

# Making and Using Visual and Audio Recordings of Patients

May 2002

## Scope of this guidance

This guidance covers all types of audio and visual recordings of patients, carried out for any purpose. 'Recording' in this guidance means originals or copies of video and audio recordings, photographs and other visual images of patients. A 'recording' does not include pathology slides containing human tissue (as opposed to an image of such a slide), or CCTV recordings of public areas in hospitals and surgeries, which are the subject of separate guidance from the Information Commissioner <sup>1</sup>

The guidance sets out some basic principles in part 1 and then reviews the following topics:

- When permission is not required to make and use a recording ([part 2](#)).
- Obtaining permission to make and consent to use recordings as part of the assessment or treatment of patients ([part 3A](#)).
- Obtaining permission to make and consent to use recordings for use within a medical setting, for example for training or research, including the use of existing collections ([part 3B](#)).
- Specific issues about recordings made for public consumption, such as filming for television ([Part 3C](#))

## Part 1: Basic principles

1. When making recordings you must take particular care to respect patients' autonomy and privacy since individuals may be identifiable, to those who know them, from minor details that you may overlook. The following general principles apply to most recordings although there are some exceptions, which are explained later in this guidance.

- Seek permission to make the recording and get consent for any use or disclosure.
- Give patients adequate information about the purpose of the recording when seeking their permission.
- Ensure that patients are under no pressure to give their permission for the recording to be made.
- Stop the recording if the patient asks you to, or if it is having an adverse effect on the consultation or treatment.
- Do not participate in any recording made against a patient's wishes.
- Ensure that the recording does not compromise patients' privacy and dignity.
- Do not use recordings for purposes outside the scope of the original consent for use, without obtaining further consent.

- Make appropriate secure arrangements for storage of recordings.
2. Where children who lack the understanding to give their permission are to be recorded, you must get to record from a parent or guardian. Children under 16 who have the capacity and understanding to give permission for a recording may do so. You should make a note of the factors taken into account in assessing the child's capacity.
  3. When a mental disability or mental or physical illness prevents patients giving their permission, you must get agreement to recording from a close relative or carer. In Scotland, you must seek agreement from any person, appointed under the Adults with Incapacity (Scotland) Act 2000, having an interest in the welfare of the patient.
  4. People agreeing to recordings on behalf of others must be given the same rights and information as patients acting on their own behalf.

## **Part 2: Recordings for which permission is not required**

5. You do not need to seek separate permission to make the recordings listed below. Nor do you need consent to use them for any purpose, provided that, before use, the recordings are effectively anonymised by the removal of any identifying marks (writing in the margins of an x-ray, for example):

- Images taken from pathology slides
  - X-rays
  - Laparoscopic images
  - Images of internal organs
  - Ultrasound images
6. Such recordings are unlikely to raise issues about autonomy and will not identify the patient. It may nonetheless be appropriate to explain to the patient, as part of the process of obtaining consent to the treatment or assessment procedure, that a recording will be made.

## **Part 3: Recordings for which permission is required**

### **3A. Recordings made as part of the assessment or treatment of patients**

7. You must seek permission to make any recording for the assessment or treatment of patients, other than those recordings listed in Part 2 above. You should explain that a recording will be made, and why. You need only give an oral explanation. You should record in the medical notes that the patient has given permission.
8. When conducting a hospital post-mortem examination, you must seek permission from a close relative or carer before making any recording from which the deceased may be identifiable. If the death is the subject of a medico-legal investigation, the proposed recording should be discussed with the coroner or Procurator Fiscal (in Scotland) who has authorised the investigation.
9. Recordings made for clinical purposes form part of the medical record. As such, when considering disclosure of a recording, you should treat the recording in the same way as any other part of the medical record. In general, that means that you should seek consent for the disclosure. However, if you are sure that the patient will not be identifiable from the content of the recording, and the recording is

effectively anonymised by the removal of identifying marks, you may use the recording for teaching purposes without consent.

10. When making a judgement about whether the patient may be identifiable, you should bear in mind that apparently insignificant features may still be capable of identifying the patient to others. Since it is difficult to be absolutely certain that a patient will not be identifiable from a recording, no recording other than those mentioned in paragraph 5 above should be published or used in any form to which the public may have access, without the consent of the patient. The GMC booklet [Confidentiality: Protecting and Providing](#) Information sets out detailed guidance on disclosure of personal information.

11. In exceptional circumstances, you may judge that it is in the patient's best interests to make an identifiable recording of a patient without first seeking permission, and to disclose the recording to others without their knowledge. Before proceeding you should discuss the recording with an experienced colleague. You must be prepared to justify your decision to the patient and, if necessary, to others. If the recording will involve covert video surveillance of a patient, it is likely to be within the scope of the Regulation of Investigatory Powers Act 2000 and you should seek advice before proceeding. A decision to use covert video surveillance, for example in cases of suspected induced illness in children, will normally be based on discussions amongst all the agencies involved, and the surveillance itself should be undertaken by the police

### **3B. Recordings made for the training or assessment of doctors, audit, research or medico-legal reasons**

12. You must obtain permission to make and consent to use any recording made for reasons other than the patient's treatment or assessment. The only exceptions to this are outlined Part 2.

13. Before the recording, you must ensure that patients:

- a. Understand the purpose of the recording, who will be allowed to see it - including names if they are known - the circumstances in which it will be shown, whether copies will be made, the arrangements for storage and how long the recording will be kept.
- b. Understand that withholding permission for the recording to be made, or withdrawing permission during the recording, will not affect the quality of care they receive.
- c. Are given time to read explanatory material and to consider the implications of giving their written permission. Forms and explanatory material should not imply that permission is expected. They should be written in language that is easily understood. If necessary, translations should be provided.

14. After the recording, you must ensure that:

- a. Patients are asked if they want to vary or withdraw their consent to the use of the recording.
- b. Recordings are used only for the purpose for which patients have given consent.
- c. Patients are given the chance, if they wish, to see the recording in the form in which it will be shown.
- d. Recordings are given the same level of protection as medical records against improper disclosure.

- e. If a patient withdraws or fails to confirm consent for the use of the recording, the recording is not used and is erased as soon as possible

### **Existing collections used for teaching purposes**

15. Some doctors may have existing collections of recordings which they use solely for teaching purposes within a medical setting. Both this guidance, and the previous edition published in 1997, require permission to be obtained to make any recording which is not part of the patient's assessment or treatment, regardless of whether the patient may be identifiable. However, recordings may have been made for teaching purposes prior to 1997 without it being recorded whether or not permission had been obtained. Such collections may have a significant value for teaching purposes.

16. You may continue to use recordings from which the patient is not identifiable, and which were made for teaching purposes prior to 1997. You should, however, seek to replace such recordings at the earliest opportunity with similar recordings for which permission can be shown to have been obtained. You may also continue to use effectively anonymised recordings that were originally made for treatment or assessment purposes, in line with paragraph 9 above. However, you should not use any recording, from which a patient may be identifiable, for teaching purposes if you cannot demonstrate that consent has been obtained for that use.

### **Recordings of emergency treatment and of unconscious patients**

17. If recordings are to be used only for training or clinical audit, you may record patients who need emergency treatment but cannot give their permission for the recording to be made. You do not need a relative's agreement before starting the recording but must stop it if a relative objects. Before these recordings are used, however, the patient's consent must be obtained or, if the patient has died, a relative must agree to it.

18. When no recording has been planned, but a record of an unexpected development would make a valuable educational tool, you may record patients undergoing treatment. If you cannot get permission at the time because, for example, the patient is anaesthetised, you must ensure the patient is later told about the recording and gives consent to its use.

19. With recordings made in these circumstances, you must follow patients' instructions about erasure or storage. The only exception is if you think you need to disclose the recording because of the advice in the GMC booklet [Confidentiality: Protecting and Providing](#) Information, for example to protect the patient or others from risk of death or serious harm.

20. Hospital policy on recording the treatment of unconscious patients should be adequately publicised, for example through notices in waiting areas.

### **Telephone calls**

21. Recordings of telephone conversations fall into a category of their own. Anyone using a telephone is subject to licence conditions under the Telecommunications Act 1984. They require you to make every reasonable effort to inform callers that their call may be recorded, and maintain a record of the means by which callers have been informed.

22. Given the sensitive nature of calls to medical advice lines or similar services, you should pay particular attention to ensuring that callers are aware that their call may be recorded. You must not make intentionally secret recordings of calls from particular patients.

## **3C. Recordings for use in public media (television, radio, internet, print)**

23. In general, the considerations set out in 3B above also apply to recordings for use in public media. There are, however, some issues that are specific to recordings to which the public will have access.

24. You must not make recordings for use in publicly accessible media without written permission, whether or not you consider the patient to be identifiable. 'Publicly accessible media' includes medical journals. The only exceptions to this are outlined in Part 2.

25. Before making any arrangements for external individuals or organisations to film patients in a health care setting, you must inform your employing or contracting body and the organisation in which the patients are being treated if this is different. You should obtain appropriate permission for the recording. Within the NHS, a contract with the filmmaker will normally be required.

26. If you are involved in any way with recording patients for television or other public media, you should satisfy yourself that patients' permission has been properly obtained, even if you are not responsible for obtaining that permission or do not have control of the recording process. Both the BBC and the Independent Television Commission issue guidance for television programme makers that requires permission to be obtained in a way that is consistent with this guidance.

27. In addition, you should make sure that patients understand that, once they have agreed to the recording, they may not be able to withhold their consent for its subsequent use. If patients wish to restrict the use of material, they should get agreement in writing from the owners of the recording, before recording begins.

28. You should be particularly vigilant in recordings of those who are unable to give permission themselves. You should consider whether patients' interests and well-being, and in particular their privacy and dignity, are likely to be compromised by the recording, and whether sufficient account has been taken of these issues by the programme makers. If you believe that the recording is unduly intrusive or damaging to patients' interests, you should raise the issue with the programme makers. If you remain concerned, you should do your best to stop the recording, for example by halting a consultation, and withdraw your co-operation.

## Notes

<sup>1</sup>CCTV Code of Practice, available from the Office of the Information Commissioner, 01625 545 745, or [www.dataprotection.gov.uk](http://www.dataprotection.gov.uk)