

# SHOULD THE DOCTOR BE A DETECTIVE OR A CAREGIVER: ETHICAL AND OTHER PERSPECTIVES OF REQUIRING POLICE REPORT BEFORE TREATING GUN SHOT VICTIMS IN NIGERIA\*

## **Abstract**

This paper examines the process of notifying the police of gunshot injuries before doctors can treat the victims in Nigeria. It argues that the process is of doubtful criminological value, as it has not had any notable impact in terms of aiding the arrest of violent criminals, and by same token, reduction of violent crimes in Nigeria. Based on this, it is further argued that there is no justification for the breach of ethical obligations of doctors to preserve life and act in the best interest of their patients. Generally, the paper maintains that Nigerian doctors should stick to their primary calling of preserving and restoring health; they should not be transformed into law enforcement machinery that compromise interest of patients.

## **Introduction**

Within the ethical confines in which they operate, doctors at different times may have to make difficult choices between protecting societal interests, such as control of crimes, and protecting the individual private interests of their patients. The appropriate stand of doctors in such context has been a subject of divergent opinions and views. Two judicial commentaries, though of different periods, reflect the divergence.

Avory J once declared,

There are cases where the desire to preserve [the confidential relation which exists between the medical man and his patient] must be subordinated to the duty which is cast on every good citizen to assist in the investigation of serious crime.<sup>1</sup>

In more recent times, the Supreme Court of Canada, declared,

The primary concern of physicians... must be the care of their patients... [P]hysicians... must not be made part of the law enforcement machinery of the state.<sup>2</sup>

The subject of *appropriate role* of doctors in crime control, or public interest, plays out in the practice among generality of doctors in Nigeria not to treat victims suffering from gunshot injuries without prior report of the injuries to the police. This is examined from the ethical and other perspectives in this paper.

## **Confronting Nigeria's High Crime Rates: Involving Doctors**

Recurrent reports in newspapers and other media reflect the high rates of armed robberies and other violent crimes in Nigeria.<sup>3</sup> One of the measures of the Nigerian police to confront the crimes is an arrangement that doctors should not treat gun shot

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<sup>1</sup> Birmingham Assizes, 1 December 1914, reported in (1914) 78 JP 604, per Avory J

<sup>2</sup> *R v Dymont* 55 D.L.R. (4<sup>th</sup>) 503 at 518, per La Forest J

<sup>3</sup> See e.g. Sikiru Abdul-Raheem, 'Katsina gasps in the throes of robberies, killings, As robbers n Police uniform unleash terror' Saturday Vanguard October 14, 2006 (Vol. 12: No. 522) p.15

victims without a prior notification of the injury to the police. This, seemingly, translates to obtaining 'police clearance' or authorization before treating gunshot victims.

The reasoning for this device is that it offers some chances of detecting and apprehending felons who might have sustained gun shot injuries in the course of criminal activities. Essentially, doctors stand like dragnets in which some violent criminals may be enmeshed in the course of seeking medical attention.

There is no provision in the Nigerian *Police Act*<sup>4</sup> that specifically authorizes the Nigeria Police Force to fetter the hands of doctors in the treatment of patients suffering from gun shot injuries.<sup>5</sup> There is also no legislation compelling doctors to notify the police or require a police report before treating gunshot victims. Generally, doctors are ethically required to avoid external interference in taking decisions whether and how to treat patients.<sup>6</sup>

Legitimacy for the procedure, perhaps, can be set within the framework of some relevant statutory provisions. One of such provisions is section 4 of the *Police Act*, which empowers the police to undertake "prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property." Arguably, some support also seems to lie in section 34 of the *Criminal Procedure Act*,<sup>7</sup> which provides, "Every person is bound to assist a...police officer reasonably demanding his aid- [a.] in the taking or preventing the escape of any other person whom such...police officer is authorized to arrest."<sup>8</sup>

Based on my findings, not all doctors wholly approve of the procedure as sound or appropriate. Yet, notwithstanding this, and additional fact that the legal validity of the procedure is debatable, it is common knowledge that doctors largely refrain from treating gunshot patients without prior police clearance. The underlying reason for compliance, according to some sources, is to "avoid police trouble." In the Nigerian context, where corruption, harassment, abuse of powers and large-scale human rights violations by the police are common occurrences,<sup>9</sup> it is understandable that no one would want to court "police trouble" through non-compliance.

Moreover, building on the provisions of section 4 of the *Police Act* read together with section 34 of the *Criminal Procedure Act*, section 201 of the *Criminal Code*<sup>10</sup> seems to offer a legal platform on which the police can proceed against an uncooperative doctor. in section 201 of the *Criminal Code*<sup>11</sup>. Section 201 of the *Criminal Code* provides, "[a]ny person who, having reasonable notice that he is required to assist any...member of the police force in arresting any person...without reasonable excuse omits to do so, is guilty of a misdemeanour, and is liable to imprisonment for one year."

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<sup>4</sup> *Police Act* Cap. P19 Laws of the Federation of Nigeria, 2004. This statute creates and empowers the Nigeria Police Force to control crimes among, other functions.

<sup>5</sup> My research for this paper includes discussion with some highly placed Nigerian police officers about the normative source of the notification procedure. The findings, generally, suggest that the procedure somehow evolved as a proactive measure by the Nigerian police, probably through "a force directive" or other means, in the efforts to combat violent crimes.

<sup>6</sup> See e.g. Clause 4 of the [World Medical Association] *Declaration of Tokyo*

<sup>7</sup> *Criminal Procedure Act* Cap. Laws of the Federation of Nigeria 2004

<sup>8</sup> For proper understanding, this provision has to be read along with section 10(1) (a) of the *Criminal Procedure Act* which gives police officers omnibus powers to arrest persons suspected of having indictable offences such as armed robberies or other violent crimes.

<sup>9</sup> See e.g. A. Ale 'Condolence letter from the police to this widow sets her in high dudgeon' Saturday Punch, October 2, 2006 (Vol. 42, No. 1327) p.3. See also E. Nnadozie 'House owner gets taste of new Lagos sheriffs' Saturday Vanguard October 21, 2006 (Vol. 12: No. 523) p.14

<sup>10</sup> *Criminal Code Act* Cap. C38 Laws of the Federation of Nigeria 2004

<sup>11</sup> *Criminal Code Act* Cap. C38 Laws of the Federation of Nigeria 2004

Whatever may be the criminological values of notifying the police before treating gunshot victims, the procedure raises some human rights concerns while the involvement of doctors raises some ethical questions. It is thus pertinent to reflect whether Nigerian doctors should remain caregivers or also become a satellite crime-control mechanism that tacitly railroads gunshot victims to the police for 'scrutiny'.

### **Ethics, Doctors and Patients**

Preserving human life and putting interests of the patient above all considerations are the central obligations of medical practitioners. Different ethical provisions have evolved to underscore significance of these duties. For example, the *International Code of Medical Ethics*<sup>12</sup> provides, "[a] physician shall always bear in mind the obligation of preserving human life. A physician shall owe his patients complete loyalty and all the resources of his science."<sup>13</sup>

In Nigeria, and presumably other jurisdictions, some legislative provisions speak along the same line as the medical codes regarding the ethical obligations of to preserve human life and protect patient's interest. For example, section 343 (1) of the *Criminal Code* provides:

*343(1). Any person who in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person...*

*(e.) gives medical or surgical treatment to any person whom he has undertaken to treat ... is guilty of a misdemeanor and is liable to imprisonment for one year.*

The *Medical and Dental Practitioners Act*<sup>14</sup> further complements the *Criminal Code* in making criminal conviction a ground for disciplinary action against a doctor.<sup>15</sup> Thus, the conviction of a doctor under section of 343 of the *Criminal Code* can be a ground for disciplinary action against the doctor.

### **Notification of Gunshot injury as precondition to treatment: Ethical Perspective**

Requirement of police report as condition precedent to treating victims of gunshot injuries has some impacts on the ethical obligations of doctors to preserve life and act in patients' best interests.

For purpose of analysis, it is assumed in this paper that there is an existing doctor/patient relationship and the concomitant duty to treat the patient on the doctor. The situation envisaged is thus one where the doctor has accepted or willing to treat the injured person but then intentionally refrains from treating the *patient* until the patient, his proxies or, possibly, the doctor notifies the police, or obtains a police report for an endorsement of the treatment.

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<sup>12</sup> [World Medical Association] *International Code of Medical Ethics* (As amended at Venice, 1983)

<sup>13</sup> *Ibid.* See also [World Medical Association] Declaration of Geneva (As amended at Stockholm, 1994) and the preamble to the [World Medical Association] *Statement on torture and other cruel, inhuman or degrading treatment or punishment*

<sup>14</sup> *Medical and Dental Practitioners Act* Cap. M8 Laws of the Federation of Nigeria 2004

<sup>15</sup> See section 16(1)(b) *Medical and Dental Practitioners Act*

Ordinarily, notifying the police or obtaining a police report would not appear to be difficult. Considering that such 'simple' procedure can assist in controlling the disturbing rate of violent crimes in Nigeria, doctors' insistence on it seems acceptable as falling within the scope of reasonable social responsibility of doctors and other citizens to assist in crime control.<sup>16</sup>

However, the seemingly straightforward process of obtaining police report is prone to some challenges in Nigeria. For long, the Nigeria Police has faced the problem of inadequate telecommunications and other facilities.<sup>17</sup> Invariably, physical attendance at the 'nearest police station', an exercise that may entail taking the injured victim along, is required to make the notification or obtain the police report. Depending on the location where the gunshot injury is sustained, getting to 'the nearest police station' may involve a significant amount of crucial time.

Secondly, at the police station obtaining the report may be confronted with a distinct set of obstacles. Accusations are rife on the lethargic attitudes of Nigerian police officers to important tasks.<sup>18</sup> There have also been recurrent reports of police insensitivity to plights of citizens, even in situations involving loss of life.<sup>19</sup> Apart from this, it is widely reported that police reports, bails or other legal duties of the police, are usually rendered to citizens after extortion of illegitimate fees.<sup>20</sup> It would not be difficult to imagine that all these factors can interplay to impede the prompt issuance of necessary "police authorization" which doctors require before giving treatment to the gunshot victims.

Some consequences are apt to flow from the setting stated above. One, the patient may not be treated if police report or any other form of police authorization is not obtained. Secondly, a patient may have died from the injury before the doctor receives the authorization to treat. Thirdly, the patient may have experienced unwarranted serious pains and sufferings because of delayed treatment.

These likely consequences strike some human rights chords. Where patients die because of not receiving prompt and immediate medical attention, arguably, there is violation of their rights to life guaranteed under the Nigerian constitution.<sup>21</sup> In the case where patients have to endure agonizing pains and suffering pending completion of process of police notification, there is a strong argument for a subjection to torture, degrading or inhuman treatment.<sup>22</sup> Put simply, the requirement of police report as a condition precedent to treating gunshot victims, raises a question of human rights violation and, by same token, the connivance of doctors in a process of human rights violation.

## **Doctors: Public Interests versus Private Interests of Patient**

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<sup>16</sup> See note 1 and accompanying text.

<sup>17</sup> See O.N.I. Ebbe, 'World Factbook of Criminal Justice Systems: Nigeria' State University of New York at Brockport, Brockport, New York, United States "The Nigerian police force has a very small number of communication devices." Though the source relates to the situation of the Nigerian Police Force in the early 1990s, there has not been any significant improvement in the situation.

<sup>18</sup> See Saturday Vanguard *supra* note 3; see also Saturday Punch *supra* note 9

<sup>19</sup> Saturday Punch *ibid*.

<sup>20</sup> See e.g. E. Amaize, 'This 26yr-old man, accused of stealing, got tortured to death in a Police station', Saturday Vanguard, *supra* note 9 at p.17: "At this stage...he decided to ask for the bail of the persons...the police collected N7,000 from him."

<sup>21</sup> See *Constitution of the Federal Republic of Nigeria 1999* [hereinafter 'Nigerian Constitution'], section 33

<sup>22</sup> See section 34 of the Nigerian Constitution.

Apart from the impact on the ethical obligations of doctors to preserve life and act in the best interest of patients, the process of police notification touches on some other ethical duties of the doctor. One is the ethical obligation that the doctor should not subject to extraneous influences or interferences in his decision to provide care to a patient. The second is the duty not to compromise patient's interest in an effort to safeguard conflicting societal or public interest. Clause 4 of the *Declaration of Tokyo* highlights these duties in the following words:

*A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose.*

Balancing the individual interest of patients against societal or public interest, arguably, is one of the great ethical challenges facing medical practice.<sup>23</sup> This difficulty has for example manifested in deciding whether a doctor should override his patient's consent to inform sexual partners of the patient's HIV/AIDS status.<sup>24</sup> The subject of notifying the police of gunshot injury can also be related against the background of the conflicting individual and public interests facing medical practice. Quite remarkably, the discourse of the propriety of doctors overstepping ethical confines for the sake of overriding public interests has featured prominently in the aspect of crime control.<sup>25</sup>

Essentially, the ethical obligations imposed on doctors are to safeguard the rights of patients. Transgressing the codes, based on overriding public interests, therefore can be equated with encroaching on the rights of the patients.

It is trite that no right is absolute. Hence, human rights instruments usually permit the restrictions of human rights based on overriding public interests in some situations.<sup>26</sup> However, such restrictions must reasonably be justifiable. The tool of *human rights impact assessment* has evolved as a benchmark of justifiability of encroachment on human rights.<sup>27</sup> This can be adapted to assess the justifiability of transgressing ethical codes in the quest to control violent crimes in Nigeria, in the police notification paradigm.

One of the key components of human rights impact assessment is that the adopted right-restricting measure should have a reasonable chance of attaining the set objective.<sup>28</sup> The justifiability of doctors' breach of ethical codes in police notification can thus be examined by an appraisal of the criminological value or feasibility of the process in arresting criminal or control of violent crimes in Nigeria generally.

It is argued that the notification process is of doubtful criminological value because the criminals for whom it is designed may be out of the range of its web. Criminals usually

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<sup>23</sup> See J.K Mason, R.A McCall Smith and G.T Laurie *Law and Medical Ethics* (5<sup>th</sup> ed.), (London: Butterworths, 1999), 193

<sup>24</sup> See generally, B. Odunsi, 'HIV/AIDS: Should Doctors be bound to inform Sexual Partners of Infected Patients? Right to Privacy versus Public Health' Seminar Paper presented at International Union for the Scientific Study of Population (IUSSP) Seminar on Ethical Issues in Reproductive Health, 21-24 September 2006, NIAS, Wassenaar, the Netherlands

<sup>25</sup> See notes 1 and 2 above and accompanying texts

<sup>26</sup> See e.g. *Nigerian Constitution*, sections 33(2), 34(2), 35(7) and 41(2),

<sup>27</sup> L. O. Gostin & Z. Lazzarini *Human Rights and Public Health in the AIDS Pandemic* (New York: Oxford University Press, 1997) 57.

<sup>28</sup> *Ibid.* at 59

have illegitimate avenues for procuring the wherewithal used in their criminal operations. Predictably, being aware of the possibility of arrest if they patronize legitimate doctors, criminals would be apt to make 'underground' treatment arrangements that would necessarily bypass the police notification process. Essentially, only law-abiding people are likely to go through the process with the attendant hardships.

The dearth of instances where the police notification mechanism has aided in the arrest of violent criminals strongly suggests that the process has not been of great significance in crime control in Nigeria. Generally, the unceasing occurrences of violent crimes in Nigeria in the face of the notification process and other crime fighting arrangements further indicates that crime control in Nigeria transcends subjecting scores of innocent gunshot victims to potentially fatal inconveniences in the hope of trapping some elusive criminals.

Flowing from the doubtful criminological feasibility of the notification process as noted above, it can safely be concluded that the breach of ethical codes by doctors for the sake of the process would not satisfy the *justifiability* test of human rights impact assessment. Put more directly, breaching ethical codes would appear to amount to unjustified encroachment on the basic rights of patients.

Apart from doubtful feasibility of the notification mechanism, courts, at different times have frowned at the co-opting of doctors into crime control. Based on a search of major law reports in Nigeria, there does not appear to be a case where Nigerian courts have had to address the issue directly. However, the Canadian case of *R v Dymont*,<sup>29</sup> which is applicable in Nigeria as a persuasive authority, offers an insight into the judicial vista on what the stand of doctors should be on crime control.

### ***R v Dymont: Patients' Private interests versus Public interests***

In the case of *R v Dymont*, following a vehicle accident, a doctor treated the respondent-patient, while in an unconscious state. In the course of the treatment, the doctor obtained a sample of 'free flowing blood'.

Subsequently, without the respondent's consent, statutory or any other legal obligation to do so,<sup>30</sup> the doctor gave the blood sample to the police officer who brought the patient to the hospital for treatment. With the blood sample as crucial evidence, the patient was later charged and convicted of drunken-driving.<sup>31</sup> There is need to note that, prior to obtaining the blood sample, neither the police officer nor the doctor suspected that the patient was in a drunken state.<sup>32</sup> The patient on regaining consciousness had even misinformed the doctor by attributing the accident to his taking 'a beer and some antihistamine tablets', but not drunkenness. The blood sample given to the police by the doctor was the main basis of the respondent's conviction.

The respondent appealed, contending that the taking and supplying of his blood sample to the police violated his right to privacy, which the doctor had an ethical obligation to protect in line with the principle of medical confidentiality. The appellate court agreed,

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<sup>29</sup> 55 D.L.R. (4<sup>th</sup>) 503

<sup>30</sup> As at the time of the case in Canada, there was no legal duty on doctors to obtain blood sample, based on reasonable suspicion of a crime- see *R v Dymont supra* at 509

<sup>31</sup> The accused was charged under section 36 of the Canadian *Criminal Code*. I have adopted a popular catch-phrase for the offence.

<sup>32</sup> *Ibid.*

excluded the evidence of the blood sample, and set aside the conviction. The Crown, in turn appealed to the Supreme Court of Canada.

Among the issues, which the Supreme Court had to resolve, was whether there was indeed a breach of ethical duty of confidentiality on the part of the doctor in respect of the blood sample, and whether the breach could be overlooked in the public interest need to discourage drunken driving. Overlooking the breach would amount to retaining the evidence as part of the proceedings.

By majority decision, the court held that there was a violation of the patient's right to privacy and held that the blood sample evidence on which basis the respondent was convicted should be excluded. Justifying its position, the court noted, "[i]f the court received evidence obtained by taking a blood sample without consent, medical necessity or lawful authority, and without the police having any probable cause, it would bring the administration of justice into disrepute."<sup>33</sup>

A rather thorny issue in the case, of great relevance to this paper, is whether the need to safeguard public interest, in terms of discouraging and protecting members of the public against drunk driving, should override the patient's individual right to privacy. Highlighting this in the dissenting judgment McIntyre J noted, "the sole question is whether the evidence of the blood analysis, because of the improper disposition...by the doctor should be excluded."<sup>34</sup> Put differently, whether the doctor was justified in placing public interest over and above his ethical obligations to his patient in the situation.

Tacitly underscoring the need to place overall public interest over and above patient's private interest,<sup>35</sup> McIntyre J maintained that, notwithstanding the initial breach of confidence on the doctor's part, the evidence was admissible.

However, the majority decision of the court on the issue was to the effect that it was unacceptable for doctors to summarily breach ethical obligations for the sake of crime control or public interest generally. La Forest J summed up the position of the court in the following words: "The primary concern of physicians... must be the care of their patients... [P]hysicians... must not be made part of the law enforcement machinery of the state."<sup>36</sup>

Considering the danger, which drunk driving or other crimes constitute to the society, McIntyre J's view that breach of ethical obligations deserve to be overlooked in bringing culprits to book, would seem quite attractive. However, the majority decision in the case seems preferable. The primary concern of doctors should remain taking care of patients and preserving life. Doctors should not become double-agents, taking inordinate advantage of the vulnerable conditions of their patients to extract evidence to inculpate the patients. Permitting such a scenario would seriously undermine the platform of trust and confidence on which the doctor-patient relationship stands.

*R v Dymont* is a strong judicial voice against the involvement of doctors in crime control at the detriment of their patients. In that context the principle enunciated in the case is

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<sup>33</sup> *R v Dymont supra* note 3 at 522

<sup>34</sup> See *R v Dymont supra* at p. 507

<sup>35</sup> See *ibid.*

<sup>36</sup> *R v Dymont supra* note 3 at 518

relevant and applicable to the process of police notification of gunshot injuries in Nigeria, as a condition precedent to medical treatment.

### **Conclusion**

This paper has sought to show that the process of notification as a precondition to doctors attending to gunshot victims in Nigeria has not had, and may never have, any significant impact in achieving the crime control goal for which it was designed. Thus, there is no legitimate overriding public interest to justify breach of ethical obligations, or infringement on the rights of patients, through tacit railroading them to the police for 'scrutiny' instead of giving prompt and unconditional medical attention. Building on this, arguably, continuing refusal of Nigerian doctors to treat gunshot victims, at the behest of the Nigerian police would amount to participation in human rights abuses. The continuing participation of doctors in such arrangement deserves an urgent review.

The illegitimate involvement of doctors in human rights abuses has been of serious concern to the regulatory bodies of the medical profession globally.<sup>37</sup> True, as part of the society, the participation of doctors would continually be required in maintaining the social structure. The participation, as has been shown, may entail doctors having to juggle patients' interests and public interests. In the juggling exercise, it is desirable that doctors should not compromise the interests of patients and their sacred obligations of preventing suffering and giving succor to humanity generally. It is along this line that this paper speaks to doctors in Nigeria on the need to draw a boundary on how far they should get involved in crime control.

In concluding summing up the whole essence of this paper, I deem it appropriate to adopt the words of a British Medical Association's Working Party on the involvement of doctors in human rights abuses:

*Doctors can contribute to the preservation of democratic freedoms, not only by maintaining ethical and human rights standards but, through their professional associations, by keeping a watchful eye on the state. The relationship between the state and the doctor can at times be uneasy and there is often conflict between the interests of the doctor and those of the government, particularly where the government wishes to involve doctors in aiding the political or security objectives of the state. It is the task of the medical association to maintain a healthy distance between the profession and the political apparatus while remaining responsive to medical and health issues of importance to the public and the government.*<sup>38</sup>

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<sup>37</sup> See generally British Medical Association, *Medicine Betrayed, the Participation of Doctors in Human Rights abuses* (London: Zed Books, 1998)

<sup>38</sup> *Ibid.* at 190