CLINICAL GUIDELINE

Clinical (Patient) Photography & Video Procedures

A guideline is intended to assist healthcare professionals in the choice of disease-specific treatments.

Clinical judgement should be exercised on the applicability of any guideline, influenced by individual patient characteristics. Clinicians should be mindful of the potential for harmful polypharmacy and increased susceptibility to adverse drug reactions in patients with multiple morbidities or frailty.

If, after discussion with the patient or carer, there are good reasons for not following a guideline, it is good practice to record these and communicate them to others involved in the care of the patient.

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Approval Group:	Acute Services Division Clinical Governance Forum

Important Note:

The Intranet version of this document is the only version that is maintained.
Any printed copies should therefore be viewed as 'Uncontrolled' and as such, may not necessarily contain the latest updates and amendments.

Clinical (Patient) Photography & Video Procedures

Version 6.0

Lead Manager:	Head of Medical Illustration Services
Responsible Director:	Diagnostics Director
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This policy has been prepared and adopted by the following Health Boards in NHS Scotland:

NHS Ayrshire and Arran, NHS Fife, NHS Greater Glasgow and Clyde, NHS Highland, NHS Lanarkshire, NHS Lothian and NHS Tayside.

For the purposes of this policy these Health Boards are referred to collectively as the National Health Service in Scotland (NHSiS), except in relation to copyright where this can only be retained by the governing Health Board.

Contents

1 Introduction

These procedures should be read in context of the Clinical (Patient) Photography and Video Policy here. The term recording is used to refer to clinical (patient) photography and video recordings.

2 Recordings made by clinical photography and video services

If the service is available, clinical photographic and video recordings of patients should be undertaken by professionally qualified staff employed for this purpose.

Clinical photographers on the Accredited Register for Medical Illustrators (Academy of Healthcare Science) are bound by the Academy's Standards for Registered Medical Illustrators and by professional body codes of professional conduct; these include legal, moral and ethical codes in relation to patient confidentiality.

Please refer to **Appendix 1** for local information on accessing this service.

3 Recordings made by other healthcare professionals

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

Healthcare professionals making clinical recordings should be authorised to do so and adhere to local standard operating procedures that cover patient confidentiality, consent and data processing.

4 Clinical recordings

All clinical recordings of patients form part of the healthcare record and must be documented and stored according to policy.

Clinical recordings containing patient identifiers are classed as personal data, therefore the loss of any clinical recording is a breach of security and confidentiality and must be reported via DATIX.

5 Recording equipment

Only NHSiS-approved equipment can be used to make and store recordings of patients. The use of non-approved personal cameras, media cards, mobile phones, or other similar devices to make recordings is not permitted.

Any theft or loss of recording equipment (including media cards) with the potential of holding patient identifiable data must be reported to the eHealth Security and/or Information Governance team and entered into DATIX immediately.

5.1 Cameras and video recorders

All camera and video equipment and media cards used to make and store recordings of patients must be:

- approved for use by the governing Health Board (Medical Illustration Services and/or eHealth Security and/or Information Governance (Form A)
- labelled as being property of the governing Health Board
- listed on a departmental equipment register to assist in cases of theft or loss
- stored or transported securely at all times.

If recording equipment is used outside NHS premises then particular care must be taken. Services must ensure that:

- any movement of recording equipment outside NHS premises is recorded locally in a departmental equipment log
- recording equipment is transported and stored safely, and never left unattended in a public area.

5.2 Mobile devices and apps

Only NHSiS-approved devices and apps should be used for clinical photography and video recordings.

Devices and apps that allow image capture must be compliant with all relevant legislation. Apps should require users to be registered, patient details to be recorded, consent to be obtained and recordings to be captured and stored off the device in a secure network storage area.

All other methods present a high risk to breaches of patient confidentiality and data protection.

Refer to **Appendix 2** for app availability in your Health Board area.

6 Registration / approval of recording equipment and users

Before making any recordings of patients for clinical or service use, recording equipment

and/or staff must be registered / approved by the service lead (**Appendix 3 Form A**). This requirement protects both the patient and the governing Health Board and is intended to be helpful rather than restrictive.

The registration / approval process requires:

- a named owner / person responsible for the recording equipment
- approved consent, cataloguing and storage protocols
- approved training for staff required to use the equipment
- Ethical Committee / R&D approval (where appropriate)

All recording requirements can be discussed with the Head of Medical Illustration / Clinical Photography service or respective department prior to the submission of the Registration **Form A**. The approved consent Form B should be used; project-specific consent forms require approval.

7 Consent

To protect patients' rights to confidentiality, NHSiS requires informed consent for all clinical recordings; this includes recordings where it is believed a patient cannot be identified (see Exceptions 7.1.2).

Consent must be recorded in the patient's healthcare record and be specific in terms of use; it is best practice to document consent for all recordings using an NHSiS approved consent form (**Form B**).

7.1 Consent to treatment (Level A)

Consent to treatment is the ethical obligation to gain informed consent from a patient before they receive any type of medical treatment, test or examination (clinical recording).

Verbal consent is acceptable for this purpose; how, when and by who consent was obtained should be documented within the patient healthcare record (**Form B**).

As the clinical recordings are made as part of a patient's clinical care, data is processed under UKGDPR 6(1)e and 9(2)h, and form part of the patient's healthcare record, and governed by the Scottish Government Records Management Code of Practice (2020).

7.1.1 Consent for specific patient groups

Minors	Children and young people under the age of 16 can give consent providing they are capable of understanding the nature and possible consequences of the procedure. Where this is not the case, those with parental responsibility are required to consent on their behalf.
Anaesthetised, unconscious or confused patients	In the case of the anaesthetised, unconscious or confused patient, recordings may be taken provided the patient is informed of the recording and consent is obtained retrospectively. If a patient does not subsequently consent, then the recording must be quarantined.
Neonatal deaths	In the case of neonatal deaths, recordings should be covered by the normal consent procedure for minors. These recordings should not be classified as pathological specimens. (Refer to governing Health Body policy for photographs taken as part of the bereavement counselling process).
Vulnerable patients	In the case of vulnerable patients, consent should be obtained from the client if the client has the capacity to consent to being recorded. If a client is considered not capable of providing informed consent then the appropriate Adults with Incapacity (AWI) documentation should be completed. If the client has a Welfare Guardian or Power of Attorney, they must consent to the recording; this should be given verbally and recorded on the AWI documentation. If the client does not have a legal proxy, the views of the client, the clinical team and next of kin must be taken into account when deciding if the photography or video recording should happen. There must be a fully justifiable purpose for any photography and video recordings of vulnerable patients, approved at consultant level. The purpose for the recording should be detailed in Section C (certificate) or Section D (treatment plan) of the AWI documentation.

7.1.2 Exceptions

Recordings without consent may be prescribed with consultant authority under certain circumstances, such as:

- recordings of suspected non-accidental injury, where it is unlikely that the parent or guardian will give consent
- recordings to protect NHSiS from litigation or are of benefit to the patient
- recordings of pathological specimens removed from the patient with no identifiable marks or information
- recordings of patients sectioned under the Mental Health [Care and Treatment] (Scotland) Act 2003

7.1.3 Implied consent

Where recordings form part of an investigation or treatment, consent is implicit in the consent given to that investigation or treatment. Examples include:

- Laparascopic and endoscopic images
- Retinal screening and OCT images
- Video fluoroscopy and ultrasound recordings

This list is not exhaustive.

7.2 Consent for secondary use (Level B teaching / Level C publication)

Consent for secondary use is the legal obligation of seeking a patient's permission to use their recording beyond those purposes for which it was originally collected. This includes teaching and publication in journals, books or online.

As consent is being used as the basis for data processing for secondary use (UKGDPR 6(1)a and 9(2)a), NHSiS requires written consent to be obtained. It must be freely given, detailed in terms of specific use, and documented within the patient healthcare record (**Forms B and C**).

7.2.1 Withdrawal or review of consent for secondary use

Patients have a right to withdraw consent for the secondary use of their recordings

at any time, and further processing should be stopped at the earliest opportunity.

Patients also have the right to change the desired level of consent from the original agreed status at any time. This should be obtained in writing from the patient (relevant guardian or personal representative), systems updated, and appropriate parties informed.

In the case of publication, it should be made clear to the patient **when consent is being obtained**, that once the recording is in the public domain, there is no opportunity for effective withdrawal of consent.

7.2.2 Consent following death and existing collections of recordings

A patient can give consent for recordings to be used prior to death; consent given before death should be respected, even when relatives may initially disagree.

Permission for any new use outside the terms of the existing consent should be sought from the deceased's personal representatives or nearest relative. In all cases, recordings should not be used if recordings of patients who are able to give consent could equally meet the purpose of the recording.

For existing collections of clinical recordings, where consent has not been obtained or cannot be proven, unidentifiable recordings can be used where they have significant value for teaching. Recordings must not be used if the patient is, or may be, identifiable.

7.3 Consent for recordings in clinical settings (not used for treatment / diagnosis)

Where recordings are made for non-clinical purposes, e.g. a patient showing the correct use of equipment, consent to appear in the recording is required from any patient or member of the public. Consent should be obtained using a model release form (Form D). Accidental recordings of patients who have not given appropriate consent must be avoided, and should not be published under any circumstances.

It is best practice to obtain written consent from staff employed by NHSiS appearing in recordings made for non-clinical purposes (Form D). Staff have the right not to appear in such recordings and should be given the opportunity to withdraw unless key to the rationale for the recording.

8 Ethical considerations

Staff undertaking recordings of patients must respect and be sensitive to the dignity, ethnicity, cultural and religious beliefs of patients at all times.

9 Data quality and integrity

Due care must be taken to ensure that the quality of recordings is adequate for its purpose.

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

9.1 Exceptions

- Recordings made for medico-legal purposes must not be manipulated in any way.
- Recordings cannot be manipulated to achieve anonymity and so avoid the need for consent.

10 Management of recordings

Standard operating procedures that cover patient confidentiality, consent and data processing should be developed; all staff responsible for the management of recordings should be registered and appropriately trained in these procedures (Form A).

10.1 Cataloguing and storage

All recordings must be retained in line with national guidelines for health records. Recordings should be catalogued so they can be clearly identified and retrieved, preferably incorporating the patient's CHI number and the date of recording. All recordings should be stored securely as soon after the recording as is practicable.

10.1.1 Clinical photographs

Clinical photographs should be stored on an image management system if such a system exists within the governing Health Board. Local policy may allow for storage on a secure server, but only with agreement and authorisation from the local e-Health department. Once safely uploaded, images should be deleted from the camera memory card, and the card formatted.

If instant (Polaroid™ type) prints are produced then the patient CHI number and name must be recorded on the print, before being scanned and uploaded to the

patient's healthcare record.

10.1.2 Video recordings

In the case of clinical video recordings, these must be catalogued and securely stored by the originating department in agreement with and authorisation from e-Health. Due to the large file sizes of video recordings, refer to governing Health Board policy for more information.

10.1.3 Patient-own recordings

Patients making their own clinical recording to document a condition has become commonplace. If recordings are submitted to a governing Health Board (either by their own submission or by request) and are used to form or support a clinical decision, the recording must be stored as part of the healthcare record and Level A consent is implied.

10.1.4 Live telemedicine consultations and transmissions

Telemedicine consultations and transmissions should not be routinely recorded.

- Consultation: details should be recorded in the case notes, with a clear indication that the consultation was undertaken by video link and therefore a 'hands on' examination was not possible.

- Transmission: The Consultant or Lead Clinician responsible for the patient(s) involved must approve the telemedicine transmission. Details of the transmission should be recorded, indicating the purpose of the transmission (e.g. Multidisciplinary Team meeting) and the location details of all remote sites. Where telemedicine techniques are to be used to transmit images of patients, reasonable care must be taken to ensure that the quality of the image at both the host and remote sites is adequate for the intended purpose.

If a recording is essential, the consent is implicit in taking part in the live transmission; however, it is best practice to obtain written consent. Reasonable care must be taken to ensure that no unauthorised recordings are made. Refer to governing Health Board policy for more information.

10.2 Access to recordings

10.2.1 Service users

Recordings of patients may only be requested or downloaded from an image management system (or secure server) for consented and approved research, teaching and publication use. Recordings can only be stored on NHSiS computers, laptops, memory sticks or other portable media with e-Health approved encryption.

10.2.2 Patients

Patients and their parents/ carers have the right to obtain copies of their clinical records, including recordings, under the Data Protection Act 2018. The normal rules for a Subject Access Request (SAR) apply.

10.3 Transfer of recordings

Refer to local eHealth protocol on transfer of patient-identifiable data.

11 Recordings for training / assessment

Doctors in training and other healthcare professionals acquiring copies of recordings in the course of their duties may retain these for teaching purposes under the terms of original consent.

Recordings for healthcare professionals' academic assessment/examination external to NHSiS should be approved by the service lead and consented under the examining body's protocol. This will be indicative of the examining body's responsibility for client confidentiality under the Data Protection Act (2018). There is no requirement by the governing Health Board to store these recordings.

12 Patient / visitor use of recording equipment

Patients and visitors must not use recording equipment, including photo, video and audio recording functions of mobile phones in healthcare premises where they may intrude on the privacy and confidentiality of other patients and visitors. Where use of these systems is requested, i.e. for the patient to communicate with relevant others not able to visit in person, permission must be sought from the service lead and arrangements made to minimise the risk of any other patients or visitors being recorded without their awareness. Specific permission may be granted within maternity suites to allow camera/ video functionality to be used on newborns, at the discretion of the relevant consultant.

There are no specific legal requirements that govern an individual making a personal recording of their medical consultation or treatment, either overtly or covertly, for their private use. Recordings made to keep a personal record of what the doctors said are deemed to constitute 'note taking' and are therefore permitted when undertaken for this purpose. This can assist those with cognitive impairment, hearing loss or visual impairment post-appointment.

While a patient does not require permission to record their consultation, common courtesy would suggest that permission should be sought in most cases. Staff may request that a patient or visitor not record them however this should not be used as reason to withhold care delivery. Any recordings must be restricted if the recording adversely affect a clinician's ability to carry out a specific procedure, thus presenting a clinical risk to the patient.

13 External agency photography in healthcare settings

External agencies may be employed to make photographic and video recordings on NHSiS premises. This may only be done with permission of the Director of Communications and/or the Hospital/Site Manager.

Contracts involving external agencies must state that ownership of copyright and moral rights is waived in recordings taken on NHSiS premises. The contract may state the right to reproduce the recording.

14 Appendices

Appendix 1 Medical Illustration Services

MIS operating times are standardised across all sites. Please phone the service prior to referring a patient to ensure a photographer is present. There is no out-of-hours service; in emergency contact switchboard.

Mon-Thurs:	0900 – 1700
Friday:	0900 – 1630
Contact number:	0141 211 5850
Email:	medillgri@ggc.scot.nhs.uk

Appendix 2 SCIT app

The Secure Clinical Image Transfer (SCIT) app is NHS Greater Glasgow and Clyde's approved method for capturing clinical photographs securely on a registered mobile device in acute and community settings.

Authorised users of the SCIT app should familiarise themselves with the SCIT Usage Policy, NHSGGC's Information Security, Mobile Communications, and Recordings (Photography and Video) for Clinical and Service Use policies, and work in compliance with them at all times.

SCIT can **only** be used on NHS GGC-owned devices, and should only be used if professional clinical photography services are not available. SCIT cannot be used on personal devices at this point in time.

Apply for access to SCIT here: Systems and Applications (sharepoint.com)

Appendix 3 Forms

All forms are available here GGC Medical Illustration Services - Home (sharepoint.com)

Form A -Registration for Digital Recording Equipment

Form B -Clinical Photography Request

Form C -Clinical Photography Consent for Publication

Form D -Model Release Form