

**CONTROLLED DOCUMENT**

## Photographic, Video and Audio Recording Consent and Confidentiality Policy

<b>CATEGORY:</b>	Policy
<b>CLASSIFICATION:</b>	Governance
<b>PURPOSE</b>	To set out the principles for protecting patients' rights with regards to consent for and confidentiality of clinical photographic images in the Trust.
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<b>Controlled Document Lead:</b>	Manager of Medical Illustration Services
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<ul style="list-style-type: none"> <li>• <b>Essential Reading for:</b> All Directors, Senior Managers and Departmental Heads</li> <li>• <b>Information for:</b> All Staff</li> </ul>	

## Contents

Paragraph		Page
1	Policy Statement	3
2	Scope	3
3	Framework	4
4	Duties	7
5	Implementation and Monitoring	7
6	References	7
7	Associated policy and procedural documentation	9
<b>Appendices</b>		
Appendix A	Monitoring Matrix	10

## Definitions

Clinical Photograph	A photographic recording of a patient which records or demonstrates that patient's clinical condition/treatment for the purposes of assisting in clinical treatment, case records, publication, teaching or research
Clinical Image	An image created as a by-product of a medical device being used for diagnosis or treatment.
DIY	Do It Yourself
Identifiable image	An image where a person's identity can be established
Personal device(s)	Any form of device, electronic or conventional, used to make recordings which belongs to an individual as opposed to a device owned by the Trust.
Photographic image	An image taken with a photographic device
Recording	An image created by the use of still/digital/video/audio cameras or photographic image scanning devices. This includes originals or copies of audio recordings, photographs, and other visual images of patients that may be made using any recording device. including 3D and thermographic scanning.
Secondary purpose	For purposes such as training, or assessment of healthcare professionals and students, research, or other health-related uses which are not designed to benefit the patient directly.
SCIT App	Secure Clinical Image Transfer application developed by the Trust which enables staff to securely take clinical photographs on their mobile phone, leaving no trace of the image on the device, encrypting the images along with minimal amount of patient data, and sending it to the Trust's image management database.

## **1. Policy Statement**

- 1.1 The purpose of this Policy and its associated documents is to respect patients' privacy and dignity, and their right to make or participate in decisions which affect them by ensuring that those who take photographs of patients in any part of University Hospitals Birmingham NHS Foundation Trust (the 'Trust'):
  - 1.1.1 Give patients the information they want, or need, about the purpose of the recording;
  - 1.1.2 Make recordings only where appropriate consent or other valid authority for doing so has been obtained;
  - 1.1.3 Ensure that patients are under no pressure to give their consent for the recording to be made;
  - 1.1.4 Where practicable, stop the recording if the patient requests this, or if it is having an adverse effect on the consultation or treatment;
  - 1.1.5 Disclose or use recordings from which patients may be identifiable only with consent or other valid reason for doing so;
  - 1.1.6 Make appropriate secure arrangements for storing recordings;
  - 1.1.7 Ensure that patients' rights to confidentiality are maintained;
- 1.2 This policy must be read in conjunction with the associated Policy for Consent to Examination or Treatment. and the Photographic and Video Recording Consent and Confidentiality Procedure.

## **2. Scope**

- 2.1 This Policy applies to all individuals who take photographs of patients whilst on or off Trust premises who are employed by the Trust including contractors, volunteers, students, locum and agency staff and staff employed on honorary contracts ('Trust Staff').
- 2.2 This policy does not apply to patients, relatives and visitors, who should be directed to the associated Use of Mobile Phones by Patients and Visitors Guidance
- 2.3 This policy covers all visual and audio recordings of patients made and used in any circumstances where Trust staff make such recordings:
  - 2.3.1 On healthcare premises;

- 2.3.2 As part of the assessment, investigation or treatment of patients' condition or illness; and/or
- 2.3.3 For purposes such as teaching, training or assessment of healthcare professionals and students, research, or other health-related uses which are not designed to benefit the patient directly.
- 2.4 Images created with cameras that form part of a medical device. e.g. Endoscope, Fundus, etc. are not within the scope of this policy. These images will come under the associated Consent to Examination or Treatment Policy.
- 2.5 Trust staff must not:
  - 2.5.1 Make, or participate in making, recordings against a patient's wishes, or where a recording may cause the patient harm; and/or
  - 2.5.2 Disclose or use recordings for purposes outside the scope of the original consent without obtaining further consent (except for the circumstances set out in paragraph 3.5).
- 2.6 Failure to comply with this Policy may result in disciplinary action being taken, which may result in dismissal or criminal prosecution.

### **3. Framework**

- 3.1 This section describes the broad framework for the taking of photographs of patients throughout the Trust. Detailed instructions are provided in the associated procedural documents.
- 3.2 The Director of Communications shall approve all procedural documents associated with this policy, and any amendments to such documents, and is responsible for ensuring that such documents are compliant with this policy.
- 3.3 All those undertaking patient photography must respect the dignity, religion, or other cultural beliefs of the patient in all circumstances. Refer to local advice and guidance available from Medical Illustration.
- 3.4 All clinical photographs are taken on the understanding that patients may request copies of them under relevant legislation.
- 3.5 Clinical Photographs
  - 3.5.1 Clinical photography/recordings cannot be made by anyone other than the professional Clinical Photographers employed within the Medical Illustrations department, unless an authorised camera or

the Secure Clinical Image Transfer App (SCIT) where available is used.

- 3.5.2 All camera equipment containing patient images must be locked away safely when not in use.
- 3.5.3 Trust issued mobile phones which are password protected and where encryption and secure email links are available are the only permissible device for photographic emergencies, where traditional camera equipment is not available. All images must be transferred as soon as possible to Medical Illustrations using a secure email route and deleted from the device. The following circumstances will constitute as an emergency:
  - a) Clinical Emergencies;
  - b) Working in the community;
  - c) Out of normal working hours of the Medical Illustration staff (Evenings & Weekends); and
  - d) When the demand for professional clinical photographers outstrips the ability to supply
- 3.5.4 Images taken must be uploaded to a safe storage system within 48 hours of being taken. Once images have been safely backed up, they must be deleted by reformatting the memory card used.
- 3.5.5 There must be a fully justifiable purpose for the taking, use and storage of all clinical photographs. Such purposes include:
  - a) assisting in clinical treatment or recording of injuries for future legal claims, where it is clear that such photography is of benefit to the patient in their treatment or clinical care, either directly or indirectly;
  - b) teaching;
  - c) research (all research must have Trust and Local Research and Ethics Committee approval prior to commencing. Further advice must be sought from the Research and Development Team); or
  - d) Publication in clinical papers, books or journals.
- 3.5.6 All clinical photographs must be taken and recorded with the patients consent in accordance with the Photographic and Video Recording Consent and Confidentiality Procedure.

3.5.7 All clinical photographic images must be stored as soon as is possible on the Trust's Image Management System, administered by Medical Illustration.

3.5.8 All clinical photographic images are required to be stored within specific timescales. Guidance on the timescales are detailed within the associated Health Records Retention Schedule.

3.5.9 All clinical photographs must be stored and transported securely, so as to ensure confidentiality according to the Records Management Code of Practice for Health and Social Care.

3.5.10 Any person undertaking clinical photographic images does so on the basis that all photographic images produced will be regarded as clinical records. Consequently, images are entitled to the same degree of protection, and must be treated with the same respect and confidentiality as all patient records.

### 3.6 Recordings for which separate consent is not required

Consent to make the recordings listed below will be implicit in the consent given to the investigation or treatment, and does not need to be obtained separately.

- Images of internal organs or structures
- Images of pathology slides
- Laparoscopic and endoscopic images
- Recordings of organ functions
- Ultrasound images
- X-rays

### 3.7 Public Relations/Trust internal communications Photography

Any recordings taken for the purposes of public relations must have the consent of any patient/persons involved ensuring they are made aware of the possible intended uses of the material in accordance with the Photographic and Video Recording Consent and Confidentiality Procedures.

### 3.8 Commercial Photography/Media

Any external agency or media requiring photography/filming on Trust premises requires the authorisation of the Director of Communications, via the Communication department.

### 3.9 Other Photography

- 3.9.1 Patients, relatives and visitors who wish to make recordings, who should be directed to the associated Use of Mobile Phones by Patients and Visitors Guide.
- 3.9.2 Staff taking photographs and/or videos of patients may only take them in accordance with this Policy,. Further guidance can be found in the associated Photographic, Video and Audio Recording Consent and Confidentiality Procedure. Contravention of this policy may result in disciplinary action, which may include dismissal, and/or legal action.
- 3.9.3 All persons undertaking or requesting photography on or off Trust premises are responsible for the images taken. They must abide by this policy and acknowledge their associated responsibilities. They must be aware of the need for obtaining appropriate consent, confidentiality, responsible use, security, image upload and storage within appropriate timescales.

#### **4. Duties**

##### **4.1 Director of Communications**

The Director of Communications will ensure that this policy is effectively implemented and monitored.

##### **4.2 Medical Director/Caldicott Guardian**

The Medical Director/Caldicott Guardian will provide expert advice and guidance on Caldicott principles relating to this policy.

##### **4.3 Manager of Medical Illustration Services**

The Manager of Medical Illustration Services will:

- 4.3.1 Ensure the relevant consent form has been completed prior to all recordings;
- 4.3.2 Ensure their staff take responsibility for their own recordings;
- 4.3.3 Provide advice and guidance as required; and
- 4.3.4 Review all incidents relating to breaches of the policy.

##### **4.4 Information Governance Senior Manager and IT Security and Compliance Manager**

The Information Governance Manager and the IT Security and Compliance Manager will provide expert advice and guidance on Data Protection and Security.

#### **4.5 Divisional Directors/Directors of Operations/Group Managers/ Clinical Service Leads/Senior Nurses**

All Divisional Directors/Directors of Operations/Group Managers/Clinical Service Leads/Senior Nurses will:

- 4.5.1 Have responsibility for, and monitor, the distribution and communication of the policy throughout their area of responsibility; and
- 4.5.2 Ensure the policy is implemented and adhered to within their area of responsibility.

#### **4.6 Ward and Departmental Managers**

Ward and Departmental Managers will:

- 4.6.1 Notify all staff of this policy; and
- 4.6.2 Ensure that all staff, contractors and other persons affected by the policy comply with its actions.

#### **4.7 All Staff**

All staff will:

- 4.7.1 Explain the purpose of any recordings and gain written consent from the patient before the recordings are generated;
- 4.7.2 Familiarise themselves with the policy;
- 4.7.3 Challenge a person if appropriate consent is not sought and/or the device is inappropriate and report it as a clinical incident if required; and
- 4.7.4 To comply with the policy relevant to their role and responsibilities.

### **5. Implementation and Monitoring**

#### **5.1 Implementation**

- 5.1.1 This policy and associated procedures and forms will be available on the Trust intranet.
- 5.1.2 Appropriate staff will receive training regarding consent. This training will include specific reference to clinical photography.

5.1.3 Information and further training will be available as required from the Clinical Photography staff in the department of Medical Illustration.

## 5.2 Monitoring

Appendix A provides full details on how the policy will be monitored by the Trust.

## 6. **References**

Children Act 1989

Copyright, Designs and Patents Act 1988

Data Protection Act 1998

Data Protection Act, 1998, 95/46/EC

Freedom of Information Act 2000

Human Rights Act 1998

Institute of Medical Illustrators, "Code of Professional Conduct," June 2008  
Making and using visual and audio recordings of patients, General Medical Council

Mental Capacity Act 2005

Obscene Publications Act 1964

Professions Supplementary to Medicine Act 1960

Reference guide to consent for examination or treatment, University of Birmingham Medical School, Medical Education Unit

West Midlands Medical Illustration Managers (contact via Trust Medical Illustration Managers)

[www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Consent](http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Consent)

[www.gmc-uk.org/recordings](http://www.gmc-uk.org/recordings)

<http://www.imi.org.uk/lawethics/law-ethics01.asp>

## 7. **Associated Policy and Procedural Documentation**

'Best Interest' Decisions Guidance Document

Procedure for the development and management of patients health records

Photographic, Audio and Video Recording Consent and Confidentiality Procedure

Policy for Consent to Examination or Treatment

Procedure for Consent to Examination or Treatment

Records Management Code of Practice for Health and Social Care

Use of Mobile Phones by Patients and Visitors Guidance

## Monitoring Matrix

## APPENDIX A

MONITORING OF COMPLIANCE	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
All incidents will be investigated by the Medical Illustration Manager	Director of Communications	Director of Communications / Information Governance Group	<p>The Medical Illustration Manager will review all incidents relating to breaches of the policy</p> <p>Action plan to be completed by Divisional Management Team to mitigate further breach of policy.</p>	As appropriate
Annual review	Medical Illustration Manager / Head of Clinical Risk and Compliance	Director of Communications/Information Governance Group.	<p>Annual review of photographic consent to include:</p> <p>Review of images taken by clinical photographers to ensure consent has been gained.</p> <p>Where DIY images have been taken and passed to Medical Illustration (search using image management system) cross referenced with patient record to find audit trail and retrospective consent.</p> <p>Results will be reported to the Information Governance Group as will any subsequent action plans.</p> <p>This will involve a random sample of 30 sets of patient notes and</p>	Annual

			<p>photographic consent forms. These will include:</p> <ul style="list-style-type: none"> <li>- Process of obtaining consent</li> <li>- Provision of information</li> <li>- Documentation of information given</li> <li>- Documentation of consent</li> <li>- Archiving of patient information</li> </ul> <p>Audit results will be reported to the Information Governance Group. Action plans will be devised by the Divisional management teams and reported back to the Information Governance Group.</p>	
Register of approved staff	Medical Illustrations Manager		<p>An up to date written record and signatures of all staff within the Trust using an authorised DIY camera or SCIT will be kept. Recordings within the Medical Illustrations Department are kept securely.</p>	