

Patients' Rights to their Medical Records in Nigeria

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While the topic may appear straightforward, it holds significant importance for our overall well-being, despite being frequently disregarded. One fundamental question lingers: what are your rights concerning your medical records? The field of medicine has evolved from a traditional and authoritative model where it was assumed that healthcare providers automatically knew what was in the best interest of their patients. However, today, we have shifted towards a patient-centred approach to healthcare. In this new paradigm, the patient is not only regarded as the primary focus of care but also as a valuable partner in their journey. The patient is not just a passive recipient of care - they can contribute to their well-being. As such, it is important to provide them with all the necessary tools to do so effectively.

What are medical records; are they 'property'?

Medical records, otherwise known as health records, contain a patient's medical history encompassing diagnosis, GP consultations, medications, test results, reactions to treatment and more. Simply, it includes doctor's notes, recommended medicines, lab results, etc. These can be in different forms: handwritten, typed, digitalised, pictures, films, etc.

After establishing what medical records are, the next step is to examine whether they can be considered as property. To do so, we first need to define the concept of 'property'. In legal terms, property refers to any tangible or intangible asset that an individual or an entity can own. Tangible properties are those items that can generally be touched; examples are furniture, house, carpet, shoes, and house. Medical records could appear in physical form, on paper, but essentially the nature of property rights in them is intellectual. The value is not necessarily in the physical book or any other structure in which the information is preserved but in the human effort or creation of the records. Broadly speaking, medical records belong to the same class as copyrights, trademarks, patents, and trade secrets. Specifically, the intellectual property relevant to the discussion of medical records is copyrights and patents.

Rights over Medical Records

It is crucial to protect the intellectual property contained within these records, as they represent more than just words on a page. They are the result of mental activities and hold significant value. Specifically, in medical records, the copyright aspect has become a topic of contention and focus. The question arises: who holds the copyright to medical records--the patient, the medical practitioner, or the hospital? It is important to note that the debates extend beyond ownership alone. In today's information age, where data is highly valuable, safeguarding medical records has become essential. These records have the potential for commercial exploitation.

The Copyright Act (the 'Act') is the most important legislation on copyrights in Nigeria. The Act lists broad categories of work qualified for protection under the Act including literary works

musical works, artistic works, cinematograph films, sound recordings and broadcasts¹. It is important to note that medical records, whether in physical or digital form, are classified as literary works and therefore fall under the purview of copyright protection.² For a work to be eligible for protection under the Act it must be an original expression fixed in a tangible form. This protection is granted to the author and requires some intellectual effort.³ It is not the medical information itself that is the intellectual property, but its fixation in a form.

The Copyright Act generally grants copyright ownership to the author. However, in a hospital setting, several medical professionals may contribute to a patient's record, making them co-authors in a way. There are, however, exceptions to this rule. The first exception applies to work created during employment. Unless there is a clause in the contract stating otherwise, the copyright ownership of employees (including commissioned individuals) belongs to their employers under the "course of employment" principle. Thus, even though several healthcare workers may have contributed to the medical records, the copyright ownership lies with the medical institution, including work done by independent medical consultants visiting or commissioned to work either on a temporary or permanent basis.⁴

Conclusion

It is important for patients to know that medical institutions may have exclusive copyright control over medical records. However, patients can negotiate with hospitals and other facilities to secure some rights over their records, even if it is merely possessory right. This is especially important when receiving treatment far away from home, like during medical travel. It's crucial to ensure access to medical records abroad or to bring reports back to local healthcare providers for a complete understanding of your medical history.

Regardless of ownership, patients possess additional significant rights to their medical records. One key right is the protection from unauthorized disclosure, distribution, or sharing without consent. The National Health Act of 2014 also acknowledges the critical nature of patient confidentiality. Section 26(1) of the National Health Act states that all details regarding a user, including health status, treatment information, or hospital stay, are considered confidential.⁵

¹ Section 1 (1) of the Act

² Aderibigbe T. O., Sodipo B., "Patient's Medical Records, Privacy and Copyright in Nigeria: On-Going Research" available at https://www.law.uwa.edu.au/data/assets/pdf_file/0005/3052724/5.-Titilayo-O.-Aderibigbe-and-Bankile-Sopido.pdf accessed on February 10, 2024

³ see Section 1 (2) of the Act

⁴ Aderibigbe T. O.

⁵ See Section 27 of the National Health Act; it provides for limited instances where disclosure may happen. It must be necessary, genuine and in the normal course of treatment.