (involving paper and books) or electronic copy (computerized, video tapes etc.).<sup>59</sup>

It is imperative at this point to distinguish between personal and impersonal health record/information.<sup>60</sup> Personal information is a sensitive health data by which individual patients are identified; and which when disclosed, will harm an individual patient. Personal information must therefore be treated as confidential and not to be disclosed except with patients’ consent or as provided by law. Such personal information includes demographic information, medical histories, records of diagnostic tests, medical certificates, laboratory results, referral notes, death summaries, inpatient files, outpatient files, discharge summaries, image and digital records, mental health conditions, and other data that a healthcare professional collects to identify an individual and determine appropriate care.<sup>61</sup>

In the United States for instance, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 regulates the use, access, and disclosure of personal health information. The HIPAA provides certain personal health information identifiers that when paired with health information become personal health information;<sup>62</sup> and organizations using the personal health information are required to comply with the HIPAA rules in that regard.

On the other hand, impersonal information is non-sensitive data that can be used and transmitted publicly without harm to a patient.<sup>63</sup> Impersonal information can therefore be disclosed to a third party even without the consent of patients.<sup>64</sup> Such impersonal information includes by is not limited to a unanimous patient’s treatment file, diagnosis or laboratory result.

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<sup>58</sup> Act on Preventing and Combating Infections and Infectious Diseases in Humans (A.P.I.D.) of 2008 Art 40.

<sup>59</sup>A Bali *et.al.*, 201

<sup>60</sup> Ibid

<sup>61</sup> J Thomas

<sup>62</sup> Name, Address, Dates (except year) related to individuals, Phone number, Email address, Social Security number, Medical record number, Health plan beneficiary number, Account number, Certificate or license number, Vehicle identifiers such as serial numbers, license plate number, Device identifiers and serial numbers, Web URL, Internet Protocol (IP) address, Biometric IDs such as finger print or voice print, Full-face photographs and other photos of identifying characteristics; and Any other unique identifying characteristic

<sup>63</sup> J Thomas 385

<sup>64</sup> Ibid



Most jurisdictions are in consensus that the physical form of medical records take, are generally considered the property of the hospital while the actual record is the property of the patient and this can only be released with the consent of the patient.<sup>65</sup> Healthcare facilities are therefore bound to maintain and produce such medical records on demand by patients and other bodies authorized by law.<sup>66</sup>

### **Medical Personnel**

In International Humanitarian Law, the term medical personnel covers all persons (military or civilian) assigned, by a Party to the conflict, exclusively to the medical purposes of searching for, collecting, transporting, diagnosis or treatment including first aid treatment of the wounded, sick and shipwrecked and the prevention of disease or to the administration of medical units or the administration and operation of medical transports whether on a permanent or temporary basis.<sup>67</sup> However, for the purposes of this study, medical personnel shall be limited to accredited or licensed medical professionals such as physicians, physician assistants, nurse practitioners, persons working under a licensed medical practitioner and other certified health care providers such as laboratory scientists, pharmacists, mortuary attendants and such other person connected with the care and treatment of the wounded and sick. Medical personnel are bound by professional ethics and in particular the duty of confidentiality.<sup>68</sup>

### **Wounded and Sick/ Patient**

In IHL, the term 'wounded and sick' refers to "persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility..." It also covers maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility."<sup>69</sup> The wounded and sick may be inpatient (that is, a patient who lives

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<sup>65</sup>J Thomas, 386

<sup>66</sup>*McInerney v MacDonald*, Dominion Law Reports 1992 93 413-31; J Thomas, 386

<sup>67</sup>AP I Article 8(c)(e)

<sup>68</sup>A Markose, R Krishnan, and M Ramesh, 3

<sup>69</sup>AP I Article 8(a)

or stays in a hospital while receiving treatment);<sup>70</sup> or outpatient, (that is, a patient who is not hospitalized overnight but who visits a hospital, clinic, or associated facility for diagnosis or treatment).<sup>71</sup>In this study, the terms “wounded and sick” and “patient” will be used interchangeably.

## **CONCEPTUAL FRAMEWORK**

Confidentiality and privacy are two concepts that are often considered interchangeable.<sup>72</sup> However, the duty of confidentiality existed long before the concept of privacy.<sup>73</sup>

The concept of medical confidentiality developed between 460 and 300 BCE in Classical Greece by one of the oldest Greek physicians-Hippocrates.<sup>74</sup> This was in an effort by physicians to distinguish themselves from quacks (such as herbalists, gymnastic trainers, iridologists and the like) who at that time dominated the practice of medicine.<sup>75</sup> The concept is encapsulated in the Hippocratic tradition, particularly the Hippocratic Oath as well as the Christian concept of the confessional; and the 19<sup>th</sup> century philosophical and legal notions of individual autonomy.<sup>76</sup> This is however, in contrast to the Jewish ethical model of the physician-patient relationship and professional duties which developed independently of the Hippocratic Oath and is traceable to the *Torah*.<sup>77</sup> The traditional version of the Hippocratic Oath reads: “whatever, in connection with my professional service, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret.”<sup>78</sup> A modern version of the Oath in part reads: “...I will respect the privacy of my patients, for their problems are not disclosed to me

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<sup>70</sup><https://www.collinsdictionary.com/dictionary/english/inpatient> accessed 7 February 2023

<sup>71</sup><https://www.merriam-webster.com/dictionary/outpatient> accessed 7 February 2-23

<sup>72</sup> D Mendelson, A Rees, and G Wolf, 3

<sup>73</sup> *Ibid*

<sup>74</sup> ‘Hippocratic Oath’ <<https://www.britannica.com/topic/Hippocratic-oath>> accessed in June 2022

<sup>75</sup> D Mendelson, A Rees, and G Wolf, 4

<sup>76</sup> D Mendelson, 227

<sup>77</sup> *Ibid*

<sup>78</sup> JW Marks ‘Medical Definition of Hippocratic Oath’ <<https://www.medicinenet.com>> accessed 9 February 2023

that the world may know...<sup>79</sup> Although the Oath has been reviewed and revised over and over again, the contents remain relevant and same in its effect.

The Western model of the duty of medical confidentiality is premised on the fact that all information obtained from a patient by a physician is exclusive, confidential and therefore cannot be disclosed to a third party.<sup>80</sup> This ethical conduct is rooted in the concept of *fiducia* arising from the professional relationship with the patient,<sup>81</sup> against the backdrop that patients are expected to disclose to their physicians such information that will be necessary for their treatment; to trust in their physicians' professional ability; and to cooperate with them in the prescribed procedure for their treatment.<sup>82</sup> On the other hand, physicians are bound to use their expertise in arriving at an accurate diagnosis and efficacious treatment in accordance with medical ethics as prescribed in the *Corpus Hippocraticum*.<sup>83</sup> Thus, Mendelson<sup>84</sup> opines that "it was possibly in recognition of the therapeutic importance of truthful disclosure of personal information by the patient without fear of embarrassment, stigma or incrimination that the Oath imposed upon the physician the strict duty of medical confidentiality."

Most of the medical codes which govern the medical profession as they exist today are traceable to the moral principles expressed in the Hippocratic Oath.<sup>85</sup> The whole idea of these codes is to protect those who seek medical assistance by establishing trust in patient-doctor relationship. However, medical confidentiality is rather a weighted right and not an absolute right.<sup>86</sup> Hence, there are a number of exceptions to the right.<sup>87</sup>

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<sup>79</sup> Ibid

<sup>80</sup> D Mendelson, 229

<sup>81</sup> Ibid

<sup>82</sup> Ibid

<sup>83</sup> L Edelstein, 6

<sup>84</sup> D Mendelson, 229

<sup>85</sup> Ibid

<sup>86</sup> V Nathanson, 'Medical Ethics in Peacetime and Wartime: the Case for a better Understanding' (2013) 95 (889) *International Review of the Red Cross*, 189,205

<sup>87</sup> AP I Article 16(3); GC Art 16(1)(h); GC III Article 31; and International Criminal Court Rules and Procedure Article 73(2)(a)(b)

## **INTERNATIONAL HUMANITARIAN LAW AND THE RIGHT TO MEDICAL CONFIDENTIALITY**

International Humanitarian Law recognizes the right to medical confidentiality generally<sup>88</sup> and specifically.<sup>89</sup> Generally, the right to medical confidentiality flows from the blanket protection accorded the wounded and sick not taking direct part in hostilities.<sup>90</sup> This cuts across the four Geneva Conventions<sup>91</sup> and is founded on the principles of respect and humane treatment of the wounded and sick<sup>92</sup> which prohibits violence to life, mutilation, cruel treatment and the like.<sup>93</sup> The wounded and sick are also required to be cared for by the Party to the conflict in whose power they may be, without any form of discrimination other than on medical grounds;<sup>94</sup> and to be searched for, collected and evacuated as necessary.<sup>95</sup> In all the cases above, medical personnel are bound by the duty of confidentiality.

Additional Protocol I also have some provisions implying the right to medical confidentiality. For instance, Article 10<sup>96</sup> is to the effect that the sick, wounded and the shipwrecked shall be respected and protected no matter the Party they belong to.<sup>97</sup> Thus, the wounded and sick and shipwrecked irrespective of the Party they belong to, are not to be made the object of attack. Acts such as killing, maltreatment or injury against the wounded and sick are all forbidden.<sup>98</sup>

Article 16(1)<sup>99</sup> stipulates that no person may be punished for carrying out medical activities compatible with medical ethics, regardless of the circumstances and of the persons

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<sup>88</sup>AP I Articles 41 & 51; AP II Article 13

<sup>89</sup> Geneva Conventions common Article 3; AP I Article 16(2); AP II Article 10

<sup>90</sup> Geneva Conventions, 1949

<sup>91</sup>GC I Articles 3 & 12; GC II Articles 3 & 12; GC III Article 3 & 13; and GC IV Articles 3 & 16

<sup>92</sup> Geneva Conventions common Article 3; AP I Article 10(1)(2)

<sup>93</sup> Geneva Conventions, 1949, common Article 3

<sup>94</sup>GC I Article 15; GC II Article 18; GC III Article 3(2)

<sup>95</sup>AP I Article 10

<sup>96</sup> AP I

<sup>97</sup>AP I Article 10

<sup>98</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 446

<sup>99</sup>AP I

benefitting from their actions. This provision is intended to remove all fear of punishment from persons who may get involved in caring for the wounded and sick (directly or indirectly),<sup>100</sup> provided they are assigned to carry out such a duty by one of the parties to the conflict.<sup>101</sup> 'Punishing' as used under Article 16(1)<sup>102</sup> refers not only to molestation, harassment, prosecution or penal sanctions, but also to any other sanctions or harassment<sup>103</sup> which may deter medical from discharging their duty as such. The obligation not to punish is imposed on all persons in the position to administer punishment, beginning from the immediate superior of the persons in question to the supreme court of a State.<sup>104</sup> The obligation applies to both enemy States and to the State to which the person in question is a national.<sup>105</sup>

Article 16(2)<sup>106</sup> specifically provides for medical confidentiality. It prohibits the compulsion of persons engaged in medical activities against the commission of acts or carrying out work contrary to medical ethics or to other medical rules intended for the protection of the wounded and sick or by any other law. To 'compel' as envisaged by the above provision means "to urge irresistibly, to constrain, oblige, and force someone to act against his will." Compulsion may be direct by way of threats of death, maltreatment, harassment, imprisonment or indirectly by threat to members of his family or by simple military order in the case of a military personnel.<sup>107</sup> The compulsion may take a positive or negative form.<sup>108</sup> While preventing the performance of essential operation or administering of medicines constitutes negative acts,<sup>109</sup> such acts as disclosing medical information of a patient under the care of a medical personnel is constitutes a positive act.

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<sup>100</sup> Sandoz, C Swinarski, and B Zimmermann (eds), 646

<sup>101</sup> Ibid, 649

<sup>102</sup> AP I

<sup>103</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 651

<sup>104</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 651

<sup>105</sup> Ibid

<sup>106</sup> AP I

<sup>107</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 665

<sup>108</sup> Ibid, 667

<sup>109</sup> Ibid, 666

The protection accorded under Article 16(2) covers those caring for the wounded and sick (such as doctors, nurses, or medical aides); and all technical personnel whose activities directly affects the wounded and sick.<sup>110</sup>

Again, Article 16(3) provides:

No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families.

The above provision is intended to establish the principle of non-denunciation of the wounded and sick.<sup>111</sup> It applies to all persons engaged in medical activities as in paragraph 16(2);<sup>112</sup> and to those who could compel denunciations<sup>113</sup> whether in occupied territories or State territories<sup>114</sup> such as the authorities of the State to which a person is a national or that of an enemy Party. On the other hand, the information to which medical personnel will not be compelled to give relates not much to the personal health information or physical information of the wounded and sick as this is covered under Article 16(2) but to the “information about the activities, connections, position or simply the existence of the wounded.”<sup>115</sup> The said information must not be demanded under compulsion by either anyone belonging to the Party to the conflict or an adverse Party.<sup>116</sup> However, although the compulsion exerted on a person by the latter’s authorities is strongly prohibited, that exercised by the former’s own authorities is only prohibited insofar as the domestic law of such a person does not allow exceptions.<sup>117</sup> In other words, where the domestic law of a

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<sup>110</sup>Sandoz, C Swinarski, and B Zimmermann (eds), 664

<sup>111</sup>Ibid, 670

<sup>112</sup> Ibid, 681

<sup>113</sup> Ibid, 684

<sup>114</sup> Ibid, 678

<sup>115</sup> Ibid, 682

<sup>116</sup> Ibid, 686

<sup>117</sup> Sandoz, C Swinarski, and B Zimmermann, 686

State permits exceptions as in the case of Nigeria,<sup>118</sup> disclosure of medical information will be justified.

The rule under Article 16(3) is however not absolute as it is subject to the condition that “such information, would, in his opinion, prove harmful to the patients concerned or to their families.”<sup>119</sup> Such harmful information will include but is not limited to reporting gunshot wounds. Reporting of gunshot wounds is harmful to both the patients and their families because it alerts the authorities of a potential combatant of the presence of such persons in the hospital and facilitates their attack or detention by the enemy party. This is however not to say that the duty to report gunshot wounds is inconsistent with International Humanitarian Law since Article 16(3)<sup>120</sup> recognizes a party’s domestic laws in that regard as an exception. This is also true of Nigeria where the Compulsory Treatment and Care for Victims of Gunshot Act requires the report of gunshot wounds in order to facilitate investigation by the Police.<sup>121</sup> Again, in the case of communicable diseases, medical personnel are under obligation to notify the appropriate authorities for the purpose of protecting the public interest.<sup>122</sup> There is therefore no obligation imposed on medical personnel to remain silent.<sup>123</sup>

Furthermore, Article 15<sup>124</sup> requires medical personnel to be respected and protected; and to be granted all that is necessary to help them perform their duty thereby enhancing their medical mission.<sup>125</sup>

Such protection will include helping them to discharge their responsibility as medical personnel.<sup>126</sup> The help may be passive or active in character.<sup>127</sup> It is passive where it, for instance permits the free movement of medical personnel;<sup>128</sup> movement of medical supplies;

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<sup>118</sup> Nigerian National Health Act, 2004

<sup>119</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 683

<sup>120</sup> AP I

<sup>121</sup> Section 3(2)

<sup>122</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 689

<sup>123</sup> *Ibid*, 683

<sup>124</sup> AP I

<sup>125</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 601

<sup>126</sup> *Ibid*, 613

<sup>127</sup> *Ibid*

<sup>128</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds), 630 and 631

and active where it involves the provision of shelter for the wounded and sick or the provision of a vehicle for their transport.<sup>129</sup>

The International Criminal Court Rules of Procedure and Evidence of 2019<sup>130</sup> also has some provisions relating to medical confidentiality. This is to the effect that communications made in the context of a class of professional or other confidential relationships in the course of confidential relationship producing a reasonable expectation of privacy and non-disclosure shall be regarded as a privilege, and consequently not subject to disclosure, where confidentiality is essential to the nature and type of relationship between the person and confidant.

In the same vein, the World Medical Association International Code of Medical Ethics<sup>131</sup> among other things provides that “a physician shall respect a patient’s right to confidentiality.”

The above provisions support the right of the wounded and sick to medical confidentiality, specifically and generally.

## **EXCEPTIONS TO MEDICAL CONFIDENTIALITY**

The right to medical confidentiality is generally not an absolute rule<sup>132</sup> as some exceptions do exist.<sup>133</sup> These are:

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<sup>129</sup> Ibid, 613

<sup>130</sup> Article 73(2)(a)(b)

<sup>131</sup> Adopted by the 3<sup>rd</sup> General Assembly of the World Medical Association, London, England, October 1949 and amended by the 22<sup>nd</sup> World Medical Assembly, Sydney, Australia, August 1968, the 35<sup>th</sup> World Medical Assembly, Venice, Italy, October 1983, and the WMA General Assembly, Pilanesburg, South Africa, October 2006, available at: <https://www.wma.net/policies-post/wma-international-code-of-medical-ethics/#:~:text=r> (accessed in 10 February 2023)

<sup>132</sup> M Norooziet *al.*,

<sup>133</sup> AP I Article 16(3); GC I Article 16(1)(h); GC III Article 31; and International Criminal Court Rules of Procedure and Evidence Article 73(2)(a)&(b)



**a. Law of the Parties to the Conflict**

Article 16(3)<sup>134</sup> recognizes the law of the parties to the conflict as an exception to medical confidentiality when it provides thus: "...except as required by the law of the latter Party..." The effect is that even where disclosure of a patient's medical information would prove harmful to them or their families,<sup>135</sup> disclosure will nevertheless be made where the law of a party to the conflict permits it. In Nigeria for instance, the National Health Act, 2014<sup>136</sup> provides some exceptions to medical confidentiality; while the Compulsory Treatment and Care for Victims of Gunshots Act, 2017,<sup>137</sup> requires medical practitioners to report cases of gunshot wounds. The above laws rightly fit into the exception under Article 16(3)<sup>138</sup> and will not be considered as breach of medical confidentiality when applied in the circumstances of armed conflict.

**b. Regulations requiring Compulsory Notification of Communicable Diseases**

Article 16(3)<sup>139</sup> further recognizes Regulations requiring compulsory notification of communicable diseases as exceptions to medical confidentiality. This provision is in tandem with section 26(2)(e)<sup>140</sup> which requires disclosure where not doing so will threaten public health. The exception is geared towards maintaining a balance between individual and public interest.<sup>141</sup> Thus, in Nigeria, medical personnel are by the above provisions compulsorily required to report cases of some diseases classified under the Integrated Disease Surveillance and Response (IDSR) System as threatening to public health. These diseases include but are not limited to cerebrospinal, meningitis, yellow fever, cholera,

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<sup>134</sup> AP I

<sup>135</sup> Y Sandoz, C Swinarski, and B Zimmermann (eds),683

<sup>136</sup> Section 26(2)

<sup>137</sup> Section 3(2)

<sup>138</sup> AP I

<sup>139</sup> Ibid

<sup>140</sup> Nigerian National Health Act, 2004

<sup>141</sup> G Sert, E Mega and A Dedeoglu 'Protecting Privacy in Mandatory Reporting of Infectious Diseases during the COVID-19 Pandemic: Perspectives from a Developing Country'(2021) *J Med Ethics*1

measles, and monkeypox, among other diseases.<sup>142</sup> In such cases, the protection of the public overrides that of the individual patient<sup>143</sup> and justifies disclosure.

**c. Requirements on Recording and Forwarding of Information; and Inspection of Prisoners of War**

Article 16(1)(h)<sup>144</sup> provides for further exceptions to medical confidentiality. This is to the effect that Parties to a conflict shall record and forward to the Information Bureau, particulars concerning wounds, or illness or cause of death of the adverse Party who have fallen into their hands. The Information Bureau shall in turn forward same to the Power on whom these persons depend through the Protecting Power of the Central Prisoners of War Agency in accordance with Article 112 of the GC III. The said recording and forwarding serves to facilitate the identification and search of the wounded prisoners of war whose whereabouts the Power on whom they depend may not know.

On the other hand, Article 31<sup>145</sup> requires that inspection of prisoners of war be conducted once a month. This inspection shall include the checking and recording of their weight.<sup>146</sup> This is necessary in order to supervise the general state of health, nutrition and cleanliness of prisoners to allow for early detection of contagious diseases among them; and to report to the appropriate authorities where necessary. Such report, forwarding and inspection does not amount to a breach of medical confidentiality as it serves to protect public interest and also consistent with Article 16(3) requiring compulsory notification of communicable diseases by medical personnel to appropriate authorities.

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<sup>142</sup> N Oragwu and S Ifejika, and S Juwah, 'COVID-19: Patient Confidentiality and Right to Medical Laboratory Reports' (August 2020) <<https://punuka.com>> accessed 10 February 2023

<sup>143</sup> Ibid

<sup>144</sup> GC I

<sup>145</sup> GC III

<sup>146</sup> Ibid, Article 31

## MILITARY MEDICAL PERSONNEL AND CONFLICT OF INTEREST IN MEDICAL CONFIDENTIALITY

Military medical personnel like their civilian counterparts are guided by the long-established rule of medical ethics encapsulated in the Hippocratic Oath.<sup>147</sup> However, military medical personnel are commissioned officers governed by the Military Codes. The US Military Code, for example, requires the US Army to “support and defend the Constitution...against all enemies” and to “faithfully discharge the duties of the office” that they hold.<sup>148</sup> On the other hand, they are bound by the provisions of the Geneva Conventions and other rules of engagement,<sup>149</sup> in particular, those rules protecting persons not or no longer taking an active part in the hostilities. The implication is that military medical personnel owe dual loyalty- loyalty to their individual patients(by virtue of their medical profession); and loyalty to the Military mission.<sup>150</sup> To that effect, Benjamin asserts that “military healthcare providers face the problem of dual loyalty also known as mixed agency or conflict of interests.”<sup>151</sup> Therefore, quite unlike their civilian counterparts, military medical personnel face the dilemma of striking a balance between their responsibilities as medical personnel, on the one hand; and as members of the Forces, on the other hand.<sup>152</sup> That notwithstanding, the US Department of Defence Policy, for instance, specifies the following exceptions to medical confidentiality.<sup>153</sup> These exceptions include: when there is risk of harm to oneself; others or the military mission; inpatient psychiatric treatment or substance misuse treatment; and acute inability to perform assigned duties or sensitive mission responsibilities, such as presidential support.<sup>154</sup> Again, where a service member is suffering from a serious mental problem and may not be willing to voluntarily present himself for

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<sup>147</sup> M Quinn and S Wilkes ‘Military Necessity, and the Dual Roles of Military Psychiatrists’ (2020) *The American Journal of Psychiatry, Residents’ Journal*. <<https://psychiatryonline.org>> accessed 10 February 2023

<sup>148</sup> Oath of Office, 5 US Code 3331

<sup>149</sup> M Quinn and S Wilkes

<sup>150</sup> M Quinn and S Wilkes

<sup>151</sup> MJ Benjamin ‘Commanders’ “Right to Know” Health Information: A Strategically Flawed Innovation’(2021) *Political Science* 26; M McCauley, Hughes and Liebling-Kalifani ‘Ethical Considerations for Military Clinical Psychologists: A Review of Selected Literature’ (2008)*Clinical Military Psychology* 7, 10-11

<sup>152</sup> M Quinn and S Wilkes, 146

<sup>153</sup> M Quinn and S Wilkes, 146

<sup>154</sup> *Ibid*

evaluation, the commanding officer may order a psychiatric evaluation of the patient, and will also be privy to the result.<sup>155</sup> It is worthy of note that in the above situations, the information to be disclosed will among other things be restricted to diagnosis, prognosis, treatment plan, impact on duty, recommended limitations, safety concerns and how unit leadership can be supportive to the patient.<sup>156</sup> In the case of a psychiatric patient, for example, the medical personnel will inform the military unit head of the drugs prescribed for the patient's treatment so as to ensure that the drugs are taken as and when due.

From the foregoing, therefore, it is crystal clear that military health personnel handle patient's medical treatment within a military context.<sup>157</sup> The idea is that "leaders need to know as much as possible about their troops"<sup>158</sup> since they are charged with the responsibility of protecting the interests of their peers and comrades.<sup>159</sup> It follows then that local commanding officers may inquire about the state of health of persons under them;<sup>160</sup> and military medical personnel are bound to keep senior officers informed of the state of health of the troops.<sup>161</sup> This is, however, contrary to International Humanitarian Law;<sup>162</sup> which require non-disclosure of patients' medical information except as provided by law.<sup>163</sup>

The obligation to respect and protect all personal health information obtained by medical personnel within the context of their duty as such is an obligation imposed by International Humanitarian Law;<sup>164</sup> and which is imperative for the protection of the wounded and sick.<sup>165</sup> Parties to the conflict are therefore bound to conduct themselves within the rules of

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<sup>155</sup> Ibid

<sup>156</sup> Ibid

<sup>157</sup> MJ Benjamin, 24

<sup>158</sup> Ibid, 1

<sup>159</sup> Ibid, 24

<sup>160</sup> V Nathanson, 204

<sup>161</sup> Ibid

<sup>162</sup> AP I Article 16(2)(3)

<sup>163</sup> Ibid, 16(3).

<sup>164</sup> AP I

<sup>165</sup> MK Wynia 'The Breach of Confidentiality to Protect the Public: Evolving Standards of Medical Confidentiality for Military Detainees' (2007) 7 (8) *Am J Bioeth*1

the game spelt out under the Geneva Conventions regime particularly respecting medical confidentiality.

## **CONCLUSION**

This paper appraised the right of the wounded and sick to medical confidentiality within the context of international armed conflict in IHL. This paper observed that there is a correlation between the right to medical confidentiality and the general protection accorded the wounded and sick in IHL but then, because military medical personnel owe dual responsibility, they face the dilemma of striking a balance between their responsibilities as medical personnel (including that of medical confidentiality) and as Military personnel, which has the effect of undermining the right of the wounded and sick to medical confidentiality. The paper argued that medical confidentiality plays an integral role as it exists as part of the protection accorded the wounded and sick in IHL; and as a matter of fact, where the wounded and sick cannot trust that communications made within the context of physician-doctor relationship will be protected by medical personnel, the medical mission will become threatened as the wounded and sick will be unwilling to seek medical assistance.<sup>166</sup> This is even more imperative in situations of armed conflict where parties to the conflict may take to compelling the disclosure of personal health information of the wounded and sick combatants of the enemy parties, in order to facilitate their detention; or to use the said information to craft coercive interrogation.<sup>167</sup> To facilitate respect for medical confidentiality it is therefore necessary to ensure that:

1. Parties to the conflict respect their obligations under International Humanitarian Law, particularly those requiring respect for medical missions by not meddling with medical personnel in the discharge of their medical duties.
2. Medical personnel must be constantly and adequately trained as to their obligation to respect confidentiality; what medical confidentiality entails; and its importance in enhancing patients' treatment and management.

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<sup>166</sup> IT Adeleke, *et. al*228

<sup>167</sup> MK Wynia, 1

3. Medical personnel of the parties to the conflict must desist from all acts which are directly or indirectly contravenes medical ethics, such as disclosure of personal health information of persons under their medical care.
4. Effective sanctions must also be provided through domestic laws against medical personnel who violate the confidentiality of their patients.
5. Exceptions to medical confidentiality must be adequately stipulated by law to avoid arbitrariness. This, it is hoped will better guarantee the right of the wounded and sick to medical confidentiality.

## REFERENCES

Adeleke, IT, *et. al.*, 'Knowing, Attitude and Practice of Confidentiality of Patients' Health Records among Healthcare Professionals at Federal Medical Centre Bida Niger' (2011) 2 (2) *Nigerian Journal of Medicine*.

Aderibigbe, TO, and Sodipo, B, 'Patient's Medical Records, Privacy and Copyright in Nigeria: On-going Research (2017) 42 (2) 88 *University of Western Australia Law Report*.

Appelbaum, PS, 'Confidentiality in the Forensic Evaluation' (1984) 7 (3-4) *International Journal of law and Psychiatry*.

Bali, A *et.al.*, 'Management of Medical Records: Facts and Figures for Surgeons' (2011) 10 (3) *j. Maxillofac. Oral Surg*.

Beauchamp, TL, and Childress, JF (eds) *Principles of Biomedical Ethics* (Revised Edition Oxford University Press 2001).

Beltran-Aroca, CM *et. al.*, 'Confidentiality Breaches in Clinical Practice: what happens in Hospitals (2016) 17 (52) *BMC Med Ethics*.

Benjamin, MJ, 'Commanders' "Right to Know" Health Information: A Strategically Flawed Innovation' (2021) *Political Science* by Nurses in the Acute Care setting' (2013) 46 (1) *j.Nurs. Scholarsh*.

British Medical Association (BMA), 'Confidentiality as a Medical Student' <<https://www.bma.org.uk>> accessed 6 February 2023.

- Edelstein, L, *Ancient Medicine* (Johns Hopkins University Press 1987).
- Flynn, HA, Marcus, Kerber, SM, and Alessi, N, 'Patients' Concern about and Perceptions of Electronic Psychiatric Records' (2003) 54 (11) *Psychiatr Serv*.
- Footer, KHA and Rubenstein, LS, 'A Human Rights Approach to Health Care in Conflict' (2013) 95 (889) *International Review of the Red Cross*.
- Ford, CA *et. al.*, 'Adolescents' Interpretations of Conditional Confidentiality Assurances' (2001) 29 (3) *Journal of Adolescent Health*.
- General Medical Council, 'Confidentiality: Protecting and Providing Information (2000)' <<https://www.gmc.uk.org>> accessed 6 February 2023.
- Grocott, A and McSherry, W, 'The Patient Experience: Informing Practice through Identification of meaningful Communication from the Patient's Perspective' (2018) 6 (1) *healthcare*.
- Juve-Udina, ME *et.al.*, 'Basic Nursing Care: Retrospective Evaluation of Communication and Psychological Interventions Documented Henckaerts, J and Doswald-Beck, L (eds) *Customary International Humanitarian Law* (Cambridge University Press 2005).
- Kao, AC, *et. al.*, 'Patients' Trust in their Physicians, Effects of Choice, Continuity, and Payment Method (1998) *JGIM*.
- Markose, A, Krishnan, R, and Ramesh, M, 'Medical Ethics' (2016) 8 *Journal of Pharmacy and Bioallied Science*.
- Marks, JW, 'Medical Definition of Hippocratic Oath' <<https://www.medicinenet.com>> accessed 9 February 2023.
- McCauley, M, Hughes and Liebling-Kalifani 'Ethical Considerations for Military Clinical Psychologists: A Review of Selected Literature' (2008) *Clinical Military Psychology*.
- Mechanic, D *et. al.*, 'Concept of Trust among Patients with Serious Illness (2000) 51 (5) *Social & Medicine*.
- Mendelson, D, 'Medical Duty of Confidentiality in the Hippocratic Tradition and Jewish Medical Ethics' (1998) 5 *Journal of Law and Medicine*.
- Mendelson, D, Rees, A, and Wolf, G, 'Medical Confidentiality and Patient Privacy'(2018).

- Murray, JP, 'New Concepts of Confidentiality in Family Practice' (1986) 23 (3) *J Fam Pract.*
- Nathanson, V, 'Medical Ethics in Peacetime and Wartime: the Case for a better Understanding' (2013) 95 (889) *International Review of the Red Cross.*
- Newell, S *et.al.*, 'The Patient Experience of Patient-centred Communication with Nurses in the Hospital Setting: A Qualitative Systematic Review Protocol' (2015) 13 (1) *JB I Database of Systematic Reviews & Implementation Reports.*
- Noroozi, N, *et.al.*, 'Challenges of Confidentiality in Clinical Settings: Compilation of an Ethical Guideline' (2018) 46 (6) *Iranian Journal of Public Health* *McInerney v MacDonald*, Dominion Law Reports 1992.
- Oragwu, N, and Ifejika, S, and Juwah, S, 'COVID-19: Patient Confidentiality and Right to Medical Laboratory Reports' (August 2020) <<https://punuka.com>> accessed 10 February 2023.
- Osime, C, 'Understanding Medical Ethics in a Contemporary Society' (2008) 10 (1) *African Journals Online.*
- Quinn, M and Wilkes, S, 'Military Necessity, and the Dual Roles of Military Psychiatrists' (2020) *The American Journal of Psychiatry, Residents' Journal.* <<https://psychiatryonline.org>> accessed 10 February 2023.
- Reilly, DR, 'Breaching Medical Confidentiality and Destroying Trust: The Harm to Adolescents on Physician's Rosters' (2008) 54 *Canadian Family Physician.*
- Sandoz, Y, Swinarski, C, and Zimmermann, B (eds) *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff Publishers, Geneva 1986).
- Sert, G, Mega, E, and Dedeoglu, A, 'Protecting Privacy in Mandatory Reporting of Infectious Diseases during the COVID-19 Pandemic: Perspectives from a Developing Country' (2021) *J Med Ethics.*
- Siegler, M, 'Confidentiality in Medicine- a Decrepit Concept (1982) 307 (24) *N Engl J Med.*
- Tariq, RA *et.al.* 'Patient Confidentiality' in: StatPearls (Internet). Treasure Island (FL): StatPearls Publishing LLC; 2022.



Tegegne, MD *et. al.*, 'Health Professionals' Knowledge and Attitude towards Patients' (2022) 23 (26) *BMC Med Ethics*.

Thomas, J, 'Medical Records and Issues in Negligence' (2009) 25 (3) *Indian J Urol*.

Wynia, MK, 'The Breach of Confidentiality to Protect the Public: Evolving Standards of Medical Confidentiality for Military Detainees' (2007) 7 (8) *Am J Bioeth*.

Zon, KM, 'Exceptions to the Obligation of Medical Confidentiality in the Context of the Protection of Public Health' (2017) 15 (4) *Zdrowie Publicznej Zarzadzanie*.

Zutah JT, Yin ET, Atupare PA & Korankye-Sakyi FK, "Licensed to kill? Contextualising medical misconduct, malpractice and the law in Ghana" (2021) 1 (2), *UCC Law Journal*, pp. 49-118.

## **INTERNATIONAL TREATIES/CONVENTIONS**

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949 (GC I)

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 1949 (GC II)

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 1949 (GC IV)

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (AP I)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (AP II)

**STATUTES**

Act on Preventing and Combating Infections and Infectious Diseases in Humans (A.P.I.D.)  
of 2008

Nigerian National Health Act, 2004

**CASE LAWS**

*Stephens v Avery* 1988 2 All Er