PCIG Consulting Template

Clinical Photography Policy

Version: **1.0**

Date: **28 May 2020**

This template is for use by Practices to Comply with the GDPR requirement to have a policy regarding processing of patient data. The template is Generic in design as PCIG Consulting have clients across the UK, local sharing arrangements and area specific sharing or processing will need to be added by the practice.

Change Control

Version	To	Change	Date
1		New Policy	28 May 2020
1	2	Error rectified in 14.1	1 June 2020
1			
1			
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1			
2			

Malvern Town Primary Care Network (PCN)

Whiteacres Medical Centre, Malvern Health Centre,
St Saviour's Surgery, New Court Surgery

Clinical Photography Policy

Document History

Document Reference:	IG2020-08
Document Purpose:	This policy sets out the practices within Malvern Town PCN [practice name] expect from all staff, including those working on behalf of the Practice, when complying with Data Protection legislation within the practice.
Date Approved:	1 June 2020
Version Number:	2
Status:	FINAL
Next Revision Due:	June 2021
Developed by:	Paul Couldrey – IG Consultant
Policy Sponsor:	Practice Manager
Target Audience:	This policy applies to any person directly employed, contracted, working on behalf of the Practice or volunteering with the Practice.
Associated Documents:	All Information Governance Policies and the Information Governance Toolkit, and Data Security and Protections Toolkit 2019
DS&P Toolkit Standard	

Introduction

1.1 It is common within the [Practice Name] for visual and audio records to be made of patients, and sometimes also members of their families. Such records include photographs, video, cine film, artwork, digital images, and audio recordings. They may be made for the purpose of providing a clinical record, for teaching, diagnosis, treatment planning, quality assurance, clinical governance, publication, public relations, fundraising, research, and as legal evidence in court cases. For the purposes of this document all such material is referred to as photographs.

1.2 It is the duty and legal obligation of all staff in the Practice to act in the best interests of patients when making photographs for the purposes of clinical assessment, teaching or publication, or when handling such photographs. All staff are under a legal duty to keep patient records confidential.

1.3 All clinical photographs created on [Practice Name] premises are subject to this policy, irrespective of who owns the equipment or the materials on which they are produced. Any breach of this policy may lead to disciplinary action.

2. Purpose

2.1 [Practice Name] is committed to ensuring that all photography undertaken on its premises and of its patients conforms to current legislation.

2.2 This policy is not intended to be over-restrictive but aims to ensure all parties are protected.

2.3 It recognises the essential role of photographic material within a teaching Practice for the benefit it brings to patients and the better education of its medical staff. In this respect, it recognises the need for continued use of material extant within the teaching domain, prior to the implementation of this policy.

3. Scope

3.1 The aim of this policy is to make all [Practice Name] employees, contractors, or guests aware of their responsibilities when undertaking any form of photography on Practice Premises.

4. Professional Bodies

4.1 Doctors are bound by the General Medical Council's guidance, October 2007: Taking and Using Visual and Audio Photographs of Patients.

4.2 Clinical Photographers are bound by the Institute of Medical Illustrator's guidance, March 2006: A Code of Professional Conduct for Members.

4.3 All staff, regardless of their professional position or status, should adhere to the principles set out in these documents.

5. Legislation

5.1 Several Acts of Parliament pertain to the recording of patients (see list at Appendix A). For further advice on any issue please contact the Data Protection Officer.

6. Responsibilities

6.1 **Data Protection Officer / Caldicott Guardian**

6.1.1 To ensure that the policy is reviewed in advance of the review date.

6.1.2 To manage the effective withdrawal of the policy if appropriate.

6.2 **Practice Manager**

6.2.1 To ensure effective distribution and communication of the policy throughout their group.

6.2.2 To ensure the policy is implemented and adhered to within their group.

6.2.3 To notify all new and existing staff of this policy.

6.2.4 To ensure that all staff, contractors and other persons affected by the policy comply with its actions.

6.3 **Individual Practice Staff**

6.3.1 To familiarise themselves with the policy.

6.3.2 To comply with the policy relevant to their role and responsibilities.

7. Consent

7.1 Valid consent is necessary for all procedures involving photographs of patients. Such consent must be informed, given by a competent person and free from coercion. This includes children if they can understand fully the nature and purpose of what is involved. The Practice confidentiality policy must always be adhered to.

7.2 All patients who are to be photographed and their parents/ carers must be fully apprised of the reasons for the photography, its purpose and the uses that might be made of it. It should be made noticeably clear to all patients/ parents/ carers who are asked to consent for photography that might be used for teaching or publication, that refusal to give consent will not affect their clinical care.

7.3 All patients being photographed, or their parents/ carers must give valid prior informed consent and should receive detailed printed information about the uses of the material to which they are asked to consent. Such consent may be given at one of two levels of permitted usage. Appropriate wording for such consent is included on the Clinical Photography Consent form (see Appendix B).

7.4 Patients'/ parents'/ carers' wishes concerning the uses made of their clinical photographs must be respected. For example, consent to publication of a photograph in a scientific journal or on a web site must be obtained before it is

published. This consent must be gained for each new incidence of publication. Blanket consent for general publication is not acceptable (see 10.1).

7.5 A patient, parent, or carer's refusal to permit any level of photography must be respected. Such refusal must not be allowed to prejudice a patient's care. However, in some cases e.g. where accurate diagnosis is dependent on a photograph, it may be judged that refusal of consent will adversely affect their clinical care. There may also be legal reasons for making photographs without consent. See section 11, 'Exceptions to consent rule'.

7.6 In the case of publication, consent may be withdrawn by the patient, or their parent / carer at any time prior to publication of the image. Patients and their parents/ carers have the right to withdraw or alter the level of their consent at any time and this should be respected. Patients and their parents/ carers should be made aware that once a photograph has entered the public domain, it may be impossible to retrieve or control the use of that image; this is particularly true when publishing photographs onto a web site.

7.7 Care must be taken when making photographs, or obtaining consent, to respect and be sensitive to the dignity, ethnicity, cultural and religious beliefs of the patient and their family.

8. Parental / Carer / Patient Consent for Clinical Photography.

8.1 This is printed on the 'Clinical Photography Consent Form' (see Appendix B). It should be completed each time a photographic or video recording is made of a patient. A child must also give their assent even if they are not competent to give consent. One copy should be kept by Clinical Photography and one given to the patient, parent or carer.

9. Patient's Request for Copies

9.1 Patients and their parents/ carers have the right to obtain copies of their clinical notes under the Data Protection Act 2018. The normal rules for SAR apply and the Practice Data Protection Policy should be followed when dealing with a SAR.

10. Consent for Publication in a Medical / Scientific Journal or Book or other public media such as Television or the Internet

10.1 If images are required for any form of publication, including on a web site, a separate consent form must be used for each individual incidence of publication. Blanket consent for any publication is not permitted. This form should be completed and signed by the patient/ parent/ carer and one named author for any clinical photographs to be submitted for publication in a medical or scientific journal, web site or book. The name of the journal and full title of the article should be given, and the form signed and dated prior to submission. Photocopies should be made of the completed form, one for the patient and one for the patient notes. The original is held in Clinical Photography.

10.2 Where possible, efforts should be made to preserve anonymity in published images: for example, by excluding the face. However, such precautions do not rule out the need for consent.

11. Exceptions to Consent Rule

11.1 Photographs without parental consent may be necessary in certain circumstances such as suspected non-accidental injury to a child, where it might be unlikely that the parent or carer would give consent and the recording of injuries is clearly in the patient's best interests. However, it is essential that photography is authorised by the practice Caldicott Guardian.

12. Research

12.1 For photographs made solely for the purposes of research the consent form should be signed and the work must have practice approval for the research

12.2 All research projects using clinical photographs must be registered with the Data Protection Officer.

13. Processing

15.1 In the interests of confidentiality the processing and reproduction of images should, wherever feasible, be kept within the direct control of the Practice. Where external processing facilities are used arrangements must be made to ensure that secure arrangements are in place to prevent any misuse of photographs of patients. All photographs taken by the Practice should be held on a secure sever and available for viewing by authorised clinical staff.

14. Receiving images Directly from Patients (not via video consultation)

14.1 There maybe times (such as during a Pandemic) that remote consultations are taking place and patients will send images to the practice for diagnosis and treatment, these images should only be stored on practice systems, and not personal mobile phones. For video consultations please refer to the Practice Video Conferencing Policy and Appendix A DPIA (Data Protection Impact Assessment). If Images are received on Personal mobile phones any cloud-based storage must be disabled and the images moved to the Practice system as soon as possible.

- As a general principle of good practice, patient or staff identifiable information should not be stored on a mobile computer and certainly must not be stored on one unless it is encrypted to the standards required in the Practice Data Protection/Encryption Policy
- **Under no circumstances should any patient based personal information be stored on any device other than equipment provided by THE PRACTICE e.g. laptop or digital camera. Mobile phones containing cameras, personal or work provided will not be used to take or store patient images or to transmit such images, unless authorised by the local ICT provider. Similarly no patient information will be stored on personally owned equipment such as iPods, PDA, Satellite Navigation Devices etc -see 14.1**
- If Patient Confidential Data (PCD) must be stored on a mobile computer, then the general principles about sensitive information given above must be followed -the data should be uploaded to the Practice system as soon as

possible.

- PCD obtained through work must only be stored on computers, electronic equipment or electronic media that are the property of [THE PRACTICE] and therefore are subject to the policies and procedures of THE PRACTICE
- Loss of a mobile computer holding confidential information must be reported through the Incident Reporting mechanism as soon as possible. [THE PRACTICE] has responsibility for informing staff or patients if their personal information has been disclosed unlawfully
- Devices holding sensitive information must be encrypted in order to safeguard the information against unauthorised access. Encryption must be done to the standards currently required by THE PRACTICE
- Sensitive information should be removed from the device as soon as practically possible
- Patient identifiable information on mobile devices should be kept to a minimum i.e. use a hospital/NHS number instead of a name wherever possible, this is to reduce the risk of breach of confidentiality if the device is lost or stolen.
- Information stored on laptops should be regularly backed up and the backups held within a secure location. Normally data should be backed up regularly to a secure location on THE PRACTICE's network. **This would involve regular synchronisation of the computer when connected to the network**
- All mobile devices must be authorised for use by IT Service Provider before connection to either a PC or the network is allowed
- Mobile devices should be password protected to ensure that unauthorised use cannot occur. Passwords should not be shared. If your password is compromised please report immediately to IT Services
- Virus protection software must be installed, active and up to date

14. Copyright

14.1 Copyright in all photographs of patients made by staff in the course of their work belongs to the Practice.

14.2 Copyright in a clinical photograph should not be transferred, for example to a publisher, and it should be explicit in any publishing contract that copyright in the images remains with the employing authority. Rights to publish can however be given, provided the appropriate consent has been obtained. These rights are normally subject to specific conditions e.g. a single publication, UK distribution only.

14.3 Copies of clinical photographs may only be made with the permission of the clinician in charge and within the constraints of consent as laid out in this document.

14.4 In the case of staff that leave the employing authority, photographs obtained during their employment may continue to be used for teaching if appropriate consent has been obtained. No other use may be made of such images, regardless of the level of consent given. Copyright in all clinical images remains with [Practice Name].

15. Diagnostic Images

15.1 Radiographs, scans, and other diagnostic images that are used for any purpose other than patient diagnosis and treatment should be made anonymous by disguising the patient's name and other personal details.

16. Digital Images

16.1 Clinical images must be stored securely and not taken or transferred out of the Practice without ensuring they are securely password protected or encrypted. This applies to images on a laptop, pda, digital camera, digital storage device, CDROM, DVD, in an email or phone attachment or in the memory of a picture phone, digital camera or any other imaging device. Individuals wishing to use any technology for capturing digital clinical images must be aware of the risks and take professional responsibility to gain patient consent and ensure patient confidentiality. The Practice 's policy on data security and the Data Protection Acts apply. Advice and procedures for ensuring the security of personal identifiable data are available as separate documents.

16.2 No images of patients should be uploaded to a web site without the explicit permission and consent of the patient and/ or parents/ carers. It must first be made clear that there is a possibility of such images being seen or downloaded by someone other than the intended recipient and that once such images are in the public domain, there is no effective means of withdrawing consent.

16.4 Where digital photography is to be used to record images of patients, due care must be taken before acquiring the images to ensure that the quality of the images (in terms of both resolution and colour depth) is adequate for their purpose.

16.5 In order to maintain the integrity of the image, manipulation may only be carried out to the whole image, and must be limited to simple sharpening, adjustment of contrast and brightness and correction of colour balance.

17.0 Reporting Security Incidents & Weaknesses

17.1 Reporting of any losses, theft or damage to documentation or computer assets will be through [The Practice] Manager at the first possible opportunity, and with a degree of urgency. This should then be reported to [The Practice] Data Protection Officer (DPO)

17.2 Information provided will include details of the losses or incidents and a detailed description of the data lost. Any PCD lost will need to be reported to the DS&P Toolkit as a Breach and individual subjects will need to be notified of the losses. Please refer to the Breach Reporting Policy.

17.3 Near misses and possible weaknesses will also be reported through this method.

18.0 Dissemination, Implementation and Access

18.1 Dissemination of this policy will be undertaken by publishing on the Intranet.

19.0 Monitoring Compliance

19.1 Staff are expected to comply with the requirements set out within the Video Consultation Policy and related policies. Compliance will be monitored by [The Practice] Manager with reports of spot checks, completion of staff questionnaires, incidents reported, electronic audit trails and submission of the DS&P Toolkit.

19.2 Non-adherence to the Clinical Photography Policy and related policies will result in disciplinary action being taken.

References

- BMA Medical Ethics Department. Taking and using visual and audio images of patients. October 2007.
- BMJ Ethics Committee. Revised Consent to Publication Guidelines. 2003.
- British Photographers' Liaison Committee. The ABC of UK Photographic Copyright. 1994.
- Department of Health. Good practice in consent implementation guide: consent to examination or treatment. November 2001.
- Department of Health. Confidentiality: NHS Code of Practice. November 2003.
- Department of Health. Information Security Management: NHS Code of Practice. April 2007.
- Department of Health. NHS Information Governance: Guidance on Professional and Legal Obligations. September 2007
- General Medical Council. Making and Using Visual and Audio Recordings of Patients. May 2002.
- Institute of Medical Illustrators. A Code of Professional Conduct for Members. 2006.
- NHS Executive. Health Service Guidelines: The Protection and Use of Patient Information. Department of Health document HSG (96)18; 1996.

Appendix A: Legislation

- Access to Health Records Act 1990
- General Data Protection Regulation 2016
- Data Protection Act 2018
- Crime and Disorder Act 1998
- Human Rights Act 1998
- Common law duty of Confidentiality
- Freedom of Information Act 2000
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Health and Social Care Act 2001 (Section 60)
- NHS (Venereal Disease) Regulations 1974
- Human Fertilisation and Embryology Act 1990
- Abortion Regulations 1991
- Data Protection Act Policy and Procedures
- NHS Code of Practice: - Confidentiality (Inc Caldicott)
- Children's' Act 2004
- Mental Health Act 2007
- Management of Health and Safety at Work Regulation 1992
- Health and safety (Display Screen Equipment) Regulation 1992
- Manual Handling Operations Regulation 1992
- Midlands and Lancashire Commissioning |Support Unit FAQ and DPIA for Co-Vid 19
- Patient Info.org VCA Guidance
- NHSE Using Online Consultations in Primary Care toolkit (September 2019)

Appendix B:

CONSENT FORM

PHOTOGRAPHY/VIDEO/AUDIO

I consent to the use of my image (including visual and audio footage) in information produced by [Practice Name]

Full name: …….

Address: .....

…… Post Code……

Telephone: ……

Email: ……..

I understand and agree that the photographs/video footage/audio referred to above may be reproduced to provide me with direct care and shared with any professional also providing me with care as referred by [Practice Name].

Signature .....

Date

Where consenter is under 16 years:

Signature of Parent/Guardian

…….. Print name……..

Consent can with withdrawn at any time. If you wish to do so you should write to:-

Dr Ismail the Practice's Information Governance Lead.

In order that we can identify you we would require the following information:-

Date and event that you attended with a recent photograph.

Once we have identified you, we will write back to you confirming that we have removed any information/images we hold.

[Practice Name] will store images securely in line with the Data Protection Act 2018.

Further information relating to the Data Protection Act 2018 can be found on the Information Commissioner's website at http://www.ico.org.uk/