



## Recordings (Photography and Video) for Clinical and Service Use Policy

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Oct 2016	MINS Group	Simplified wording and layout. Separation of 'procedure' aspects from actual 'policy' requirements to reduce size of document.	4.0
23/11/2016	KMF	Update to 8.1, vulnerable patients	4.1
21/12/2016	RGM	Update to contents page	4.2
Oct 2018	MINS Group	Routine review update and changes to ensure GDPR-compliant.	5.0
June 2022	JB	Routine review, No Changes	5.0

## 1. Introduction

This policy has been prepared and adopted by the following Health Boards in NHS Scotland:

NHS Ayrshire and Arran, NHS Fife, NHS Greater Glasgow and Clyde, NHS Highland, NHS Lanarkshire, NHS Lothian and NHS Tayside.

For the purposes of this policy these Health Boards are referred to collectively as the National Health Service in Scotland (NHSiS), except in relation to copyright where this can only be retained by the governing Health Board.

## 2. Scope

This policy sets out the requirements for taking and managing recordings (photography and video) for clinical and service use. It applies to any individual employed, in any capacity, by the governing Health Board, including employees, students and third party contractors, and overrules any other related guidelines or policies.

Any breach of policy may amount to serious professional misconduct with disciplinary and regulatory consequences.

This policy does not cover diagnostic audio recordings, or recordings made by Forensic Services of the Scottish Police Services Authority.

This policy may be adopted by those working in partnership with NHSiS, such as health and social care services.

## 3. Roles and responsibilities

### **NHS Lanarkshire**

“NHS Lanarkshire takes care to ensure personal information is only accessible to authorised people; staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at [www.nhslanarkshire.scot](http://www.nhslanarkshire.scot) or ask a member of staff for a copy of our Data Protection Notice.”

### **Medical Illustration Network Scotland (MINS)**

Responsible for ensuring the policy is fit for purpose, with appropriate consultation and review of evidence prior to approval or updates.

### **The Caldicott Guardian**

Responsible for ensuring the implementation of the Caldicott Principles with respect to patient identifiable information.

### **Information Governance**

Responsible for monitoring and assisting the investigation of any relevant incidents reported through DATIX.

### **Directors and General Managers**

Responsible for ensuring that the policy and its supporting standards and guidelines are built into local processes and that there is ongoing compliance. They must ensure that any breaches of the policy are reported, investigated and acted upon via DATIX.

### **Line Managers**

Responsible for ensuring that the policy and any local protocols are accessible for their staff, and identifying staff training needs in relation the policy.

### **Employees**

Responsible for ensuring their practice is in line with the policy and local protocols.

## **4. Copyright**

The governing Health Board holds the copyright, reproduction and moral rights of all recordings made of its patients and staff.

## **5. Clinical recordings**

All recordings of patients form part of the healthcare record (either physical or electronic) and must be documented and stored according to policy.

- The loss of any clinical recording is a breach of security and confidentiality, and must be reported via DATIX.

Clinical photographic and video recordings of patients should be undertaken by professionally qualified staff employed for this purpose, where possible, during core working hours. Please see [Appendix 1](#) for local information on accessing this service.

## **6. Recording equipment (cameras, video recorders and mobile devices)**

Only NHSIS-owned equipment can be used to make and store recordings of patients. The use of personal cameras, media cards, mobile phones, or other similar devices to make recordings is expressly prohibited.

- Any theft or loss of recording equipment with the potential of holding patient identifiable data must be reported to the Information Governance team and entered into DATIX immediately.

All equipment used to make and store recordings of patients must be:

- registered for use with Medical Illustration/ Clinical Photography Services or the eHealth Security Manager ([see section 7, Appendix 2 Form A](#))
- labelled as being property of the governing Health Board (including 'if lost please return to' contact details if possible)
- listed on a departmental equipment register to assist in cases of theft or loss
- stored or transported securely at all times.

If recording equipment is used outwith NHS premises then particular care must be taken. Services must ensure that:

- recording equipment is only removed when strictly necessary, and is returned to base on the same day of use (unless permission approved through local protocol).
- any movement of recording equipment outwith NHS premises is recorded locally in a departmental equipment log
- recording equipment is never left unattended in a public area.

## **7. Registration of recording equipment and users**

Before making any recordings of patients for clinical or service use, recording equipment and/or staff must be registered by the service lead (**Appendix 2 Form A**). This requirement protects both the patient and the governing Health Board, and is intended to be helpful rather than restrictive. The registration process requires:

- a named owner / person responsible for the recording equipment
- approved consent, cataloguing and storage protocols
- approved training for staff required to use the equipment
- Ethical Committee / R&D approval (where appropriate)

All recording requirements should be discussed with the Head of Medical Illustration / Clinical Photography service or respective department prior to the submission of the Registration **Form A**. The approved consent **Form C** should be used; project-specific consent forms require approval.

## 8. Consent

### 8.1 For clinical recordings

To protect patients' rights to confidentiality, NHSiS requires informed consent for all clinical recordings; this includes recordings where it is believed a patient cannot be identified (see Exceptions 8.1.1). **It is best practice to obtain written consent for all recordings using an NHSiS approved consent form (Form B).** Consent must be recorded in the patient's healthcare record and be specific in terms of use. The consent form allows up to four levels of consent: for healthcare record use only, for teaching, for patient-to-patient viewing, and for potential publication.

For publication in journals, books or online, the patient's permission for the specific use must be sought and written consent obtained (**Form C**).

Verbal consent is acceptable for **healthcare record only purposes**; how, when and by who consent was obtained should be documented within the patient healthcare record.

Consent for specific patient groups:

Minors	Children and young people under the age of 16 can give consent providing they are capable of understanding the nature and possible consequences of the procedure. Where this is not the case, those with parental responsibility are required to consent on their behalf.
Anaesthetised, unconscious or confused patients	In the case of the anaesthetised, unconscious or confused patient, recordings may be taken provided the patient is informed of the recording and consent is obtained retrospectively. If a patient does not subsequently consent, then the recording must be quarantined.
Neonatal deaths	In the case of neonatal deaths, recordings should be covered by the normal consent procedure for minors. These recordings should not to be classified as pathological specimens.  (Refer to governing Health Body policy for photographs taken as part of the bereavement counselling process).
Vulnerable patients	In the case of vulnerable patients, written informed consent should be obtained from the client if the client has the capacity to consent to being recorded.  If the client has capacity to consent but cannot sign their name, they

	<p>should be asked to make a mark (e.g. a cross), with the form being witnessed and also signed by the healthcare professional.</p> <p>If a client is considered not capable of providing informed consent then the appropriate Adults with Incapacity (AWI) documentation should be completed.</p> <ul style="list-style-type: none"> <li>• If the client has a Welfare Guardian or Power of Attorney, they must consent to the recording; this should be given verbally and recorded on the AWI documentation.</li> <li>• If the client does not have a legal proxy, the views of the client, the clinical team and next of kin must be taken into account when deciding if the photography or video recording should happen.</li> </ul> <p>There must be a fully justifiable purpose for any photography and video recordings of vulnerable patients, approved at consultant level. The purpose for the recording should be detailed in Section C (certificate) or Section D (treatment plan) of the AWI documentation.</p>
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### 8.1.1 Exceptions

Recordings without consent may be prescribed with consultant authority under certain circumstances, such as:

- recordings of suspected non-accidental injury, where it is unlikely that the parent or guardian will give consent
- recordings to protect NHSiS from litigation or are of benefit to the patient
- recordings of pathological specimens removed from the patient with no identifiable marks or information
- recordings of patients sectioned under the Mental Health [Care and Treatment] (Scotland) Act 2003

### 8.1.2 Implied consent

Where recordings form part of an investigation or treatment, consent is implicit in the consent given to that investigation or treatment. Examples include:

- Laparoscopic and endoscopic images
- Retinal screening and OCT images
- Video fluoroscopy and ultrasound recordings

This list is not exhaustive.

### 8.1.3 Withdrawal or review of consent

Patients have a right to withdraw consent for use of their recordings at any time. If a patient withdraws consent then images must be quarantined (and not destroyed).

Patients have the right to change the desired level of consent from the original agreed status at any time. This should be obtained in writing from the patient (relevant guardian or personal representative) and the relevant parties informed.

In the case of publication, it should be made clear to the patient **when consent is being obtained**, that once the recording is in the public domain, there is no opportunity for effective withdrawal of consent.

#### **8.1.4 Consent following death and archive recordings**

If a patient dies before consent can be obtained, recordings by which the patient is identifiable can only be released with the consent of the deceased's personal representatives.

If a consenting patient subsequently dies, permission should be sought for any new use outside the terms of the existing consent. In this instance, the consent of both the personal representative and the next of kin is required.

In these cases, recordings should not be used if recordings of patients who are able to give consent could equally meet the purpose of the recording.

In the case of archive clinical recordings, where consent has not been obtained or cannot be proven, any such recording should not be used if recordings of patients who are able to give consent, could equally meet the purpose of the recording.

#### **8.2 For recordings in clinical settings (not used for treatment / diagnosis)**

Where recordings are made for non-clinical purposes, e.g. a patient showing the correct use of equipment, consent to appear in the recording is still required from any patient or member of the public. Consent should be obtained using a Model Release Form (**Form D**). Accidental recordings of patients who have not given appropriate consent must be avoided, and should not be published under any circumstances.

It is best practice to obtain written consent from staff employed by NHSiS appearing in recordings made for non-clinical purposes (**Form D**). Staff have the right not to appear in such recordings and should be given the opportunity to withdraw unless key to the rationale for the recording.

### **9. Ethical considerations**

Staff undertaking recordings of patients must respect the dignity, ethnicity and religious beliefs of patients at all times.

### **10. Data quality and integrity**

Due care must be taken to ensure that the quality of recordings is adequate for its purpose.

To maintain the integrity of the recording, manipulation to improve image quality may be carried out to the whole recording, but must be limited to simple sharpening, adjustment of contrast and brightness, and correction of colour balance.

#### **10.1 Exceptions**

- Recordings made for medico-legal purposes must not be manipulated in any way.

Recordings cannot be manipulated to achieve anonymity and so avoid the need for consent.**11. Management of recordings**

All staff responsible for the management of recordings must be registered and trained in these procedures (**Form A**).

#### **11. 1 Cataloguing and storage**

All recordings must be retained in line with national guidelines for health records. Recordings should be catalogued so they can be clearly identified and retrieved,



preferably incorporating the patient's CHI number and the date of recording. All recordings should be stored securely as soon after the recording as is practicable.

#### **11.1.1 Clinical photographs**

Clinical photographs should be stored on Medical Image Manager (MIM) if such a system exists within the governing Health Board. Local policy may allow for storage on a secure server, but only with agreement and authorisation from the local e-Health department. Once safely uploaded, images should be deleted from the camera memory card, and the card formatted.

#### **11.1.2 Instant prints**

If instant (Polaroid™ type) prints are produced then the patient CHI number and name must be recorded on the print prior to filing in the healthcare record, or scanning and upload into MIM (or secure server).

#### **11.1.3 Video recordings**

In the case of clinical video recordings, these must be catalogued and securely stored by the originating department in agreement with and authorisation from e-Health. Refer to governing Health Board policy for more information.

#### **11.1.4 Live telemedicine consultations and transmissions**

Telemedicine consultations and transmissions should not be routinely recorded.

- Consultation: details should be recorded in the case notes, with a clear indication that the consultation was undertaken by video link and therefore a 'hands on' examination was not possible.
- Transmission: The Consultant or Lead Clinician responsible for the patient(s) involved must approve the telemedicine transmission. Details of the transmission should be recorded, indicating the purpose of the transmission (e.g. Multidisciplinary Team meeting) and the location details of all remote sites. Where telemedicine techniques are to be used to transmit images of patients, reasonable care must be taken to ensure that the quality of the image at both the host and remote sites is adequate for the intended purpose.

If a recording is essential, the consent is implicit in taking part in the live transmission; however, it is best practice to obtain written consent. Reasonable care must be taken to ensure that no unauthorised recordings are made.

#### **11.1.5 Patient-own recordings**

Clinical recordings made by patients can be stored as part of their healthcare record on the understanding that:

- Appropriate consent has been obtained
- The clinical content has been verified by the clinician / healthcare professional.

### **11. 2 Access to recordings**

Recordings of patients may only be requested or downloaded from MIM (or secure server) for consented and approved research, teaching and publication use. Recordings can only be stored on NHSiS computers, laptops, memory sticks or other portable media with e-Health approved encryption.

### **11.3 Transfer of recordings**

Refer to local eHealth protocol on transfer of patient-identifiable data.

## **12. Recordings for training / assessment**

Doctors in training and other healthcare professionals acquiring copies of recordings in the course of their duties may retain these for teaching purposes under the terms of original consent.

Recordings for healthcare professionals' academic assessment/examination external to NHSiS should be approved by service lead, and consented under the examining body's protocol. This will be indicative of the examining body's responsibility for client confidentiality under the Data Protection Act (2018). There is no requirement by the governing HB to store these recordings.

## **13. Patient / visitor photography in healthcare settings**

Every individual has a right to privacy, dignity and respect whilst on NHS premises. To protect this privacy and dignity, no-one is permitted to make unauthorised photographs, video or audio recordings in healthcare settings that feature other service users, visitors or staff.

Local policy may permit recordings, for example in maternity and labour suites. Requests for a birthing partner to record the birth must be documented in the birth plan. Prior to delivery, staff must also give consent and record as such in the plan. If difficulties arise the video recording must cease to avoid possible disruption; the birth partner should be made aware of this before recording is started. Refer to local policy for more detail.

Recordings of Diagnostic Screening Obstetric Ultrasound Examinations are not permitted by the patient, partner or any other person accompanying them. Recording equipment includes mobile telephones or any other digital or analogue recording media.

## **14. External agency photography in healthcare settings**

External agencies may be employed to make photographic and video recordings on NHSiS premises. This may only be done with permission of the Director of Communications and/or the Hospital/Site Manager.

Contracts involving external agencies must state that ownership of copyright and moral rights is waived in recordings taken on NHSiS premises. The contract may state the right to reproduce the recording.

## **15. Resource implications**

Equipment: All recording equipment must produce images of sufficient quality to be fit for purpose.

## **16. Monitoring and review**

The effectiveness of the policy will be monitored and have a structured approach to the evaluation methods within a reasonable period of time. This will be done by the following evaluation methods:

- Observation
- Consultation via various staff groups undertaking photographic and video recordings

## 17. Equality Impact Assessment

Complete

(tick box)



### Appendices

#### Appendix 1

MIS operating times are standardised across all sites. Please phone the service prior to referring a patient to ensure a photographer is present. There is no out-of-hours service; in emergency contact switchboard.

Monday to Thursday: 0900 – 1700 hrs

Friday: 0900 – 1630 hrs

#### Appendix 2

All forms are also available on *firstport* MIS webpage.

<http://firstport2/staff-support/medical-illustration-service/default.aspx>

#### Form A -Registration for Digital Recording Equipment

<http://firstport2/staff-support/information-governance-records-management/usb-removable-media/storage/Documents/Application%20for%20Removable%20Media%20inc%20cameras%20V3.pdf>

#### Form B -Clinical Photography Request

<http://firstport2/staff-support/medical-illustration-service/Documents/Clinical%20Photo%20Request%20Form%20A.pdf>

#### Form C -Clinical Photography Consent for Publication

<http://firstport2/staff-support/medical-illustration-service/Documents/Request%20for%20Publication%20Form%20C.pdf>

#### Form D -Model Release Form

<http://firstport2/staff-support/medical-illustration-service/Documents/Model%20Release%20Form%20D.pdf>