



Professional Guideline

Photographic, Video and Audio Recording of Patients

Preamble

This document is a guideline of the Board of the College of Physicians and Surgeons of British Columbia.

College's Position

Modern technology has made the photographic, video and audio recording of patient-physician interactions much easier. Digital cameras, smartphones, tablets and other electronic devices have enabled physicians to record their patients with relative ease in a more informal process. Whether a still photograph, video or audio, it must not be forgotten that these recordings may form part of the patient's medical records and need to be treated with the same degree of security and confidentiality as case notes. These recordings are also subject to access, disclosure and disposition provisions under applicable access and privacy legislation in Canada (e.g. *Personal Information Protection Act*, SBC 2003, c.63). Further, using mobile recording devices raises privacy issues and concerns about confidentiality when such devices have the potential for automatic backups occurring to a cloud-computing service, especially if that service is located outside of Canada.

Medical and surgical procedures involving patients may be recorded for a variety of purposes. The recording may be made as part of the patient's care to assist in the assessment, investigation and treatment, in which case the recording forms part of the patient's medical record and must be treated as such. Alternatively, the recording may be made for a secondary purpose such as teaching, training, or research that may require additional safeguards.

1. Regardless of the intended use the consent of the patient must always be obtained. The physician is responsible for the following:
 - a. **Before the recording**
 - The patient understands why the recording is being made, who will be allowed to see (or hear) it including the names of the people if known, whether copies will be made and how long the recording will be kept.
 - The patient understands that refusal to consent to the recording will not affect the quality of the care being offered.

- The patient is given time to consider a consent form and explanatory material which sets out the necessary information in a way which the patient can understand (translations should be provided where necessary prior to signing the form).
- The consent form is neutrally worded, in order not to imply that consent is expected.
- Where patients are unable to give consent because they suffer from a mental disability or for any other reason, consent should be sought from the nearest relative or representative as defined under sections 1 and 2 of the *Personal Information Protection Act* Regulations. In the case of minors who lack the understanding to consent on their own behalf, the consent of a parent or guardian or a representative must be obtained. The person giving consent must understand the rights set out above and below.

b. During the recording

- The recording must be stopped immediately if the patient requests or, if in the opinion of the physician, the recording is reducing the benefit that the patient might derive from the consultation.

c. After the recording

- The patient is invited after the recording to consider whether to vary or withdraw the consent to use the recording. If the patient withdraws the consent, the recording is to be erased as soon as possible.
- The recording may only be used for the purpose for which the patient's consent was obtained. If the physician wishes to use the recording for purposes outside the scope of consent originally obtained, a new consent must be obtained.

2. Where a recording is made as part of the patient's care to assist in assessment, investigation and treatment, the recording forms part of the patient's medical record. It must be maintained and stored in accordance with all ethical, professional and legal requirements. There should be protocols in place to address physical security, data sharing with other health-care professionals, backup of electronic data and user-based levels of access (see Medical Records). The recording should be erased in accordance with the patient's instructions. If no specific instructions have been received from the patient, the recording will remain as part of the medical record and be treated accordingly.

Recorded content made with mobile recording devices should be transferred to a secure electronic medical record-keeping system and erased from the recording device as soon as practically possible after the transfer.

3. Where a recording is made for a secondary purpose (teaching, training, or research) and as a result may be shown to people other than the health-care team responsible for the care of the patient, the following additional safeguards apply:
- a. The patient should clearly understand that the recording may be shown to people with no direct responsibility for the patient's health care.

- b. The patient must be offered the opportunity to view the recording, in the form in which it is intended to be shown, before the recording is used. The patient has the right at this stage to withdraw consent to the use of the recording.

The above procedures apply even if the recording will be edited in order to anonymize the identity of the patient.

In exceptional circumstances, where no recording of a procedure has been planned but an unexpected development during the procedure makes a recording highly desirable on educational grounds, a recording may be made without consent if the patient's consent cannot be immediately obtained (for example because of anesthesia). In such circumstances, the patient's consent must be obtained as soon as possible. If retrospective consent is not obtained, the recording should be securely erased.

4. If the recording is intended to be accessible to the public media (e.g. television, radio, internet, newspaper) the same considerations apply as for recordings made for a secondary purpose. Consent must be obtained, the purpose for making the recording explained and an opportunity provided to view the recording. In addition the physician should ensure that the patient understands that once the recording has been released to the public media, it may not be possible to stop any subsequent use even if the patient subsequently withdraws their consent.

Physicians may seek advice on these issues by contacting the College and asking to speak with a member of the registrar staff, or by seeking medical legal advice from the CMPA.

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