

Policy Name: Photography of Patients 03-37

Applies to: OSU Wexner Medical Center [University Hospital, East Hospital, Brain and Spine Hospital, Richard M. Ross Heart Hospital, Harding Hospital, Dodd Rehabilitation Hospital, Ambulatory Clinics and Services] and Arthur G. James Cancer Hospital and Richard J. Solove Research Institute and Outreach Sites

Policy Objective

This policy establishes guidelines for the use of cameras and video recording devices and software, including voice capture, of patients and patient information within the Ohio State University Wexner Medical Center (OSUWMC) and Arthur G. James Cancer Hospital and Richard J. Solove Research Institute (The James), and to protect the privacy and security of patients and their confidential information. This policy applies to all workforce members, which include: employees, faculty, staff, students, and volunteers.

Definitions

Term	Definition
Authorization	Written permission from a patient or patient’s personal representative for use and/or disclosure of PHI that meets the requirements of the HIPAA Privacy Rule.
Disclosure	Releasing, transferring, giving access to or divulging PHI outside of the Health System.
The Ohio State University Wexner Medical Center	The Ohio State University Hospital, Richard M. Ross Heart Hospital, The Arthur G. James Cancer Hospital and Richard J. Solove Research Institute, OSU & Harding Behavioral Healthcare and Medicine, The Ohio State University Hospital East, The Brain and Spine Hospital, Dodd Hall, Talbot Hall, and the Primary Care & Specialty Care Networks.
Protected Health Information (PHI)	Individually identifiable information (oral, written or electronic) about a patient’s past, present, or future physical or mental health, the receipt of health care, or payment for that care. This includes the PHI of deceased individuals.
Protected Health Information Image (“PHI-I”)	Any identifiable image of a patient or procedure. These images may be stored and transmitted in various manners (see below). Items that could be used to individually identify patients include, <u>but are not limited to</u> : <ul style="list-style-type: none"> a. The patient’s name; b. The patient’s Medical Record Number or Encounter Number; c. The patient’s face or any part of the face; d. The patient’s birth date, admission date, discharge date, date of death; e. The patient’s Social security number; f. Any other unique identifying number, characteristic, or code.
Treatment	The provision, coordination, or management of health care and related services by one or more health care providers. Treatment may include coordination or management of health care with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.
Use	The sharing, employment, application, utilization, examination or analysis of PHI within the Health System.
Workforce	Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Health System or Business Associate, is under the direct control of the Health System or Business Associate, whether or not they are paid by the Health System or Business Associate.

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Policy Details

The collection, duplication, disclosing, transmission or storage of Protected Health Information Images (PHI-I), for treatment, payment and health care operations will be in accordance with the Health System Joint Notice of Privacy Practices.

All PHI-I obtained for clinical purposes are considered to be Protected Health Information (PHI) and are part of the patient's medical record. Images obtained for non-clinical purposes will require prior Authorization from the patient or their representative.

All images will be maintained in a secure manner to protect patient privacy. Only hospital approved devices and applications may be used to photograph patients. No images may be saved on a personal device that is not registered with and properly encrypted by the Information Technology department.

Procedures

I. Patient Photography, Videotaping, and Other Recording/Imaging Requiring Authorization

A. Educational and/or Publications and Presentations

1. Photographs or recordings that contain any patient identifiers or facial images are protected PHI-I.
2. Patients may agree to the Use and Disclosure of their PHI-I for the purpose of publication or presentation by signing the [Release of Patient Information for Media, Educational Purposes, or Case Studies](#).

B. Documentation of Abuse and Neglect

1. If, after appropriate assessment, it is suspected that the patient is a victim of abuse/neglect, images may be taken after obtaining Authorization from the patient using the [Authorization to Release Medical Information form](#).
2. Photographs should be taken of the visible injuries.
3. One set of images will be placed in the patient's medical record.
4. Copies of the pictures or images will be offered to the patient.
5. Please refer to [Domestic Violence, Victims of Violent Crimes, Abuse, Neglect or Exploitation 03-32](#) policy.

C. Law Enforcement

1. When law enforcement agencies request to photograph or videotape a patient, permission may be given if:
 - a. The attending physician is of the opinion that the patient's condition will not be jeopardized or compromised by obtaining the images;
 - b. The attending physician will document the opinion in the patient's medical record; and;
 - c. The patient or their legal representative authorizes the photography or videotaping by law enforcement.
2. Photographs or images of patients will not be released to law enforcement without prior

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patient Authorization by using the [Authorization to Release Medical Information form](#).

D. Marketing/Public Relations/Fund Raising/Media

1. Prior to recording, videotaping or photographing a patient for use in marketing of any kind, the designated department will obtain an Authorization from the patient or their legal representatives via the [Release of Patient Information for Media, Educational Purposes, or Case Studies](#).
2. All photography and recordings must be actively monitored by the appropriate workforce member in the designated department to ensure compliance with the Privacy Rule and Health System policies and procedures.

E. Research

1. All components of this policy are also applicable to recordings and photographs used in research that are uploaded into a medical record. For recordings and photographs used in research that will not be uploaded to the medical record, the camera/recorder must be registered per this policy. (See IV(A) below).
2. Recordings and Photographs taken as part of a research protocol must be approved by the OSU Institutional Review Board (IRB).
3. Authorization for photography, videotaping, recording or other imaging must be incorporated into the informed consent document signed by the research participant or the participant's legally authorized representative.
4. If photographs, images, or recordings of research participants are disclosed with other researchers, sponsors and/or organizations, those researchers, sponsors and/or organizations must be specifically listed in the "Those Who May Use, Share and Received Your Information As Part of This Study," section of the [Ohio State University HIPAA Research Authorization form](#).

II. Authorization

A. Authorization to Obtain Non-Clinical Images and Recordings

1. The patient or their legal representative must give written Authorization before photography, videotaping, recording or other imaging is obtained using the [Release of Patient Information for Media, Educational Purposes, or Case Studies](#). The Informed Consent for a surgery or procedure is not a replacement of the authorization and cannot be used for images in lieu of an authorization form. The Informed Consent form lacks required elements for HIPAA authorizations.
2. If photographs, images, or recordings are obtained prior to obtaining patient Authorization (e.g. the patient is unconscious), the films, photographs or images will not be used until appropriate Authorization is obtained from the patient or their legal representative.
3. If Authorization cannot be obtained, the films, photographs, videotapes or images should be destroyed by the individual who obtained the image.

B. Disclosure of Images

1. Unless required by law, the disclosure of photographs, videotapes and other images are not permitted without the Authorization of the patient or their legal representative.
2. The Workforce member who obtained the images assumes responsibility for the appropriate

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collection, use, duplication, disclosure, transmission, storage, and deletion of those images.

III. Photography, Videotaping, Recording and Other Imaging by Family Members and Visitors

A. Patients, family and visitors may use their own devices to record, take photos or videos only as follows:

1. To record conversations when needed to retain patient instructions and with the prior authorization of the attending physician or their designee who is discussing the patient's care.
2. With prior authorization of the patient or the patient's legal representative for personal use by the patient or the patient's family and friends.
3. With the prior authorization of Workforce members or others who are to be included in the photo or video for personal use by the patient or the patient's family and friends.
4. Patients, family and visitors should ask for authorization prior to taking photos or video to protect the privacy and safety of patients and staff.
5. Photography or videotaping cannot be obtained in instances where doing so may interfere with the provision of care or otherwise create an unsafe environment.
6. The photography or videotaping is done in an area where no other patients or patient information will be included in the photograph or video.

B. In the event that a patient or visitor takes a photograph or video in violation of this policy, the following steps should be taken:

1. Workforce members should instruct the individual to immediately stop taking the photograph or video and request that all images and/or recordings be deleted.
2. If the individual refuses, then Workforce members should contact Patient Experience.

IV. Devices, Storage, Transmission and Retention of Images

A. Devices

1. Haiku and Canto are the only hospital approved apps for taking patient photos. Built-in photo apps on personal devices are not approved.
2. Workforce members may direct any questions regarding the approved device processes to the Information Technology Help Desk.

B. Safeguarding of Images

1. All Workforce members will be responsible for the protection of PHI-I in their possession, and will safeguard against their improper Use and Disclosure.
 - a. If the PHI-I's are to be part of a patient's medical record, the image taker is responsible for ensuring that the image is properly uploaded and incorporated into the medical record.
 - b. If the PHI-I's are not to be part of the patient's medical record (e.g. Images used for educational purposes), the image will be retained by the hospital in a secure environment.
 - c. Any use will be consistent with the Authorization obtained from the patient
 - d. Images used outside of the Health System will be de-identified and maintained in a manner consistent with the provisions of this policy.
2. Security of the data is subject to the Privacy Rule and Health System policies and

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procedures.

3. It is important that all devices that store electronic PHI-I's have incorporated safeguards to protect data from virus infection and unauthorized access.

G. Storage and Retention of Recordings and Images

1. Digital image files containing PHI-I's should be stored in a dedicated and encrypted workspace, not sharing the same space, directory, or memory storage device as personal images.
2. Portable storage media (e.g. compact disks) should be clearly identified with the patient's name, identification number, date, and contain the name of the person who is accountable for the images taken.
3. Cameras, CD's, and other storage media containing PHI should be stored securely when not in use. Digital images should be deleted from the storage media (e.g. cameras) when no longer needed.
4. All PHI-I must be collected, stored and safeguarded in accordance with Information Security Policy 07-06.

H. Internet Transmission of Images and Telemedicine

1. Transmission and/or storage of PHI-I across the Internet must be compliant with all HIPAA security standards (i.e. encrypted, password protected) and will require the assistance of the Information Technology Data Security Office.
2. Images created and transmitted during the course of telemedicine treatment should be transmitted in a technically secure environment.

I. Sanctions

1. Failure to follow this policy will result in sanctions up to and including termination.

Resources

[Frequently Asked Questions Regarding Photography in the Clinical Setting](#)

Related Policies & Procedures

[Patient Information and HIPAA 09-03](#)
[Information Security Policy 07-06](#)
[Domestic Violence, Victims of Violent Crimes, Abuse, Neglect or Exploitation 03-32](#)
[Use of Patient Information by the Hospital and Medical Staff 09-07.09-11](#)

Contacts

Office	Telephone
Privacy Officer	614-293-4477
Security Officer	614-293-7672

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<i>The Ohio State University Wexner Medical Center</i>		
Approved By (List All Committees): 1. Compliance Committee	Approval Date: 1. 12/20/2020	Issue Date: 01/14/2008 Effective Date: 1/13/2021
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<i>Arthur G. James Cancer Hospital and Richard J. Solove Research Institute</i>		
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