

**The Newcastle upon Tyne Hospitals NHS Foundation Trust  
University of Newcastle upon Tyne**

**Clinical Recordings of Patients: Policy on Confidentiality, Consent, Copyright  
and Storage**

Effective: December 2010

Review: December 2013

The Data Protection Act (1998) came into force on the 1st March 2000. The act imposes legal obligations on the use of manual, non-electronic data held on living individuals. This is an important change in the law and this document sets out a policy to satisfy these new demands.

## **1. Introduction**

- 1.1 It is common within the Newcastle Hospitals NHS Trust and the University of Newcastle for visual and audio records to be made of patients, and sometimes also members of their families. Such records include photographs, video, cine film, artwork, digital images, video and audio recordings. They may be made for the purpose of providing a clinical record, for teaching, quality assurance, clinical governance, publication, research and as legal evidence in court cases.
- 1.2 Another possible use of these recordings can be for public relations and publicity purposes. Requests for such recordings are not covered by this policy and should be directed to the Press and Communications Office.
- 1.3 It is the duty and legal obligation of all staff in the Trust and the University to act in the best interests of patients when making recordings for the purposes of clinical assessment, teaching or publication, or when handling such recordings. All staff are under a legal duty to keep patient records confidential.
- 1.4 All illustrative clinical records created on Newcastle Hospitals NHS Trust or University of Newcastle premises are subject to this policy, irrespective of who owns the equipment or the materials on which they are produced. Any breach of this policy may lead to disciplinary action.

## **2. Professional Bodies**

- 2.1 Doctors are bound by the General Medical Council's guidance, September 1997: Making and Using Visual and Audio Recordings of Patients.
- 2.2 Medical Illustrators are bound by the Institute of Medical Illustrators' A Code of Responsible Practice, 1996.
- 2.3 All staff, regardless of their professional position or status, should adhere to the principles set out in these documents.

## **3. Legislation**

- 3.1 A number of Acts of Parliament pertain to the recording of patients (see list at Appendix A). A detailed discussion is beyond the scope of this document. For

further advice on any particular issues please contact the Head of Photography at the Audio Visual Centre, University of Newcastle.

#### **4. Consent**

- 4.1 Valid consent is necessary for all procedures involving recordings of patients. Such consent must be informed, given by a competent person and free from coercion. This includes children if they are able to understand fully the nature and purpose of what is involved. The consent policy must be adhered to at all times.
- 4.2 All patients who are to be recorded and their parents/ carers must be fully appraised of the reasons for the recording, its purpose and the uses that might be made of it. It should be made very clear to all patients/ parents/ carers who are asked to sign a consent for recording that might be used for teaching or publication, that refusal to give consent will not affect their clinical care.
- 4.3 All patients being recorded or their parents/ carers must give valid prior informed consent and should receive detailed printed information about the uses to which they are asked to consent. Such consent may be given at one of three levels of permitted usage. Appropriate wording for such consent is included on The AVC patient request form available from Clinical Photography Department.
- 4.4 Patients'/ parents'/ carers' wishes concerning the uses made of their clinical recordings must be respected. For example, consent to publication of a photograph in a scientific journal must be obtained before it is submitted to the journal.
- 4.5 A patient, parent or carer's refusal to permit any level of recording should be respected. Such refusal in itself must not be allowed to prejudice a patient's care. However, in some cases e.g. where accurate diagnosis is dependent on a recording, it may be judged that refusal of consent will adversely affect their clinical care. There may also be legal reasons for making recordings without consent. See section 10, 'Exceptions to consent rule'.
- 4.6 In the case of publication, consent may be withdrawn by the patient, or their parent / carer at any time prior to publication of the image. Patients and their parents/ carers have the right to withdraw or alter the level of their consent at any time and this should be respected.
- 4.7 Care must be taken when making recordings, or obtaining consent, to respect and be sensitive to the dignity, ethnicity and religious beliefs of the patient and their family.

#### **5. Parental/ Carer/ Patient Consent for Clinical Imaging.**

- 5.1 This is printed on the reverse of the 'Request for Clinical Photography' form (see Appendix B). It should be completed each time a photographic or video recording is made of a patient. A child must also give their assent even if they are not competent to give consent.

## **6. Ordering Clinical Photography or Video Recording from The Audio Visual Centre**

- 6.1 All requests for clinical recordings should be made on the pink request form. Full patient details must be given and the consent (on the back of the form) must be signed and dated by the patient and/or parent/ carer.

## **7. Parents', Carers' or Patient's Request for Copies.**

- 7.1 Patients and their parents/ carers have the right to obtain copies of their clinical notes under the Access to Health Records Act (1990). Following all requests by patients or their parents/ carers for access to their notes and other hospital-held information the Audio Visual Centre should also be contacted to ascertain whether any data to which they are entitled is held there.
- 7.2 Before copies of a patient's photographs are so released a request form should be completed (available from the Audio Visual Centre), and signed by the consultant in charge and a parent or carer. A standard charge is made for making such copies.

## **8. Consent for Publication in a Medical / Scientific Journal or Book**

- 8.1 In the case of patients or their parents or carers who have not previously consented to publication of their photographs by means of the consent on the clinical photography request form, a separate consent form (available from the Audio Visual Centre) can be used. This form should be completed and signed by the patient/ parent/ carer and one named author for any clinical photographs to be submitted for publication in a medical or scientific journal or book. The name of the journal and full title of the article should be given, and the form signed and dated prior to submission
- 8.2 Where possible, efforts should be made to preserve anonymity in published images; for example, by excluding the face. However, such precautions do not preclude the need for consent.

## **9. Clinical Recordings Made During Anaesthesia**

- 9.1 Recordings may be made for the patient's case notes, provided that the patient/ parent/ carer has signed the surgical consent form. This does not include consent for any other use; further specific consent should be obtained for teaching, publication or any other use of such recordings.

## **10. Exceptions to Consent Rule**

- 10.1 Recordings without parental consent may be necessary in certain circumstances such as suspected non-accidental injury to a child, where it might be unlikely that the parent or carer would give consent and the recording of injuries is clearly in the patient's best interests. However, it is essential that recording is authorised by the Consultant Clinician in charge.
- 10.2 There may be circumstances in which it is impossible to obtain prior consent and the recording needs to be obtained immediately. In this case the

Consultant Clinician in charge may request recordings to be made. Consent must then be requested as soon as possible and, if it is refused, the recordings must be destroyed. No material may be released until the appropriate consent is given.

## **11 Research**

- 11.1 For recordings made solely for the purposes of research the consent form should be signed and the work must have Research Ethics Committee approval and must be officially registered with the Research & Innovation Services Unit at the University of Newcastle upon Tyne or the Research and Development Department, Newcastle Hospitals NHS Trust. 11.2 All research projects using illustrative clinical recordings must be registered with the Data Protection Officer.

## **12 Processing**

In the interests of confidentiality the processing and reproduction of images should, wherever feasible, be kept within the direct control of Hospital and University staff. Where external processing facilities are used arrangements must be made to ensure that secure arrangements are in place to prevent any misuse of recordings of patients. The Audio Visual Centre has its own in-house facilities for all processing and printing of confidential images.

## **13 Copyright**

- 13.1 Copyright in all recordings of patients made by staff in the course of their work belongs to their employing authority
- 13.2 Copyright in a clinical recording should not be transferred, for example to a publisher, and it should be explicit in any publishing contract that copyright in the images remains with the employing authority. Rights to publish can however be given, provided the appropriate consent has been obtained. These rights are normally subject to specific conditions e.g. a single publication – UK distribution only.
- 13.3 Copies of clinical recordings may only be made with the permission of the clinician in charge and within the constraints of clause 4 (consent).
- 13.4 In the case of staff who leave the employing authority, recordings obtained during the course of their employment may continue to be used for teaching only if that level of consent has been obtained. No other use may be made of such images, regardless of the level of consent given, without the written agreement of the Consultant Clinician who commissioned the recording.

## **14 Diagnostic Images**

- 14.1 Radiographs, scans, and other diagnostic images that are used for any purpose other than patient diagnosis and treatment should be made anonymous by disguising the patient's name and other personal details.

## **15 Digital Images**

- 15.1 Images should be stored in a secure place. The University's policy on data security and the Data Protection Acts apply. All computers, disk drives and other storage media should be kept in a secure location under lock and key when not in use.
- 15.2 Access to images should be password protected. Computers should be located in such a way that the images of patients displayed on screen cannot be seen by passers-by.
- 15.3 No images of patients should be transmitted over a public network without explicit permission of the patient and/ or parents/ carers. It must first be made clear that there is a possibility of such images being seen or downloaded by someone other than the intended recipient and that, once such images are in the public domain, there is no effective means of withdrawing consent. Pictures showing a face or genitalia should never be transmitted over a public network.
- 15.4 Where digital photography is to be used to record images of patients, due care must be taken before acquiring the images to ensure that the quality of the images (in terms of both resolution and colour depth) is adequate for their purpose.
- 15.5 Original digital image files should be stored on disc or tape in their proprietary camera format prior to any processing. Each image must be assigned a file name by which the patient can be clearly identified, preferably incorporating name and registration number.
- 15.6 In order to maintain the integrity of the image, manipulation may only be carried out to the whole image, and must be limited to simple sharpening, adjustment of contrast and brightness and correction of colour balance.
- 15.7 Images of patients may only be transferred to personal computers for use in connection with research projects that have been approved by the Local Research Ethics Committee and registered with the Data protection Officer, or for the preparation of teaching materials if the appropriate level of consent has been given.
- 15.8 Staff undertaking storage and retrieval of digital images must be trained in these procedures and have approved access to the University/Trust network.

## **16. Historical Collections of Teaching Material**

- 16.1 Historical collections of identifiable clinical images used for teaching purposes should be checked for consistency with the policies outlined in the present document. It should be assessed whether or not consent was obtained for images to be used for educational purposes. Where consent was not obtained, attempts should be made to obtain this.
- 16.2 Images should not be used with a lay audience or for publication without obtaining informed written consent.

- 16.3 When consent cannot be obtained images may be used provided that there is no chance that the images may be linked to the patients.
- 16.4 If consent has not been obtained images may be used for teaching medical students

## **17. Recordings Made Principally for Legal Purposes**

- 17.1 If the primary purpose of a recording is to provide evidence for use in court the recording must not be used for teaching or publication without the express permission of the court for which it was prepared.
- 17.2 Recordings that have been made for teaching or publication should cease to be used for such purposes if the recordings become the subject of litigation against the Trust or University or are used as evidence in a court case.

## **18. Logging and Storage**

- 18.1 Since any medical record has to be available for disclosure if required, it is essential that every recording is properly logged in the case notes.
- 18.2 In the case of photographic negatives, these must be securely stored and catalogued in the originating department.
- 18.3 All recordings of patients should be clearly labelled to indicate that copyright belongs to the employing authority. Master copies and copies that form part of the clinical case notes should be labelled with patient name, registration number and date of recording.

## **References**

- General Medical Council. *Making and Using Visual and Audio Recordings of Patients*; GMC, September 1997.
- Institute of Medical Illustrators. *A Code of Responsible Practice protocols for ethical conduct and legal compliance for medical illustrators*; IMI, 1996.
- Royal College of General Practitioners. *RCGP Statement on the Use of Video-recording of General Practice Consultations for Teaching, Learning and Assessment: the importance of ethical considerations*; RCGP 1993.
- British Photographers' Liaison Committee. *The ABC of UK Photographic Copyright*; BPLC 1994.
- NHS Executive. *Health Service Guidelines: The Protection and Use of Patient Information*. Department of Health document HSG(96)18; 1996. Committee for Accreditation of Medical Illustration Practitioners. *National Board of Registration Code of Conduct*.

## **Appendix A:**

### **Legislation**

The Access to Personal Files Act (1987).

The Access to Health Records Act (1990).

The Children Act (1989).

The Copyright, Designs and Patents Act, (1988).

The Criminal Justice and Public Order Act (1994).

The Data Protection Acts (1984 and 1998).

The Mental Health Act (1983).

The Obscene Publications Act (1959).

The Protection of Children Act (1978).

The Video Recordings Act (1984).

THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST  
**IMPACT ASSESSMENT – SCREENING FORM A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

<b>Policy Title:</b>	<b>Clinical Recordings of Patients: Policy on Confidentiality, Consent, Copyright and Storage</b>	<b>Policy Author:</b>	Richard Oliver
		Yes/No?	You must provide evidence to support your response:
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	• Race	No	Policy is unchanged.
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability – learning difficulties, physical disability, sensory impairment and mental health problems.	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	No	
4(a).	Is the impact of the policy/guidance likely to be negative? <i>(If "yes", please answer sections 4(b) to 4(d)).</i>	No	
4(b).	If so can the impact be avoided?		
4(c).	What alternatives are there to achieving the policy/guidance without the impact?		
4(d).	Can we reduce the impact by taking different action?		
<b>Comments:</b> No change to Policy			<b>Action Plan due (or Not Applicable):</b>

Name and Designation of Person responsible for completion of this form: Richard Oliver ..... Date: 04/02/2011  
 Names & Designations of those involved in the impact assessment screening process: .....

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)

*For advice on answering the above questions please contact Helen Lamont, Director of Nursing, or, Christine Holland, Senior HR Manager. On completion this form must be forwarded electronically to Steven Stoker, Clinical Effectiveness Manager, (Ext. 24963) [steven.stoker@nuth.nhs.uk](mailto:steven.stoker@nuth.nhs.uk) together with the procedural document. If you have identified a potential discriminatory impact of this procedural document, please ensure that you arrange for a full consultation, with relevant stakeholders, to complete a Full Impact Assessment (Form B) and to develop an Action Plan to avoid/reduce this impact; both Form B and the Action Plan should also be sent electronically to Steven Stoker within six weeks of the completion of this form.*