

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

**Version 4.1**

<b>Lead Manager</b>	<b>Medical Photography Service Manager, Duncan Blyth</b>
<b>Responsible Director:</b>	<b>Caldicott Guardian, Professor Alison McCallum</b>
<b>Approved by:</b>	<b>Information Governance Steering Group Medical Illustration Network Scotland (MINS)</b>
<b>Date approved:</b>	<b>November 2016</b>
<b>Date for review:</b>	<b>October 2018</b>
<b>Replaces previous version:</b>	<b>V4.0</b>

## CONTENTS

1.	Introduction	4
2.	Scope	4
3.	Roles and responsibilities	4
4.	Copyright	5
5.	Clinical recordings	5
6.	Recording equipment	5
7.	Registration of recording equipment and users	5
8.	Consent	6
8.1	For clinical recordings	6
8.2	For recordings in clinical settings (not used for treatment / diagnosis)	8
9.	Ethical considerations	8
10.	Data quality and integrity	8
11.	Management of recordings	8
11.1	Cataloguing and storage	8
11.2	Access to recordings	9
11.3	Transfer of recordings	10
12.	Recordings for training / assessment	10
13.	Patient / visitor photography in healthcare settings	10
14.	External agency photography in healthcare settings	10
15.	Resource implications	10
16.	Monitoring and review	10
17.	Equality Impact Assessment	11
18.	Appendices	11

Consultation and Distribution Record	
<b>Contributing Author / Authors</b>	Kathy McFall Ross G Milligan Stephen Palmer Duncan Blyth Lucy Griffin Nicky Goodfellow Eric Robinson
<b>Consultation Process / Stakeholders:</b>	Adult Learning Disability Service – NHS Lanarkshire Adult Learning Disability Service – NHS Lothian Community Nursing Staff – NHS Lothian Director of Diagnostics – NHS GGC Information Governance – NHS Ayrshire & Arran Information Governance – NHS GGC Information Governance – NHS Lanarkshire Information Governance – NHS Lothian SALT – NHS Lothian
<b>Distribution:</b>	Medical Illustration / Medical Photography Services: NHS Ayrshire & Arran, NHS Fife, NHS GGC, NHS Lanarkshire, NHS Lothian, NHS Tayside and NHS Highland.

CHANGE RECORD			
Date	Author	Change	Version No.
Oct 2016	MINS Group	Simplified wording and layout. Separation of 'procedure' aspects from actual 'policy' requirements to reduce size of document.	4.0
23.11.16	KMF	Update to 8.1, vulnerable patients	4.1

## **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**

### **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 and Caldicott approval where necessary.

#### **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 the Medical Photography Service Manager and obtain approval through the Data Protection Officer ([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 Medical Photography Service Manager 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 written informed consent for all clinical recordings (**Form B**). This includes recordings where it is believed a patient cannot be identified (see Exceptions 8.1.1).

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 healthcare record and teaching, for a patient-to-patient viewing and for potential publication.

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

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 and / or those without capacity to consent, 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 should be asked to make a mark (e.g. a cross), with the form being witnessed and also signed by the healthcare professional.  If a client is considered not capable of providing informed consent, then the appropriate Adults with Incapacity (AWI) documentation should be completed.

	<p>The purpose for the photography and video recording must be detailed in either Section C (certificate) or Section D (treatment plan) of the AWI documentation.</p> <p>There must be a fully justifiable purpose for any photography and video recordings of vulnerable patients, approved at Clinical Lead level. 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.</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>
--	--

### 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).

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.

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.

### **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 may only be carried out to the whole recording, and must be limited to simple sharpening, adjustment of contrast and brightness, and correction of colour balance.

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 eHealth 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 eHealth. 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:

- Approval from eHealth Security Manager has been obtained
- 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 eHealth 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 (1998). 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)



## 18. Appendices

### Appendix 1

Where possible, service times are standardised across the Medical Photography Service, as shown below. If possible please phone the relevant department prior to referring a patient for photography. There is no out-of-hours service.

**Monday – Thursday:** 08:45am – 17.00pm

**Friday:** 08:45am – 16:30pm

### Contact details

Lauriston Building:	0131 536 2139	Ext 62139 (studio) / 61140 (office)
Princess Alexandra Eye Pavilion:	0131 536 3733	Ext 63733 (office) / 64084 (imaging room)
Royal Infirmary of Edinburgh:	0131 242 3446	Ext 23446
Royal Hospital for Sick Children:	0131 536 0306	Ext 20306
St John's Hospital:	01506 522143	Ext 52143
Western General Hospital:	0131 537 1099	Ext 31099

Please note; further information on the Medical Photography Service and all forms within the policy can be found here

<http://intranet.lothian.scot.nhs.uk/NHSLothian/Healthcare/A-Z/MedicalPhotographyService/Pages/MedicalPhotographyService.aspx>

### Secure email systems

NHS Lothian's email systems may be used to send personal identifiable data within the organisation. Please consult 'Safe Email Transmission' documentation on NHS Lothian's intranet pages (as below).

<http://intranet.lothian.scot.nhs.uk/NHSLothian/Corporate/A-Z/ehealth/Policies/Other%20NHS%20Lothian%20OrganisationWide%20PoliciesDocumen/Safe%20Email%20Transmission%20Grid.pdf>

## **Formal approval from the Caldicott Guardian**

In Lothian, in some instances of data sharing it is necessary to ask the Caldicott Guardian for formal approval to share patient identifiable data by submitting an application form. This can be found on the Caldicott intranet page.

<http://intranet.lothian.scot.nhs.uk/nhslothian/corporate/a-z/caldicott/Pages/default.aspx>

The main reasons for seeking formal Caldicott approval are;

1. Storage of patient identifiable data on any removable or portable media
2. The sending of patient identifiable data out with NHS Lothian, either
  - a. Electronically out with NHS Lothian's computer (database) systems
  - b. Physically (by post)
3. Use of patient identifiable data for which patient consent has not been obtained for that specific purpose
4. Use of email to patients relating to their treatment in exceptional circumstances

## Form A. Equipment Registration

Page 13 of 17

**What security measures are in place for the storage of the equipment?**  
(including camera memory cards)

**What security measures are in place for the storage of any clinical data** (including any digital images / video clips and prints)?

**If not on NHS Lothian's Medical Image Manager (MIM) database, can you please explain why?**

**Who will have access to the images and for what purpose?**

**Is there a requirement to share / copy images outwith NHS Lothian?** Yes / No

**If yes, do you have Caldicott approval?** Yes / No

**If you have Caldicott approval how do you intend to share / copy images outwith NHS Lothian securely?**

I confirm that I have read and understood the **Policy on Recordings (Photography and Video) for Clinical and Service Use** and agree to comply with its contents. I confirm that the above named person has permission to make clinical recordings of patients under my care.

<b>Name:</b>	<b>Date:</b>
<b>Signature (Lead Clinician):</b>	

<b>Medical Photography Service (Manager):</b>	
<b>Data Protection Officer:</b>	

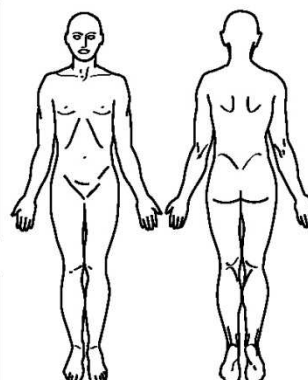
## Form B. Clinical Photography / Video Consent



### Clinical Photography / Video Consent Form

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 / clinical details** (please provide clear information)



☐ MIM digital image ☐ Millimetre scale (in close-up view) ☐ Video

**Requesting Clinician** (print): .....

**Signature:** ..... **Date:** .....

#### Informed Consent (to be completed by patient / parent or guardian)

Clinical photographs form an important part of your health records and every care is taken to ensure that only authorised staff involved in your care have access to them.

**There are four levels of consent available to you (A,B,C,D).**

In view of the explanation given to me I give consent to the following consent levels. Please **INITIAL** only those that you agree to.

Your choice of consent level will not affect your treatment in any way.

- A Health Records**  
..... I consent to images / recordings being taken for my health records only.
- B Teaching**  
..... I consent to my images / recordings being made available for teaching healthcare staff and students.
- C Publication**  
..... I am happy to be contacted in the future if my images / recordings are requested for medical publication. **Written consent from me will be needed for each specific publication.**
- D Patient to Patient**  
..... I consent to the use of my images / recordings to be shown to other patients as an example of pre / post clinical procedures.  
**I understand that no fee is payable to me for the use of my images / recordings.**

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

**Signature** (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:	Smart Card No:	Job Ref:	Comments:
Image Date:	No. of Images:	Date Printed / Completion Date:	

☐ LAURISTON ☐ PAEP ☐ RHSC ☐ RIE ☐ SJH ☐ WGH ☐ Other

VL044 / L0T045 (OCT 2016)

## Clinical Photography Request for Publication



### Request Details (PLEASE PRINT)

Author: .....

Name of Publication: .....

Date of Publication: .....

Image Details: .....

Image Date(s): .....

Job number(s): .....

***'I have explained the nature of the publication to the patient'***

Signature: .....

Medical Photography Service (Sept 2016)

### Patient Details (PLEASE PRINT)

Name: .....

CHI No: .....

***'I hereby consent to the use of my images in the named publication on this occasion only. I understand that any other publication requests will require further consent, and that I may review the images(s) by arrangement with the requesting clinician'***

Signature: .....

Date: .....

***On occasion, the name or title of the publication may not be known. If you are happy to proceed without this information, then please sign above.  
Thank you!***



**Form D. Consent Form for General Photography**

**Consent Form for General Photography**  
(Photography / Video / Illustrations)



\*Not used for treatment or diagnostic purposes

Full name (print): ..... Date: .....

Address: .....  
.....

**I hereby confirm that I give consent for recordings to be made of me.  
(Photography / Video / Illustrations)**

I consent to the recording being shown to appropriate professional staff and used in educational publications, journals, textbooks and used in any form or medium; including all forms of electronic publication for distribution anywhere in the world. As a result, I understand that the material may be used in conjunction with other photographs, drawings, video images, sound recordings or other forms of illustration that could be viewed by the general public.

I may view the recording by arrangement with NHS Lothian by contacting the Medical Photography Service on 01506 522143. However, once released, I realise that recovery of the recordings may not be possible.

I understand that no fee is payable to me by NHS Lothian or any other person in respect of the recording either now or at any time in the future.

I confirm that the purpose for which the recording would be used has been explained to me in terms which I have understood. Refusal to consent will in no way affect my medical care.

To be completed by patient / parent / guardian (if patient is under 16) or staff member.

Signature: .....

Witnessed by: .....

Copyright of all recordings produced by NHS Lothian should not be reproduced without written permission from the copyright holder.

**For Department Use Only**

Job details / Publication if known:

Photographer:

Smart Card No:

Job Ref:

Image Date:

No. of images:

Client:

☐ LAURISTON

☐ PAEP

☐ RHSC

☐ RIE

☐ SJH

☐ WGH

☐ Other

Medical Photography Service, NHS Lothian (Oct 2016)