

DEFENCE MEDICAL SERVICES CLINICAL PHOTOGRAPHIC POLICY

Introduction

1. Authorised and consented clinical photography has proven utility as an aid to the assessment, diagnosis and treatment of a patient, as a record of clinical conditions for the official medical record¹ and as a tool to support education and research. Outside these legitimate reasons for clinical photography, individuals working within or alongside the Defence Medical Services (DMS), will not or may not record clinical images for their own purposes. Modern mobile telecommunication devices make it possible to transfer these images more easily. Such practices may cause distress to patients, may breach medical confidentiality law, thereby exposing the individual and the organisation to legal consequences, and damage the reputation of the wider organisation.

Scope

2. This leaflet provides policy direction to any person taking photographs of patients, in a DMS facility and all personnel taking clinical photographs (medical and dental). For the purpose of this policy:

- a. Clinical photography refers to an image created by the use of any stills/digital/video/phone cameras or photographic image scanning devices.
- b. Clinical photography includes any photographic image of a patient, which records or demonstrates a patient's clinical condition or treatment.
- c. DMS patients refers to all patients, regardless of nationality, under the care of the DMS.
- d. A DMS facility includes any DMS-manned facility, permanent or temporary, mobile or fixed, operationally deployed or in the Firm Base, at sea, in air, or on land.
- e. Non-clinical photographs are those taken for media eg news articles, or historical purposes.

3. Images created with cameras that form part of a medical device (eg endoscope, fundoscope, colposcope, etc), are outside the scope of this leaflet, as these clinical cameras are covered under separate 'consent to treatment and investigation' procedures.

4. Photography of patients whilst in the care of the DMS is subject to the following legislation, that provides the patient with rights of confidentiality, protection against the unlawful processing of data and the right of consent:

- a. [Data Protection Act 1998](#).
- b. [Children Act 1989](#).
- c. [Mental Health Act 1983](#).
- d. [Obscene Publications Act 1959](#) and [Obscene Publications Act 1964](#).
- e. [Copyright and Patents Act 1988](#).

¹ Examples include the documentation of rashes in dermatology; progress monitoring in Burns and Plastics; retinal photography to monitor diabetic retinopathy; and endoscopic video surveillance in suspected peptic ulcer disease, inflammatory bowel disease or bowel cancer screening.

- f. [Professions Supplementary to Medicine Act 1960.](#)
- g. [Human Rights Act 1998.](#)
- h. [Freedom of Information Act 2000.](#)

5. Clinical photography undertaken in non-DMS facilities (eg National Health Service (NHS), independent healthcare providers and coalition partner facilities), where there are local procedures in place are not covered by this policy. Personnel working in non-DMS facilities are to adhere to these local policies, whilst at the same time complying with any relevant overarching guidance issued by their professional bodies. In order to ensure coherence throughout the operational care pathway, this policy is aligned with the University Hospitals Birmingham NHS Foundation Trust (UHBFT), Photographic and Video Recording Consent and Confidentiality Policy². Where it is not possible to ascertain if suitable policy exists, such as when utilising host nation support, DMS policy is to be adhered to.

Aim

6. The aim of this leaflet is to ensure that all clinical photography undertaken within a DMS setting, conforms to current legislation and best practice, such that DMS patients and staff are protected. The importance of clinical photography as an aid to diagnosis, management, teaching and research is acknowledged, but only with patient consent.

Principles

7. The taking, use and storage of all clinical photographs must comply with the following principles:

- a. There must be a fully justifiable purpose for photography to be carried out:
 - (1) The purpose of assisting in clinical assessment, diagnosis and treatment or recording of injuries for future legal claims, where it should be clear that such photography is of benefit to the patient in their treatment or clinical care, either directly or indirectly.
 - (2) Official DMS teaching sessions that have been authorised by the Defence College of Healthcare, Education and Training (DCHET).
 - (3) Research (formerly endorsed with any necessary ethical clearance in accordance with current Surgeon General policy).
 - (4) Publication in clinical papers, books, journals or presentations in accordance with [JSP 950 Leaflet 1-2-3 Procedure for DMS Personnel to Obtain Clearance to Communicate with the Media and Public](#), [2014DIN03-024 Contact with the Media and Communicating in Public](#) and [2009DIN02-004 Revised Security Clearance Procedures for the Presentation or Publication of Authored Material](#).
- b. Appropriate informed consent is obtained and recorded, indicating any limitations on use of clinical photographs taken.
- c. All clinical photographs are stored and transported securely, to ensure confidentiality.

8. The taking of photographs outside these parameters is prohibited and individuals who do so may be subject to disciplinary or legal action.

² UHBFT Photographic and Video Recording Consent and Confidentiality Policy Issued 10 Dec 08.

Patients and Visitors

9. Patients and visitors may only take photographs if:
 - a. Consent is obtained from the subject being photographed.
 - b. No other patients or staff are captured in the image (unless they have consented).
 - c. There are no clinical reasons as to why photography should not be allowed.

Consent³

10. Clinical Purposes.

- a. Where photography is for diagnostic or treatment purposes, the healthcare professional taking the image must ensure that the patient's consent is obtained and recorded appropriately and remains valid throughout.
- b. Photographic and video recordings that are made for treating or assessing a patient must not be used for any purpose, other than the patient's care, without the patient, or a person with responsibility for the patient, providing consent to such usage.
- c. The following types of images are exempt from the requirement for specific photographic consent, because they are deemed non-identifiable and are covered under the consent arrangements in place for the specific procedure to be undertaken:
 - (1) Radiological images where patient details have been removed (x rays, MRI, CT, ultrasound).
 - (2) Macro/micro photography of pathological specimens.
 - (3) Ophthalmic photography, endoscopy, proctoscopy.
 - (4) Images of the operative field taken during surgical intervention (unless the clinical picture is so unique, or might be used in a context where it may become identifiable).

11. Non-Clinical Purposes.

- a. If individuals wish to use photography or video recordings for education, publication or research, they must always seek consent in writing, ensuring the patient is fully aware of the intended uses of the material. In particular, the subject must be made aware that the individual taking the image may not be able to control future use of the material, once it is placed into the public domain. If a child is not willing for a recording to be used, the photographer must not use it, regardless of whether consent is given by a parent or legal guardian and irrespective of the child's competence.
- b. Photographs must not be used for any purpose other than for which the original consent was granted, unless further consent is obtained. A full explanation of how the photographs will be used must be given to the patient, before any photography takes place. This must be documented in the patient's medical notes.
- c. A patient or next of kin of a deceased patient, has the right to withdraw consent at any time. Any retraction in consent should be notified to HQ Healthcare Delivery and Training.

³ Further guidance on consent can be obtained from the GMC publication: 'Consent guidance: patients and doctors making decisions together' dated Jun 08. http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp.

Consent Documentation

12. Where photography is justified in accordance with the above principles a Consent Form must be signed by the patient and retained in the clinical notes. An example of a consent form is at Annex A. Further information related to consent documentation can be found in [Guidance Note 03/15 Consent for Treatment](#) dated 31 Mar 15. It is the responsibility of those holding or using clinical images to demonstrate, that they have the appropriate consent to possess the image and use it in the manner intended.

Consent and Unconscious Patients

13. If a patient is temporarily unconscious and a photographic record is required for clinical treatment purposes, then the photograph can be taken but written consent must be sought, as soon as the patient regains this capacity. If they subsequently refuse, the recording must not be used. These images cannot be destroyed, because they were taken as part of the clinical treatment/process. The images are to be archived at the DMS Central Health Records Library (CHRL)⁴ and not stored in the patient's notes. Such archiving must be documented in the patient's medical records.

14. Where a photograph is taken for research, education or publication purposes and the patient is temporarily unable to provide consent (eg they are unconscious), the image may only be used when the patient has provided informed written consent. If they subsequently refuse, the recording must not be used and must be destroyed.

15. If the patient is likely to be permanently unable to give or withhold consent for a recording to be made (eg due to mental incapacity), the photographic record may only be used with the specific consent of the next of kin. The recording may not be used in any way that might be against the interests of the patient. In such situations, recordings should not be made, or used if the purpose of the recording could equally be met by recording another patient, who is able to give consent. The General Medical Council provide further guidance for consent procedures for adult patients who lack capacity⁵.

Photographs of the Deceased

16. Photographs of the deceased (including stillbirths) may be requested by clinicians, eg grieving/bereavement counselling. The clinician must seek the consent of the deceased's next of kin prior to taking the photographs. Where obtaining consent from grieving relatives is inappropriate, the image may only be used for the patient record. The principles of confidentiality continue to apply after a patient's death⁶.

Photographs of Captured Personnel

17. Under the Geneva Convention and other legal instruments, Captured Personnel (CPers) (which includes all detainees and prisoners), must be protected from exploitation and the risks of being subjected to public curiosity. Clinical photography of CPers requires special consideration, as the validity of consent in this vulnerable group may be difficult to assess. Photographs required for legal or forensic purposes will be conducted by Provost Marshal staff, in order to ensure compliance with any legal evidence requirements. Very rarely other clinical images may be required for the clinical record, but should be taken only after written consent has been given by the CPers. The use of such images for teaching, research, papers, books, journals or presentations is prohibited.

⁴ Images sent to CHRL are to be in hard copy.

⁵ http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_making_decisions_patient_lacks_capacity.asp.

⁶ [GMC Confidentiality Guidance for Doctors 2009](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp). http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp.

Photographic Material without Consent

18. Photographic material taken before the enactment of the [Data Protection Act 1998](#) 95/46/ EC already in circulation for educational purposes may still be used if:

- a. The patient is not identifiable.
- b. Appropriate attempts have been made to obtain retrospective consent.

19. Where there is any doubt concerning whether images should continue to be used, the respective single Services, organisational or DMS Caldicott Guardian should be consulted in the first instance. Caldicott Guardians may seek further expert legal guidance from Central Legal Service as required.

Identification of Images

20. Images retained as part of the medical record must include relevant patient details. However, when such material is to be held outside of the medical record, all patient details (such as name, date of birth, hospital number or any other specific personal data), that may allow the patient to be identified should be removed to protect anonymity. The use of black bands across the eyes in facial views is insufficient to conceal identify.

Storage and Transport/Transmission of Images

21. All photographic images must be kept securely in accordance with the Data Protection Act 1998⁷. Wherever possible, clinical photographs should be securely stored in the patient's clinical records, FMed9 Hospital Folder, or the equivalent electronic health record. Where images are required to be archived but not as part of the medical record, they should be sent to the CHRL with tracing identifiers of full name, date of birth and Service number. If stored anywhere else there must be an effective audit trail to link the images to the correct records.

22. The storage and/or transmission of electronic photographic material must be carried out in accordance with the Ministry of Defence's (MOD's) Information Security Policy, [JSP 440 The Defence Manual of Security](#). Electronic images are to be treated with the same level of security and confidentiality as traditional medical images and records. Such images may be stored on static computer systems, where the necessary levels of security are installed and maintained as deemed suitable for OFFICIAL SENSITIVE PERSONAL Medical in Confidence material⁸. When portable and mobile devices (including magnetic media) are to be used to store and transmit personal information and where the loss of this data could cause damage or distress to individuals, then it should be protected using approved encryption software, which is designed to guard against the compromise of information⁹. Sending images via e-mail without encryption is prohibited.

23. Clinical photographs are predominantly digital, therefore the requirement for processing in a commercial laboratory is unlikely. However, in the event photographic film is used, only commercial laboratories or agencies that have been approved by the DMS/MOD may be used. This requirement is to ensure images are not promulgated or retained by third parties.

24. Where possible, all clinical photographic material must be stored in their original format, without manipulation to preserve integrity. Proof of integrity may be required (eg where photographic evidence is required by a legal court).

⁷ Seventh Principle, [Data Protection Act 1998](#): 'Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data'.

⁸ [JSP 950 Part 1 Lft1-2-7 Protective Marking for Healthcare Records](#).

⁹ Information Commissioner's Office - www.ico.org.uk/Home/for-organisations/guide-to-data-protection.

25. Fixed medical facilities should consider the need to make a suitably trained and equipped individual, responsible for recording clinical images where this is routinely required. The use and security of any dedicated camera equipment, should be controlled by a designated individual, who should maintain a register of all images taken. This register should include:

- a. A locally generated serial number (also annotated on any consent form).
- b. The name and Service details of the photographer.
- c. Description of image.
- d. Whether consent has been obtained.
- e. Final disposal of the image eg attached to medical record or sent directly to CHRL for archiving.

Use of Mobile Phones

26. In addition to the general security restrictions placed on mobile phone usage in the operational and/or clinical environment, clinical photographs of patients must not routinely be taken on mobile phones. However, it is recognised that there may be exceptional situations, where there is an urgent and important need to capture a clinical image, where no other camera is available.

27. In the exceptional case where the use of a mobile phone to make photographic recording cannot be avoided, the following must be complied with:

- a. Only mobile phones with a removable memory card (separate to the SIM card) may be used to take clinical images.
- b. The clinical images must be downloaded from the removable memory onto the DMS IT system, or to an encrypted MOD/DMS laptop and then deleted from the removable memory as soon as possible, before the storage medium containing the clinical photographs is removed from the DMS facility.
- c. If there is any delay before downloading can take place, any removable media containing clinical images, must be placed in a safe storage place until the images can be downloaded.
- d. The transmission of clinical images by text message between mobile phones is prohibited.
- e. If images are held temporarily on mobile devices, the card on which the images are stored must be removed when using the device's network to make and receive calls.
- f. Bluetooth must be turned off when clinical images are contained on a mobile phone.

Copyright and Confidentiality Matters

28. All parties undertaking photography on behalf of the MOD must be aware that, since the [Copyright, Designs and Patents Act 1988](http://www.legislation.gov.uk/ukpga/1988/48/contents)¹⁰, full copyright of photographs taken by employees of the MOD will automatically reside with the MOD.

29. Being in possession of material that has been reproduced without consent may be an offence under the above Act. It is prohibited to lend, sell or hire any photographic image to a third

¹⁰ <http://www.legislation.gov.uk/ukpga/1988/48/contents>.

party without permission of the copyright holder. Breach of copyright or other failure to comply with current UK legislation with regard to data protection is an offence punishable by law.

30. Misuse of photographic images is considered a breach of confidentiality. Maintaining confidentiality is a specific professional and contractual obligation of DMS personnel. Any such breach of these obligations may lead to disciplinary action, referral to appropriate professional bodies, or dismissal.

Monitoring and Assurance

31. Any incidents of non-compliance with this policy must be reported and dealt with in accordance with MOD security policy. Evidence of implementation and compliance with this policy will be sought during single Service and Medical Command assurance visits.

Annex

A. Consent for Clinical Photography and Videos.

CONSENT FOR CLINICAL PHOTOGRAPHY AND VIDEOS

PATIENT DETAILS

SERVICE NUMBER	SURNAME	FIRST NAME	RATE/RANK

1. As part of your treatment some kind of photographic record may be made – for example, clinical photographs or sometimes a video. You will always be told if this is going to happen. The photograph or recording will be kept with your notes and will be held in confidence as part of your medical record. This means that it will normally be seen only by those involved in providing you with care or those who need to check the quality of care you have received. The use of photographs and recordings is also extremely important for other work, such as teaching or medical research. However, we will not use yours in a way that might allow you to be identified or recognised without your express permission.

2. If you are prepared to give consent for clinical photography and videos, including such records that allow you to be identified or recognised, please sign the appropriate box below.

3. If you do not wish these records to be taken you are at liberty to refuse to give this consent.

Date	Type and Number of Photographic Records Made	Is the patient identifiable or recognisable from these records? Y/N	Patient signature - Consent for Clinical Photos and/or Videos to be taken.	Patient Consents for photos to be used for: 1. Insertion in Medical Notes, 2. Medical Training, 3. Publication.	Clinician's Signature

This form is to be completed prior to photography or video scanned and retained on the patient's DMICP individual Health Record.