

	MANUAL Admin	Section Public Affairs	Pages	Number
Subject: Photography, Audiovisual Recording and Assignment of Rights of Patients at St. Joseph's Healthcare Hamilton			Date 01/10/2014	
Supersedes:	Cross Reference: 027-ADM Public Affairs & Media 063-MED Observers in the Operating Room 090-ADM Privacy of Personal Privacy of Personal Health Information 043-ADM Videotaping Policy (Security)		Issuing Authority: Executive Council	
<input checked="" type="checkbox"/> Charlton Campus	<input checked="" type="checkbox"/> West 5th Campus	<input checked="" type="checkbox"/> King Campus		

Table of Contents

- 1.0 Purpose & Goals Description**
- 2.0 Definitions**
- 3.0 Equipment/Supplies**
- 4.0 Policy**
- 5.0 Procedure**
- 6.0 Documentation**
- 7.0 References**
- 8.0 Sponsor**
- 9.0 In Consultation with**
- 10.0 Posting Dates**
- 11.0 Attachments/Appendix**

1.0 Purpose & Goals Description

As part of the delivery of clinical care at St. Joseph's Healthcare Hamilton [SJHH], Personal Health Information [PHI] is collected, used, retained, disclosed and eventually destroyed, according to our legislated responsibilities. As PHI, photographic images require the same level of protection as all other types of confidential personal health information.

In the interests of our patients, PHI may include photographic images taken for enhanced safe, quality patient care. Images may also be taken for teaching, administrative and public relations functions.

This policy provides guidelines and regulations related to the taking of photographs/video of patients by staff members, physicians, learners, volunteers and members of the public including the media on or within all campuses and community

programs administered by St. Joseph's Healthcare Hamilton. It also addresses the hospital's rights and responsibilities in managing the taking of photographs/video of SJHH staff and facilities by the aforementioned stakeholders.

This policy is intended to assist staff in:

- Involving patients, substitute decision makers (SDM) and staff in a process of consent for photographic images;
- Respecting patient and staff privacy, dignity and confidentiality;
- Empowering appropriate and respectful conversation to address photography of SJHH staff in the absence of consent;
- The safe storage of photographic image records;
- Protecting copyright, where applicable.

2.0 Definitions

Photographic Image: Any still or moving image of an individual or space taken regardless of technology used to obtain the image.

Photographic Equipment: equipment used to take a photographic image including but not limited to camera, video recorder, photographic image scanning devices, personal digital assistants and cellular phone devices with built in cameras.

3.0 Equipment/Supplies

Photographic Equipment (film, digital, video and still)
Mobile recording devices (tablets, cell phones)

4.0 Policy:

Photographic images, when managed according to corporate and clinical policy, may play an integral role in optimizing care for patients, improving teaching opportunities for learners and enhancing the profile and reputation of SJHH and its programs.

It is the policy of SJHH that when photographs of a patient are carried out by staff, clinicians, physicians, learners across our organization that explicit **written** consent shall be obtained (see attached Appendix C, *Consent for Photographs, Audiovisual Recordings and Assignment of Rights* Form). At all times, photography at SJHH shall conform with the *Personal Health Information Protection Act* [PHIPA] guidelines related to the collection, use, storage, disclosure and disposition of personal health information.

It shall be noted that any requests for copies of any images, exclusive of patient images, taken by authorized staff are subject to the Freedom of Information and Protection of Privacy Act [FIPPA].

SJHH employees, clinicians, physicians, learners and/or volunteers may take

photographs of patients and transmitting them electronically (email, text, skype, etc.) utilizing their own personal devices, provided that the patient has expressly consented to taking of photographs on personal devices. Where the photograph is taken in support of patient care, that photograph must be retained as part of the patient record and deleted from the personal device. If the photograph is to be retained on the personal device, the SJHH employees, clinicians, physicians, learners and/or volunteers must seek the express consent of the patient.

It is also acceptable for those staff with hospital-issued or personal mobile devices (tablets, phones etc.) with built in camera capabilities to take pictures if required as part of their duties (e.g., picture of a wet floor/hazard, for promotional purposes including social media opportunities). These pictures are the property of SJHH and must be provided to the manager for any appropriate action. Those pictures must be deleted from the personal devices and must not be shared with anyone including on any social media site.

Patients and their families often bring photographic equipment or camera/video equipped cellular devices with them into hospital for the purposes of taking personal family photos. This is an acceptable practice and aligned with St. Joseph's model of patient and family-centered care. Care shall be taken to ensure that such photographs do not inadvertently capture images of other patients or staff/visitors that have not consented to having their images captured. Patients and visitors will be advised about the photography policy through corporate signage (Appendix A).

Staff are responsible for ensuring compliance in their areas and to verbally remind patients and visitors about the policy when appropriate and necessary. Suggested phrases to support staff in this conversation are outlined in Appendix B. Images, whether taken by staff, physicians, patients or visitors, which accidentally or deliberately include other individuals or visitors that have not provided prior consent are prohibited. In the event that an individual takes a photograph in violation of this policy, the following steps shall be taken and Risk Management and Public Affairs consulted:

- a) Staff shall advise the individual of the hospital's policy requiring consent from subjects for photography and ask the individual to immediately stop taking the photograph. If the individual refuses, Risk Management and Public Affairs shall be informed.
- b) Staff shall inform the individual that hospital staff may need to view the photographs and determine whether appropriate consent was obtained, and to ensure that the privacy of other individuals has not been violated.
- c) If proper prior consent was not obtained, the individual shall be asked to delete/destroy the photograph by SJHH staff. If the individual refuses to delete the photograph, Public Affairs and Risk Management shall be called to notify them of a potential risk to the hospital's reputation/media exposure.

4.1 Exclusions

This policy does not apply to the following:

- Images or photos taken by the SJHH Security Services administration or management staff that have been issued cell phones with camera-enabled capabilities, related to performance of daily duties associated with video surveillance, photography and audio records for the purposes of policy, legal and security issues and investigations.
- Images taken of babies that have died at SJHH as a result of stillbirth. The Social Work Department shall contact the community based "Now I Lay Me Down to Sleep" organizations to request remembrance photos for a family that has experienced the loss of a child through stillbirth. An AV technician will only be contacted if this group is not available. These images are provided to the family at the time of loss and/or housed indefinitely through the Social Work Department for families requesting copies at a later date.
- Images taken with Research Ethics Board [REB] approved projects
- Images or photos taken as part of the standard course of treatment including but not limited to:
 - Radiographic or ultrasound images such as x-ray and echocardiography
 - Macro/micro photography of pathology specimens
 - Ophthalmic or endoscopic images
 - Telemedicine imagery
 - Any images produced as a result of a healthcare treatment or intervention

4.2 Storage and security of images listed as exclusions are addressed within other department processes and remain the responsibility of the individual department, or organization responsible for taking the image.

5.0 Procedure:

5.1 Consent for Taking Photographic Images of Patients

Written consent shall be obtained from the patient or if the patient is incapable, the Substitute Decision Maker [SDM]. Consent shall be obtained prior to taking of the photographic images. The Consent Form for Photography of Patients is attached as **Appendix C**, one copy of which shall be filed in the patient's health record and one given to the patient once completed.

The health professional expediting the signing of the Consent Form for Photography of Patient shall discuss the following information at the time of consent:

- The purpose of the photograph
- Who will be permitted to see the photograph
- Whether copies may be made
- Arrangements for storage and length of time the photograph shall be kept.

Photos shall only be used for the purposes for which the original consent was provided. In the event the hospital, department, or health professional wishes to use the photographic image for another purpose, a new consent form specific to that use shall be completed and signed by the patient or SDM.

5.2 Breach of Patient Privacy

Any unauthorized access, use or disclosure of a patient image constitutes a breach of patient privacy. Where the image was taken by a physician or learner on their own personal device, it is the sole responsibility of the physician or learner who took the images. This may include dealing with the Information Privacy Commissioner of Ontario, fines, penalties or law suits.

Should a real or suspected Breach of Privacy occur, the incident must be reported to the SJHH Chief Privacy Officer as soon as possible.

5.3 Withdrawal or Refusal of Consent

If a patient or SDM withdraws or refuses consent to the taking or use of a photographic image after the photo has been taken, the photographic image(s) shall be destroyed as soon as is reasonably practicable following the withdrawal/refusal and documented on the consent form.

5.4 Use of Photographic Images from Existing Files

Existing photographic images, for which there is no patient or SDM consent for the photographic image to be used, may be used ONLY IF the following condition has been met:

- The patient is not identified or identifiable in the photographic image(s) and/or with the accompanying case report information.

5.5 Use of Photographic Images for Non-Clinical Purposes

A disclaimer shall be used at the beginning of any presentations containing photographic images of patients or visitors. For example, "These photographs are provided with explicit consent and shall not be distributed or reproduced without prior permission."

5.6 Storage Retention & Disposal of Images

It is the responsibility of SJHH and SJHH staff to ensure the safe storage and security of photographic images taken of patients or visitors.

All photographs which form part of the patient health record shall be stored in their original format without manipulation to preserve the integrity of the image.

All images shall be stored in a safe and secure location or medium to prevent accidental loss, theft, unauthorized viewing, damage, deletion or destruction.

5.5.1 Storage of Clinical Photographic Images

Where consent has been obtained to take and store images for clinical purposes, the clinician is responsible for making arrangements to safely store and maintain the image in a secure password-protected electronic file. The original shall be deleted from the camera's memory as soon as possible. For future retrieval purposes, each image shall be assigned a filename by which it can be clearly identified. Under no circumstances, shall the name of the patient be used as the file name.

Before leaving the employment of SJHH, clinical staff shall erase any digital images of patients from their files.

5.5.2 Storage of Non-Clinical Photographic Images

The Public Affairs Department shall be responsible for maintaining a repository of non-clinical marketing and promotional photographs with active and valid consents. As per the *Consent for Photographs, Audiovisual Recordings and Assignment of Rights* Form, all photographic material that contain staff, physicians, volunteers or patients shall be active for a period of 12 months from the date the photo was taken, unless indicated otherwise. The Public Affairs Department shall be responsible for annually reviewing the active photography file and removing and storing any photos without an active consent in an inactive file to prevent on-going use without an updated consent from a patient/SDM.

The St. Joseph's Healthcare Foundation shall be responsible for maintaining an up to date repository of all marketing and promotional photographs they hold responsibility for. This repository shall contain consent and timeline processes similar to the Hospital's.

The Library Services Department maintains a paper-based archive of historically-significant photographic images. The Audiovisual Department and Library Services Department shall annually review non-clinical photographic images with suspected historical significance and determine whether a copy of these image(s) shall be stored indefinitely in the SJHH Archives.

5.5.4 Accidental disclosure, access, loss, theft or destruction of photographic images of patients shall be promptly reported to the Chief Privacy Officer and Director, Risk, Legal & Medical Affairs. For all other situations that this policy does not provide for, please contact the Privacy

or Risk Management offices for direction. A Safety Incident Report (SIR) may need to be completed and submitted.

5.7 Copyright

SJHH holds the copyright of all photographic images taken of patients. It is important that in any contract or publication the copyright in the photograph remains with SJHH and does not pass automatically to the publishers on first publication. This would prevent SJHH the ability to protect the patient's interests by exercising control over further publication of the photograph. Those signing contracts with books, journals or other publishers have a responsibility to delete from the contract any suggestion that the copyright will pass to the publishers.

Copyright is protected when images are labeled with the words: "This print is the copyright of St. Joseph's Healthcare Hamilton. Permission is granted for first publication in....(title of journal or book and date of publication).

Contracts with external photographers shall ensure that they waive ownership of copyright and moral rights in the images they prepare.

Clinical staff acquiring copies of medical photographs in the course of their duties may retain these for teaching purposes, but shall undertake only to use them within the terms of their original consent, according to the policy set out above. Copyright and reproduction rights at all times remain with SJHH. Once the purpose for use of these photographs is completed, the photographs shall be permanently deleted or shredded.

6.0 Documentation

Consent for Photographs, Audiovisual Recordings and Assignment of Rights.

7.0 References

Personal Health Information Protection Act, Ontario 2004

http://www.health.gov.on.ca/english/providers/legislation/priv_legislation/priv_legislation.html

8.0 Sponsor

Director, Public Affairs

9.0 In Consultation With

Chief Privacy Officer

Director, Risk, Legal & Medical Affairs

Director, Communications, St. Joseph's Healthcare Foundation

Manager, Audiovisual Services
Director, Library Services
Manager, Security Services
Patient Educator

10.0 Posting Dates

Initial Posting Date: 01/10/2014

11.0 Attachments/Appendices

A) Signage

See Appendix A

B) Phrases to address the use of patient/visitors taking photographs:

See Appendix B

C) Consent Form

See Appendix C

Appendix A

No Photography Without Consent



To protect the privacy of patients, visitors and staff, the use of recording devices are not permitted without consent.

We reserve the right to review media recorded at St. Joseph's Healthcare Hamilton to protect patient privacy.

St. Joseph's
Healthcare  Hamilton



Charlton Campus | *King Campus* | *West 5th Campus*

Appendix B

SUGGESTED PHRASES FOR MANAGING PHOTOGRAPHY VIOLATIONS

"I noticed you were using a camera just now. Our photography policy doesn't permit photography without the consent of those being photographed. We ask that you respect the privacy of our staff and obtain permission before taking any photos of our staff. I will need to review the images you've captured to ensure they don't violate anyone's privacy. Please do not take additional photos of me (my staff, other individuals) without their permission."

"I noticed you were using a camera just now. To protect the privacy of our staff patients, we don't permit photography/videography in the hospital without expressed consent. I will need to review the images you've captured. IF PHOTOS CONTAIN IMAGES of PEOPLE → "Having that photograph of me/my staff member on your phone violates my/their privacy. Please delete it from your phone/device and don't take additional photos of me/my staff without their permission."

If patient/visitor refuses to show photos/delete photos:

- 1. Notify Risk Management/Patient Relations and explain scenario – what was the situation, what photographs may exist, tone and nature of the incident.*
- 2. Notify Public Affairs to advise of potential social media/media impact – what was the situation, what photographs may exist, tone and nature of the incident.*

Appendix C

CONSENT FOR PATIENT PHOTOGRAPHIC IMAGE FORM

PERMISSION TO PHOTOGRAPH

I, _____, give permission to _____ in
 his/her
 (insert patient or substitute decision-maker's name) (insert recorder's name)

employment at St. Joseph's Healthcare Hamilton to take and produce photographs, video image/recording, sound recordings and any other audio and/or visual reproductions of myself and to use, for the uses indicated below on this the _____ day of _____, 20__.
 (insert day) (insert month) (insert year)

USE OF PHOTOGRAPH(S)

I understand the photographs and/or audiovisual recordings may be used as initialed below:

PURPOSE	MEDIUM	LENGTH
CLINICAL Photo Documentation for Hospital <input type="checkbox"/> Photo Documentation for Police <input type="checkbox"/> Photo Documentation for Pt/SDM <input type="checkbox"/> EDUCATION & RESEARCH Peer Review <input type="checkbox"/> Educational Purposes <ul style="list-style-type: none"> • Only where I cannot be identified <input type="checkbox"/> • Where identification may be possible <input type="checkbox"/> 	Photograph <input type="checkbox"/> Video Image/Recording <input type="checkbox"/> Audio/Voice Recording <input type="checkbox"/>	Permission to Use for Extended Period: <input type="checkbox"/> <input type="checkbox"/> 2 Years 5 Years Indefinite <input type="checkbox"/>
PUBLIC AFFAIRS SJHH/SJHF Hospital Publication & Marketing <input type="checkbox"/> External Media <input type="checkbox"/>		

I understand:

- a) That the images and/or recordings shall be developed and stored in a confidential, secure manner and that they shall not be reproduced or used for any other purpose(s) without my prior written authorization.
- b) That I may withdraw my consent or any part of this consent at any time and that a refusal or withdrawal of consent will not affect my care in any way.
- c) I understand that this consent shall be active for a period of 12 months unless I have designated extended use above.

Patient/SDM Signature: _____ **Date:** _____

Print Name & Relationship of Other Person Consenting _____

I have explained the content of the form and the implications of consent to the patient. I believe that the patient's/SDM consent is freely given and the patient is capable of giving consent.

Print Name and Position/Dept: _____

Signature _____ **Date:** _____