

Patient Photography, Videotaping, and Other Imaging (1999)

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Note: The likeness of a patient may be recorded through a number of visual means, including still photography, videotaping, digital imaging, scans, and others. Throughout this document, the term "patient photography" will be used for any such recording of a patient's likeness.

Recommendations

- Healthcare providers should have written policies addressing (1) circumstances under which patient photography is permitted, (2) patient consent, (3) ownership, storage, and retention of the images, and (4) patient authorization for the release and/or use of images outside the organization
- Generally, the patient or his or her legal representative should give written consent before photography is done by anyone other than a friend or family member of the patient
- Photographs, videotapes, and other images should be clearly identified with the patient's name, identification number, and date, and stored securely to protect their confidentiality. If used to document patient care, they should be kept for the same time period state law requires medical records to be kept
- Written authorization from the patient or his or her legal representative should be required before photographs, videotapes, or other images are released to outside requestors

Background

The use of patient photography, videotaping, digital imaging, and other visual recordings during patient care is on the rise. New scopes and surgical equipment may provide the capability of routinely recording events on videotape or digital media. For instance, families may wish to record a child's delivery, and physicians and hospitals increasingly use videotapes for seminars, teaching, and community education.

Although patient photography may be fairly common, liability issues still need to be considered.

Photographing a patient during a healthcare encounter may make a healthcare provider liable for invasion of privacy. Courts have imposed liability primarily when the provider has exploited the patient for commercial benefit. However, courts have also imposed liability when the patient's name or likeness was used for non-commercial purposes, finding that even taking a picture without the patient's expressed consent was an invasion of privacy.¹

Healthcare providers may be subject to liability for publishing photographs or other images under the type of invasion of privacy known as public disclosure of embarrassing private facts. In one case, the court ruled that a physician had invaded a patient's privacy by using "before and after" photographs of her face to demonstrate the effects of a face-lift. The use of the photographs publicized the fact the patient had a face-lift, which she found embarrassing and distressing.² Before allowing patient photography, healthcare providers should consider why it is being done and how the images will be used.

Documentation of Patient Care

In facilities where patient photography is used routinely to document patient care, a consent paragraph, such as the one below, may be inserted into the standard admission form.

I understand that photographs, videotapes, digital, or other images may be recorded to document my care, and I consent to this. I understand that (name of organization) will retain the ownership rights to these photographs, videotapes, digital, or other images, but that I will be allowed access to view them or obtain copies. I understand that these images will be stored in a secure manner that will protect my privacy and that they will be kept for the time period required by law or outlined in (name of organization)'s policy. Images that identify me will be released and/or used outside the institution only upon written authorization from me or my legal representative.

Note: This consent does not authorize the use of the images for other purposes, such as teaching or publicity. A separate consent form should be used for such purposes.

If images will be routinely recorded as part of a diagnostic or therapeutic procedure, the above paragraph may be incorporated into the consent form for that procedure.

Documentation of Abuse or Neglect

Laws in most jurisdictions require healthcare providers to report cases of actual or suspected abuse or neglect of children or adults. Since reporting requirements vary from state to state, providers should check their state laws for specifics. Generally, photographs taken to document abuse or neglect do not require consent from the patient or his or her legally authorized representative. Such photographs may be submitted with the required report to the investigating agency, but they should not be used for other purposes (such as teaching) without consent.

Research

Photographs taken as part of a research protocol should be approved by an institutional review board or another appropriate committee. Consent for such photography should be incorporated into the consent form the patient signs to participate in the research protocol.

Medical Education, Teaching, or Publicity

Written consent should be obtained before photographing patients for medical education, staff teaching, or publicity purposes. The patient or his or her legal representative should sign and date the consent form. Anyone other than the patient who has the legal authority to sign should indicate his or her relationship to the patient. The signature should be witnessed, and the witness' signature should be in the space provided on the form. The signed consent form should be filed with the patient's health record. A new consent form should be signed for each new series of photographs taken by individuals other than those named in prior consents. The consent given for photography remains valid unless and until the patient or his or her legal representative withdraws or restricts the authorization.

Media or Law Enforcement

When representatives from the news media or law enforcement agencies ask to photograph a patient, permission may be given if (1) the patient's physician does not feel it would be detrimental to the patient; and (2) the patient or his or her legal representative signs a written consent form agreeing to the photography. See [Exhibit 1](#) for a sample consent form.

Photography of Newborns

If facilities routinely take photographs of newborns to give or sell to parents, consent should be obtained before this is done. A separate consent form may be used or a brief consent statement, such as the one below, may be incorporated into the standard admission form.

I agree to have photographs of my newborn child(ren) taken for possible purchase by me.

Family

Consent is not needed for photography done by the patient's family members or friends, but this should be addressed in the provider's policies and procedures. If parents want to videotape a child's delivery, for example, it may be helpful to provide them with written information prior to the delivery. Allowances to discontinue taping if the physician deems it necessary should be included.

Telemedicine or Internet

Consent should be obtained before any photographs or other images are used in telemedicine or on the Internet. The images, along with the complete medical record, should be encrypted in order to protect the patient's privacy. The technology used in some telemedicine and the Internet may not support the media originally used to record the patient data. Video, scans, or photo images may have poor resolution resulting in misinterpretations. Quality monitoring should be performed periodically to verify the quality of images transmitted.

Policies

As a first step in developing its policies, providers should take an inventory of the types and locations in which patient photography is being done. Areas to be considered include the operating room, endoscopy, cardiac catheterization laboratory, labor and delivery, radiology, nuclear medicine, patient/staff education, and corporate communications.

Each healthcare provider's policies should outline the circumstances under which the facility will allow patients to be photographed for any reason and the requirements for patient consent. Statements that address the sensitive nature of patient photography need to be in the facility's policy. Staff training on the issue of photograph and image handling and confidentiality should be conducted. Ownership issues should also be addressed.

Maintenance

Still photographs and scanned printouts taken for medical reasons may be filed with the patient's record for safekeeping. Videotapes, because of their size, may need to be filed separately in the HIM department or other secure area. The issue of patient privacy and confidentiality needs to be addressed when maintaining patient images. Sensitive images (i.e., photographs taken in the ER, psychological therapy sessions that are recorded, sensitive diagnostic scans) need to be available for patient care, but also need to be maintained in a manner that protects the patient from unauthorized viewing. Maintenance of medical record policies should address how and where patient images are kept. For example, patient photographs can be stored in sealed envelopes that are secured within the actual medical record, scan images should be affixed to pages of the medical record or concealed within an affixed envelope, and videotapes should be stored in a secure filing cabinet. If videotapes or other recordings are not filed with the patient's record, a note should be made in the patient's record indicating the availability and location of these recordings. All photos, videos, and other images should be stored in a manner that ensures timely retrieval when requested. All recordings should be identified with the patient's name, identification number, and the date on which the recording was made. The name of the photographer or recorder may also be included. Since photographs, videotapes, and other images used to document patient care may be considered part of the patient's record, they should be kept for the same time period state law requires medical records to be kept.

Disclosure

Unless otherwise required by state law, photographs, videos, scans, and other images should not be released to outside requestors without specific written authorization from the patient or his or her legal representative. The authorization should state that the patient agrees to have the photographs released to the requestor and the purpose for which they will be used. This may be incorporated into the facility's standard authorization for release of information form. See [Exhibit 2](#) for a sample authorization form.

If the patient wants the photographs for his or her own use, a copy of them may be provided unless otherwise prohibited by state law. The healthcare provider should keep the originals. If procedures involving several patients have been recorded on the same videotape, the footage specific to that patient should be dubbed onto a separate tape, so the patient is not given access to other patients' information. In cases of the release of group therapy and family therapy, each person portrayed in the image must approve of the disclosure prior to the release of the information. Only the information pertaining to the persons

who consented to the disclosure may be released. Editing or other means of protecting the information and images of the non-consenting parties must be done to protect their confidentiality. Patients may be charged a reasonable fee to cover the cost of duplication.

Liability Reduction

Malpractice cases commonly use videotapes that contain a potentially questionable medical incident. There are many pros and cons to having a video recording of a special event or procedure, but the facility must be aware of the liability risks involved. The following list offers a few ways to reduce the facility's risks involved when video recording:

- Create a policy that addresses the subject of videotaping surgery, childbirth, etc. Use it consistently to avoid charges of "hiding" images in cases that may have involved malpractice
- Document every video recording in the medical record. A videotape can be used to prove innocence as well as guilt and both parties are entitled to complete, unedited copies
- Do not offer souvenir copies of facility-made videotapes

Notes

1. Roach, William H. Jr. et al. *Medical Records and the Law*. Gaithersburg, MD: Aspen Publishers, Inc. (1994): 207-208.
2. *Ibid.*

References

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Note: This practice brief replaces an earlier one published in the October 1995 *Journal of AHIMA*.

Exhibit 1

Sample Consent for Photography/Videotaping (For Media or Educational Purposes)

Patient's Name: _____

Identification Number: _____

I hereby give my consent to have photographs, videotaped images, or other images made of myself or my family member and/or consent to interviews with a member of the news media or a representative of (*name of organization*). I understand and agree that these images may be used by the news media or by (*name of organization*) for the purpose outlined below:

Signature of Patient or Legal Representative Date

Signature of Witness Date

Note: This sample form is provided for discussion purposes only. It is not intended for use without the advice of legal counsel.

Exhibit 2

Sample Authorization for Disclosure of Health Information

1. I hereby authorize (*name of provider*) to disclose the following information from the health records of:

Patient Name: _____ Date of Birth: _____

Address: _____

Telephone: _____ Patient Number: _____

Covering the period(s) of healthcare:

From (date) _____ to (date) _____

From (date) _____ to (date) _____

2. Information to be disclosed:

___ Complete health record(s)

___ Discharge Summary

___ History and Physical Examination

___ Consultation Reports

___ Progress Notes

___ Laboratory Tests

___ X-ray Reports

___ Photographs, videotapes, digital or other images

___ Other (please specify) _____

I understand that this will include information relating to (check if applicable):

- ☐ AIDS (Acquired Immunodeficiency Syndrome) or HIV (Human Immunodeficiency Virus) infection
☐ Psychiatric care
☐ Treatment for alcohol and/or drug abuse

3. This information is to be disclosed to _____ for the purpose of _____.

4. I understand this authorization may be revoked in writing at any time, except to the extent that action has been taken in reliance on this authorization. Unless otherwise revoked, this authorization will expire on the following date, event, or condition: _____

5. The facility, its employees, officers, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized herein.

Signature of Patient or Legal Representative Date

Signature of Witness Date

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