Institute of Medical Illustrators

Clinical Photography, Art, Graphics and Video in Healthcare

IMI National Guidelines

Consent to Clinical Photography

The IMI National Guidelines have been prepared as baseline guides on specific aspects of medical illustration activity and provide auditable standards for the future.

The Guidelines can either be implemented in full, or may be amended according to individual requirements.

Copies are available on the IMI website (www.imi.org.uk)

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Background

The issue of giving informed consent for clinical photography, or for that matter any form of audiovisual recording, was first highlighted by the Audiovisual Advisory Committee of the North East Thames Regional Health Authority. A report was published in 1984 which stimulated the request for a code of practice and this was published in 1986 under the authorship of Cull and Gilson.

Subsequently a number of hospitals across the UK adopted the recommendations and in 1988 Cull reviewed the situation in light of the then current legislation. Since then IMI published its own Code of Responsible Practice (1996) which has recently been updated. The BMA (2004) and GMC (2002) have also issued guidelines and most medical journals now require authors to provide proof that patients have consented to publication of their images.

The latest initiatives have been the Department of Health's *Good practice in consent implementation guide: Consent to examination or treatment* (2001) which provides guidance on obtaining informed patient consent for examination and treatment including photography. Recently a number of hospitals have introduced accreditation schemes for all healthcare professionals who wish to use photography or video recording of their patients. Such measures not only cover consent issues but also confidentiality and security. Johns (2002) published an account of the procedures at Addenbrooke's Hospital.

Informed consent procedure

Obtaining informed consent is the responsibility of the clinician. There should be a consent form that the patient signs on which they indicate the level of usage for the images to which they agree. It is common practice to offer three levels of consent:

1. For use in the medical records only
2. For use in teaching healthcare staff and students
3. For publication.

Good practice dictates that consent for publication should only be obtained for a specific single use, not an overarching general release. If publication is to be in a journal, book, electronic media or on the Internet the patient should be warned that once published the consent cannot be withdrawn as the images are in the public domain. This is especially important for Internet publication.

When the patient presents in the medical photography/illustration department they should be given an information leaflet to read. On entering the studio the photographer must ascertain that the patient understands both what is about to happen and the implications of the level of consent that they have signed. If there is any doubt, or the patient changes their mind, then the photographer must refer the patient back to the clinician. It is not the photographer's responsibility to gain the informed consent. It would be deemed acceptable to allow the patient to reduce the level of consent, record this and let the clinician know.

Some departments will ensure that the patient takes away with them a record of the procedure so that they can contact the department at a later date if they change their mind. A sample patient information leaflet that gives space for this information to be entered is appended.

Who can give consent?

The Department of Health *Good practice in consent implementation guide: Consent to examination or treatment* (2001) has a set of accompanying leaflets that cover specific patient groups; children, older people, and those with learning difficulties. These leaflets lay out under what circumstances these groups may, or may not, be competent to give consent. The test for competence is generally the person's ability to understand the consequences of their decision and a number of safeguards are in place to prevent abuse.

With such patients it might be difficult for the photographer to check that the patient has in fact given informed consent, and it might be that this step in the photographic procedure is missed out. With regard to children giving consent, it is considered opinion that the Fraser competence does not apply because photography is not a treatment. However, many people believe it does apply so the clinical photographer should have an understanding of the Fraser competence.

Photography without consent

As a general rule informed consent should always be obtained before photography is undertaken. It is accepted, however, that in some circumstances photography might be legitimately required at a time when the patient is unable to give consent, for instance under anaesthesia. In these circumstances it is custom and practice to undertake the photography but to withhold the photographs until the clinician has retrospectively obtained informed consent. If this is not obtained then the photographs must be destroyed.

The Department of Health reference guide covers procedures that need to be followed when consent is required if the patient lacks capacity or refuses to consent against the clinician's professional judgement and advice.

Summary

1. It is recommended that medical photography/illustration departments have a policy and protocol covering informed consent.

2. Informed consent must always be obtained for any form of audiovisual recording of the patient.

3. Informed consent should be obtained by the patient's clinician.

4. The photographer must always check that the patient understands what they have consented to.

5. If the patient changes their mind after receiving information from the photographer, then their wishes should be respected and the clinician informed.

6. It is considered to be good practice for medical photography/illustration departments to provide patients with written information that clearly lays out procedures and possible uses of the photographs.

7. It is considered good practice, and common courtesy, to inform the patient of the photographer's name and the job number in writing for their future reference.

8. All patient audiovisual material should be clearly marked with the level of consent given by the patient when it leaves the department.

9. Medical photography/illustration departments should not release audiovisual recordings of patients unless informed consent has been given and a written record is obtained.

10. Informed consent for the publication of patient audiovisual recordings should be sought for each specific use. It is not considered good practice to obtain generic consent for such uses.

Departments of medical photography/illustration should not release patient audiovisual recording for publication without first being satisfied that informed consent has been obtained for that use.

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