Making audio and visual recordings of patients

Advice correct as of July 2015

Making and using audio and visual recordings of patients can benefit medical training, research and treatment. However, it poses risks for doctors regarding consent and confidentiality. In addition, all recordings from which living individuals can be identified constitute personal data and are subject to the provisions of the Data Protection Act.

Guidance

The GMC’s guidance *Making and Using Visual and Audio Recordings of Patients* applies to originals and copies of photographs, visual and audio recordings of patients made with the use of any type of recording device (including mobile phones) and used in any circumstances, within or outside the UK, where doctors are working in a professional capacity – this does not include original pathology slides containing human tissue.

Making recordings

Specific consent is required to make a recording that forms part of the investigation or treatment of a patient or contributes to their care, except:

- Images of internal organs or structures
- Images of pathology slides
- Laparoscopic and endoscopic images
- Recordings of organ functions
- Ultrasound images and X-rays
- Where consent to make the recording will be inherent in the consent given for the treatment or procedure.

Wherever practicable, explain that such recordings could be used in an anonymised form for secondary purposes.

However, you may use such recordings in an anonymised form without seeking specific consent to do so.

When making recordings as part of patient care you must:

- Get the patient’s consent for the recording
- Explain the purpose of the recording, how it will be used, and where possible, whether you plan to use it for any secondary purposes, such as teaching
- Explain how long it will be kept and how it will be stored
- Note the main points of the discussion in the medical record
- Stop recording if a patient asks you to do so, or if in your opinion it is having a negative impact on the consultation.

Disclosure

Recordings made as part of the patient’s care form part of the medical record, and should be treated in the same way as written material in terms of security and decisions about disclosure.

You will usually need the patient’s consent before disclosing recordings where the patient can be identified.

However, you may disclose anonymised or coded recordings for use in research, teaching or training, without consent.

Disclosures may also be made where they are required by law, by a Court, or can be justified in the public interest.

Adult patients who lack capacity

If a person lacks capacity to consent to a recording being made, you must get consent to make the recording from someone who has legal authority to make the decision on the patient’s behalf.

If no-one has such legal authority, or if treatment cannot be delayed for consent to be obtained, then the recording can be made where it forms an integral part of the patient’s care or treatment.

If a recording has already been made as part of care, you should anonymise or code it where practicable, before using it for a secondary purpose.

If it cannot be anonymised, consent should be sought from anyone who has legal power to make decisions on behalf of the patient. If there is no-one appointed, the law permits you to decide whether the recording can be used, if it can be justified in the public interest.
If the recording is being made purely for a secondary purpose you must be satisfied that the making of the recording is necessary, of benefit to the patient and is in their best interests.

**Children and young people**

Children and young people under 16 who have the capacity and understanding to give consent for a recording may do so, but you should encourage them to involve their parents in the decision making.

This applies to recordings made for care and for secondary purposes. If a child or young person lacks the capacity to consent to a recording being made, a person with parental responsibility may consent on their behalf.

Where recordings are made for secondary purposes, the recording should be stopped if the child or young person objects to it, is distressed about it or if the consent for the recording is withdrawn at any stage.

**Research and teaching**

You must get the patient's consent, ideally written, before making recordings for teaching, training or research that are not part of a patient's care. You should explain the purpose of the recording, how it will be stored and used, and that patients can withdraw their consent during or after the recording without any negative consequences.

If the recording was made as part of care with the patient's consent, you may use it for research, teaching or training, providing it is anonymised (wherever possible, you would have discussed this when obtaining the original consent). Be careful that the patient's anonymity is preserved when publishing recordings in journals and learning materials.

Recordings made before 1997 may still be used for teaching, provided they have been anonymised, or if the patient can be identified, that you have a record that consent was obtained for this purpose.

**Recordings used in the media**

You must get the patient’s consent, preferably in writing, to make a recording that will be used in widely accessible public media, irrespective of whether the patient will be identifiable from the recording.

If the recording was originally made for care, and you subsequently wish to publish it in the media you must get consent to do so if the patient is or may be identifiable. It is also good practice to obtain consent for use of anonymised recordings in the media.

**Key points:**

- Before making a recording, you must get agreement from your employing or contracting body, and from the organisation treating the patient if this is different. If in doubt seek advice from your employing or contracting body, a Caldicott Guardian or equivalent.

- You must satisfy yourself that consent for such recordings is obtained in accordance with the GMC’s guidance even if you are not obtaining the consent yourself.

- Check that patients understand that once they have agreed to the recording, they may not be able to stop its subsequent use.

- If you believe the recording is unduly intrusive or damaging to the patient's interests, you should raise your concerns, even if the patient has consented to the recording, and withdraw your co-operation if your concerns are not resolved.

- The GMC’s guidance on consent to making recordings for secondary purposes of children and young people, and adults who lack capacity, should be applied when deciding whether to involve them in filming (see above).

- You must not participate in making recordings of children or young people who lack capacity, where you believe that they may be harmed or distressed by making the recording, or by its subsequent use.

**Deceased patients**

The duty of confidentiality continues after death and a patient’s known wishes about the use of a recording should be respected. Anonymised recordings may be used after the patient's death.

If the recording is to be made public, or if the patient is identifiable you should consider consulting the patient's family, eg, if it is about a genetic condition.

Consent for making recordings that are an integral part of post-mortem examinations and which assist in the determination of the cause of death is not required.

Consent for making recordings for secondary purposes ideally should be sought at the time of seeking consent to do the post-mortem itself, although consent for the use of such recordings may not be required if the patient cannot be identified.

For coroner’s post-mortem examinations, you should check with the coroner or the Procurator Fiscal before taking images of tissues during a post-mortem examination for purposes other than those authorised by them.

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This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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Making covert recordings

Such recordings should only be undertaken where there is no other way of obtaining information which is necessary to investigate or prosecute a serious crime, or to protect someone from serious harm, eg, suspected child abuse. Relevant authorisation must be obtained in accordance with the legislation.

Recording telephone calls

Telephone calls from patients to healthcare organisations may be recorded for legitimate reasons, eg, for medico-legal purposes, staff training and audit, provided all reasonable steps have been taken to inform callers. Secret recordings are not permitted.

CCTV recordings

CCTV recordings of public areas in hospitals and surgeries are subject to the provisions of the Data Protection Act. The Information Commissioner’s Office CCTV Code of Practice should also be adhered to.

Storing and disposing of records

Recordings must be treated in the same way as medical records, and you should be clear about the responsibility for the control and use of such recordings.

Anonymised recordings may belong to an employing or contracting body, so make sure you understand your contractual or other rights to hold and use recordings.

Further information

If you have any concerns about recording patients, or issues regarding consent and confidentiality, please contact MPS for advice.

- MPS factsheets, Confidentiality series – www.medicalprotection.org/uk/factsheets
- MPS factsheets, Consent series – www.medicalprotection.org/uk/factsheets
- GMC, Confidentiality – www.gmc-uk.org/
- Information Commissioner’s Office (ICO), Health Organisations – www.ico.org.uk/for-organisations/health/

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