



## MAKING AND USING VISUAL AND AUDIO RECORDINGS OF PATIENTS

### 1. INTRODUCTION

- 1.1 Visual images including photographs and audio recordings may be required as part of the patient's healthcare record and for other purposes such as teaching, audit and research. Healthcare professionals must be aware of their responsibilities regarding consent, confidentiality and procedures for the secure management of this information.

### 2. POLICY STATEMENT

- 2.1 This policy sets out the principles and practice for health professionals involved in making and using visual images and audio recordings including photographs. This policy has been developed with reference to professional guidance (General Medical Council, 2011) and relevant Trust policies and covers:

- 2.1.1 The use of originals or copies of visual images, photographs and audio recordings which will be referred to throughout the policy as 'recordings'.

- 2.1.2 Recordings made on Trust property as part of the assessment, investigation and treatment of a patient. Children's services also include some recordings taken by parents and shared on disc with health staff

- 2.1.3 Within the Adult services and those that form Children's Specialist Services (CSS) (Speech and Language Therapy, Occupational Therapy, Physiotherapy, Children's Community Nursing and Clinical Psychology), audio and video recordings can be used for the following purposes:

- To support accurate assessment, analysis and accurate transcription of the behaviour/development being assessed
- To carry out specific therapeutic interventions
- To provide a record of the adult/ child's progress
- To allow students on clinical learning placements to analyse their performance with a child.

Digital photography may be used:

- To provide visual support for an adult or a child's communication and development
- For safe use of equipment.

- 2.1.4 Recordings made for teaching, training and assessment of health professionals/students and other health related uses e.g. research and publication not designed to benefit the patient directly; referred to in the policy as 'secondary purposes';

#### 2.1.5 **Storage of the recordings.**

- 2.1.6 Healthcare professionals must adhere to the following principles:

- Ensure patients are fully informed of the purpose and use of a recording;
- Only proceed with appropriate consent or valid authority;
- Ensure that only the patient, and parent(s)/carers as appropriate and member of staff responsible for the intervention can be identified.

- Stop the recording if requested to do so by the patient/carer or if it is having an adverse effect on the consultation/treatment;
- Where recordings are used for a secondary purpose ensure the patient's consent is specific regarding the level of anonymity required/requested;
- Adhere to the Trust procedure for the secure storage of recordings (4.7);
- Adhere to related Trust policies (10);
- **Do not** make or participate in recordings against the patient's wishes or where a recording may cause the patient harm;
- **Do not** use recordings for purposes outside the scope of the original consent before obtaining further consent;
- Where a situation arises that appears to be outside the scope of this policy or the procedure in the policy is not clear, do not continue and obtain advice from the Patient Safety Team, Communications or the Caldicott Guardian.

2.3 Where recordings are required as part of the patient's care the Medical Illustration Department should be involved wherever possible to ensure the recording is of high quality (Appendix 1).

### 3. DEFINITIONS

#### 3.1 'Recordings'

Originals or copies of visual images, photographs and audio recordings.

#### 'Secondary purposes'

Recordings made for teaching, training and assessment of health professionals/students and other health related uses e.g. research and publication not designed to benefit the patient directly.

### 4. PROCEDURE

#### 4.1 Recordings made as part of the patient's care: specific consent is not required

4.1.1 Consent to make recordings listed below will be implicit in the consent given for the investigation of treatment and does not need to be obtained specifically:

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

4.1.2 When seeking consent to treatment/procedure that involve recordings noted in 3.1 the health professional, should explain that a recording will be made and could be used in the future in an anonymised form for secondary purposes including in the public domain.

4.1.3 Where recordings noted in 3.1. are used for secondary purposes (as defined in 3.1), consent is not required provided that before use the recordings are anonymised i.e. removal of any/all identifying marks.

#### 4.2 Recordings made as part of the patient's care: specific consent is required

4.2.1 "Photographic and video recordings which are made for treating or assessing a patient must not be used for any purpose other than the patient's care or the audit of that care, without the express consent of the patient or a person with parental responsibility for the patient" (Department of Health, 2001).

4.2.2 Specific consent from the patient is required to make recordings that are not included in Organisational Policies Manual

3.1.. An explanation must be given to the patient about:

- Why the recording is necessary;
- How it will assist in their care;
- The format of the recording;
- Storage of the recording;
- Where practicable explain any possible secondary uses of the recording in an anonymised form.

4.2.3 The key points of the discussion and verbal consent of the patient must be recorded in the patient's healthcare record. Where Medical Illustration is requested to take recordings the patient's consent will also be recorded on the Medical Photography Clinical Request Card (Sheffield Teaching Hospital).

4.2.4 Where an adult patient lacks capacity to make a decision about the need for recordings and specific consent is required (4.2) consent must be obtained from the person with legal authority e.g. lasting power of attorney, court appointed deputy (see Mental Capacity Act (2005) Policy, Organisational Policy OP1.24). Where there is no person appointed the need for the recording, urgency and best interests must be discussed with the consultant who has responsibility for the patient's care. Please call the Patient Safety Team where further advice is needed.

4.2.5 Children or young people under the age of 16 with the capacity and understanding to give consent may do so, but the health professional should encourage the involvement of the person with parental responsibility. Where the child cannot understand, consent must be obtained from the person with parental responsibility. In the case of suspected non-accidental injury and the parent refuses consent it may be necessary for Children's Social Care to apply to the courts.

4.2.6 In Specialist Childrens Community services consent will be taken using the form in Appendix 2, Acute and Adult services will utilise trust consent forms as appropriate.

### **4.3 Recordings made for secondary purposes**

4.3.1 Written consent from the patient must always be obtained for every recording made for secondary purposes indicating the appropriate level of consent; whether for example the recording will be used solely for teaching, research, publication or a combination of two or more purposes;

**N.B. Where multiple recordings are made at different times written consent is required on each occasion.**

4.3.2 The following should be explained during the consent process:

- Purpose of the recording and how it will be used i.e. for teaching, research and/or publication;
- How long the recording will be kept for and how it will be stored;(Some recordings are deleted after a time which is identified and agreed on consent form)
- The patient may withhold consent or withdraw it during or immediately after the recording and this will not affect the quality of care received or relationship with the health professionals.

Information should be provided in a way the patient can understand using all necessary and appropriate resources to ensure the patient is fully informed and able to communicate their wishes (see Consent to Examination or Treatment Policy, Clinical Practice Policy CP2.40).

4.3.3 Where the patient may not have the capacity to make a decision an assessment of the patient's capacity must be undertaken and resources used as appropriate to enable the patient to make their own decision where possible.

4.3.4 Where the patient does not have the capacity to consent, the health professional must ensure that the recording:

- Is necessary and benefits the patient, or is in their best interests and
- The purpose cannot be achieved in a way that is less restrictive of the patient's rights and choices.

Consent must be obtained or decision taken as per 4.2 and 4.3.

**N.B: where recordings are for research purposes please see the Research Policy Organisational Policy (OP1.17).**

4.3.5 A child/young person under the age of 16 with the capacity and understanding to give consent may do so, but the health professional should encourage involvement of the person with parental responsibility. The health professional should use any opportunity to offer the option of withdrawal or varying the consent previously given by a person with parental responsibility where:

- The child/young person may be identifiable;
- It is reasonably practicable to act in accordance with the child/young person's wishes.

4.3.6 If a child/young person lacks capacity to consent to a planned or unplanned recording the person with parental responsibility may consent on their behalf. However the health professional must stop the recording if the child/young person:

- Objects verbally or through their actions;
- Demonstrates distress in other ways about the recording or if the person with responsibility asks for the recording to stop.

4.3.7 Recordings made pre-1997:

- Anonymised recordings used solely for teaching/training purposes may continue to be used.
- Recordings where the patient is identifiable may be used only if the health professional possesses a record of the patient's consent for the use of the recording.

#### **4.4 Recordings for use in public media (television, radio, internet, print)**

4.4.1 Specific written consent must be obtained from the patient for recordings that will be widely accessible whether the patient will be identifiable or not. The exceptions to this are the recordings listed in 4.1.1.

4.4.2 Where recordings of patients, their relatives and visitors in a healthcare setting is planned the proposal must be discussed with senior management in the Trust: Head of Communications and the Caldicott Guardian.

In the context of programme makers patients must be informed beforehand that once they agree to the recording being made they may not be able to stop its subsequent use. Where patients wish to restrict use of material they should be advised to get an agreement in writing with the programme maker/owners of the recording.

#### **4.5 Deceased patients**

4.5.1 The duty of confidentiality continues after a patient has died. The known wishes of a patient made before their death should be followed after death:

- A check should be undertaken before the use of any recording to ensure consent was not withdrawn before the patient died.

- If the recordings will be in the public domain or the patient is identifiable please contact the Patient Safety Team for advice.

#### **4.6 Covert recordings**

4.6.1 Covert recordings must not be undertaken.

#### **4.7 Equipment and storage of recordings**

4.7.1 Recordings made as part of the patient's care will form part of the patient's healthcare record. Photographic images must be labelled with the patient's details:

- First name, surname, date of birth, hospital number, NHS number
- Date/time the image was taken
- Name of the health professional who took the image and
- Level of consent obtained i.e. as part of the patient's care, teaching, research/publication.

Images must be stored on a secure server e.g. Dermatology use a secure server for images taken by clinical staff. For further information discuss with the IT Department.

4.7.2 Where a photographic image is required as part of the patient's care the Medical Illustration Department should be used wherever possible; high quality images and secure auditable storage (Appendix 1).

4.7.3 A digital (Polaroid-type) camera is available in the Medical Equipment Library when an image is required immediately or out of hours. Once the images have been produced and filed in the patient's healthcare record, the images on the camera must be deleted. Medical Equipment Library staff will also check the camera on return to ensure that there are no images stored on the camera.

**4.7.4 Mobile phones must not be used for clinical photography.**

4.7.5 Where written consent is obtained for a recording made/used for secondary purposes a copy of the consent must be kept with the recording.

4.7.6 Recordings may be made by specialists in conjunction with, for example, children and their parents for therapeutic use.

4.7.7 Any recordings captured by Chesterfield Royal Hospital staff during working hours are copyright to the Trust. The Medical Illustration Department images are copyright to Sheffield Teaching Hospitals.

### **5. ROLES AND RESPONSIBILITIES**

5.1 Executive responsibility for maintaining the policy is delegated from the Chief Executive to the Medical Director and Chief Nurse.

5.2 Health professionals involved in making and using recordings must adhere to the policy and report any breaches in consent and confidentiality via the established incident reporting system (DatixWeb).

### **6. TRAINING REQUIREMENTS**

6.1 There are no specific training requirements for this policy.

### **7. MONITORING**

7.1 Directorate managers should ensure that staff are aware of the policy and their responsibilities regarding practice and safe storage of recordings where Medical

Illustration have not been involved.

## **8. KEYWORDS**

8.1 Consent, confidentiality, media, television, radio, internet, print, publication, research.

## **9. REFERENCES**

General Medical Council (2011) Making and Using Visual and Audio Recordings of Patients. GMC.

## **10. RELATED POLICIES**

- Confidentiality Policy - Organisational Policy (OP1.11).
- Consent to Examination or Treatment Policy – Clinical Practice Policy (CP2.40).
- Guidelines for the Use of the Colposcope and Digital Imaging -Child Protection Policy 10.
- Healthcare Record Keeping Policy - Organisational Policy (OP4.12).
- Mental Capacity Act (2005) Policy - Organisational Policy (OP1.24).
- Research Policy - Organisational Policy (OP1.17).

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To be reviewed by: Governance Lead Clinical specialities, Governance lead Child Health

Director responsible: Medical Director and Director of Nursing

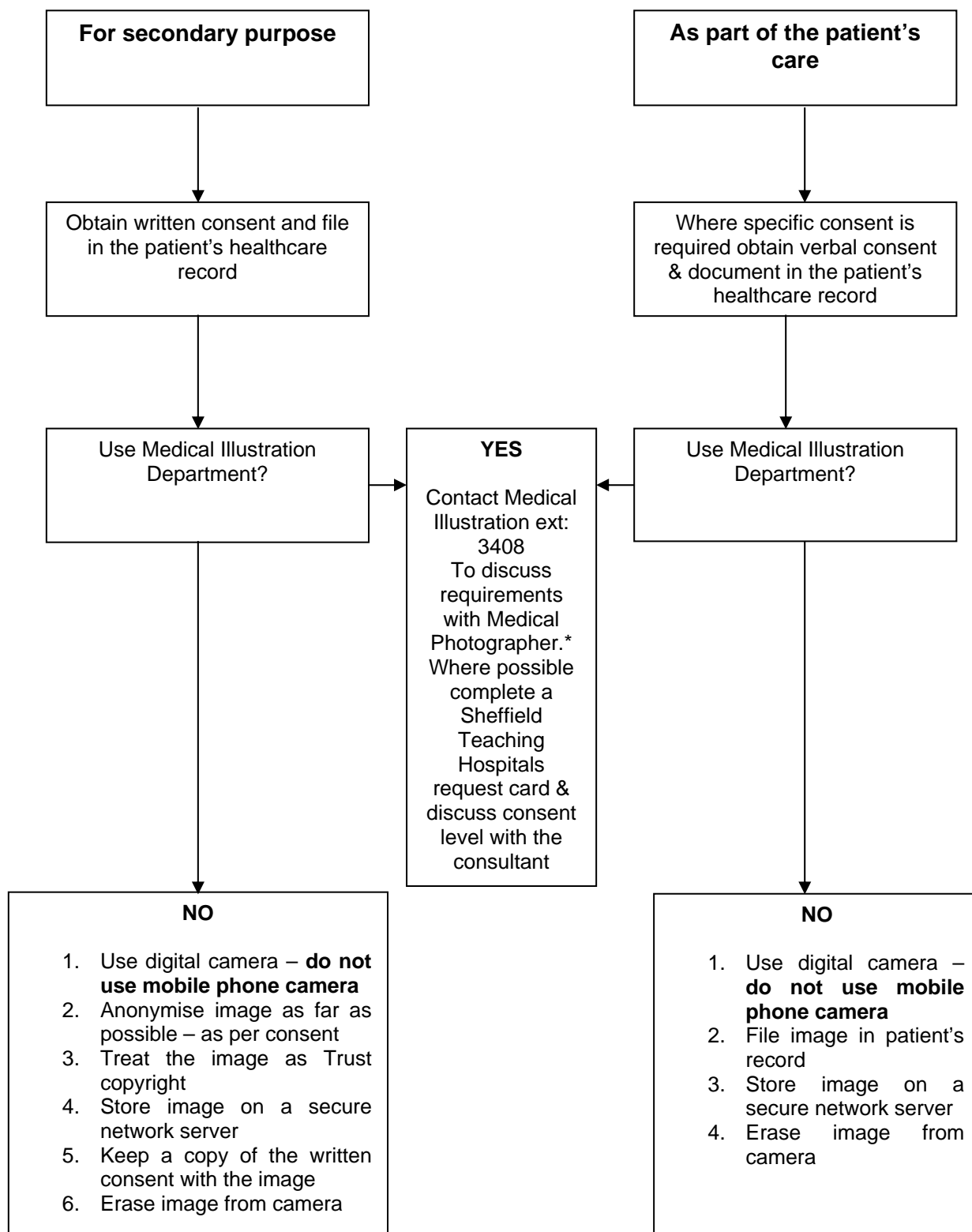
**EQUALITY IMPACT SCREENING TOOL**

**Appendix 1**

Please complete the following when screening your policy for potential impact on equality groups.

1. Name of lead	Carmel Stagles
2. Directorate/ Department	Women's and Children
3. Name of policy	Making and Using Visual and Audio Recordings of Patients
4. Is this a new or existing policy?	Existing X2
5. Target audience  e.g. patients and public; NHS staff; professional health organisations; voluntary organisation; internal staff	Corporate Clinical
6. What are the aims of the policy?	This policy sets out the good principles and practice for health professionals involved in making and using visual images and audio recordings including photographs. This policy has been developed with reference to professional guidance (General Medical Council, 2011) and relevant Trust policies and covers. It merges two previous policies one form Women and Children's and the other an existing organizational policy.
7. Does any part of this policy have a positive impact on our duty to promote good race relations, eliminate discrimination and promote equality based on a person's age, disability, ethnic origin, gender, religion/belief or sexual orientation?  If No, please provide brief reasons.	NO- This Policy Is About Good Practice In The Making And Using And Storage Of Visual And Audio Recordings Of Patients- It Is Independent Of On A Person's Age, Disability, Ethnic Origin, Gender, Religion/Belief Or Sexual Orientation.
8. Could any part of this policy have an adverse impact on our duty to promote good race relations eliminate discrimination and promote equality based on a person's age, disability, ethnic origin, gender, religion/belief or sexual orientation?  If No, please provide brief reasons.	No as above
9. Are there any factors that could lead to differential take-up, outcomes or satisfaction levels based on people's age, disability, ethnic origin, gender, religion/belief or sexual orientation?  If No, please provide brief reasons.	No as above

Flow Chart for Clinical Photographs



\*If the Medical Photographer is required to complete the request card the consent will only be for medical records level



<b><u>Affix Patient Label</u></b>		<b>CHILDREN'S SPECIALIST SERVICES: AUDIO, VIDEO RECORDING AND PHOTOGRAPHY CONSENT FORM</b>	
Surname: First name: Date of birth: Hospital number: NHS number:			
<b><u>Responsible Health Professional (tick appropriate boxes)</u></b>			
I confirm I have explained to the patient/person with parental responsibility that the:			
<input type="checkbox"/> audio record <input type="checkbox"/> analogue/digital video record <input type="checkbox"/> photograph(s) <input type="checkbox"/> (material)			
will be used for the following purposes:			
<input type="checkbox"/> Assessment <input type="checkbox"/> treatment <input type="checkbox"/> recording your/the child's progress <input type="checkbox"/> clinical learning			
The material will be:			
<input type="checkbox"/> Stored securely on trust J Drive			
<input type="checkbox"/> Deleted			
<input type="checkbox"/> Loaned to you for your use in managing your child			
<b>Name (print):</b>		<b>Designation:</b>	
<b>Signature:</b>		<b>Date:</b>	
<b><u>Patient / person with parental responsibility (tick appropriate boxes)</u></b>			
I confirm that I give consent for the:			
<input type="checkbox"/> audio record <input type="checkbox"/> analogue/digital video record <input type="checkbox"/> photograph(s) <input type="checkbox"/> (material) to be made.			
I confirm that the purpose for which the material will be used has been explained to me in terms I understand and I agree to the use of the material in the following circumstances:			
1.	I understand the material will form part of the confidential treatment records and has value in clinical assessment <input type="checkbox"/>		
2.	I understand the material has value in medical education and will be used for the education and training of appropriate professional healthcare staff <input type="checkbox"/>		
I agree that I will retain the material for management purposes and that in the case of a digital recording I will preserve the recording in the form in which it is provided. I will return it to the clinical department on request.			
I am the <input type="checkbox"/> Patient <input type="checkbox"/> Person with parental responsibility			
<b>Name (print):</b>		<b>Signature:</b>	
<b>Relationship if not patient:</b>		<b>Date:</b>	
<b><u>Withdrawal of Consent</u></b>			
I am the <input type="checkbox"/> Patient <input type="checkbox"/> Person with parental responsibility			
I wish to withdraw my consent for purpose <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> both 1 & 2			
<b>Name (print):</b>		<b>Signature:</b>	<b>Date:</b>
<input type="checkbox"/> Copy of form given to patient/person with parental responsibility			