



Health Data Privacy in Digital Medicine: An Islamic Perspective

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Abstract

(Arabic script: والأرض السماوات على الأمانة عرضنا إذا)

Health issue has taken a different dimension as to the paper work it was known for in the past. Records on paper flown from one hospital office to the other as they gave access to many eligible and non-eligible health workers to patients' secret health conditions. In the recent time, digital medicine has transformed health care reports via electronic health records, wearable devices, Artificial Intelligence, cloud-based medical systems and telemedicine. It is no doubt that the aforementioned health innovations have introduced efficacious improvement to the Sector: easiness compared to the task of carrying hard copies of patients, fast communication among laboratory technicians, medical doctors, scan centers, pharmaceutical departments etc. Yet, the innovation has, also, introduced serious concerns regarding protection of patients' privacy. Islam as the complete religion plays paramount importance to keeping secrets of others known to some professionals during the period and beyond when they attend to their customers or clients, without divulging such secrets to the third party. This paper, therefore addresses this as a challenge in health sector which it addresses from Islamic perspective as the papers centre its discussion on examining health data privacy, focusing on the principle of trust (Amānah) confidentiality, prevention of dishonouring humans against harms and maintain human dignity. In order to drive home the points, this research adopts analytical and doctrine, with oral interview conducted with a few health workers as buttressed with quotations from primary and secondary sources of Islam in conjunction with the citations from classical juristics' opinions. In addition, contemporary legal maxims and legal verdicts in addition to the stance of Nigeria's Constitution. Conceptual framework was based on objectives of Islamic Law (Shariah) particularly, preservation of life, intellect, property and dignity. The objective of the paper proves that Islamic law protects passionately, patients' personal medical secret information. It summarizes that leaving out patients or clients' health information without his or her consent is against Islamic law and tant amounts to offending Allah and the patients. At the end of the entire discussion, the paper draws out some recommendations.

Keywords: Health Information, Patients' Secrets, Medical Ethics, Islamic Law, Trust-Amānah.

INTRODUCTION

Practicing medical system such as: consultants, nurses, midwifery, receptionists, laboratory technicians, pharmacists, radiologists, health care etc. has been revolutionised based on the rapid development of technological advancement, shifting its pedigree from basic traditional pen-paper-file work to Electronic Health Records (EHRs), mobile health application, telemedicine, artificial intelligence-assisted diagnosis and cloud based medical databases. Jonathan affirms that health care systems have increasingly moved from paper-based medical files to electronic databases and digital record systems due to advancements in information technology. In the same opinion, World Health Organization admits that: Digital transformation in health care has accelerated the replacement of traditional paper records with electronic health information system. Despite the chains of merits the innovation accrue, however, it exposes patients' information to risks, namely: cyber-attacks, data commercialization, unauthorised access, identity theft and unethical surveillance.

Under Islamic law, it is unethical to expose, reveal, divulge or report another person's health secrets to any third person, so long the clients are not infants, whom the medical doctor may explain

the infant's health condition to his or her parent(s).

*"And do not spy or backbite each other" (Q 49:12)

In Nigeria, ethical health privacy protection is covered by a section of the Nigeria's Federal Republic of Nigeria's Constitution (1999, as amended) guarantees privacy. In the same tone, Islamic law also recognises and advocates for sanctity of private information and as well warns against divulging or disclosing a client or patient's top health secrets:

*"Whoever believes in Allah and the Last Day should speak good or remain silent. Whoever believes in Allah and the Last Day should honour his neighbour. Whoever believes in Allah and the Last Day should honour his guest."

The contextual analyses of the Hadith 6475/6018 denotes that, one who believes in Allah and the Day of Judgement should speak good things about another party, not to derogate, insult, make jest or ridicule another being; instead, remaining mute or silent is preferred to disclosing another person's secrets. Metaphorically speaking, a doctor or medical health worker's client or patient is guest. He therefore, has a duty bound on him to keep whatever the patient may have discussed with him or her.

CONCEPTUAL FRAMEWORK

Definition and Meaning of Health Data Privacy

An attempt to protect, preserve and keep the secrets of a client/patient's personal health issue or information only to the deserving health personnels is connoted to health data privacy. Jonathan asserts that confidentiality refers to the obligation of healthcare professionals to protect patients' personal health information from unauthorised disclosure. This reflects the importance of keeping the secrets or data privacy of any patient, away from any third party. Gavison, from her own perspective refers to health data privacy as information that concerns the individual's right to control the acquisition, uses or disclosure of her or her identifiable health data.

Medical information is very paramount, relevantly peculiar and remains part of every patient's secrets of life, in which when kept cryptically, the patient maintains his or her trust and confidentiality with health personnels who maintain the status quo; but in a situation, where such a secret is divulge to an undeserving third part, and without patient's consent, this is a betray scenario and this may put off such a patient and loses trust and confidence in the revealer of such secrets.

Conceptualization of the theme extends to not divulging the patient's treatment history, mental health records, biometric details, generic data, blood group, diagnosis, scan, x-ray results, and other private medical issues that may have arisen during the course of attending to the patient's health issues whether those on admission or otherwise. Where a third party, no matter the status or relations, access to such information to a third party is solely with the patient's full consent and while he or she is conscious, not during unconsciousness. World Health Organisation categorically states that confidentiality (privacy) in healthcare is fundamental to trust between patients and healthcare providers. The Prophetic Hadith states that:

*"Whoever conceals the fault of a Muslim, Allah will conceal his faults in this world and the Hereafter."

Islam is therefore, emphatically as it places a strong advocate on preservation of people's dignity, secrets, faults, confidentiality, sensitively personal information without revealing to others who are not eligible. Accordingly a report Umar bn al-Khattab once climbed over a wall and entered a house after suspecting wrongdoing inside. The occupants reminded him (Umar bn al-Khattab) that he had violated Islamic etiquette by spying and entering without permission. Umar acknowledge his mistake and withdrew. The verse therefore, condemns searching into people's private affairs without lawful justification.

Digital Medicine

In the past, all health-related records were maintained in hard copies with movement from one segment of the hospital to another. However, today, digital technologies have successfully, to a

large extent, replaced the old system of monitoring, diagnosing and keeping patients' records in general. Such electronics include: telemedicine platform, cloud-based health databases, Patient Data Management Systems (PDMS), Picture Archiving and Communication Systems (PACS), Electronic Health Record (EHR) systems, Electronic Medical Records (EMRs), Internet of Things (IoT) medical devices, e-prescription systems, virtual healthcare platform systems, smart sensors and biosensors, Health Information Systems (HIS) etc.

Ronquillo categorises the digital medicine which includes: wearable devices, telemedicine, mobile health, digitized health record platforms, patient portals and decision-support systems. World Health Organisation proved beyond doubt that the outbreak of COVID-19 significantly accelerated the adoption and popularity of digital medicine technologies across the world.

THEORETICAL FRAMEWORK

The Theoretical framework of this research is basically formed on Maqasid al-Shari'ah (Objectives of Islamic Law) particularly, protection of human dignity, privacy and honour under the caption Trust (Amānah), in relation to life and property. In this context, life is the patient while the patient's property refers to the privacy or confidentiality of the patient. It is imperative in health data privacy to keep secret as any disclosure of unauthorised health information may likely harm, devastate, put in shame, damage the reputation or reduce the personality of the patient. Simply put here, protecting jealously the patient's digital records (privacy) aligns or agrees with the objective of Shari'ah. Abu Hamid al-Ghazali argues that: patient's confidentiality is a legal and moral obligation in Islam; digital health systems must protect private medical information; unauthorised access to health records contradicts Islamic ethics (amanah), and cybersecurity measures serve the Shari'ah objectives of preventing harm. Allah says:

*(Arabic script: اللَّهُ إِن يَأْمُرْكُمْ اللَّهُ إِن يَأْمُرْكُمْ Q 4:58

"Indeed, We offered the trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed he was unjust and ignorant" Metaphorically, Allah uses the task that can be performed only by humans, that is, exercising trust (Amānah); having levied three inanimate objects (heavens, earth and mountains), despite that they are inhuman, they declined from accepting trust because of its mightiness, meanwhile, humans who have been given reasoning faculty, and actually know the repercussions of not keeping to trust, accepted to bear the trust, but at the end, fail to fulfil the promise, turn to being unjust and engage in mistrust. Islam then teaches every Muslim and by generalization, all humans to retain, maintain and keep strictly, any trust entrusted in our custody hence the decline of inanimate objects.

Privacy and Islamic Basis

Islam passionately guards against intrusion, spying and secretly consuming others' information for exposure, feat, insult and derogation. A number of Quranic verses protect personal privacy socially, religiously and economically, as a means of promoting Islamic ethical values of Muslims and non-muslims who care to emulate. Allah states:

Socially

*"O you who believe! Avoid much suspicion; indeed some suspicion is sin. And do not spy..."

The above verse establishes strong prohibition of intrusion into people's matters or affairs or trade on clients' privacy. Saying untrue things or revealing truthful privacy of others, or spying on their matters for self-consumption are all condemned in Q 49:12. In addition, family ties relation under socio-religious, restrict intrusion and spying into others' affairs: Allah explains:

*"O you who have believed, let those whom your right hands possess and those who have not yet reached puberty among you ask permission of you before entering at three times: before the dawn prayer, and when you put aside your clothing at noon, and after the night prayer. These are three times of privacy for you. Beyond these times, there is no blame upon you or upon them for entering without permission, because they continually circulate among you..."

The prohibition of those (children) who are of legal age (mature) be restricted from entering

into their parents' rooms, except with permission or consent before Subhi prayers, that specific time the dress wore, or cover cloth must have gone off one's body, exposing some privacy; also, having returned from work, office, trade etc when one is in the state of "undressing", and the final time refers to after Isha'i prayer when parents must have retired to bed, having taken off dresses.

Economic

Access to patients' accounts is accessible through the payment of hospital bill via ATM Automated Teller machine's details (ATM), bank account, hospital billing records, online wallet, business database etc. If used without permission, it falls under the prohibition of spying (tajassus). Intrusion, or unlawfully peeping into the financial information of the patients by the hospital financial staff, or by other patients during payment are all tantamount to breach of trust under Islamic law. Wahbah asserts that: Accessing or observing another person's confidential financial information without permission constitutes a breach of trust (Khiyānah) and a violation of the Islamic principle of amanah (trustworthiness), because financial privacy is among the protected rights recognised by Shari'ah.

Prophet Muhammad (P.B.U.H) said:

*"Whoever listens to the conversation of people while they dislike it, molten lead will be poured into his ears on the Day of Resurrection"

The Hadith emphasizes and supports the Islamic principles of respecting private information which includes economic matters.

Social-Economic Privacy

Economic, visa-a-vis social privacy as related to digital medical privacy is well discussed in Islamic law. Visits to some government and private hospitals revealed that decorum about social privacy was recorded; while a patient was with a medical consultant, with Tochukwu in a government hospital, dated 25th May, 2026 another patient dabbled in, and was asked to sit in the next room where Mustapha Shehu listen to all the conversations that went between the Doctor and Tochukwu. To a great extent, such was not a good standard as it was against medical practice, WHO's standards and ethical privacy in Islamic teachings. Allah says:

*"O you who believe! Do not enter houses other than your own until you seek permission and greet their inhabitants. That is better for you, so that you may be mindful."

The second patient, Mustapha Shehu ought to have asked for the doctor's permission, and where he failed to do so the doctor would have humbly ask him to stay out until as it is practically legislated in the chapter 24, verse 27, so as to safeguard the privacy, dignity and unlawful exposure of the other patient. Seeking permission before entry was legislated in Islam to safeguard privacy preserves dignity. An objective of Qur'anic command that requires permission before entering houses reflects on the protection of people's private affairs and secrets, including matters they dislike others to discover.

Digital Health Data privacy and Preservation of Human Dignity

Allah honours human beings generally irrespective of race, language, culture, religion or status. Allah says:

*"Indeed, We have honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created with (definite) preference".

When a third party interpolates or catches a glimpse of patients' privacy or secrets, divulged by medical practioners, it can devastate, or dishonour, or humiliate such patients as such may cause dejection, rejection, or oppression to his psychological being as that may cause him stigmatisation and inability to relate freely with others and that certainly is in opposition to the objective of Shari'ah under preservation of life (Hifz al-Nafs).

Furthermore to negative effect on preservation of life under Maqāsid al-Shari'ah is the

patients' intellect and psychological mental health (Hifz al-'Aql) which can be linked to discrimination about social status. Allah affirms the wrongness of discrimination in Q 49:13. He says:

"O mankind! Indeed, We created you from a male and a female and made you into peoples and tribes so that you may know one another. Indeed the most honourable of you in the sight of Allah is the most righteous of you. Indeed, Allah is All-Knowing, All-Aware"

To know one another as humans is objectively meant for exchange of goodness, idea, knowledge, wisdom, development, progressive, corrective measure, encourage others to be steadfast etc.; certainly not to bring down or reveal the others' privacy for molestation, jest, mockery or ridiculousness supremacy above others is only on righteousness and piety, not in adversity against others. The Prophet Said:

"An Arab has no superiority over a non-Arab, nor a non-Arab over an Arab; neither a white person over a black person, nor a black person over a white person, except by piety"

It can be analysed that the piety of a medical practitioner or otherwise is weak if he or she relates, divulges or reports the secrecy of the digital health report of a patient, to a third party, without the patient's legal or lawful consent.

Legal Implications of Divulging Patients' Privacy Breach of Trust (Amānah)

Confidential medical information is a trust (Amānah); divulging such information (of a patient), without lawful justification, authorisation or consent is an offence in Islamic law which is punishable by Allah, unless a strong repentance is put forward to Allah, and with a promise of not repeating such again. In Ilorin, a medical practitioner divulged the ill-health condition (HIV) of a female patient which led to the patient's mockery as she walked on the street by the third parties who got her medical privacy. An oral interview revealed this.

Stigmatisation

The case, as reported in this research, when Tochukwu was with a medical doctor and Mustapha came in and got the medical privacy of Tochukwu while sitting in the same room next to the doctor's office is an example of Stigmatisation. According to Tochukwu: "that he was not comfortable to express himself confidently because of the presence of Mustapha who was in the nearby room." This was related to her brother while they were at the pharmacy of the same hospital.

Psychological Trauma

Halimah Ibrahim in an interview, disclosed that her husband accompanied her to the Hospital but later divulge the recurrent surgical operations performed on her wife in attempts to bear a child via In vitro Fertilization (IVF); according to her "only for me to hear the process from my husband's friends." Jonathan argued that unauthorised disclosure of a patient's medical information by family members may cause emotional pain, embarrassment and breach of confidentiality.

Islamic and Constitutional Stance

Under Islamic law consent is paramount in any contractual dealings, where there is an offer, an acceptance is likelihood. Therefore, a contract between two parties must have yielded a set of agreements, be it oral or expressed, in Islamic marriage for example, the contract is sealed first between the bride and the groom. The Qur'an states:

"O you who believe! Do not consume one another's wealth unjustly, except by trade conducted by mutual consent"

Obviously, any consent divulged without lawful permission or, obtained through force, coercion, ambiguity, deception, frivolity, under Islamic law is void or invalid.

Constitutional Basis

Health data privacy is formed in S37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It states that:

*S 37: The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

In that Section, the keywords: privacy, citizens, correspondence, and telephone conversation have formed major part of the discussion in this research. By analysis, privacy in the Constitution represents the information between the medical practitioners and the patients, or between the patients and their families, friend or neighbours. Citizen represents the individual patient, homes may include the hospitals, clinics, diagnose centres or residents where the matters are discussed; and telephone conversations depict the verbalised words.

Therefore, S37 strongly supports the position of World Health Organisation (WHO), medical ethics and Islamic law on ethics of privacy. Other legal instruments that support keeping privacy of the health seekers are: Health Insurance portability Act (HIPAA), United States, 1996, Nigeria Data Protection Act, 2023, General Data Protection Regulation (GDPR), European Union, 2018 etc.

Civil Litigation against Breach of Privacy

Various legal actions await medical practitioners who willfully unlawfully disclose their patients' health information, including other professional sanctions, punishments under modern law and Islamic law.

Facing Professional Disciplinary Actions

Defaulters may face sanctions, such as: suspension of license, dismissal from employment, revocation of practicing license, and warning or reprimanding the defaulter. In Nigeria, the Medical and Dental Council of Nigeria may discipline practitioners for involving in any of the health related privacy issues.

Constitutionally, the affected patients may sue the defaulter who discloses his privacy and the decision of the court may include payment of damages where the disclosure leads to defamation of character or damages his reputation at his or her workplace, family or the society the patient lives.

Criminal Liability

Under the United States Health Insurance Portability and Accountability Act (HIPAA), the offence may attract:

*If it is for commercial advantage or malicious harm, it may lead to imprisonment.

*It may as well attract fines, ranging from \$100 to \$50,000 per violation which depends on the severity.

*Imprisonment up to ten years in serious cases involving malicious intent.

CONCLUSION

Electronics or digital medicine has become part of health system in Nigeria and elsewhere around the world. Of course, there are unmeasurable merits the innovation brings, yet its disadvantages cannot be over emphasised; these include: mistrust (Khiyānah), fraud, relay of privacy etc. The Islamic law: Qur'an and Hadith kick against the action divulging the patient's privacy as it is against some of the objectives of Islamic law.

RECOMMENDATIONS

Hospital staff, literates and illiterates among them, should be enlightened during the staff briefing on the eminence of keeping safe the patients' privacy.

Unauthorised persons should not be given access to the patients' ill-health information.

Seminars, symposia, and conferences should be organised by the Ministry of Health, in conjunction with both Islamic jurists or leaders, Christian leaders and technological officers on how to handle information of the patients.

Nigeria as a country, likewise other African countries, should see the need to emulate the best international practice relations between the hospital practitioners and patients; and patients and their relations.

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