

Date 18/08/08  
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Our Ref RM/1001  
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Dear

## **FREEDOM OF INFORMATION – PHOTOGRAPHY POLICY**

I write in response to your email request of 28 July 2008 for information in relation to a Photography Policy within NHS Lothian.

I have been provided with information to help answer your request by Ms Hazel Herd, Manager, Medical Photography Department – NHS Lothian. I include with this response a copy of the Photography and Video Recording of Patients Policy and Procedure.

I hope this information answers your request.

If you are unhappy with our response to your request, you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner.

If you require a review of our decision to be carried out, please write to Mr I Whyte, FOI Reviewer at the address at the foot of this letter. The review will be undertaken by Mr Whyte as he was not involved in the original decision making process.

FOI responses (subject to redaction of personal information) may appear on NHS Lothian's Freedom of Information website at :- [http://www.nhsllothian.scot.nhs.uk/your\\_rights/foi/foi\\_09.asp](http://www.nhsllothian.scot.nhs.uk/your_rights/foi/foi_09.asp).

Yours sincerely

**ALAN BOYTER**  
**Director of Human Resources**  
**and Organisational Development**  
Cc: Chief Executive

Continued

Headquarters  
Deaconess House 148 Pleasance Edinburgh EH8 9RS

Chair Dr Charles J Winstanley  
Chief Executive Professor James Barbour O.B.E.  
*Lothian NHS Board is the common name of Lothian Health Board*

# **PHOTOGRAPHY AND VIDEO RECORDINGS OF PATIENTS**

## **Policy & Procedure**

**DRAFT (1.9)**

**May 2008**

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Introduction

Medical images taken of NHS Lothian patients, in NHS Lothian hospitals, are personal data of which NHS Lothian is the Data Controller and is legally responsible for ensuring that the information is processed in compliance with the Data Protection Act.

The Seventh Principle of Data Protection requires Data Controllers to have 'appropriate technological and organisational measures in place' to protect against unauthorised and/or unlawful processing.

This policy and procedure sets out NHS Lothian's requirements in terms of the photography and video recordings of patients. The policy also gives guidance on confidentiality, consent, copyright, and the secure storage and retrieval of patient photographs.

NHS Lothian could be found in breach of the Data Protection Act (1998) and the Freedom of Information (Scotland) Act (2002), if it were unable to produce a copy of any photograph taken within the Organisation, regardless of whether it was taken by the Medical Photography Service, since any Clinician or Healthcare Worker taking a photograph/video of a patient, would be deemed to be acting as an agent for NHS Lothian in doing so.

A significant number of photographic images are generated to support healthcare records. Images are also taken for teaching, research, medico-legal, and publication purposes.

Copyright of all such photographs and video recordings is vested in NHS Lothian when undertaken by a NHS Lothian employee within the course of their employment.

## **Policy Objectives**

- To protect the integrity of both staff and patients
- To provide guidance on staff responsibilities in relation to confidentiality, consent, copyright, and the secure storage and retrieval of patient photographs and video images.

## **Policy Scope**

This policy is about taking clinical photographs and clinical video recordings of patients. It applies to **ALL** NHS Lothian staff in **ALL** locations. The policy applies to both new technologies, and to more conventional processes of recording and transmitting images of patients.

## **1. NHS Lothian Medical Photography Service**

1.1 NHS Lothian employs professionally qualified, registered Medical Photographers, who, as part of the Healthcare Team, provide a comprehensive patient photography service. A significant number of photographic images are generated to support healthcare records. Images are also taken for teaching, research, medico-legal, and publication purposes.

The Medical Photographers cover all areas of the hospitals including theatres, wards, and outpatient clinics as well as the studios within the photographic departments.

1.2 Departments are located at the following six sites:

- St. John's Hospital, Livingston  
Phone: 52143
- Royal Infirmary Edinburgh (Little France)  
Phone: 23446/23445
- Royal Hospital for Sick Children, Edinburgh  
Phone: 20306
- Lauriston Building, Edinburgh  
Phone: 62139
- Western General Hospital, Edinburgh  
Phone: 31351
- Princess Alexandra Eye Pavilion, Edinburgh  
Phone: 63733/64084

Contact the appropriate site Medical Photography Department for further details.

## **2. Personal Cameras, Camera Devices on Mobile Phones/Similar Devices**

2.1 NHS Lothian has made the decision that patient photography should be undertaken and/or managed by the Medical Photography Service. Staff **MUST NOT** use their own

personal cameras, mobile phones or other similar devices to photograph/video patients (please also refer to the NHS Lothian eHealth Security Policy).

### 3. Who can take photographs/video recordings of patients?

3.1 It is not practical for **all** photographic/video recordings to be made by the Medical Photography Staff. Some procedures where video or still recordings is implicit e.g. endoscopy, is recorded by other NHS Lothian Healthcare Staff. Allied Health Professionals also make their own recordings for assessment or intervention purposes.

3.2 Clinics, wards, operating theatres and other departments are permitted to purchase a 'departmental camera' and 'media cards' for patient photography use during 'out of hours' or in an emergency, or at times when a Medical Photographer is unavailable. Such cameras and media cards must be registered with the Medical Photography Manager. The use of personally owned media cards is **not allowed** and is considered a breach of policy. All patient photographic images, including those taken on "departmental cameras" must be securely stored on the Medical Photography Database for archiving purposes.

### 4. Medical Photographic Records – Confidentiality and Consent

4.1 All photographic images of patients regardless of format or recording medium form part of the healthcare record (either physical or electronic) and are therefore subject to the same confidentiality, data protection and security considerations as any other healthcare record.

4.1.1 this includes live telemedicine transmissions or video recordings.

4.2 Confidentiality is the patient's right and may usually only be waived by the patient or by someone legally entitled to do so on his/her behalf. A breach of confidentiality may well amount to serious professional misconduct with inevitable disciplinary consequences.

4.3 **Care must be taken to respect the dignity of all patients.** A major feature of clinical photography is the need to expose parts of the body and you must ensure that issues around modesty are respected. This is not exclusive to patients from particular religious or cultural or ethnic backgrounds and includes, for instance, patients undergoing gender reassignment or patients with a disability.

Whenever possible, the photographer should be the same gender as the patient and if this is not possible a chaperone must be offered (see NHS Lothian Chaperoning, Intimate Examination Procedures and Care Policy).

Should you encounter communication difficulties contact the Interpretation and Translation Service who will assist with interpreters, both spoken and sign language. They may also be able to help with general advice around cultural issues and can be contacted on 0131 242 8181 for advice.

4.4 In order to ensure that the patient's right to confidentiality is preserved, NHS Lothian requires that **WRITTEN CONSENT** be obtained for photography and video recordings in **ALL** circumstances (NHS Lothian Obtaining Informed Consent Policy/Procedure). There are some exceptions and these are listed below.

**Recordings for which permission is not required:**

- Procedures where video or still recording is **implicit** e.g. endoscopy, colposcopy (unless performed for child protection/evidential purposes, when written consent is required), interventional radiology, ultrasound etc
- Retinal photographs
- Images taken from pathology slides

4.5 In emergencies or other similar situations where patients are temporarily unconscious and cannot give consent for themselves (e.g. unplanned theatre photography or ITU), photography is permitted. However, it is important that making of the recordings does not prejudice the patient's care. The patient must be told that the photographs have been taken, and this should be by an appropriate member of staff. Retrospective consent must be sought from the patient/relative/carer before the images can be released.

4.6 If a patient dies before retrospective consent can be obtained, material by which the patient is identifiable can only be released with the consent of the next of kin or the personal representative of the deceased. A duty of confidentiality survives the death of the patient.

4.7 If a patient who has already consented subsequently dies, permission should be sought for any new use outside the terms of the existing consent. In this instance the consent of either the next of kin or the personal representative is required.



4.8 The practice of obtaining the patient's written consent only in the case of full length or facial photographs or video, from which the patient can easily be identified, is not sufficient. It is sometimes possible for people to be identified from other categories of photograph or video, e.g. showing a tattoo or other distinguishing mark. Nor is it sufficient to rely on the photographer or consultant's judgement that a particular patient is unlikely to be identified from a particular photograph or video sequence.

4.9 A patient's image may not be altered in any way to achieve anonymity and so avoid the need for consent. Blacking out the eyes in a facial photograph is not an acceptable means of anonymising the image.

4.10 It is recognised that specimen photography may be required as part of pathological examination with any resultant photographs forming an integral part of the patient record. It is also recognised that there is no opportunity for pathology staff to obtain consent from the patient, but a consent form for the surgical procedure during which the specimen was obtained will be in place. If clinical staff wish to use a specimen photograph for a purpose not directly related to the care of the patient the onus will be on them to obtain consent for this.

4.11 The recording, especially on video, of vulnerable adults requires particular care. Vulnerable adults may be defined as those who are not in a position to make judgements and/or consent on their own behalf regarding medical treatment or procedures. These may include certain categories of psychiatric patients and those suffering from dementia. In Scotland, patients may be photographed without consent providing they have an active incapacity certificate (Adults with Incapacity (Scotland) Act, 2000). The Institute of Medical Illustrators has published guidelines for these procedures. (Code of Responsible Practice 2006, available from The Hon. Secretary, Institute of Medical Illustrators, Dept. Medical Illustration, St. Luke's Hospital, Bradford Hospitals NHS Trust, Little Horton Lane, Bradford, West Yorkshire, BD5 0NA. The Medical Photography Departments also hold copies).

4.12 For children and young people less than 16 years, the usual practice is to obtain consent from the adult with parental responsibility (usually the mother). The Age of Legal Capacity (Scotland) Act, 1991 allows children and young persons less than 16 years to validly consent (or refuse consent) on the same basis as adults provided they are capable of understanding the nature of and possible consequences of the procedure or treatment.

4.13 Requests for bereavement photographs of neonatal deaths or stillborn babies should be made using the SiMBA photographic request form. Contact the Medical Photography Department for further information if required (SJH ext 52143 or RIE ext 23445).

4.14 Accidental photography or video of patients who have not given appropriate consent must be avoided. Images of a patient, which have inadvertently picked up the images of another patient or patients who have not consented, should not be published under any circumstances.

4.15 **The NHS Lothian Photography/Video Request/Consent Form** (Appendix 1) A Medical Photography request/consent form should be filled out. It should be signed by the requesting clinician and countersigned by the patient/representative/carer. The clinical diagnosis section can be completed after the patient has signed consent if required. The existence of clinical photographs must be logged in the patient's case notes or other appropriate healthcare record. The original top copy of the request form should be filed in the patient clinical record. The Medical Photography Service will retain the duplicate counterfoil copy.

AHP's who make their own recordings for assessment/intervention purposes should refer to section 4.20.

4.16 There are four levels of consent:

- **Consent A – Personal Medical Records Only**
- **Consent B - Teaching.** The recordings being made available for healthcare teaching through secure, password-protected websites, videos and lectures and may also be used for personal medical records.
- **Consent C – Publication** The recordings being published in publicly accessible electronic media (includes paper based medical journals/books).
- **Consent D – Patient to Patient** The patient gives consent for other patient's to see his/her images. May help in understanding treatment or likely outcomes of treatment.

4.17 In the cases of publication, including electronic, it should be made clear to the patient that once a photograph or video is in the public domain, these images cannot be effectively withdrawn.

4.18 If a request form is sent to the Medical Photography Department with a patient and the consent section has not been signed then the Medical Photographer will endeavor to

obtain consent. The Medical Photographer will ask the patient to give written consent to the photography/video after having explained that this consent will be for the monitoring of the patient's treatment and health care teaching purposes only.

4.19 Consent levels are clearly indicated on the Medical Photography request form. If the desired level of consent changes from the original agreed status, then the requesting clinician must obtain written permission from the patient (relevant guardian or patient representative).

4.20 Allied Health Professions (e.g. physiotherapy, speech & language therapy and occupational therapy) who make their own recordings in their assessment/intervention with clients are permitted to use the photographic/video request/consent forms they have designed for local purposes. The photography/video request form should include relevant consent levels according to the proposed use of the recordings. A copy of the form should be kept in the client record and with the stored photographs/recordings.

## **5. Logging, Secure Storage and Staff Access to Electronic Patient Photographic Records**

5.1 Since any healthcare record has to be available for disclosure if required, it is essential that every photograph and or video is properly logged and stored. NHS Lothian could be found to be in breach of the Data Protection Act (1998) and/or the Freedom of Information (Scotland) Act (2002) if it were unable to produce a copy of any photograph taken within the organisation.

5.2 It is therefore imperative that the Medical Photography Service, or the originating department, maintains an accurate record of all patient photographs. An entry must be made in the case notes/patient record indicating that photographs have been taken and where they are stored.

5.3 In the case of master videotapes, these must be securely stored and logged by the Medical Photography Service or the originating department.

5.4 Camera equipment is desirable and theft is not uncommon. It is essential to take careful precautions with cameras, which have recorded patient identifiable images on them. Camera equipment must be kept secure e.g. in a locked drawer or cupboard. Digital images should be removed from the camera as soon as practicably possible.

5.5 NHS Lothian has invested in an electronic Medical Image Management Database (MIM). The system is used for the secure storage and retrieval of patient photographs, captured by NHS Lothian Staff (i.e. Medical Photographers, Clinicians and other Healthcare Staff). The key benefits of implementing such a system include:

- Improved Data Protection. The system provides a comprehensive security model which supports the Caldicott Report, the Data Protection Act and the Freedom of Information Act
- Patient photographs are securely stored centrally, so they can be easily located and backed up on a regular basis by the IT department
- The Images can be distributed across NHS Lothian via the intranet (applications section), allowing instant access to patient photographic records (MIM System User Authorisation is required)
- Faster delivery of medical images to clinicians that evaluate and report on them
- No lost or misplaced images
- Better collaboration, Registered System User's can view the images from multiple workstations and locations

#### **5.6 Staff Access to Electronic Patient Photographic Records**

Child Protection and Caldicott principles of good practice are issues of fundamental importance to NHS Lothian. Therefore, clinical photographs are only available to staff at levels appropriate to their roles and degree of access required (including access to 'sensitive' and 'highly sensitive' images of children and young persons less than 16 years of age). To access the password protected Medical Photography Database you must be authorised to register as a Medical Image Management (MIM) User (Contact the Medical Photography Service for details, telephone extension 52143).

5.7 NHS Lothian requires that all original digital camera images are securely stored on the Medical Image Management Database (MIM) prior to any image manipulation. The server for this database is backed up on a regular basis by the IT Department. This will ensure that NHS Lothian would be able to comply with any future subject access request. This is intended to protect the patient, individual and the Board (Contact the Medical Photography Service for further information telephone: 52143/23446).

5.8 Once the original image has been saved manipulation may only be carried out to the whole patient image. This would normally be limited to simple sharpening, cropping, adjustment of contrast and brightness and correction of colour balance.

5.9 Images of patients may only be transferred to NHS Lothian computing equipment for use in connection with Ethics Committee approved and/or registered research projects, or for the preparation of consented teaching/publication materials.

5.10 Prior to leaving the employment of NHS Lothian, staff must erase any digital images of patients from their computers unless specific permission to retain images for teaching purposes is obtained from the Medical Director or nominated representative. NHS Lothian may grant such permission subject to the retention of copyright and all reproduction rights.

## **6. Non-clinical Photography or Video Recordings in which Patients Appear**

6.1 Although a patient may be incidental to a photograph/video, e.g. which is primarily to illustrate a particular piece of equipment but also includes a patient or member of the public, signed consent should still be obtained.

6.2 Members of staff who may operate the equipment or appear in the photograph /video should also give signed consent to the recording and the further use of the images.

6.3 If 'outside' photographers or video operators are seeking to acquire these types of photographs /videos they can only function and produce images on NHS Lothian premises with the written permission of the NHS Lothian Communications Manager. Staff have the right to decline consent to appear in a photograph or video.

## **7. Video Recordings of Patients (analogue or digital media)**

7.1 Under the Data Protection Act (1998), video recordings are part of the patient's record and must be available for disclosure. It is therefore imperative that the Medical Photography Service or the originating department maintains an accurate record of all patient videos.

7.2 NHS Lothian requires that all copies of video recordings (analogue or digital) as well as the master tapes are securely stored and documented. This is intended to protect the patient and the individual. The re-recording tab must be broken off to ensure that the tape is not accidentally erased. As a safe guard, a back up duplicated copy of the original recording should also be made.

7.3 All video equipment and cameras used to record patient images not implicit in the procedure must be registered with the Medical Photography Manager.

7.4 Where video is to be used to record images of patients, reasonable care must be taken before the start of the project to ensure that the quality of the image is adequate for its purpose.

## **8. Live Telemedicine Consultation**

8.1 It is recommended that unless vital, videotape recordings of telemedicine consultations should not be routinely recorded.

8.2 Relevant details should be recorded in the case notes, as normal but it should be clearly indicated that the consultation was undertaken by video link thus a 'hands on' examination was not possible.

8.3 If a video recording is undertaken the consent is implicit in taking part in the consultation but written consent after explanation to the patient is preferable.

8.4 Consultations must not be edited and the re-recording tab must be broken off at the end of the consultation to ensure that the tape is not accidentally erased.

8.5 All video recordings involving patients must be clearly labelled with the details of that patient and the tape clearly marked as the 'Master Tape'.

8.6 An entry must be made in the case notes indicating that a recording of the consultation has been made and the location of the storage point.

## **9. Live Telemedicine Transmissions**

9.1 The Consultant or Lead Clinician in charge of the patient(s) involved must approve the telemedicine transmission and record this in the case notes.

9.2 Relevant details should be recorded in the case notes as normal, indicating the purpose of the transmission and location details of all remote sites.

9.3 Reasonable care must be taken to ensure that no unauthorised video recordings are made of the live transmission.

9.4 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.

## 10. Copyright

10.1 Copyright is a separate but closely related issue. In respect of all photographic and video images taken on NHS Lothian premises regardless of recording medium and whether or not staff of the Medical Photography Service takes the photograph/video, the copyright is deemed to be vested in NHS Lothian.

10.2 It is important that in any contract for publication the copyright in the photograph remains with NHS Lothian and does not pass automatically to the publishers on first publication, otherwise it may be impossible to protect the patient's interests by exercising control over further publication of the photograph. The R&D department should be contacted at the Academic and Clinical Central Office for Research Development (ACCORD) to establish whether there is a requirement to register intellectual property rights.

10.3 Those signing contracts with book or other publishers have a responsibility to delete from the contract any suggestion that the copyright will pass to the publisher.

10.4 Doctors-in-training and others acquiring copies of medical photographs/videos in the course of their duties may retain these for teaching purposes, but must undertake only to use them within the terms of the original consent. Copyright and reproduction rights at all times remain with NHS Lothian.

10.5 Copyright is protected when the images are labelled with the words:

This print (image) is the copyright of NHS Lothian. Permission is granted for first publication in.....(title of journal or book and date of publication).....

**10.6 Only authorised copies should be made of patients' photographs or video images.**

## 11. Additional Information

11.1 There should be no reason for NHS Lothian staff to undertake their own clinical photography/video during normal working hours, as this service is available from the Medical Photography Service. However, if there are exceptional circumstances, photography/video of patients may be undertaken provided they have received prior approval from the Consultant or Lead Clinician in charge of the patient. (Note: Consent for Police Photography is usually given by the patient/patient's representative).

11.2 Medical photography/video of an individual patient undertaken out-of-hours (e.g. in theatre) by non Medical Photography staff is subject to the same guidance on confidentiality and consent as previously noted under sections 4.2, 4.4 and 4.5 of the Photography and Video Recordings of Patients Policy. This requirement is intended to ensure the protection of both the patient's rights and NHS Lothian, and is intended to be helpful rather than restrictive.

11.3 Any medical/clinical photography project, to be carried out by staff other than members of the Medical Photography Service must receive prior written approval from the Medical Director or nominated representative in conjunction with the Head of the Medical Photography Service. It may also be necessary to discuss the project with the NHS Lothian Data Protection Officer.

11.4 Before any persons, other than NHS Lothian staff undertakes any video recording, all staff involved must give their consent to be filmed

- In Labour suites, for example, any request for a partner to record the birth must be included in the birth plan in advance
- Prior to delivery, staff must give consent and this recorded in the case notes
- If difficulties arise, in order to avoid possible disruption, the video recording must cease

11.5 Confidential or personally identifiable information, including clinical images, may only be electronically transferred via approved Clinical Mailboxes. On no account should confidential or personally identifiable information be transferred by email, whether internally or externally by SMTP email, If further advice is required, please contact the IT Help Desk on extension 85050

11.6 At all times the NHS Lothian eHealth Security Policy and Obtaining Informed Consent Policy/Procedure apply. If further advice is required, please contact the IT Help Desk on extension 85050



11.7 If you are producing patient information materials or other literature to promote your service to patients, public or staff and you need advice about social/media photography, please contact Clifford Burden, Communications Manager, NHS Lothian, Deaconess House, 148 Pleasance, Edinburgh EH8 9RS.

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Ratification:

Acknowledgements: Institute of Medical Illustrators

Reviewed:

## Medical Photography / Video Request

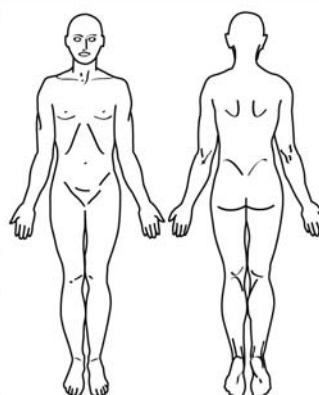
LAURISTON • PAEP • RHSC • RIE • SJH • WGH

NHS Lothian - University Hospitals Division

Surname	Date
First Name	Ward / Dept.
TRAK / CHI No	Consultant
D.O.B. M / F	New Pt. <input type="radio"/> Old Pt. <input type="radio"/> In-Pt. <input type="radio"/> Out-Pt. <input type="radio"/>

### Diagnosis / relevant clinical details (please print)

☐ Millimetre scale in close-up view



☐ MIM digital image ☐ Print ☐ Video

Requesting Clinician (print) .....

Signature ..... Date .....

### Patient Consent

In view of the explanation given to me by the above clinician. I give consent to the following consent levels. INITIAL only those that apply.

- ..... **A Medical Records** I consent to the recordings being taken for my personal records only.
- ..... **B Teaching\*** I consent to the recordings being made available for healthcare teaching through secure, password protected websites, videos and lectures.
- ..... **C Publication\*** I consent to my recordings being published in publicly accessible electronic media (includes paper based medical journals/books).
- ..... **D Patient to Patient\*** I consent to the use of the recordings to be shown to other patients as an example of pre/post clinical/surgical procedures.

**Medico-legal** I understand that the use of the recordings might be used to support clinical evidence and may be shown to professional staff for medico-legal purposes, including court proceedings.

I understand that no fee is payable to me for use of the recordings.

**\*Refusal to consent will NOT affect medical care.**

Signature of patient / parent / guardian ..... Date .....

Witness / Chaperone ..... Date .....

Copyright of all material produced by the Medical Photography Service is retained by NHS Lothian and should not be reproduced without written permission from the copyright holder.

### For Department Use Only

Photographer	Camera/Smart Card No.	Job Ref.	Comments
Image Date	No. of Images	Date Printed/Completion Date	

## Reference and Further Reading

- Obtaining Informed Consent Policy/Procedure - NHS Lothian, April 2006
- NHS Code of Practice On Protecting Patient Confidentiality – NHS Scotland
- Patient Confidentiality and Clinical Illustrative Records – Institute of Medical Illustrators National Guidelines, March 2006
- Records Management Policy – NHS Lothian
- eHealth Security Policy – NHS Lothian
- Code of Professional Conduct for Members – Institute of Medical Illustrators, March 2006
- Chaperoning, Intimate Examination Procedures & Care Policy – NHS Lothian, July 2007
- The Use of Chaperones in Clinical Photography – Institute of Medical Illustrators National Guidelines, March 2006
- Bereavement Photography – Institute of Medical Illustrators National Guidelines, April 2006
- Clinical Photography & Cultural Diversity - Institute of Medical Illustrators National Guidelines, November 2004