# UNDERSTANDING THE LEGAL AND ETHICAL ISSUES IN THE PRACTICE OF TELEMEDICINE IN NIGERIA*

**Abstract**

*Telemedicine is the delivery of health care services at a distance using electronic means for ailment diagnosis, prevention and treatment of illnesses. Telemedicine is a fast-evolving service to provide increased access to high- quality healthcare that is efficient and cost-effective, especially amid the current COVID-19 pandemic and other possible pandemics in the future. However, in spite of all of the promises and health communication benefits that telemedicine is capable of delivering, it also creates serious legal and ethical issues that obstruct or threaten its growth and implementation in various ways. Thus, this article employs a doctrinal approach for this research, which uses the primary and secondary sources of law in highlighting telemedicine practices, legislation, and implementation in Nigeria. The paper highlights the legal and ethical issues that may arise in the practice of telemedicine in Nigeria. These include the health professional's obligations and future liability, the obligation to protect the security and privacy of medical information, and the jurisdictional issues that come with cross-border services. The Paper finds that the inadequacy of the legal framework discourages many medical practitioners and healthcare providers from taking part in telemedicine practice due to the fear of medical malpractice liability. The Paper also finds that the laws that partly regulate telemedicine activities in Nigeria do not answer the ethical and legal issues that spring from the practice of telemedicine. The paper concludes with a recommendation for the enactment of a suitable regulatory framework that provides certainty to all stakeholders involved in this mode of healthcare delivery.*

**Keywords**: Telemedicine, Law, Ethics, Nigeria

## 1. Introduction

The term health care system refers to a country's system of delivering services for the prevention and treatment of diseases. Health care systems are now changing due to the dynamic nature of technological and scientific medical practices and due to the advancement in medical technology the cost of treatments becomes higher.[1] Lots of health care providers, especially hospitals cannot manage to pay for high-cost equipment to take care of diseases and wounds. Some complex kind of treatments like bypass surgery of heart, surgeries, trauma care and other complex procedures need expert medical teams including equipment and facilities. Such resources are only available at hospitals and surgical centers with expert doctors. Therefore, people living in rural areas need to travel huge distances to access more costly and complex levels of care.[2] Telemedicine is the mechanism that allows health care professionals, use technology in the assessment and management of healthcare services. The challenges posed by distance, poor economic status and other inconveniences are ameliorable through telemedical approach to healthcare provision because it facilitates medical information sharing from one distant point to another between practitioners so as to treat and improve a patient's health.[3] According to American Telemedicine Association, telemedicine is the future of medicine. The Government has a key role to play in the successful implementation of telemedicine in Nigeria. This obligation arises from the existing laws regulating health matters. It is no news that telemedicine opens a giant door to a variety of medical liability risks, but it is necessary to note that telemedicine raises a lot of ethical and legal issues and most healthcare providers are troubled by medical liabilities and risk management challenges on a daily basis. Thus, this paper analyses the ethical and medico legal implications of telemedicine and recommends solutions to the problems.

## 2. Conceptual Clarification

### Telemedicine

There are many definitions of telemedicine. Telemedicine is an emerging medical field with the potential to revolutionize healthcare delivery. Telemedicine became prominent in the early 1990s, and its definition extends

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[1] N Eriotis, D Vasilio & V Zisis. The Development of Telemedicine Projects by Private Health Institutions in Greece; Shareholder's Reaction and Best Financing Methods. *European Journal of Economics, Finance and Administrative Sciences,* Issue 11 (2008).

[2] MFA Rasid & B Woodward, 'Bluetooth telemedicine processor for multichannel biomedical signal transmission via mobile cellular networks', *IEEE Transactions on Information Technologies in Biomedicine*, (2005) 9(1), 35-43.

[3] WU Brian. What are the benefits and advantages of telemedicine? Healthline Newsletter. Available from: https://www.healthline.com/health/telemedicin e-benefits-and-advantages> Accessed December 15, 2022.

far beyond health. It is defined as 'healthcare carried out at a distance.'[4] It is also defined as: 'using modern information technology, especially two-way interactive audio/video communications, computers, and telemetry, to deliver health services to remote patients and to facilitate information exchange between primary care physicians and distances from each other'. According to the World Health Organization, telemedicine is: 'The delivery of healthcare services, where distance is a critical factor, by all healthcare professionals using information and communication technologies for the exchange of valid information for the diagnosis, treatment and prevention of disease and injuries, research, and evaluation, and for the continuing education of healthcare providers, all in the interests of advancing the health of individuals and their communities'.[5] Telemedicine is essentially divided into the following categories:

**Store-and-Forward Telemedicine**: This refers to the electronic transmission of a patients' medical information, such as laboratory report to a practitioner, usually a specialist, who uses the information to properly evaluate the case or render a service outside of a real-time or live interaction.[6]

**Tele-Monitoring:** This is the continuous or non-continuous monitoring process that allows a healthcare professional to remotely interpret the data necessary for a patient's medical follow-up, and if necessary, make decisions regarding the patient's state of health.[7]

**Real-Time Telemedicine**: Also referred to as interactive services, involves the provision of immediate advice to patients who require medical attention. There are several different mediums utilized for this purpose, including phone, online and home visits.

In the light of the above, it is clear that the introduction of technology to the Nigerian health care sector, has greatly aided the sector's growth by ensuring the ease of access to healthcare, lowering the cost of receiving healthcare and improving health care delivery services. However, the writer contends that the practice of telemedicine in Nigeria has raised lots of ethical and legal issues and the absence of a legal framework that regulates telemedicine represents a major challenge to its widespread adoption as Medical Practitioners have refused to practice same since there is no law to protect them in case ethical and legal issues arises.

## 3. Legal and Ethical Issues in the Practice of Telemedicine in Nigeria

### Ethical Issues

#### Doctor-Patient Relationship

In cases where the patient has met face-to-face with the physician prior to a teleconsultation, it is a cinch to determine when the doctor-patient relationship is established. In *Barnett v Chelsea & Kensington Hospital*[8], the court affirmed that the doctor-patient relationship is formed as soon as the patient presents himself for treatment in the hospital. However, determining when this duty is established within telemedicine context is not a five-finger exercise seeing as in robotic surgery for instance various professionals are involved. The American Medical Association believes that a valid doctor-patient relationship is established where there has been a face-to-face interaction before the provision of telemedicine services.[9] However, the Supreme Court of Ohio upheld that a physician patient relationship exists where the former undertakes, contracts or assumes the obligation regardless of whether there was direct or indirect contact with the patient.[10] Following this logic, a doctor-patient relationship comes into being where the tele doctor contracts with the patient or has taken steps to treat the patient via a virtual visit. In *Day v Harkins Munoz*[11], the court affirmed that where no prior relationship

[4] A Darkins & others, Telemedicine and Telehealth: Principles, Policies, Performances and Pitfalls (Springer Publishing Company 2000) 2

[5] World Health Organization (ed), Telemedicine: Opportunities and Developments in Member States: Report on the Second Global Survey on EHealth (World Health Organization 2010) 10

[6] CCHP, 'Medicaid & Medicare: Store-And-Forward' < https://www.cchpca.org/topic/store-and-forward/> accessed February 19 2023.

[7]Science Direct, 'The Human challenge of telemedicine: Tele-monitoring (2019) < https://www.sciencedirect.com/topics/nursing-and-health-professions/telemonitoring> accessed February 19 2023.

[8] [19691 1 QB 428

[9]L Barhum, 'What to Know About Telehealth for Arthritis' (Verywell Health, 9 April 2021) Available at: https://www.verywellhealth.com/telehealth-for-arthritis-5116821 accessed 14 April 2023

[10]M Rubinsky, 'Ohio Supreme Court Expands the Physician-Patient Relationship' https://www.law.uh.edu/healthlaw/perspectives/MedicalProfessionals/020715Ohio.html> accessed 14 April 2023

[11] 961 S.W.2d 278.

exists, the doctor must take actions to treat the patient. In *Miller v Sullivan*[12], the court upheld that the relationship is created when professional services are rendered and assented for purposes of medical treatment. Generally, when the consulting physician contacts directly with the physician and no specific patient is identified, there is no physician patient relationship established. In *St. John v Pope*[13], the bone of contention was whether an on-call physician consulted by an emergency room physician over the telephone formed a physician patient relationship by expressing his opinion that the patient could be transferred to another hospital. The court held that there was no physician patient relationship, and that the fact that a physician does not deal directly with a patient is not conclusive proof that there is no physician patient relationship. In *Lopez v Aziz*[14], where a consulting obstetrician spoke to the patient's regular physician by telephone, the Texas Court of Appeal held that the relationship did not exist. The court emphasized that the patient was never contacted or examined by the consultant. In another American case, *Wheeler v Yettie Kersting Memorial Hospital*[15], an on-call physician received information concerning the status of a woman in labour via the telephone. Based on the information received, the on-call physician determined that the patient could be transported to another facility. While en route the baby died. According to the court the relationship existed because he evaluated the status of the patient's labor and gave approval for transfer. Similarly, in *Bienz v Central Suffolk Hospital*[16], the court upheld that a physician who provided advice to a patient over the telephone on which the patient relied on, could constitute a doctor-patient relationship. Extrapolating this line of case law to telemedicine, the patient must not only prove that the physician gave advice, but also establish that he relied on the medical advice given.[17]

From the cases examined above, the issue of doctor-patient relationship is a question of fact and not a hard and fast rule and would be determined based on the circumstances of each case. It is recommended that the physician first of all takes necessary steps to verify the patient's identity before prescribing medication or furnishing medical services.[18] Additionally the physician has a duty to obtain as much information as possible before making a diagnosis and proceeding with treatment. Ultimately, the physician is obliged to maintain the trust of the patient, respect the patient's autonomy, exercise professional autonomy, and participate in follow up procedures where necessary.

**Encroachment on Privacy and Confidentiality**

There is a general common law duty of confidentiality imposed on all medical professionals. The rationale behind this duty of confidence is to protect the patient's information from unauthorized access and to encourage patients to divulge necessary information. The Hippocratic Oath states 'whatever in connection with my professional practice…I see or hear in the life of men which ought not to be spoke abroad, I will not divulge, as reckoning that all such should be kept secret'. In *Hunter* v *Mann*[19], the court held that a doctor is under a duty not to disclose patient information he has gained in his professional capacity, unless the patient's consent has been obtained. Under the Nigerian law, section 44 of the Code of Medical Ethics provides that privileged information received by a practitioner must in no way be divulged by him to a third party. It permits disclosure only where the patient has given consent. This duty continues even after the patient's death. Furthermore, section 27 of the National Health Act allows for a healthcare provider to disclose patient information to another party or healthcare provider as is necessary for any legislative purpose, within the scope of his/her duties. Such personal information can be divulged where statute or the court requires or public interest as seen in *W v Edgell*.[20] The inexorable question that arises is how to ensure the confidentiality of a patient's health data with the use of telemedicine. The practice of telemedicine poses a risk to privacy and confidentiality because it involves a wider range of third parties. For example, telemedicine apps or websites can share sensitive data such as location, contacts, with third parties. On the same note, non-medical staff (i.e Information technology members, administrative support staff, customer service staff etc) are usually involved in the healthcare delivery process. This increases the risk of unauthorized access and unlawful divulging of health data. Medical devices

[12] 625 N.Y.S.2d 102.
[13] 901 S.W.2d 420 (Tex. 1995).
[14] 852 S.W.2d 303 (Tex. App. 1993).
[15] 866 S.W.2d 32 (Tex. App. 1993).
[16] 557 N.Y.S.2d 139 (App. Div. 1990).
[17] *Clanton v Von Haam* 177 Ga. App. 694, 340 S.E. 2d 627 1986.
[18] Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine', Vermont Board of Medical Practice 2015 Available at:.https://www.healthvermont.gov/sites/default/files/documents/2016/12/BMP_Policies_Vermont%20Telemedicine%20Policy_05062015%20.pdf> accessed 15 April 2023
[19] [1974] QB 767 at 772.
[20] [1990] 1 ALL ER 835; In this case, W had been detained in a hospital for mental illness. His application for release was turned down. Dr Edgell, was asked by W's legal counsel to provide an assessment indicating that W was not an immediate danger to the public. However, Dr Edgell was of the opinion that W was still dangerous. Therefore, he sent his assessment to the hospital to which W sued for breach of confidence. The Court of Appeal held that the breach was justified.

are sometimes given to patients to monitor their health, however, some of these devices are implanted with sensors that can pick up interactions with family, detect activities or pickup information which the patient would rather keep private.[21] Also, by clicking on a website and scrolling through for information on diseases, hospitals, consultations etc the user's information can be tracked and stored for other purposes.[22] In 2017, a class-action lawsuit was filed against MDLive a telemedicine app provider.[23] The suit alleged that MDLive takes screenshots of its patient's sensitive health information on its app and sends to a third party, Testfairly, which provides application checking. The plaintiff claimed that this was done without the patient's consent, and that MDLive failed to adequately secure access to the screenshots. MDLive, pointed out there was no breach and consumers are informed in its privacy policy that personal information may be disclosed to its contracted third parties. Telemedicine providers must have security measures to protect data. Such measures include data encryption technologies, setting up an organizational policy for handling confidential data, setting up firewalls, protection of emailing systems etc.[24] There must also be proper protocols put in place to verify the identity of the patient and the provider.

**Informed Consent and Teleconsent**

The cornerstone principle of informed consent is that every human being off adult years has the right to choose what will be done to his body.[25] Informed consent in telemedicine is indispensable and failure to obtain patient's consent may amount to a tort or a crime. Consent entails telling the patient of the risks associated with his/her privacy and the arrangements in place to protect it.[26] In the same light, consent should be obtained before processing of patients data, transmission, treatment, monitoring and transfer to third parties.[27] According to the recommendation of the American and French Medical Associations on the responsibilities and ethics arising from the practice of telemedicine, presented to the World Medical Association in 1997, a physician seeking the expert opinion of a distant physician should inform the patient and obtain consent.[28] On the same note, the Finnish Medical Association recommend that patient data can only be transmitted to another health professional with the informed consent of the patient and subject to the extent of his/her approval.[29] Informed consent in telemedicine sometimes takes the form of 'teleconsent'. It is a novel approach to obtaining informed consent. It replaces the traditional method of pen to paper signature with a teleconsent document (created with HTML5) and e-signature.[30] The teleconsent document is synchronous in nature as such all actions are updated real-time. A typical teleconsent document contains, checkboxes, text data for the patient. When the patient has completed the document, the program checks to ensure all data fields have been filled out. There is a dearth of literature and case laws in the area of teleconsent.

**Legal Issues**

**Responsibility, Liability and Good Practice**

Once the doctor-patient relationship is established it is the duty of the doctor to exercise reasonable care and due diligence. It is the duty of care that establishes the responsibility of the physician, patient and other healthcare providers involved. Typically, a breach of duty of care occurs where a medical practitioner has acted below the acceptable standard of practice. For cross border tele practice, there is no international standard of care that governs telemedicine services. In determining the applicable standard of care, the principles established in Bolitho[31] and Bolam's[32] case would be applied. Thus, this means the medical practitioner would be judged by

[21] 'Providers and Business Leaders Beware: Telemedicine Security & Privacy Risks' (Virtru, 12 November 2020) Available at: https://www.virtru.com/blog/telemedicine-privacy-security/> accessed 11th April 2023

[22] S Callens & D Crolla et al, E-Health and the Law (Kluwer Law International, 2003) 41.

[23] J Comstock, 'MDLive faces class action suit over alleged data privacy breach' (Mobihealthnews, 25 April 2017) Available at: https://www.mobihealthnews.com/content/mdlive-faces-class-action-suit-over-alleged-data-privacy- breach> Accessed 13 April 2023.

[24] NDPR 2019, Part 2.6

[25] *Schloendorff v Society of N.Y. Hospital* 105 N.E.92,93 (N.Y.1914).

[26] G Kelly & B McKenzie, 'Security, privacy, and confidentiality issues on the Internet' JMIR 2002 Oct-Dec 4920 e12 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1761937/ > accessed 15 April 2023.

[27] N Ateriya et al, 'Telemedicine and virtual consultation: The Indian perspective' *The National Medical Journal of India* Vol 31, No 4 2018. Available at: http://www.nmji.in/temp/NatlMedJIndia314215-3282027_090700.pdf> accessed 15 April 2023.

[28] World Medical Assembly, WMA statement on accountability, responsibilities and ethical practice of telemedicine 1999 Available at: http://www.wma.net/e/press/1999_5.htm> accessed 16 April 2023.

[29] Finnish Medical Association, Ethical Guidelines in Telemedicine 1997 Available at: http://www.laakariliitto.fi/e/ethics/telemed.html> accessed 16 April 2023.

[30] M Brandon and others, 'Teleconsent: A Novel Approach to Obtain Informed Consent for Research' (ScienceDirect) Available at: https://doi.org/10.1016/j.conctc.2016.03.002> accessed 16 April 2023.

[31] Bolitho v City and Hackney HA [1996] 4 All ER 771.

whether he has acted in accordance with a standard of practice recognized by a responsible medical body, and such practice must be capable of withstanding logical analysis. However, this highlights the problem of what medical opinion, considering the fact that telemedicine is still a developing area. Generally, it is expected that the standard of care is not below what is expected in the traditional setting. Other areas of uncertainty are the burden of liability in the case of a physician supervising another physician, and in a circumstance where there are multiple physicians, would they be independently, jointly or severally liable.

**Liability of a Physician supervising another Physician through Telemedicine**

The teleconsultant has a duty to advice the referring physician or patient and to intervene in the patient's treatment when necessary.[33] The referring physician is not obligated to strictly follow the advice given by the consultant but may take it into consideration in choosing another diagnosis or treatment.[34] He is also not liable for the negligent acts of the teleconsultant nor is the teleconsultant responsible for the errors of the physician. The consultant bears the liability of his or her owns or failure to exercise reasonable care in supervising the patient.[35] The same applies to a physician who undertakes to offer assistance in diagnosing or treating a patient in a telemedicine service. Even where a conventional physician-patient relationship does not exist, the court held in *Greenberg v. Perkins*[36] that a physician who undertakes to test a non-patient owes an obligation to perform the exam in a professional manner. If a physician's actions cause harm to a patient, or if a physician fails to act when he or she has a duty to act, malfeasance has occurred and the physician may be held liable for damages.[37] In *Walters v Rinkers*[38] a diagnostician engaged by a patient's treating physician examined the patient's thigh to which he ruled out malignancy. Subsequently, the patient was diagnosed with cancer. The diagnostician argued that he never examined the patient and the patient did not personally seek his assistance. The court rejected this argument holding that the patient gave implied consent by virtue of his physician contracting on his behalf. In any telemedicine meeting, it is important that the referring physician confirms the identity and qualifications of the teleconsultant. Additionally, the referring physician must also define the responsibility of the teleconsultant, any ambiguity in the delineation of responsibility could make the referring physician vicariously liable.[39] By extension, there is the concern that computer images may be of poor quality which leads to the physician giving a misdiagnosis. As such technology providers may be liable for inconsistencies in images that lead to misdiagnosis and should ensure to use high quality technology and diagnostic devices.

**Would different physicians involved in a telemedicine interaction be independently, jointly or severally liable?**

When people use telecommunications to get healthcare from multiple providers, it raises the question of who is responsible if malpractice happens. In most cases, where one physician's activities are clearly discernable from those of the other included doctors, and the harm is distinct, a doctor will be held liable for the harm caused by his or her activities.[40] In similar vein, when the independent acts of various physicians augment one another and contribute to an indivisible injury, the physicians are considered joint tortfeasors, which means they may be held jointly and severally liable for any harm to the patient caused by any of the physicians' advice. If it cannot be determined which physician is to blame for a patient's injury, a court may hold all physicians involved in the patient's care jointly and severally liable.[41] In *Morrill v. Komasinski*[42], where the family physician and second physician involved failed to diagnose a hairline fracture that needed treatment, the Wisconsin held they were jointly liable.

**Licensing**

Professional licensing in telemedicine is often a barrier to international telemedicine. The Medical and Dental Practitioners Act does not provide for the requirement of licensing for telemedicine providers or tele doctors. Countries, like Singapore, United states, require that healthcare providers who intend to proffer telemedicine

[32]*Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.

[33] P F Granade, 'Medical Malpractice Issues Related to the use of Telemedicine- An Analysis of the Ways in which Telecommunications affect the Principles of Medical Malpractice' *North Dakota Law Review* Volume 73 Number 1 Available at: https://core.ac.uk/download/pdf/322510508.pdf accessed 18 April 2023

[34]*Ibid*

[35] *Baker v Story* 621 S.W.2d 639 (Tex. App. 1981)

[36] 845 P.2d 530 (Colo. 1993)

[37]*Ibid*

[38] 520 N.E.2d 468 (Ind. Ct. App. 1988)

[39]J Kearney, 'Telemedicine: Ringing in a New Era of Health Care' https://scholarship.law.edu/cgi/viewcontent.cgi?article=1126&context=commlaw> accessed 19 April 2021.

[40]L D Fleisher, J C Dechene, *Telemedicine and E-Health Law*, Law Journal Press, 2004) 60.

[41]*Ravo v. Rogatnick,* 514 N.E.2d 1104, 1109 (N.Y. 1987).

[42] 41 N.W.2d 620 (Wis.1950).

services be licensed with the relevant authority. The issue of licensing arises where a Nigerian doctor for example treats a patient via telemedicine in a foreign country where he is not licensed. This issue is well illustrated in the case of *Hagesworth v Superior Court of California*.[43] A Californian resident Mckay, initiated an online purchase of a drug from a website. This was done by submitting a questionnaire which was forwarded to a Florida based company. The company asked Dr Hageseth, a Colorado based physician, to assess Mckay's request for the drug to which he issued a prescription. While under the influence of alcohol, Mckay took an overdose of the drug and committed suicide. Dr Hageseth was charged with the felony offence of practicing medicine in California without a licence. Hageseth presented three arguments, all of which the court rejected. First, Hageseth claimed he was unaware of the illegality of his conduct. In response, the court noted that this approach is not new and that a licensed medical practitioner ought to be aware. Second, Hageseth argued that claiming jurisdiction will not halter the prescription of medication by out-of-state physicians. The court pointed out that complaints about unlawful prescription of drugs were actively being investigated. Lastly, Hageseth averred that claiming jurisdiction will stymie the practice of telemedicine, to which the court did not agree.

**Data Protection**

According to Reuters, health data has become ten times more desirable than financial data.[44] While telemedicine offers innumerable benefits, it is vulnerable to cyberattacks. The primary law regulating data protection is the Nigerian Data Protection Regulation 2019 (NDPR). Anyone dealing with personal data of a data subject owes a duty of care to the data subject. Upon obtaining consent, the data controller is permitted to process the data for historical research, scientific research, archiving or statistical purposes for public interest.[45] However, personal data can only be stored for the period which it is reasonably needed. The regulation further sets out certain conditions that must be fulfilled before the processing of personal data can take place. It is lawful if any of the following applies - the data subject has given consent, processing is needed for compliance with a legal obligation, to protect interests of the data subject, to perform an obligation in the public interest, and to perform a contract which the data subject is a party to.[46] The purpose for which consent is obtained must be made known to the data subject, and for the consent to be valid, it must be without fraud, coercion, or undue influence.[47] Another vital provision in the NDPR is the provision of rights of data subject.

**Conflict of Laws in Telemedicine**

The rules regarding jurisdiction are clear if both the patient and medical practitioner are residing in Nigeria, and the telemedicine service was performed in Nigeria. In such circumstance, Nigerian law would apply. The conundrum exists where the physician is in a different jurisdiction from the patient, which raises the question of what law would apply? Is jurisdiction based on where the patient resides or where the doctor is located? No special law exists yet that addresses jurisdictional issues. This leaves courts to apply the traditional principles and methods. Various solutions have been proposed to this dilemma, one of which is that the country of the physician has jurisdiction over the matter, while the patient is regarded as being electronically transported to the jurisdiction of the physician.[48]In the United states, the test in determining personal jurisdiction is the minimum contact test.[49] The Nigerian courts have also adopted the minimum contact test in determining personal jurisdiction as seen in *Esso Exploration & Prod. Nig Ltd v Nigerian National Petroleum Corp*[50]. In this case the court buttressed that the minimum contact test requires that the defendant must have purposefully connected himself to the forum state. It is noteworthy that the courts are enjoined to ensure that the jurisdiction which the matter is brought is the most convenient (forum non conveniens) and for the end of justice.[51] In *Bradley v Mayo Foundation*[52], the plaintiff, a resident of Kentucky, sued Mayo clinic, a clinic based in Minnesota. The plaintiff argued that Kentucky had jurisdiction because one Mayo subsidiaries were in Kentucky, several telephone contacts between the plaintiff and Mayo clinic, two Mayo websites were accessible to Kentucky residents and that Mayo practiced telemedicine throughout the country. The case was dismissed as the court held that the calls and letters exchanged were inadequate to establish jurisdiction over the defendant. The court concluded that

[43] (2007) 150 Cal.App.4th 1399.
[44] C Hummer & J Finkle, 'Your medical record is worth more to hackers than your credit card' (Reuters, 24 September 2021) Available at: https://www.reuters.com/article/cybersecurity-hospitals/your-medical-record-is-worth- more-to-hackers-than-your-credit-card-idUSL2N0RN13320140924 > accessed 18 April 2023.
[45] NDPR 2019, Part 2.1.
[46] *Ibid*
[47] *Ibid*
[48] A Le Roux, 'Telemedicine: a South African legal perspective' *Journal of South African Law* 2008 (1) : 99-114 Available at: https://scholar.sun.ac.za/handle/10019.1/104493> accessed 17 April 2023.
[49] International shoe v Washington 326 US 310 (1945); Asahi Metal Industry Co v Superior Court 480 US 102 (1987)
[50] 397 F. Supp. 3d 323 (S.D.N.Y. 2019).
[51] *Broad Bank of Nigeria Ltd v Alhaju Olayiwola & Sons Ltd 7 Ors* (S.C. 288/2002) [2005] NGSC 19 (14 January 2005).
[52] No. 97-204, 1999 U.S. Dist. LEXIS 17505 (E.D. Ky. Aug. 10, 1999)

there was no specific evidence that telemedicine services were provided in Kentucky and that the telephone calls exchanged are part of the routine functions of medical practitioners. The courts later expanded this principle stating that the more the defendant interaction with the forum state, the more minimum contact is established.[53] Hence, this means the plaintiff in such scenario must go beyond establishing the virtual presence of the defendant in the forum state. The defendant must have voluntary directed his activities to the forum state or be substantially connected with the forum state. In foreign jurisdictions, the courts normally apply the principle of lex loci delicti in determining the choice of law. According to this principle, a court can decide an injured party's substantive rights based on the law of the state where the harm/damage occurred.[54] The location of a wrong is the place in which the last occurrence required to hold an actor responsible for an alleged tort occurs. The writers opined that it is best practice that Healthcare provider should provide for forum selection and choice of law clauses in international telemedicine contracts to escape liability in a foreign nation or under foreign law.

**4. Conclusion and Recommendations**

The increasing access of internet and the easier use of digital technology makes the practice of telemedicine unavoidable. The COVID-19 pandemic in a record time has also propelled the use and practice of telemedicine in Nigeria. Although, telemedicine gives added value in terms of patient accessibility to doctors, it reveals several legal and ethical shortcomings. The need for telemedicine and the highlighting of ethical and legal problems linked to this technology have prompted several countries including Nigeria to take measures aimed at regulating this practice. If proper guidelines and safeguards are established internationally and nationally for telemedicine it can be medically, legally and ethically justified. The writers recommend that the setting up of a clear legislation which regulates these technologies and the popularization of existing recommendations will surely ensure the confidentiality and security of digital patient data and strengthen the trust relationship between the physician and the patient. The potential of telemedicine in Nigeria cannot be fully tapped if these complications are not addressed. Nevertheless, the writers further recommended that medical practitioners involved in telemedicine be legally required to undergo training and subsequently be certified before venturing into such practice. They must be equipped with specialized knowledge and skills.

[53] *Zippo Mfg Co v Zipp Dot Com Inc* 952 Supp 1119 (W.D. Pa 1997)

[54] J Barnes, 'Telemedicine: A Conflict of Laws Problem waiting to Happen – How will Interstate and International Claims be Decided?' *Houston Journal of International Law* 28, 479 Available at: https://www.semanticscholar.org/paper/Telemedicine%3A-A-Conflict-of-Laws-Problem-Waiting-to-Barnes/1431ed590fd620dfb83f738cbb2401bb9f7ee996 19 April 2023.