

Making audio and visual recordings of patients

MPS



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Making and using audio and visual recordings of patients can benefit medical training, research and treatment. The Malaysian Medical Council's (MMC) guidance, *Audio and Visual Recordings*, sets out the importance of confidentiality and consent.

Making recordings

Doctors need to remember that recordings and images form part of a patient's medical record. This includes: imaging records and reports; clinical photographs; tape recordings of discussions with patients and/or next of kin (if applicable); video recordings and recordings of telephone consultations.

Valid consent has to be obtained prior to the recording, copying, storing and transmission of images of patients. You must ensure that the recording:

- Is not made against a patient's wishes
- Is not used for purposes outside the scope of the original consent, unless in agreement with the patient
- Does not harm a patient
- Is stopped immediately upon a patient's request or if it has an adverse effect on a patient's management
- Is stored in a secure environment.

The patient should be given the opportunity to view the recording and to specify the contexts in which it should be used.

Ownership

The MMC advises that unless imaging records (eg, X-ray or ultrasound) have to be retained for medicolegal reasons or for continuing medical care, patients should generally retain these.

Recordings as part of a patient's care

Separate consent is not required for recordings such as X-rays or endoscopy images if consent for care or treatment has already been obtained. It is good practice to inform patients that such recordings are being made. Any other recording must be with the patient's consent, stored along with the patient's medical record and treated in accordance with the MMC's guidelines on *Confidentiality*. The MMC advises that it is good practice to obtain written consent for the recording, but where this is not practicable, the patient's consent should be recorded in the notes.

If a recording is not planned but an unexpected event occurs, and a recording would be of educational value, consent should be sought from the patient or another person who has legal authority to act on behalf of the patient.

Research and teaching

You must obtain the patient's consent before making recordings for teaching, training or research that are not part of a patient's care. You should make it clear to patients that their quality of care will not be affected, whether they give consent for the recording or not. Information should be provided to patients in a manner that they understand.

Adult patients who lack capacity

If a patient lacks capacity, you should obtain consent from someone who has legal authority to make a decision on the patient's behalf prior to making the recording. If no individual is present, the recording may still be made, where it forms an integral part of the treatment.

Deceased patients

You should comply with the patient's known wishes regarding the use of the recording. If the recording is to be made public and the patient is identifiable, you should consult the patient's family. If the recording is about a genetic condition, or about the family, they have a right to stop its use.

Separate consent is not needed for post mortem examinations or for taking photographs of organs, body parts or pathology slides. Images should be anonymised before use.

Recordings used in the media

You must obtain the patient's consent to make a recording that will be used in print and electronic media, irrespective of whether the patient will be recognisable. Check that the patient understands that once they have

agreed to the recording, they may not be able to stop its subsequent use, unless they make a written agreement prior to the start of the recording. If the recording involves patients who are physically or intellectually challenged, and the recording may be intrusive or damaging to their interests, it is your responsibility to raise these concerns with the patient or recording company.

Further information:

- MPS factsheet, *Medical records* – www.medicalprotection.org/malaysia/education-and-publications/factsheets
- Malaysian Medical Council, *Audio and Visual Recordings 2010* – www.mmc.gov.my
- Malaysian Medical Council, *Confidentiality 2011* – www.mmc.gov.my

For medicolegal advice please call us on:
1 800 81 5837 (FREECALL) or email us at:
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www.medicalprotection.org

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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MPS1304:

2 of 2