

SESLHD POLICY COVER SHEET



Health
South Eastern Sydney
Local Health District

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EXECUTIVE SPONSOR or EXECUTIVE CLINICAL SPONSOR	Director, Clinical Governance and Medical Services
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FUNCTIONAL GROUP(S)	Records Management – Health Clinical Governance
KEY TERMS	Photography Recordings
SUMMARY	In line with respecting patient privacy and confidentiality, this policy is to provide clear and concise guidelines for obtaining consent to photograph, video or audio record patients and the subsequent taking and management of images and recordings.

COMPLIANCE WITH THIS DOCUMENT IS MANDATORY
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1. POLICY STATEMENT

- Photographs, video recordings and audio recordings of patients may be taken for use in clinical care, peer review, consumer and staff education.
- This policy excludes the use of photographic images and recordings for the purpose of organisational publicity, health promotion and medical research.
- In order to protect the privacy and confidentiality of those working or visiting our facilities, no photograph or recording may be captured by patients, staff or visitors without informed consent unless the image is essential for clinical care.
- As per the State Records Act, NSW Health Code of Conduct and the Health Records and Information Privacy Act, all staff must maintain the security of confidential and / or sensitive information, including that stored on communication devices.
- The Health Records and Information Privacy Act applies to all patient photographs and recordings. The local health district is required to provide secure storage, access to, and use and disclosure of photographs and recordings.

2. AIMS

To inform staff of the requirement for obtaining consent to photograph video or audio record patients and the subsequent taking and management of images and recordings.

3. TARGET AUDIENCE

All staff that require the use of clinical photography to assist in the on-going assessment and management of patients/clients.

4. RESPONSIBILITIES

4.1 All staff will:

- Ensure informed consent is obtained where appropriate and documented for all photographs and recordings taken within SESLHD
- Use approved equipment to capture all photographs and recordings in the first instance if available
- Use non-approved devices in accordance with the requirements of this policy and the NSW Code of Conduct
- Maintain the security of confidential and / or sensitive information
- Ensure the photograph or recording is managed appropriately and stored correctly.

5. DEFINITIONS

- **Approved device:** any end-user computing device supplied by SESLHD, which would be expected to have proper advice from ICT

- **Audio Visual Recording:** relating to materials, such as films, video and tape and audio recordings, that present information in audible and pictorial form
- **Confidentiality:** the restriction of access to information, and the control of the use of release of personal information, in order to protect patient privacy
- **Consent:** permission for something to happen or agreement to do something. For more information see Section 5.4 Consent of the NSW Health [Privacy Manual for Health Information](#) (2015)
- **De-identified information:** information or opinion about a person whose identity cannot be ascertained from the information or opinion
- **Electronic health record:** electronic health record applications/systems such as Cerner eMR, eMaternity, eRIC, MOSAIQ, ARIA, or any other similar
- **End-user computing device:** any electronic device which is capable of storing data and connecting to a digital data network, including but not limited to mobile phones, smartphones, tablets, laptops, personal computers, thin-clients, wearable technologies, smart watches, woven computing technologies and netbooks.
- **GIPA Act:** the NSW Government Information (Public Access) Act 2009
- **Health Information:**
 - (a) personal information that is information or an opinion about:
 - (i) the physical or mental health or a disability (at any time) of an individual, or
 - (ii) an individual's express wishes about the future provision of health services to him or her, or
 - (iii) a health service provided, or to be provided, to an individual, or
 - (b) other personal information collected to provide, or in providing, a health service, or
 - (c) other personal information about an individual collected in connection with the donation, or intended donation, of an individual's body parts, organs or body substances, or
 - (d) other personal information that is genetic information about an individual arising from a health service provided to the individual in a form that is or could be predictive of the health (at any time) of the individual or of any sibling, relative or descendant of the individual, or
 - (e) healthcare identifiers, but does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of the HRIP Act generally or for the purposes of specified provisions of the HRIP Act

- **Health record:** a documented account, whether in hard copy or electronic form, of a patient's health, illness and treatment during each visit or stay a health service (note: holds the same meaning as "Health care record", "Medical record", "Clinical record", "Clinical notes", "Patient record", "patient notes", "patient file", and so on)
- **HRIP Act:** the Health Records and Information Privacy Act 2002 (NSW)
- **Non-Approved Device:** personal phones, personal cameras and other digital devices with a capacity to capture images or recordings
- **Patient:** any person who receives a health service and to whom, as a result, a health practitioner owes a duty of care. (note: holds the same meaning as "client" or "consumer")
- **Photograph:** an image of an object, person, scene, or part thereof, in the form of a print, slide or digital image recorded by a camera on photosensitive material
- **Privacy:** the right of an individual to have their personal health information safeguarded from loss, misuse, and unauthorised disclosure in order to protect the privacy of an individual's personal health information
- **Security:** a tangible set of physical and logical mechanisms which can be used to protect information held in hard and soft copy, digital format, within computer systems, via telecommunications infrastructure, etc.

6. POLICY

- In line with protecting patients' privacy and confidentiality, this policy provides a clear and concise guideline for obtaining consent, the taking / recording of, and the subsequent management of photographs, videos and audio recordings of patients.
- This policy applies to images taken on cameras and other end-user computing devices, but excludes those images captured during routine diagnostic imaging such as x-ray, CT or MRI scanning.

Clinical

- In certain clinical contexts, the taking of patient photographs and recordings may be required for the care, monitoring, observation and treatment of patients. Some examples include burns, wounds, rashes, cancers, congenital conditions and patient behaviour.

Photographs and recordings, whether re-produced in hard copy or maintained in digital format, do form part of the patient's health care record.

- For wound photography, refer to [SESLHDPR/285 Wound – Clinical Digital Photography](#).
- For abuse / neglect photography, refer to [NSW Ministry of Health Policy Directive PD2015 047 – Photo and Video Imaging in Cases of Suspected Child Sexual Abuse, Physical Abuse and Neglect](#) and related consent form - SMR020.028 Consent for imaging - suspected child abuse.

Non Clinical

- At times photographs and recordings may be taken for purposes unrelated to direct patient clinical care. Some examples include:
 - Organisational publicity
 - Health promotion
 - Medical research
 - Education of healthcare workers.
- For more information on non-clinical photography and recording, or the use of clinical photography for purposes unrelated to direct patient clinical care, contact the SESLHD Manager, Media and Communications.

6.1 Consent

- Written consent is not required where the capturing of images is a necessary part of clinical diagnosis, clinical care or treatment. However the patient must be made aware why the taking of the images is / was clinically indicated and this must be documented in the patient's health care record.
- If the patient can be identified or potentially identified, and the purpose of capturing of the image is not a necessary part of clinical diagnosis, care or treatment, the consent of the patient must have been obtained in writing (*Patient Consent for Photographs / Images / Recordings for Non-Patient Care Purposes - SMR020.005* to be completed). (Appendix 1). Consent must always be obtained before intra-operative filming, photography or streaming of procedures for education or training, photographs/images that are to be used for quality improvement and training purposes.
- If a patient cannot be identified in the photograph or recording, then consent may be verbal but must be documented within the patient's health care record.
- During the consenting process, it should be explained:
 - Why the photograph or recording is being taken
 - How the photograph or recording will be used
 - The benefits of taking the photograph or recording to the individual / others / organisation
 - Who will take the photograph or recording
 - Who will see the image or recording
 - Where the image will be stored
 - That the image will be deleted from the device after being saved to the appropriate health service information system
 - That consent can be withdrawn at any time, however images of the patient that are related to clinical care will form part of the health care record and cannot be deleted.

- Patient photographs and recordings may be used only for the purposes covered during the consenting process. If staff wish to use an image or recording for purposes not covered in the consenting process, the patient is to be contacted to seek further consent for the additional use of the image or recording. Additional consent from the patient must be documented within the patient's health care record.
- Consent can only be given by a person who has the capacity to consent (refer to NSW Health Privacy Manual for more information).
- An interpreter should be used if required and documented in the health care record.
- A patient's refusal to consent should be documented in the health care record.
- Any consent for photographs or recordings is valid until withdrawn. Consent may be withdrawn at any time, however if the images are part of the health care record then they will not be deleted/removed. Withdrawal should be documented in the patient's health care record and / or by the appropriate department.

6.2 Photography and Recordings

- All photographs and recordings for clinical purposes should be captured on approved equipment as far as practicable.
- When non-approved devices, for example mobile phones and Bring Your Own Technology (BYOT) are used to capture images or recordings, this must be in accordance with the requirements of this policy, the NSW Code of Conduct and other policies related to the privacy and protection of children, patients and clients.
- All photographs and recordings should be clear and accurately represent the purpose of the image or recording.
- Wherever possible, the use of identifying features should be avoided, unless required to support patient assessment and management.
- All images and recordings should be of the highest quality possible. Care should be taken to ensure the use of adequate lighting and clarity of an image.
- Hand hygiene should be performed before and after handling photography equipment and care should be taken to prevent the equipment coming into contact with patients and their immediate surroundings.

- To ensure the images are allocated to the correct patient health care record, they must have:
 1. Patient identification label or;
 2. Name, date of birth and patient's facility/site.
 3. The first and the last frame should include the date of image or recording.

Staff should take particular care to transfer images and recordings from all devices as soon as possible, and have the image stored securely within the patient's health care record. The image must then be permanently deleted from the personal device and any other associated sources of storage (such as cloud networks).

6.3 Management and Storage of Clinical Photography and Recordings

- Photographs and recordings form part of the patient's personal health information and are therefore part of the health record. This includes both hard copy and digital format.
- All photographs and recordings should be stored in the patient's electronic health record, (Refer to relevant system user instructions, guidelines or procedures for saving images.) Photographs may also be stored in the paper file if the image can be produced in a clear and accurate format.
- It is the responsibility of the individual who has taken the photograph or recording to ensure it is managed appropriately and stored correctly.
- All photographs and recordings must be uploaded as soon as possible after they are taken, and deleted from the device for security purposes.
- The SESLHD supports the use of privately-owned end-user computing devices to access digital resources but prohibits the storage of information classified as confidential on privately-owned devices.
- In the case where the SESLHD provides end-user computing devices to staff, the LHD does not condone the storage of confidential information on these devices, whether they are fixed or mobile, without written approval of the SESLHD Director Health ICT or their delegate.
- Photographs and video imaging for child abuse and neglect must be stored separately from the patient's health care record as per the NSW Photography and Video Imaging in cases of suspected child sexual abuse, physical abuse and neglect policy PD2015_047.

6.4 Access

6.4.1 External Access to photographs and recordings

- Under the Health Records and Information Privacy Act (HRIP), the Government Information Public Access Act (GIPA) and NSW Health policy, patients or their authorised representative (such as solicitor, insurer, etc) may apply for access to information a health service holds about them. This includes any photography and/or recordings. All enquires for access to Patient's Health Care Records should be directed to the relevant Site Medical Records Department.
- Compliance with a search warrant and / or subpoena (court order) is required by law and thus photographs and recordings may be requested.
- Other authorised Government agencies also have powers to access photography and recordings, such as the Health Care Complaints Commission (HCCC), the NSW Ombudsman and the Child Death Review Team.

6.4.2 Staff Access to photographs and recordings

- Staff may access photographs and/or records in accordance with access guidelines set out by the Privacy Manual for Health Information and the code of conduct. This may include (but not be limited to)
 - Clinical staff providing care
 - Complaint handling
 - Quality assurance or audit activities
- Treating clinicians / staff may forward a photographic image to another clinician involved in the patient's care for the purposes of communication and urgent clinical decision making.
- It is the responsibility of the sender and receiver to delete the image(s) from their personal device.
- The transmission of images should be documented in the patient health care record including details of the sender, receiver and rationale for transmission.
- Staff should consider that patients can be identified by not just their faces, but by birth marks, scars, tattoos, piercings, unusual diagnoses and other features which may be unique to them.
- For further information, contact the [SESLHD Privacy Contact Office](#).

7. DOCUMENTATION

Health Care Record
Patient Consent for Photographs / Images / Recordings for Non-Patient Care Purposes - SMR020.005

8. REFERENCES

Legislation:

[NSW Health Records and Information Privacy Act, 2002](#)
The Government Information (Public Access) Act 2009 (GIPA)

NSW Ministry of Health

[NSW Ministry of Health Privacy Manual for Health Information \(2015\)](#)
[NSW Ministry of Health Policy Directive PD2015_036 - Privacy Management Plan](#)
[NSW Ministry of Health Policy Directive PD2015_047 – Photo and Video Imaging in cases of suspected child sexual abuse, physical abuse and neglect](#)
[NSW MoH Patient Matters Manual for Public Health Organisations](#)
MOH - PD2005_406 – Consent to Medical Treatment - Patient Information
[NSW Ministry of Health - Health Records and Information Manual](#)
[NSW Health Code of Conduct](#)

SESLHD:

[SESLHDPR/292 – Hybrid Health Care Record Procedure](#)
[SESLHDPR/285 – Wound - Clinical Digital Photography](#)
[SESLHDPR/593 – Media and Communications Protocols](#)
[SESLHDPR/426 – Filming and Photography Procedure \(Non-Media\)](#)
[SESLHDPD/310 – Information Security Policy](#)

9. REVISION AND APPROVAL HISTORY

Date	Revision No.	Author and Approval
May 2020	DRAFT	Co-Chair SESLHD Health Records & Medico Legal Committee
June 2020	DRAFT	Draft review and approved SESLHD Health Records & Medico Legal Committee
August 2020	DRAFT	Draft for comment period.
October 2020	DRAFT	Processed by Executive Services and tabled at Corporate Executive Council.
November 2020	DRAFT	Endorsed by Corporate Executive Council requesting policy be approved by Clinical and Quality Council.
December 2020	DRAFT	Approved at Clinical and Quality Council.
February 2021	1	Published by Executive Services.

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the SESLHD

SESLHDPD/327

Appendix 1

 SMR020005 Holes Punched as per AS2828.1: 2019 BINDING MARGIN - NO WRITING		FAMILY NAME	MRN
	Facility:	GIVEN NAME	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE
	CONSENT FOR INTRA-OPERATIVE AND OTHER PHOTOS, IMAGES AND RECORDING FOR NON PATIENT CARE	D.O.B. ____/____/____	M.O.
		ADDRESS	
LOCATION / WARD			
COMPLETE ALL DETAILS OR AFFIX PATIENT LABEL HERE			
This form is to be used to obtain consent in relation to: <ul style="list-style-type: none"> All intra-operative filming, photography or streaming of procedures for education or training. Photographs/images that are to be used for quality improvement and training or any other purpose not directly related to the care or treatment of a patient. Consent must always be obtained before intra-operative filming, photography or streaming of procedures, for education or training purposes, can occur. Even if the procedure is on a non-identifiable body part, patients must consent to participate. Other photographs or images that may identify a person, or involve a sensitive body part, must only be taken with the consent of the patient. Identifying information includes facial features, tattoos, scars or other body markings. HEALTH PRACTITIONERS NOTE: The image must be stored securely and must be able to be retrieved for staff and patient access in the future. Discuss any concerns with your Health Information Manager/ Clinical Information Manager.			
CONSENT			
I understand and acknowledge: <ul style="list-style-type: none"> The reasons for these photographs/images/recordings and the purpose for which they will be used as described below. That this has been explained to me by the treating health practitioner. That my participation is completely voluntary and I can choose not to participate at all. That these photographs/images/recordings will be retained and managed by the Local Health District in accordance with the <i>State Records Act 1998</i> and the <i>Health Records and Information Privacy Act 2002</i>. That I can withdraw my consent for the future use of photographs/images/recordings at any time, noting that in some cases it may not be possible for images that have already been used prior to withdrawal of my consent to be withdrawn from circulation. That I may request a copy of these photographs/images/recordings. 			
I, _____ hereby consent to myself / my _____ (Relationship) _____ (Name of Patient) being: <input type="checkbox"/> PHOTOGRAPHED/IMAGED <input type="checkbox"/> VIDEO RECORDED <input type="checkbox"/> AUDIO RECORDED <input type="checkbox"/> LIVE STREAMED IN THEATRE <input type="checkbox"/> OTHER _____			
For the purpose of _____ at the following NSW Local Health District/Clinical Service _____			
For adults with capacity and mature minors			
_____ Signature of Patient		_____ Print Name	
		_____ Date	
For adults without capacity and minors			
_____ Signature of Authorised Representative		_____ Print Name of Authorised Representative	
		_____ Date	
HEALTH PRACTITIONER ACKNOWLEDGEMENT			
_____ Signature of health practitioner		_____ Designation	
		_____ Print Name	
		_____ Date	
If an interpreter is present:			
_____ Signature of interpreter		_____ Print Name	
		_____ Date	
		_____ Time	
		_____ Employee ID	
NO WRITING			