

POLICY

Photography & Audiovisual Recording At Bhs

SCOPE (Area): All Areas

SCOPE (Staff): All Staff, Volunteers, Contractors, Clients, Patients

Printed versions of this document SHOULD NOT be considered up to date / current

Rationale

In all cases, care shall be taken to respect the privacy, dignity, cultural customs and religious beliefs of the patient or person whose image is being taken.

Mobile devices with photographic capacity are now commonplace. This policy aims to provide guidance for BHS staff taking Clinical and Corporate Photography and members of the public taking photographs or capturing audiovisual media within BHS facilities.

Expected Objectives / Outcome

Personal and Clinical Photography and Audiovisual Media recordings within Ballarat Health Service (**BHS**) are undertaken with the written consent of those involved as appropriate.

For Clinical and Corporate Photography, consent will be provided in writing by the patient or member of the community involved.

Photographs and Audiovisual Media recordings are managed in a manner that acknowledges and protects patient privacy and confidentiality. Media must only be used in a way which is consistent with the purpose for which the materials were obtained (which may be for treatment, educational or research purposes).

Definitions

Audiovisual Media: all types of media including but not limited to photography including still and digital photography, video/DVD recording, audio recording, and film.

Clinical Photography: Images (electronic or otherwise) taken by BHS staff that depict a patient's condition and includes, but is not limited to photographs and audiovisual recordings of wounds, injuries and of patients, to assist in treatment or for educational or research purposes.

Corporate Photography: Any Audiovisual Media taken for BHS publicity, educational (other than for clinical education), community and promotional purposes.

Patient: patient includes consumer / resident / client.

Photography: still photographs using any type of camera (including but not limited to digital, film, and mobile phones).

Principles

LEGAL REQUIREMENTS

The taking of photographs or Audiovisual Media of patients is governed by Health Privacy Principle 1 of the *Health Records Act 2001* (Vic). Relevantly, HPP1 states that an organisation must not collect health information about an individual unless the information is necessary for providing a health service to a person and either the patient consents, or where this is not reasonably practicable, the authorised representative or person responsible consents.

Photography and Audiovisual Media is usually considered to be identifiable information, even where no name or other identifying characteristics are provided.

BHS staff must not use their own personal photography or audiovisual equipment to capture Clinical or Corporate Photography. Hospital equipment must be utilized at all times.

Photography by members of the public and/or patients:

Photography and Audiovisual recordings of patients by visitors

Patients and their visitors may take photographs or audiovisual recordings of each other using their own equipment. Staff, other patients, and visitors must not be photographed or recorded without their written consent. The person taking the photograph must exclude other persons where consent has not been obtained. While BHS will make reasonable efforts to make persons aware of this requirement, BHS does not take responsibility for these images and recordings or related consent issues.

Use of photographic or audiovisual equipment in clinical areas where ability to consent may be impaired should be closely monitored by the clinical manager of the area.

BHS buildings, grounds, equipment, etc must not be photographed or recorded without the approval of the Communications Team. communications@bhs.org.au

Photographs and Audiovisual Recordings in the Delivery Suite following birth:

If the mother consents, accompanying persons may take photographs within the delivery suite, but only following the delivery of the baby. Where it has the potential of impairing clinical care, patients and accompanying persons may be asked to refrain from taking photographs at the discretion of BHS staff. Staff must not be photographed without their consent.

Audiovisual recordings are not permitted in the delivery suite.

Photographs and Audiovisual Recordings in Theatre during a Caesarean Section:

If the mother consents, photographs may be taken within the theatre with the approval of the Surgeon and Anaesthetist, and the Nurse in charge shall be notified. Photographs may only be taken following the delivery of the baby.

Staff must not be photographed without their written consent. Where it has the potential of impairing clinical care, accompanying persons may be asked to refrain from taking photographs at the discretion of the Surgeon and/or Anaesthetist.

Audiovisual recordings are not permitted in the theatre.

Photographs of Residents:

Photographs shall be taken of residents at BHS residential facilities for identification and security purposes. Appropriate consent must be obtained from the patient or their representative.

Corporate photography

Obtaining Corporate Photography, and using it for publication through websites, posters, or similar channels requires advance approval from the Communications Team and the staff members involved and other persons to be photographed.

If a patient is to be photographed, consent must be obtained using the BHS consent form (Consent – Photography and video recording).

The Communications Team will ensure appropriate storage of digital images and consent forms.

Written consent from staff, must be obtained using the BHS Staff Photography Consent Form (Appendix 1). This must include an explanation of how the photography may be used, which could be for social media promotion, publications such as the Year in Review, Annual Report and Quality Account or on the BHS website. The consent form will be stored by the Communications Team on the BHS secure shared drive.

Participants have the right to withdraw or alter their consent to Corporate Photography at any time. Requests to remove an image from a publication, signage or website will be managed on a case by case basis by the Communications Team.

However, it should be made clear that once consent has been given and the photograph is in the public domain, BHS may not be able to suppress publication of the image by third parties, even if the image is removed from all publications under BHS's control.

No person's image shall be altered in any way to prevent it being identifiable to avoid the need for consent to any disclosure or publication. However, this does not preclude altering images to render them unidentifiable where a person has consented to disclosure and publication.

Where Corporate Photography is obtained at BHS events, the organisers must display event photography signage informing patrons of this, and asking patrons to let photographers know if they do not wish to be photographed. This should also be mentioned in the welcoming speech. These signs are available through Environmental Services and can be booked through the Communications Team.

Clinical Photography:

Clinical Photography may be used:

To assist health professionals at BHS to accurately record a patient's condition

To identify patients at BHS residential facilities, and for security purposes.

For teaching purposes.

For research purposes.

To assist with continuity of care of the patient between Ballarat Health Services and the community or in residential services.

For evidence or support of clinical observations, particularly in the case of forensic examination and reporting.

Staff members recording audiovisual footage of patients for Clinical Photography must take particular care to exclude other persons who may appear or be heard in the background.

Consent

Clinical Photography – treatment purposes

Patient consent to Clinical Photography shall be obtained prior to the Clinical

Photography being undertaken. This shall include an explanation of how the Clinical Photography will be used. Informed written consent must be obtained for each of the proposed uses of the Clinical Photography. This consent for each proposed use shall be documented in the BHS consent form.

It must be stored in the patient's medical record (MR/360.10).

In general, one consent per admission will cover all Clinical Photography taken to assess progression of a patient's clinical condition (eg. assessing wound healing). In the event of an emergency where the patient is not competent to provide consent, Clinical Photography may be taken where necessary as part of the emergency treatment without the patient's consent (providing the patient does not have an authorised representative, or where it is not practicable to obtain their consent). This exception does not apply where Clinical Photography is for research or teaching purposes.

In non-emergency circumstances, where the patient is not competent to provide written consent, consent may be obtained from a person legally able to consent on behalf of a patient (such as the person's authorised representative under the *Health Records Act 2001* (Vic), meaning the individual's guardian, attorney under an enduring power of attorney, medical treatment decision maker under the *Medical Treatment Planning and Decisions Act 2016* (Vic), administrator under the *Guardianship and Administration Act 1986* (Vic), the parent of a child, or a person otherwise empowered under law to perform any functions or duties or exercise powers as an agent of or in the best interests of the individual).

This is if the purpose of the Clinical Photography is for treatment and follow-up of the patient (as deemed clinically appropriate by the treating team) and for use in the medical record **only**. Refer to 'Consent policy/protocol'.

Persons legally able to consent on behalf of a patient should not be approached to provide consent if the purpose of the Clinical Photography is for use in teaching of healthcare staff and students or for research purposes.

If consent is refused or not obtained, the Clinical Photography shall not proceed.

The refusal must be documented in the patient's medical record.

In the case of endoscopic procedures, the consent form for the procedure includes consent to photography. No additional consent form is required.

Clinical Photography - non-treatment purposes (teaching or research)

Clinical Photography may be requested for teaching, research or internal audit purposes. This purpose should be documented on the consent form. Where Clinical Photography is for research purposes, the patient should be made aware of the possibility of later publication of the de-identified image in scientific journals. Please note that this consent does not replace any conditions or consents required for research as directed by a Human Research Ethics Committee. All research involving humans carried out at Ballarat Health Services must have the approval of a Human Research Ethics Committee.

Clinical Photography for education and/or research purposes must be de-identified by removal of identifying information (eg name and UR) and blocking of distinctive visual characteristics(eg face, hair, piercing, scars, tattoos).

Educational and training purposes includes the audiovisual transmission of footage from surgical procedures from theatre to the lecture theatre in the Education Resource Centre for teaching purposes. If this is intended, consent must be obtained from the patient prior to surgery. If any images are retained from the transmission, they should be destroyed or stored as detailed below.

If the intended use of the Clinical Photography changes and the patient has not consented for the new use of the Clinical Photography, the patient must be contacted and a new consent obtained. This must be recorded on a new form (MR/360.10).

In circumstances where Clinical Photography could be also utilised for public relations purposes, consent must be obtained from the patient and treating clinicians and approval must be obtained from the Media and Communications Manager.

Patients (or those persons legally able to consent for them) have the right to withdraw or alter their consent to Clinical Photography and specific uses of the images at any time. However, in the case of public relations purposes or publications, it should be made clear that once consent has been given and the Photography is in the public domain, BHS may not be able to suppress publication of the image by third parties, even if the image is removed from all publications under BHS's control.

Integrity

The patient's privacy shall be respected and Clinical Photography kept confidential in accordance with laws applying to health information and medical records. It may be necessary for continuity of care to create care paths and dressing regimes using Clinical Photography, and to share these with community providers (eg general practitioners, district nurses and other health care facilities). This would particularly apply to Clinical Photography taken to assist with wound care. For patient focused Clinical Photography, where possible, identifying information shall be included in the image (eg. UR, name on ruler beside wound) to provide image validation for inclusion in the patient medical record, particularly in the event of direct upload of digital image to the Digital Medical Record.

Where the above is not possible, the image should be printed and a patient identification label (Bradma) placed on the photograph.

Residential Services and Sub-acute Services may send Clinical Photography of patients electronically, to seek advice regarding appropriate treatment. This would usually apply to images taken to assist with wound care.

These images may only be sent within the internal Ballarat Health Services e-mail system and at no time can photographs be sent electronically outside this system. Emails containing such images should be deleted once sent.

Clinical Photography must not be distorted in any way.

Storage and Retention

All digital Clinical Photography is to be sent to Health Information Services for loading into the BOSSnet Digital Medical Record (DMR) .

Any hardcopy Clinical Photography shall be marked with the patient's name, UR number, date of birth, and the date when the image/recording was taken, and any other relevant information (eg location of skin lesion if not obvious from image). These will be scanned into the patient's DMR.

All Clinical Photographs must be kept within the patient's medical record with the correlating consent. Audiovisual recordings shall be stored by Health

Information Services with the consent form (MR/360.10) and a brief description of the time and content of the audiovisual recordings within the patient's medical record.

The original electronic images or audiovisual recordings shall be deleted from the camera.

Access to Clinical Photography shall be in accordance with the 'Health

Records Act', 'Health Services Act' and 'Freedom of Information Act'. For example, section 141 of the "Health Services Act" prohibits disclosure of patient information including such images without the relevant consent, unless specific exceptional circumstances apply. Disposal of Clinical Photography shall be in accordance with the disposal schedule of the medical record.

Clinical Photography kept for educational/research purposes must be de-identified and securely stored.

Clinical Photography identified as 'forensic' must be stored in the Legal/Forensic subtab within the DMR. Access to this subtab is restricted and will prompt extra privacy warnings. All access to this subtab will be audited with notification to the Director of Medical Services.

Illegal photography and photography without consent:

Offences relating to photographs and recordings:

It is an offence within the meaning of the *Summary Offences Act 1966* (Vic), to visually capture another person's genital or anal region without the consent of the relevant person. If BHS staff become aware of this occurring at BHS, the police should be notified.

It is an offence under the *Surveillance Devices Act 1999* (Vic) to use listening or optical devices, which would include mobile phones, to record private conversations. The use is prohibited only in private circumstances where the person is not involved in the activity. This would not usually include a hospital ward situation. However, it is also an offence to publish a record of a private activity or conversation without consent of the parties. This may be applicable where a person has recorded a private conversation or treatment while they were present, but without consent, and the activity or conversation was not reasonably expected to be one that could be viewed or overheard more generally.

Photography or recordings of staff or patients without consent:

Where a patient, or member of the public takes a photograph or audiovisual footage of a staff member without their consent, the Consumer Liaison Officer (in hours) and the Patient Flow Coordinator (out of hours) should be notified and should be involved in a discussion with the individual regarding the right of staff members to privacy while on BHS premises. The individual may be requested to delete the image or footage. However, the device containing the image or footage may not be confiscated from the individual, and the individual cannot be compelled to delete the image or footage. If BHS staff have a concern about further publication of such images or footage, they should contact The Director of Community Engagement on 5320 4351.

If a visual or audio recording has been made without consent in a private setting, the individual may be committing an offence if they publish or otherwise communicate a record of it. If this occurs on BHS premises, the individual should be advised of this possibility by the Consumer Liaison Officer or Patient Flow Coordinator, as appropriate.

Where a member of staff without reasonable excuse takes a photograph or audiovisual footage of a patient without consent, the image or footage should be deleted from the device, and appropriate disciplinary action should ensue.

Related Documents

 [CPP0211 - Consent For Medical Treatment](#)

 [SOP0001 - Principles Of Clinical Care](#)

References

 [Freedom of Information Act 1982.](#)

 [Guardianship and Administration Act 1986.](#)

 [Health Records Act 2001.](#)

 [Health Services Act 1998.](#)

 [Medical Treatment Planning and Decisions Act 2016](#)

 Medical Treatment Planning and Decisions Act 2016 (Vic)

Appendix

 [Privacy and Data Protection Act 2014](#)

Reg Authority: Corporate Online Ratification Group	Date Effective: 21/05/2019
Review Responsibility: Director Community Engagement	Date for Review: 21/05/2024

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