

Policy Title: Photographing, Filming and Recording of Patients Policy #: 01310

Effective Date:
Reviewed Dates:
Revision Dates:

Signature: _____

Purpose:

To protect the privacy of patient information in accordance with HIPAA and JCAHO standards by placing safeguards on the photographing, recording and filming of patients and to define the parameters in which personal cell phones with camera or video capability and other personal image recording devices may be used at **[ORGANIZATION]**.

Definitions:

1. **[ORGANIZATION] Personnel** – **[ORGANIZATION] Personnel** includes all personnel who would appear to the general public as an employee or agent of **[ORGANIZATION]**.
[ORGANIZATION] Personnel includes: Employees, residents, physicians and allied health professionals, volunteers, contractors, vendors, temporary labor, registry personnel, travelers, and contract employees.
2. **Personal Recording Device (“PRD”)** – A personal recording device is any device that:
 - a. Is not the property of **[ORGANIZATION]**;
 - b. Is capable of capturing an image, live action or still, of a patient; and
 - c. Is capable of transmitting an image electronically.Such devices include, but are not limited to: Video cameras, cell phones with cameras, cell phones with videotaping capability, digital cameras.
3. **Personal Representative** – The person who is authorized to make decisions on behalf of the patient. If it is unclear who the personal representative of the patient is, **[ORGANIZATION] Personnel** may determine the personal representative based on reasonable evidence such as familial relationship, financial responsibility for the patient’s care, legal guardianship, or other similar indicators.

Policy:

[ORGANIZATION] Personnel will provide patients the opportunity to consent to being photographed, recorded, or filmed in accordance with the HIPAA Privacy regulations and JCAHO standards, except for clearly and narrowly defined situations that are addressed in specific, departmental policies, including but not limited to, legitimate operational or treatment purposes. In such cases where photographing, filming and/or recording of patients is permitted, only **[ORGANIZATION]** recording devices, and not PRDs, may be used and all photographs, film, and recordings of patients must be transferred from the device and maintained in a secure location in accordance with the HIPAA Security Regulations.

Procedure:

1. Except as permitted by department-specific policies and consistent with this policy, **[ORGANIZATION] Personnel** will always photograph, film, and/or record patients only in accordance with the permissions of the Consent to Treatment **or** attempt to obtain a signed consent to photograph from the patient or the patient’s personal representative.
2. If consent to photograph, film, and/or record cannot be obtained from the patient or the patient’s personal representative **and** the legitimate operational or treatment purpose for the recording or film has passed or subsided, then the recording or film will either be destroyed or

- the identifying information or any information that would reasonably result in the recognition of the nonconsenting patient will be removed from the recording or film.
3. A patient or the patient's personal representative has the right to request cessation of recording or filming and the patient or the patient's personal representative may request the right to rescind consent for use up until a reasonable time before the recording or film is used.
 4. Photographs, films, and recordings of patients must be transferred from the **[ORGANIZATION]**-owned recording device, stored in a secure location, and deleted from the recording device itself. **[ORGANIZATION]** recording devices may only be used for photographing, filming, and/or recording patients.
 5. Patients, visitors, patient family members may use PRDs if such use is permitted by Service Line/Department/Unit policy and such use will not compromise the privacy or security of other patients. **Under no circumstances shall PRDs be used by [ORGANIZATION] Personnel for photographing, filming, and/or recording of patients.**
 6. Each service line, department, and/or unit providing patient care may draft a specific service line, departmental, or unit policy to address the photographing, filming or recording of patients and by patients, visitors and family members specific to the service line, department, and/or unit.
 - a. The policy will be consistent with the **[ORGANIZATION]** system-wide photographing policy.
 - b. The policy will address the following three scenarios as it relates to the service line, department and/or unit:
 - i. Photographing, filming and recording for treatment and **[ORGANIZATION]** internal operations;
 - ii. Photographing, filming and recording for purposes other than treatment and **[ORGANIZATION]** internal operations; and
 - iii. Photographing, filming and recording by or for patients, visitors and patient family members.
 - c. The policy may use language from the "Guidelines for Drafting Service Line, Department and/or Unit Photographing Policies" document attached to this policy as appropriate.
 - d. The policy must be consistent with the "Guidelines for Drafting Service Line, Department and/or Unit Photographing Policies" document and no provision of a service line, department and/or unit policy may contain provisions that conflict with the document.
 - e. The policy must be reviewed and approved by the Service Line Director **AND** the Chief Compliance Officer before becoming effective.
 7. The Compliance Office will be responsible for monitoring compliance with this policy by establishing an audit protocol with affected departments.
 - a. Public Affairs will track the use of the signed Consent to Photograph forms on a central log.
 8. Noncompliance with this policy that results in violations of the HIPAA Privacy and Security Regulations will subject the violator to either removal for visitors and patient family members, or disciplinary action up to, and including, termination for **[ORGANIZATION]** Personnel.

References: JCAHO Patient Rights, Responsibilities and Ethics §RI.2.50
HIPAA Privacy Regulations, 45 CFR 164.500 *et. seq.*
HIPAA Security Regulations, 45 CFR 164.302 *et. Seq.*

Keywords: Photograph, camera phone, HIPAA, patient privacy, film, recording, medical staff, employees, consent, guidelines