



Jackson, Etti & Edu

COMMUNIQUE ISSUED FOLLOWING THE
WEBINAR TITLED

**“HEALTHTECH, NDPR &
PATIENTS’ RIGHTS -
ADDRESSING PROBLEMS AND
OPPORTUNITIES”**

ORGANIZED BY
JACKSON, ETTI & EDU

ON THE 9TH OF JUNE 2022



1.0 INTRODUCTION

The one-day Webinar titled “HealthTech, NDPR & Patients’ Rights – Addressing Problems and Opportunities” was put together by the Health & Pharmaceutical Sector and the Data Protection Unit of Jackson, Etti & Edu, a leading Nigerian law firm distinguished for its sector focus and expertise. The firm is also a certified Data Protection Compliance Organization, licensed by the National Information Technology Development Agency (NITDA), now managed by the Nigerian Data Protection Bureau (NDPB).

The event assembled a panel of distinguished Panelists, stakeholders, and leaders in the healthcare industry to discuss the NDPR and its implications for healthcare professionals. The aim of the webinar was to facilitate an in-depth conversation and analysis of the importance of compliance with the NDPR vis-à-vis the protection of Patient’s rights in an era where the use of technology has become important in the delivery of healthcare services.

The speakers at the event included Dr. Vincent Olatunji (National Commissioner, NDPB); (represented by Dr Babatude Bamgboye); Ms. Florence Abebe (Chief Legal Officer, FCCPC) representing Mr. Babatunde Irukera (Executive Vice Chairman, FCCPC); Dr. Ferdinand Umelo (Medical Director, Cedarcrest Hospital) representing Dr. Felix Ogedegbe (CEO, Cedarcrest Hospital); Ms. Ifeoluwa Olokode (Head, Public Health & Data Partnerships, Helium Health); Mr. Victor Benjamin (Co-Founder & Chief Operating Officer, Remedial Health); Mrs. Ngozi Aderibigbe (Partner and Head of Data Protection Practice, Jackson, Etti & Edu); and Mrs. Chinyere Okorochoa (Partner and Head of the Health & Pharmaceutical Sector, Jackson, Etti & Edu).

The webinar was moderated by Mr. Ifeanyi E. Okonkwo (Senior Associate, Jackson, Etti & Edu).

The event was divided into four main parts: an Opening Address delivered by Mrs. Chinyere Okorochoa, the Panel session which featured in-depth discussions on the topic, a Question & Answer session with participants in the webinar, and a closing remark delivered by Mrs. Chinyere Okorochoa.

2.0 OPENING ADDRESS

Mrs. Chinyere Okorochoa welcomed panelists and attendees to the webinar. She commented on Nigeria's limited access to healthcare and how health technology has come to the rescue, noting, however, that important legal considerations, such as data privacy issues, frequently arise from the implementation of health technology. She indicated that discussions would center on the Nigeria Data Protection Regulation (NDPR) and the FCCPC's Patients' Bill of Rights (PBoR), considering the rights of patients, how their data is secured, and the necessity for continuing compliance by healthcare providers, given the sensitivity of health data.

3.0 KEY TAKEAWAYS FROM THE PANEL SESSION

1. The growing importance of data protection in the Healthcare Industry:

Prior to the establishment of the PBoR and the NDPR, it was normal for clinicians to register patients' consent prior to major treatments such as surgery, but consent was seldom recorded outside of that context. With the advent of the PBoR and increased levels of awareness about the significance of documenting consent even for simple procedures, things have begun to change. These factors, together with the high level of litigation in the healthcare sector, have made practitioners more cautious in their documentation of consent during patient care. The PBoR and NDPR are excellent; but news about them must spread to ensure that more patients and practitioners are aware of the regulations. [Dr. Ferdinand]

2. The importance of the PBoR:

The PBoR was created after significant collaboration with industry stakeholders. The Bill was created as a standard-setting instrument for both consumers and health care practitioners, with the goal of ensuring that people are aware of and aggressive about their rights. The PBoR is essentially an amalgamation of different rights that already existed under the Constitution and other legislation, with the goal of restoring and increasing consumer trust in the health sector. The Bill is the first stage in the development of a standard health bill aimed at assuring comprehensive and appropriate protection for patients as well as the enhancement of the Nigerian health care system. [Ms. Abebe]

3. The various rights of the data subjects in relation to healthcare:

This includes the right to legitimate data processing based on informed consent or some other legal basis, the right to data accuracy, the right to care from healthcare providers, the right to data confidentiality, and the duty of healthcare providers to have a comprehensive privacy policy outlining, among other things, the purpose(s) for which data is collected and used. Some of these rights predated the NDPR, such as the case of *MDPDT v Okonkwo*, which advocated for a patient's right to privacy, the steps a medical practitioner should follow before deciding on a course of treatment, and the patient's right to decline it. [Mr. Bamgboye]

4. The impact of health-tech in providing support to the healthcare industry:

Health-tech has substantially increased operational efficiency in the healthcare industry and has aided in the battle against counterfeit and substandard medicines by providing a means of validating drug authenticity, which has saved countless lives. One such example is how Remedial Health is digitizing pharmaceutical procurement, enabling more access to high-quality healthcare treatments. [Mr. Benjamin]

5. The right of patients to access their health data:

There is a clear relationship between higher quality standards and customer sophistication; sophistication is what drives the need for a specific degree of service quality. The PBOR is primarily aimed to increase patient sophistication by codifying patients' rights and their right to access their health information. The provisions of the NDPR have strengthened this. It would thus be surprising for medical practitioners to claim ignorance of their need to make patient health data available upon request. [Ms. Abebe]

6. Data privacy by design and the Healthcare Industry:

Privacy by design is a philosophy that considers privacy as a preventative approach. It entails complying with the NDPR and the PBOR, thinking about ways to prevent privacy breaches, predicting difficulties that may develop, training team members, and putting systems in place to guarantee that the privacy of information gathered, processed, and stored is preserved by default. It entails acting rather than reacting. It is particularly crucial in e-health since the sector predominantly involves the use of software to gather, process, and distribute personal data; as a result, privacy principles must be integrated and addressed in the development of their software. [Mrs. Aderibigbe]

-The belief that after data is transferred to or shared with a third party, liability ceases in respect of the data in the third party's custody. Except transfer is expressly authorized by the patient, responsibility subsists for whatever happens to the data. Therefore, before data is transferred, healthcare providers must, in line with the NDPR:

(1) satisfy themselves that the recipient has sufficient structure in place to comply with the NDPR, and that they indeed comply and do not have a history of privacy breaches; and

(2) ensure that they have a data protection agreement with the receiving entity. She strongly advised consultation of legal experts in the preparation of such agreement.

7. The role of health-tech & telemedicine in filling Healthcare gap in Nigeria:

Health-tech can bridge the gap in the healthcare industry by extending the reach of physicians and other health professionals to remote regions, enabling greater access to medical treatment. However, technology cannot address the problem on its own. While it greatly improves the situation, it must be accompanied with policy and thought, as well as education and recruitment of more health staff. [Ms. Olokode]

8. How healthcare providers and health-tech companies fall within the radar of the NDPR:

Because they are data controllers, healthcare providers and health-tech companies are subject to the NDPR. Beyond the scope of the NDPR, accountability is also required; accordingly, steps are being implemented to ensure that Nigeria meets up with the international standards for data protection. To do this, healthcare practitioners and health-tech businesses, as data controllers, must respect privacy rights holistically, rather than limiting themselves to the code of medical ethics and the PBoR.

[Mr. Bamgboye]

9. Practical steps to take when a patient's right is breached:

Patients can express their discontent to the facility, and if the outcome is unsatisfactory, the patient can escalate the complaint to a sector-specific regulator, such as the Medical and Dental Council, or any other regulator, including the FCCPC.

[Ms. Abebe]

10. Deadline for submission of data protection audit for 2022:

June 30, 2022, remains the deadline for the filing of NDPR compliance audits, and that if the date would be shifted, there would be communication in that regard.

[Mr. Bamgboye]

CLOSING REMARKS

In closing, Mrs. Chinyere Okorochoa stressed the importance for healthcare providers, practitioners, and stakeholders to constantly avert their minds to the two regulations spotlighted during the webinar, because the penalties for non-compliance are very steep to a business. She strongly suggested that legal counsel be sought and obtained well in advance of the imposition of sanctions or the initiation of legal proceedings. Finally, she thanked the attendees and speakers for their participation and efforts.

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