



South East Coast Ambulance Service  
NHS Foundation Trust



## Patient Photographic and Video Recording Policy

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## Document Control

### Manager Responsible

Name:	Andy Collen
Title:	Clinical Development Manager
Directorate:	Clinical Operations

Committee/Working Group to approve	RMCGC	
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### Draft/Evaluation/Approval (Insert stage of process)

Person/Committee	Comments	Version	Date
RMCGC	Committee Approved this policy	V0.08	10/11/2011
Clinical Governance Working Group	Approved with minor changes to wording (as per this version 0.07). Change of responsibility for document to Corporate Information, Data Quality & Protection Manager	V0.07	25/10/11
Clinical Development Manager	Final integration of comments and tracked changes. Ready to be submitted to RMCGC	V0.06	8/6/11
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Head of Information Governance		V0.03	13/2/11
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### Review Due

Manager	Andy Collen	
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## **1 Introduction**

- 1.1. The existence of digital images (stills and video) clearly supports the move towards electronic patient records incorporated within the national care record service, a key part of the Connecting for Health (CfH) programme.
- 1.2. From here-on, the term “image” relates to any media (i.e. stills or video images).
- 1.3. Technological advances in digital photography over recent years have been accompanied by an increase in legislation and guidance covering the security and confidentiality of identifiable information, most notably the Data Protection Act (1998), the Human Rights Act (1998), the recommendations of the Caldicott committee issued with HSC (99) 012 and the Information Governance Toolkit, which was implemented in the early part of 2004.
- 1.4. Key elements of this legislation and guidance underline the requirement for patients to be fully informed of photographic (or indeed any) records being made of them, together with their intended use, particularly where this may extend beyond the patient record such as inclusion in personal logbooks or use for teaching or publication. The underlying legislation goes on to emphasise the requirement for patients to give their consent for photographic (and other) information on them to be recorded having been fully informed of the intended use. A document entitled “Good Practice in Consent Implementation Guide” was issued by the Department of Health (DH) in November 2001. The guidance within this document includes a specific section on “Clinical Photography and Conventional or Digital Video Recording”.
- 1.5. Additionally, the Confidentiality NHS Code of Practice was issued by the DH in November 2003 as a guide to NHS staff regarding confidentiality and patients’ consent to the use of their health records. This document states explicitly that pictures, photographs, video, audio-tapes or other images of patients are deemed to be key identifiable information items. A copy of the code of practice can be found from the following link:  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4069253](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4069253)
- 1.6. A key element of the Data Protection Act 1998 is the subject access provision, under which a patient or their designated representative (e.g. solicitor) can request copies of their health records, including photographs or other images. It is therefore essential that any photograph taken by clinicians from South East

Coast Ambulance Service NHS Trust (the Trust) is accessible in order that a copy can be produced for this purpose. Therefore, any agreements to pass on clinical photographs must include the agreement to provide copies of images on request of the Trust, by means of a formal agreement for recipients to act as a data processor.

## **2 Aims and Objectives**

- 2.1. To provide information on the legal requirements regarding clinical photography and videography.
- 2.2. To link practices within the Trust involving clinical photography or videography to the existing principles, such as Caldicott and the Data Protection Act.
- 2.3. To give staff a framework within which clinical photography or videography can be used.
- 2.4. To protect patients and staff from the consequences of failing to comply with legislation surrounding clinical photography or videography.
- 2.5. To provide evidence for the Trust in compliance with legislation.

## **3 Definitions**

- 3.1. **Clinical photography:** The taking of images of pathology in order that a record can be kept of the condition, or to enable a visual representation of that condition to be viewed by other health professionals.
- 3.2. **Clinical videography:** As above, but using video recording, instead of still photography.
- 3.3. **PCR:** the patient clinical record made by the attending clinician.

## **4 Policy Statement**

- 4.1. Risk management is the responsibility of all Trust staff. It is recognised that risk management is an integral part of good management practice and, as such, should be embedded in the Trust's culture. Where appropriate, issues will be recorded on the Trust's Risk Register.
- 4.2. This policy embraces diversity, dignity and inclusion in line with emerging Human Rights guidance. We recognise, acknowledge and value difference across all people and their backgrounds. We will treat everyone with courtesy and consideration and ensure that

no-one is belittled, excluded or disadvantaged in any way, shape or form.

- 4.3. This policy will provide the overarching description of how clinical photography can be used to the benefit of patients. It details, the governance, patient safety and risk management implications and mitigations associated with that activity.

## 5 Arrangements

- 5.1. From here on, any form of clinical photography (video or still) will be referred to as photography.
- 5.2. Photographs taken for transmission to another care facility remain the property and responsibility of SECamb. The Trust (and the individual clinician) retains responsibility for any images temporarily stored on Trust devices.
- 5.3. The Trust will store images using existing appropriate facilities or will commission a Data Processor to manage media on behalf of the Trust.
  - 5.3.1. Data processing arrangements must be underpinned by formal contract or memorandum of understanding.
- 5.4. Where images are being managed by a data processor, images **must** be removed from Trust devices once the receiving organisation has confirmed receipt of any images and stored appropriately.
- 5.5. Images originating from Trust devices must not be used for training or publication. All arrangements with other providers to receive images must be made with this point in mind.
- 5.6. **Images Taken of Patients at the Scene**
  - 5.6.1. Staff must, **under no circumstances**, take clinical photographs on mobile phones (regardless of Trust or private ownership). If a photographic record of a scene/ incident is deemed to be relevant as part of a care record, only Trust approved cameras must be used, and a copy of the images must be passed to the receiving hospital as part of the care record. Failure to comply with this would incur disciplinary proceedings.
    - 5.6.1.1. Devices used to take images can be seized by the Police as evidence.
  - 5.6.2. Staff intending to take photographs that are (or could be) capable of being linked to a patient, must seek informed consent for the images to be taken. The patient's decision must be recorded on the PCR.

- 5.6.3. The Trust will not retain clinical images, as these images will be held with the patient's ongoing secondary/ tertiary care record. Images must be considered in exactly the same way as a paper record and must never be retained by individuals.
- 5.6.4. Images will only be taken and shared as part of an approved pathway or protocol and in accordance Caldicott principles.
- 5.6.5. Any images that are unintentionally retained must be handed to a Clinical Operations Manager (or other appropriate manager) who will attempt to reunite the image with the patients care record. Images must not be destroyed/ deleted until a permanent copy is reconciled with the care record.
- 5.7. Further details of the Data Protection Act can be found from the Information Commissioner's website, which can be accessed from the following link: <http://www.ico.gov.uk>
- 5.8. The Human Rights Act and Data Protection Act are both concerned with a patient's right to dignity and privacy. The use of photographic material for any non-therapeutic purpose without the patient's express authority is a clear breach of these principles. Whilst the Human Rights Act would leave the Trust liable to damages, the Data Protection Act, as a criminal statute, imposes personal liability on the individual wrong doer who if convicted would be personally liable for the fine or any other penalty imposed by the court. Further information on the Human Rights Act can be found from the following link: <http://www.dca.gov.uk/hract/hramenu.htm>
- 5.9. When seeking agreement to take clinical photographs, clinicians must consider patient's capacity with reference to the Mental Capacity Act (2005) and the Trust's Consent and Capacity Policy.
- 5.10. Another fundamental principle of data protection legislation concerns the safe keeping of information. Where the Trust does not have the facility to store clinical photographs, all images must be passed to another provider (as part of an approved Data Processing arrangement).
- 5.11. **Clinical Research**
  - 5.11.1. Trust images will not be used for training, publication or research.
  - 5.11.2. Whilst the principles of patient consent continue to apply, the recording and management of such images in respect of patients photographed for use within the Trust, or for passing to approved agencies, will be the responsibility of the Medical Director under the auspices of their role as Caldicott Guardian.

- 5.11.3. A Trust Patient Photographic and Video Recording Policy is therefore required in order to take account of the above issues and set out clear procedures to ensure that both the Trust and its staff comply with the requirements of appropriate legislation.
- 5.11.4. The Patient Photographic and Video Recording Policy is intended to ensure the protection of both the rights of the patient and the position of the Trust and its staff with regard to appropriate legislation and is thus intended to be helpful rather than restrictive.
- 5.11.5. All procedures, protocols or pathway information involving clinical photography must reference this policy.

## 5.12. **Underlying Principles**

- 5.12.1. All photographic images of patients regardless of format or recording medium form part of the patient record (either physical or electronic) and are therefore subject to the same security and confidentiality considerations as any other medical record, and must only be used in relation to the care of the patient.
  - 5.12.1.1. Where the Trust does not have the facility to store clinical photographs, all images must be passed to another provider (as part of an approved Data Processing arrangement).
- 5.12.2. Patients must always be informed of the intended use to be made of any photograph taken of them.
- 5.12.3. Where patients lack the capacity to give consent, the same mechanism must be applied within the guidance of the Mental Capacity Act 2005.
- 5.12.4. Photographs taken within the Trust must be:
  - 5.12.4.1. Stored securely internally or passed to a secure data processing facility.
  - 5.12.4.2. Removed permanently from the device used to take the image. The removal must be according to any prescribed procedure as part of specific approved pathways.
- 5.12.5. Digital photographs can only be taken with equipment owned by the Trust or explicitly approved by the Medical Director or Consultant Paramedic.
- 5.12.6. **Under no circumstances whatsoever** may clinical photographs be taken using a mobile telephone with an integral camera facility. This may result in disciplinary action.
- 5.13. **Specific guidance for photography of incident scenes which do not involve patients.**

- 5.13.1. It is recognised that there is value in capturing images of the scene of incidents, such as road traffic collisions, in order to give the receiving clinicians an impression of the damage to vehicles or mechanism of injury.
- 5.13.2. These kinds of images are not considered to be clinical photographs as long as the identity of the patient is not compromised. Staff must still only use Trust approved devices to take these kinds of images and must delete/destroy images after the incident is complete.
- 5.13.3. The DH guidance reproduced at Attachment 1 states that “photographic and video recordings made for treating or assessing a patient and from which there is no possibility that the patient may be recognised may be used within the clinical setting for education or research purposes without express consent from the patient, as long as this policy is well publicised. However, express consent must be sought for any form of publication.”
- 5.13.3.1. No images arising from the Trust will be considered for training purposes at the present time.
- 5.14. **Encryption**
- 5.14.1. The NHS is required to ensure that any identifiable information being transferred from an NHS organisation is encrypted.
- 5.14.2. Any images which require transmission must be encrypted and sent via a N3 connection.

## **6 Responsibilities**

- 6.1. The **Medical Director** has overall Executive responsibility, as Caldicott Guardian, for clinical photography.
- 6.2. The **Corporate Information, Data Quality & Protection Manager** is responsible for this policy.
- 6.3. The **Senior Operational Managers, Clinical Operations Managers** and **Clinical Team Leaders** are responsible for the implementation and monitoring of this policy.

## **7 Competence**

- 7.1. Any member of staff involved in clinical photography must have received training and education commensurate to the requirement of the equipment or system being used.

## **8 Monitoring**

- 8.1. The Head of Programmes & Planning is responsible for monitoring compliance with this policy.
- 8.2. This policy will be reviewed by the Information Governance Working Group and the Clinical Governance Working Group.
- 8.3. The Director of Clinical Operations will be responsible for ensuring adherence to the policy.
- 8.4. Non-compliance or deviation from this policy that results in an adverse outcome for a patient will be dealt with in accordance with the Incident Reporting Procedure and actioned accordingly.

## **9 Audit and Review**

- 9.1. The policy document will be reviewed every three years; or earlier if required due to change in local/ national guidance and/ or policy; or as a result of an incident that requires a change in practice.

## **10 Equality Impact Appraisal**

- 10.1. The Trust has undertaken an equality impact appraisal to identify the impact the policy may have on disparate groups. There are no indications that this document will adversely affect any particular group, on the basis of age, gender, religion, race, ethnic origins, nationality, disability or sexual orientation.

## **11 Associated Documentation**

- 11.1. Data Protection Policy
- 11.2. Freedom of Information Policy
- 11.3. Health Records Management Policy
- 11.4. Information Governance Policy
- 11.5. Information Security Policy
- 11.6. Records Management Policy
- 11.7. Consent and capacity policy
- 11.8. Laptop Security Policy
- 11.9. Removable Media Information Security
- 11.10. Confidentiality Code of Conduct
- 11.11. Disciplinary Policy

## **12 References**

- 12.1. Data Protection Act 1998
- 12.2. Human Rights Act 1998
- 12.3. Mental Capacity Act 2005
- 12.4. Computer Misuse Act 1990
- 12.5. Freedom of Information Act 2000
- 12.6. Good Practice in Consent Implementation Guide, DH, 2001,
- 12.7. Confidentiality: NHS Code of Practice, DH, 2003
- 12.8. Confidentiality: NHS Code of Practice - supplementary guidance: public interest disclosures, DH, Nov 2010
- 12.9. Information Security management: NHS Code of Practice, DH, 2007
- 12.10. Confidentiality, including Caldicott principles.  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/Browsable/DH\\_5133529](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/Browsable/DH_5133529)
- 12.11. HPC standards of proficiency for paramedics