National Policy on Blood Transfusion and the Right to Refuse Blood Transfusion- Establishing Legal Boundaries and Limits

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Abstract

Blood transfusion is legally permissible in Nigeria under the National Health Act, 2014 and the National Blood Service Commission Act, 2021 which established the National Blood Service Commission. Furthermore, under the Compulsory Treatment and Care for Victims of Gunshot Act, 2017, a victim of gunshot shall receive obligatory treatment in any public or private hospital which may involve blood transfusion without the necessity for prior police report. Transfusion of blood raises delicate intersection between religion, medicine and law. While medical emergency may compel blood transfusion, yet the exercise of rights to freedom of thought, conscience and religion and privacy entitles a patient to reject any form of medical procedure including blood transfusion. To delineate the legal boundaries in these competing spheres, this paper adopted the doctrinal research method to critically examine statutory provisions and concomitant judicial decisions on blood transfusion, rights to religion and privacy. It was found that consent of an adult is non-negotiable whereas the welfare of the child is paramount irrespective of the religious or other beliefs of the parents hence the recommendation that the right of an adult patient to reject any medical procedure must be respected since it is a guaranteed constitutional right.

Keywords- blood, gunshot, medicine, religion, transfusion

1. Introduction

The aim of this paper is to proffer solutions on how the intersection of the right to medical treatment via blood transfusion with the right of a patient to refuse blood transfusion especially on religious grounds should be resolved. In as much the legal and institutional framework for blood transfusion in Nigeria is robust with the establishment of the National Blood Service Commission under the National Blood Service Commission Act, 2021, yet the compulsory administration of blood transfusion needs to be examined against the right of a patient to refuse blood transfusion. Consistent with the fundamental and constitutionally guaranteed right to freedom of thought, conscience and religion and the right to privacy, an adult patient is at liberty to reject an unwanted medical procedure. What happens with blood transfusion for a patient who is a child also requires to be critically examined. Who is best suited to give consent- is it the parents or should the welfare of the child be paramount? To achieve this stated objective, this paper is divided into segments that critically analyses the following: legal and institutional framework for blood transfusion in Nigeria; offences and penalties relating to blood transfusion; compulsory treatment and care for victims of gunshot; locating the right to non-religion or irreligion under the right to religion; right of a patient to object to medical treatment or blood transfusion; conditions precedent for adult or child to exercise right to refusal of medical treatment and conclusion and recommendations

2. Legal and Institutional Framework for Blood Transfusion in Nigeria

In Nigeria, blood transfusion is recognised under various legislations as a viable and lawful medical procedure. To start with, s*ection 47(1*) of the National Health Act, 2014 empowers the Minister of Health to establish the National Blood Transfusion Service for the Federation. Similarly, under *section 47(3),* without prejudice to the provision of sub-section, (1) above, the

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States of the federation are also empowered to set up Blood Transfusion Service as they find it appropriate within their Jurisdiction. In consequence thereof, at the federal level, under *section 1(1)* of the National Blood Service Commission Act, 2021, there is established the National Blood Service Commission[1] which is among other things authorised to carry out the following functions namely:

(a) establish, coordinate, regulate and control blood transfusion services on a country-wide basis within the national health plan;
(b) produce and ensure proper compliance with the National Blood Transfusion Guidelines and Standards;
(c) employ suitable persons to work with the National Blood Service Commission as staff or consultants;
(d) appoint, promote and discipline staff of the Commission;
(e) maintain a system of quality assurance at all levels of service;
(f) encourage research in all aspects of blood transfusion;
(g) promote the rational use of blood, blood products and alternatives to blood where appropriate;
(h) collaborate with international organisations and other stakeholders in the field of blood transfusion and safety;
(i) collaborate and partner with relevant Ministries, Departments, Agencies and Intergovernmental agencies in carrying out the activities of the Commission;
(j) consider such matters as the Minister may refer to it and make recommendations;
(k) produce blood products, plasma and other blood products in collaboration with relevant agencies for National use and export;
(l) promote health education on rational usage of blood and promotion of voluntary blood donation;
(m) establish a register for voluntary blood donors and rare blood group donors;
(n) encourage State Governments to establish State Blood Service Commissions; and
(o) do such other things necessary or expedient to the performance of its functions under this Act.

The objectives of the National Blood Service Commission as outlined in *section 2* of the National Blood Service Commission, Act, 2021 include to-

(a) co-ordinate and control blood transfusion services on a country wide basis within the national health plan;

(b) ensure the delivery of blood, blood components and blood derivatives which are safe for transfusion and other medical therapies;

(c) be the sale regulatory authority for all blood related services nationwide;

(d) accredit blood transfusion service facilities throughout the country;

(e) establish a National Strategic Blood Reserve which can be called upon for national emergencies in any part of Nigeria when the need arises and the reserve shall be ware

[1] In *section 1(2)* of the National Blood Service Commission Act, 2021, the Commission shall- (a) be a body corporate with perpetual succession and a common seal; (b) may sue and be sued in its corporate name; and (c) may acquire, hold and dispose of any property for the purpose of carrying out its functions under this Act

housed at the National Blood Service Commission in the six Zonal Centers, Headquarters and Lagos, Kano and Port Harcourt;

(f) coordinate all public and private blood banks within the country, to deliver 5% of their safe blood collections, both whole blood and blood products, to the Commission's Zonal centers and replenish same; and g create public awareness for blood donation.

3. Offences and Penalties Relating to Blood Transfusion

The above expositions of the functions and objectives of the National Blood Service Commission serve to explicate that there is elaborate recognition and provision for blood transfusion in Nigeria. To further underscore the importance attached to blood transfusion and need to carryout same under approved medical and ethical conditions, sundry offences and penalties for violation are created under *section 18* of the National Blood Service Commission Act, 2021. The categories of offences and punishments against persons or bodies corporate are as follows:

(1) A person who- a without the supervision of a registered and trained medical or health practitioner collects or arranges to bleed a blood donor for the purpose of transfusion, or b administers blood components to a patient without an order from a registered medical practitioner, commits an offence and is liable on conviction to a fine of at least N500,000.00 or imprisonment for a term of at least six months or both.

(2) A person or group of persons who operates a blood bank commits an offence, if such a person or group of persons-

(a) processes blood for the purpose of obtaining blood products without the approval of the commission,

(b) fails to comply with the guidelines and standards issued by the Commission, or c aids another person to commit any of the offences mentioned in this section, and is liable on conviction to a fine of at least N500,000.00 or imprisonment for a term of at least six months or both.

(3) A person who-

(a) transfuses blood not properly screened for Hepatitis B & C virus, HIV I and II, Syphilis and other transmissible agents as specified by the Commission,

(b) transfuses blood not typed for ABO and RH (D) factor,

(c) supplies for transfusion blood not screened except in life- threatening situation,

(d) labels blood or blood products in a manner as to mislead others about the status of the blood products,

(e) supplies expired blood for transfusion into a human being,

(f) bleeds a child, except for therapeutic purposes with parental consent, or

(g) engages in practices that can compromise blood safety, commits an offence and is liable on conviction to a fine of at least N1,000,000.00 or imprisonment for a term of at least one year or both.

(4) A person who knowingly interferes with, tampers or obstructs in whatsoever manner, the proper donation, collection, screening, banking, processing, distribution, transfusion of blood and blood products, inspection of records and premises where blood is processed for transfusion commits an

offence and is liable on conviction to a fine of at least N500,000.00 or imprisonment for a term of at least six months or both.

(5) A person who, for the purpose of procuring blood or blood products from the Blood Service Commission-

(a) makes a statement which he believes to be false in a material particular, or

(b) recklessly makes a statement, which is false in a material particular, commits an offence and is liable on conviction to a fine of at least N500,000.00 or imprisonment for a term of at least six months or both.

(6) A body corporate that commits an offence under this Act is liable on conviction to a fine of at least and any person who, at the time of the commission of the offence, was a chief executive officer, director, secretary, manager or other similar officer of the body corporate or was purporting to act in any such capacity shall be liable on conviction to a fine not less than N500,000.00 or imprisonment for a term of at least 6 months or both.

The offences and penalties enumerated above are self-explanatory except to add that under *section 18(7)* of the National Blood Service Commission Act, 2021, the law does not preclude the- (a) proper expression of appreciation to the donor of blood by way of tokens or gestures other than financial reward; or (b) charging of appropriate fees as determined by the commission to cover the cost of preparation of blood components for transfusion or the proper performance of autologous blood transfusion.

4. Compulsory Treatment and Care for Victims of Gunshot

It is instructive to note that the Compulsory Treatment and Care for Victims of Gunshot Act, 2017 enacts that every hospital in Nigeria shall accept or receive for immediate and adequate treatment any person with gunshot wound. This obligation extends to private and public hospitals and the treatment and care be given to the victim with without or without Police clearance. Hence under *section 2(2)* of the Compulsory Treatment and Care for Victims of Gunshot Act, 2017, a person with a gunshot wound should be given adequate treatment by any hospital in Nigeria without initial monetary deposit and a person with a gunshot wound shall not be subjected to inhuman and degrading treatment or torture by any person or authority including the police or other security agencies. *Section 15* of the Compulsory Treatment and Care for Victims of Gunshot Act, 2017 interprets "victim" to mean a person who sustains injuries as a result of gunshot, powder burn and other injuries arising out of or caused by the discharge of a firearm. By virtue of *section 11(1)* of the Robbery and Firearms (Special Provision) Act, 2004, 'Firearms" is defined to include "any canon gun, riffle, carbine, machine - gun, cap gun, flint- lock gun, recover, pistol, explosive or ammunition or other firearms, whether whole or in detached pieces.

Sundry offences penalties are also prescribed for failure, refusal or neglect to abide by the provisions of the law requiring compulsory treatment of victims.[2]

In sum, by a combined reading of the provisions of the Compulsory Treatment and Care for Victims of Gunshot Act, 2017 and the National Blood Service Commission, Act, 2021, a victim of gunshot is entitled to compulsory treatment which includes blood transfusion.

[2] NO Obiaraeri, C*ompulsory Treatment and Care of Victims of Gunshot Act, 2017- A legal overview,* (Owerri, Imo State University Press, 2023).

5. Locating the Right to Non-Religion or Irreligion under the Right to Religion

Section 10 of the Constitution of the Federal Republic of Nigeria, 1999 as amended is explicit that "The Government of the Federation or of a State shall not adopt any religion as State Religion." In the case of *Registered Trustees of Apostolic Church of Christ v Registered Trustees of Grace Church of Chris*,[3] the Supreme Court held that religion, under the Constitution, is not a business or purpose any Government in Nigeria should engage itself in since *section 10* of the CFRN, 1999 as amended provides clearly and unambiguously that the Government of the Federation or of a State shall not adopt any religion a State religion. On the other hand, *section 38* of the Constitution of the Federal Republic of Nigeria, 1999 as amended guarantees the right to freedom of thought, conscience and religion to the effect that

> *(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.*
>
> *(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.*
>
> *(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.*

The right to freedom of thought, conscience and religion was interpreted in *Medical and Dental Practitioners Disciplinary Board v Emewulu*[4] to imply a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religion's belief. The limits of these freedoms as in all cases are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy.

In summary, the constitutional right to religion includes the right to non-religious belief or irreligion.

6. Right of a Patient to Object to Medical Treatment or Blood Transfusion

Although the medical procedure of blood transfusion is lawful, nonetheless, it is not compulsory for all classes of patients irrespective of the grave danger or threat to life they are facing. As a general rule, the right of a patient to object to a medical procedure including blood transfusion is constitutionally protected with the right to freedom of thought, conscience and religion, and right to privacy. In the case of *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,[5] it was adjudged by the Supreme Court that the patient's Constitutional right to object to medical treatment or, particularly, as in this case, to blood transfusion on religious grounds is founded on fundamental rights protected by the Constitution of the Federal Republic of Nigeria, 1999 amended under the right to privacy and right to freedom of thought, conscience and religion. It was held that the right to privacy implies a right to protect one's thought, conscience or religious belief and practice from coercive and unjustified intrusion; and, one's body from unauthorised invasion. The

[3] (2021) LPELR-55340(SC) (Pp. 46-47 paras. E) per Eko, JSC.
[4] (2001) 3 SCNJ 106 @ 224 per Ayoola, JSC.
[5] (2001) LPELR-1856(SC) (Pp. 45-46 paras. G) per Ayoola, JSC.

right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limits of these freedoms, as in all cases, are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy. The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary. Law's role is to ensure the fullness of liberty when there is no danger to public interest. Ensuring liberty of conscience and freedom of religion is an important component of that fullness.

7. Conditions Precedent for Adult or Child to Exercise Right to Refusal of Medical Treatment

Different legal considerations arise regarding right to reject medical treatment where a patient is an adult on one hand and or where a patient is a child on the other hand. Under the Child Rights Act, 2003, a minor is a person under the age of 18 years. With respect to an adult, his full consent is a condition precedent for administering medical procedure on him including blood transfusion irrespective of the provision of any law to the contrary. In *Medical and Dental Practitioners Disciplinary Board v Emewulu*,[6] the Supreme Court per Uwaifo, JSC was emphatic that under normal circumstances no medical doctor can forcibly proceed to apply treatment to a patient of full and sane faculty without the patient's consent, particularly if that treatment is of a radical nature such as surgery or blood transfusion. So, the doctor must ensure that there is a valid consent and that he does nothing that will amount to a trespass to the patient. Secondly, he must exercise a duty of care to advise and inform the patient of the risks involved in the contemplated treatment and the consequences of his refusal to give consent

Where however the patient is a child, the welfare of the child is of paramount and overriding consideration over and above the consent of the parents to the contrary. In *Esabunor & Anor v Faweya & Ors*,[7] the position of the law on the application of a particular form of medical treatment on a child was in issue. The facts of the case were that the 1st appellant, a child of one month old was rushed to the Chevron Clinic by his mother, the 2nd appellant. Dr Faweya, the 1st respondent, examined him and found that the child was suffering from severe infection and anemia (lack of blood). Antibiotics were administered on the child to help fight the infection. In the morning of the next day, Dr Faweya observed that the child was in very bad shape with poor colour, was convulsing and had poor breathing. The child was immediately placed on oxygen therapy. According to Dr Faweya, it became increasingly obvious to him that the child desperately needed a blood transfusion to remain alive. The child's mother bluntly refused blood transfusion for her child. She made it clear that because of her religious beliefs, being a member of the Jehovah Witness Sect, she cannot consent to her child receiving blood. This is because Jehovah Witnesses believe that the Bible commands that they do not ingest blood included through transfusion.

The Supreme Court held that the case involved a convergence of religion, medicine and law and held that it is long settled that an adult who is conscious and in full control of his mental capacity, and of sound mind has the right to either accept or refuse blood (medical treatment). The hospital has no choice but to respect their patients wishes. All adults have that liberty of choice. All adults

[6] (2001) 3 SCNJ 106 at 224. Note that the case of *Sidaway v. Board of Governors of Bethlem Royal Hospital* (1985) 1 AC 871 was cited in support.

[7] (2019) LPELR-46961(SC) (Pp. 26-29 paras. F) Per Rhodes-Vivour, JSC.

have the inalienable right to make any choice they may decide to make and to assume the consequences. However, when it involves a child, different considerations apply and this is so because a child is incapable of making decisions for himself and the law is duty bound to protect such a person from abuse of his rights as he may grow up and disregard those religious beliefs. It makes no difference if the decision to deny him blood transfusion is made by his parents. Conclusively, the apex Court held as follows

> *When a competent parent or one in loco parentis refuses blood transfusion or medical treatment for her child on religious grounds, the Court should step in, consider the baby's welfare, i.e. saving the life and the best interest of the child, before a decision is taken. These considerations outweigh religious beliefs of the Jehovah Witness Sect. The decision should be to allow the administration of blood transfusion especially in life threatening situations.*

In *Dr. Amos Adebayo* v *Chairman, Medical and Dental Practitioners Investigation Panel & Ors,*[8]

> It was held that the following among others constitute professional negligence namely:
>
> (A) Failure to attend promptly to a patient requiring urgent attention when the practitioner was in a position to do so.
>
> (B) Manifestation of incompetence in the assessment of a patient.
>
> (C) Making an incorrect diagnosis particularly when the clinical features were so glaring that no reasonable skillful practitioner could have failed to notice them.
>
> (D) Failure to advise, or proffering wrong advice to, a patient on the risk involved in a particular operation or course of treatment, especially if such an operation or course of treatment is likely to result in serious side effects like deformity or loss of organ.
>
> (E) Failure to obtain the consent of the patient (informed or otherwise) before proceeding on any surgical procedure or course of treatment, when such consent was necessary.
>
> (F) Making a mistake in treatment e.g. amputation of the wrong limb, inadvertent termination of a pregnancy, prescribing the wrong drug in error for a correctly diagnosed patient.
>
> (G) Failure to refer or transfer a patient in good time when such a referral or transfer was necessary.
>
> (H) Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient.
>
> (I) Failure to see a patient as often as his medical condition warrants or to make proper notes of the practitioner's observations and prescribed treatment during such visits or to communicate with the patient or his relation as may be necessary with regards to any developments, progress or prognosis in the patient's condition.

[8] (2018) LPELR-45537(CA) (Pp. 28-47 paras. B).

8. Conclusion and Recommendations

The procedure of blood transfusion provokes convergence of religion, medicine and law and must as such be treated as a sensitive issue. This paper clearly identified that, for purposes of blood transfusion, consent of a patient is key but it is not in all cases that consent is required as exception is made for children. It is thus recommended that relevant public authorities like the National Blood Service Commission and the National Oriental Agency among others should be public enlightenment of the citizenry that consent is a condition precedent for blood transfusion because of the right of an adult patient to reject any form of medical procedure. It is further recommended that heightened public enlightenment is required in schools, religious settings, communities and villages to sensitize parents and guardians of children that on issue of blood transfusion of children, the welfare of the child is paramount. Parental consent is not mandatory and as such the law will step in to save the life of the child to allow administration of blood transfusion especially in life threatening situations. Medical practitioners are encouraged to know and accord recognition to these judicially sanctioned boundaries in matters of blood transfusion.