COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

PRACTICE STANDARD

Photographic, Video and Audio Recording of Patients

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A **practice standard** reflects the minimum standard of professional behaviour and ethical conduct on a specific topic or issue expected by the College of its registrants (all physicians and surgeons who practise medicine in British Columbia). Standards also reflect relevant legal requirements and are enforceable under the *Health Professions Act*, RSBC 1996, c.183 (*HPA*) and College Bylaws under the *HPA*.

Preamble

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

The functionality of electronic devices and increased provision of virtual care have enabled registrants to record their patients with relative ease. Any recording of a patient, whether it be a photograph, video, or audio recording, may form part of the patient's medical record and is expected to be treated with the same degree of security and confidentiality and in accordance with the College's *Medical Records Documentation* and *Medical Records Management* practice standards. These recordings are subject to access, disclosure and disposal provisions under applicable access and privacy legislation in Canada (e.g. *Personal Information Protection Act*, SBC 2003, c.63).

Recording devices raise privacy, security, data integrity and availability issues when they have the potential for automatic backups occurring to a cloud-computing service, especially if that service is located outside of Canada. Registrants must be mindful of how and where they use devices to record conversations. If these devices are kept in clinical areas, they must be turned off or their settings changed so they do not record personal health information without patient consent.

College's position

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. A recording may also be made in the context of providing virtual care (e.g. telehealth visit, phone consultation) in accordance with the College's *Virtual Care* practice standard. Alternatively, the recording may be made for a secondary purpose such as teaching, training, or research resulting in the need for additional safeguards. In all of these circumstances, the informed consent of the patient must always be obtained.

Registrants are responsible for the following:

Before the recording

- The patient understands why the recording is being requested, 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, although in some circumstances, it may impact the services available to the patient.
- The patient understands that the recording can be discontinued immediately on request.
- The patient is given sufficient time to consider a consent form and explanatory material which set out the necessary information in a way which the patient can understand (translations must be provided where necessary prior to signing the form).
- The consent form is neutrally worded and does not 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 can be obtained from the nearest relative or representative as defined under sections 1 and 2 of the *Personal Information Protection Act* (*PIPA*) regulations.
- Registrants working within a regional health authority must be aware of and comply with any hospital policies and *Freedom of Information and Protection of Privacy Act* (*FOIPPA*) regulations.
- In the case of minors who lack the ability to consent on their own behalf, the consent of a parent, guardian or representative must be obtained. The person giving consent must understand the rights set out above and below.

During the recording

- The recording must be stopped immediately if the patient requests or, if in the opinion of the registrant, the recording is having a negative impact on the patient-registrant relationship or reducing the benefit that the patient might derive from the consultation.

After the recording

- The patient is invited after the recording to discuss any concerns regarding the recording and consider whether to vary or withdraw the consent to use the recording. If the patient withdraws the consent, the recording must be erased from the device as soon as possible.
- The recording may only be used for the purpose for which the patient's consent was obtained. If the registrant wishes to use the recording for purposes outside the scope of consent originally obtained, a new consent must be obtained.
- 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, including the College's *Medical Records Documentation* and *Medical Records Management* practice standards. Protocols must be in place to address physical security, data sharing with other health-care professionals, backup of electronic data and user-based levels of access. The recording, and any backups (such as copies saved on the Cloud), must 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 must be transferred to a secure electronic medical record-keeping system and erased from the recording device as soon as practically possible after the transfer.

Recordings for secondary purposes

Recordings for educational purposes

Where a recording is made for 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, even if the recording will be edited in order to anonymize the identity of the patient:

- The patient must clearly understand that the recording may be shown to people with no direct responsibility for the patient's health care.
- The patient's consent to the recording must be documented in the patient's medical record.
- 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.

If a recording has not been planned, but an unexpected development during a procedure makes a recording highly desirable on educational grounds, a recording may be made. However, under such circumstances, the patient must have provided their informed consent for the possibility of a recording prior to the procedure.

If the recording is intended to be accessible in the public domain, (e.g. published in online or printed media), consent also has to be obtained for the disclosure of the recording outside of Canada as outlined in *FOIPPA*. Consent must be obtained, the purpose for making the recording explained and an opportunity provided to view the recording. In addition, registrants must ensure that the patient understands that once the recording has been released to the media, it may not be possible to stop any subsequent use even if the patient subsequently withdraws their consent.

Recordings in public spaces for security purposes

Recordings may be made in public spaces (e.g. waiting rooms) for security purposes given the registrant is using closed circuit television or other video systems (CCTV) as set out in *FOIPPA*. When this is implemented, appropriate signage must be visible in all areas where recordings are being made.

Resources

Canadian Protective Medical Association [Internet]. Ottawa. Photo and Video Consent Form [cited December 21, 2020]. Available from: https://www.cmpa-acpm.ca/static-assets/pdf/advice-and-publications/risk-management-toolbox/com_photo_and_video_consent_form-e.pdf

Canadian Protective Medical Association [Internet]. Ottawa. March 2011. Using clinical photography and video for educational purposes [cited December 21, 2020]. Available from: https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2011/using-clinical-photography-and-video-for-educational-purposes

Canadian Protective Medical Association [Internet]. Ottawa. March 2017. Smartphone recordings by patients: Be prepared, it's happening [cited December 21, 2020]. Available from: https://www.cmaj.ca/content/suppl/2017/05/03/189.18.E659.DC1/170363-guide-1-at-updated.pdf

Office of the Information and Privacy Commissioner for British Columbia [Internet]. January 2014. Public Sector Surveillance Guidelines [cited December 21, 2020]. Available from: https://www.oipc.bc.ca/guidance-documents/1601