

BC 7.430 PATIENT PHOTOGRAPHY, VIDEOTAPING, OTHER IMAGING, AND AUDIO RECORDING

POLICY:

It is the policy of Baystate Health to protect within reasonable limits the privacy of all patients by limiting the potential for unauthorized photography, videotaping and/or audio recording.

PURPOSE:

This policy addresses both the taking and the disclosure of photography, videotaping, other imaging and audio recording of patients. The policy defines those circumstances in which verbal consent must be obtained prior to the taking of images or recordings as well as those circumstances where written authorization must be obtained prior to disclosure or release of such images or recordings. The policy also describes those circumstances in which verbal consent or written authorization is **not** required.

SCOPE:

This policy applies to all patients within any Baystate Health entity including employees, residents, visitors, students, volunteers, and Medical Staff members. This policy applies to the use of all current and future media technology including smart phones and any other imaging functionality (Facetime, Skype) used to transmit images. The policy is intended to address both clinical (direct patient care) and non clinical use of photography, videotaping and/or audio recordings

PROCEDURE:

1. The taking of photographs, video and/or audio recording can be performed without patient authorization in the following circumstances:
 - a. For the purposes of direct patient care (direct patient care is defined as the medical care provided within BH, where the technology is to be used for purposes such as medical treatment, record keeping, or patient follow-up).
 - b. For procedures where video recordings or still photography are implicit (e.g. endoscopy). Consent to the procedure provides implicit consent to the photography or videography.
 - c. When there is no ability to identify the individual.
 - d. Personal photography or videography performed by patients and/or visitors of themselves or their family members. However any individual may refuse to permit another to take a picture or video. If use of photography or videography poses a threat to a patient or employee's privacy or is disruptive to the operations of the facility or impedes patient care, the individual can be asked to stop. BH Security can be a resource in such events.
 - e. Video recording of clinical care for the purposes of medical education and peer review. This may include Videotaping for Certification and/or Performance Improvement purposes. Videotaping as a documentation "tool" for peer review, performance improvement activities, or clinical certification may be carried out without patient authorization. Viewing is limited to authorized staff. The videotapes are not considered a part of the patient's health information and will be erased following completion of the performance improvement process. Guidelines shall be developed for use of video cameras or other technology for these purposes and shall include limited access and timely destruction practices.
 - f. Consultation with another provider for the purposes of direct patient care. This may include telemedicine (including e-mail), Internet transmission and cell phone transmission of **de-identified** images. Any images or recordings that contain individually identifiable health information must be encrypted whenever PHI is sent outside of the health system's secured network in order to protect the patient's privacy.
2. Written authorization for the purposes of releasing **identified** photographs or a video recording is required in the following circumstances:

- a. Research (unless the Institutional Review Board has approved a waiver of authorization), publication, public presentation where the individual is identifiable or where privacy concerns exist due to the sensitive nature of the material.
 - b. Marketing, media or other public use.
 - c. Educational activities outside of Baystate Health; and
 - d. Prior to the release of any patient photography for purposes not otherwise specifically addressed within this policy.
3. Media photography or videography is arranged in advance by Public Affairs. Members of the media must be accompanied by a Public Affairs representative.
 4. Photography of Baystate Health buildings or property should be coordinated with Public Affairs or the Public Affairs on-call representative.
 5. Photography under BH's Baby Picture Service requires a formal written authorization of at least one of the newborn's parents or guardians. Requests to photograph newborns outside of the approved agreement shall be handled like any other patient photo request.
 6. Any photography, videography and/or audio recording that is related to direct patient care or the business of Baystate Health must be conducted with a Baystate issued or approved device. Portable storage devices & media will be encrypted where technology is available. If encryption isn't available on a device, the device should not be used to store any sensitive information, e.g. PHI, PII, etc.
 7. A patient or patient representative who is being photographed or video recorded for purposes such as forensic evaluation, criminal investigations, etc. has the right to refuse such photography or videography.
 8. Massachusetts law prohibits secret recording of an in- person or telephone conversation. In the event that an individual wishes to audio or video record such conversations verbal consent of all parties must be obtained.
 9. Retention or destruction of photographs, video recordings, etc. is the responsibility of each individual department or healthcare provider. Images and recordings that are to be stored must be clearly identified with the patient's name, identification number and/or date of birth, and date of image or recording. In the event that it is necessary to store photographs, video recordings, etc. such storage shall be through a secure Baystate Health system or server to protect the patient's confidentiality. If used to document patient care, images and recordings will be retained for clinical care but will not be considered a part of the legal medical record.
 10. In the event that **identifiable** images or recordings are to be used for medical education, training, research, public presentation or publication outside of Baystate Health, patient authorization must be obtained. Refer to the AUTHORIZATION TO USE AND DISCLOSE IMAGES AND/OR RECORDINGS CONTAINING PROTECTED HEALTH INFORMATION form. (Appendix A)

Purpose	Verbal Consent for Photography, Videography and/or Audio Recording	Written Authorization for Internal Use	Written Authorization for <u>External Release</u>
Direct Patient Care	No	No	No
For procedures	No	No	No
Consultation	No	No	No
Personal photography	No but can refuse	N/A	N/A
Medical Education when the patient is identifiable	No	No	Yes*
Peer Review	No	No	No (but subject to peer review protection)
Research Publication when the patient is identifiable	N/A	N/A	Yes*
Marketing/Media	No	Yes	Yes*
Audio or Video-recording of Conversations Other than Direct Patient Care	No	Yes	Yes*
Law Enforcement/Outside Investigators	Yes	N/A	N/A

*If patient is deceased and authorization of the legal representative cannot be obtained, the image should be **de-identified**.

References:

- HR 821 - Use of Communication Systems
- BC 4.200 - Record Retention Policy
- BC 4.550 - Interview and Interrogation of Patients and Healthcare Providers by Law Enforcement Officers
- BC 6.815 -Social Media Guidelines for Employees, Physicians & Students
- BC 6.820 - Information Security Policy
- BC 6.830 - WORKSTATION SECURITY POLICY
- BC 6.875 - Baystate Health Medical Record
- BC 6.930 - Disposal or Re-Use of Electronic Media
- BC 6.950 -PDA – Smartphone Security Policy
- BC 7.010 - PRIVACY POLICY (MINIMUM NECESSARY)
- BC 7.500 - Release of Info to Media

		Date:
Approved by:		
Originating Department/Author:	Risk Management/Compliance/Health Information Management	
Reviewed:	May 2015	5/1/15
Revised:	September 16, 2013	9/16/13
Replaces:	BC 7.430 Release of Information to the Media & Photography	
Effective:	December 19, 2014	

AUTHORIZATION TO USE AND DISCLOSE IMAGES AND/OR RECORDINGS CONTAINING PROTECTED HEALTH INFORMATION

I, _____, have been informed that Baystate Health is seeking my Authorization to use images or recordings of _____ for the following purposes.

I have been advised that my refusal to consent to the use of images or recordings for medical education or research will in no way influence my treatment.

MEDICAL TRAINING & EDUCATION - I understand that my images, including photographs, still or motion pictures or video or other media formats will be used by Baystate Health in its teaching and educational activities outside of Baystate Health and that information concerning my medical care may be revealed in the use of the photograph or videotape. This medical training and education may include classroom discussion, grand rounds, medical education seminars and case studies presented to healthcare providers, students or participants of an educational seminar.

RESEARCH, PUBLIC PRESENTATION OR PUBLICATION – I understand that my images, including photographs, still or motion pictures or video or other media formats will be used for research, public presentation or publication outside of Baystate Health. I have been informed that the use, release and/or disclosure of my images include use in professional journals and/or medical books, medical education seminars or meetings or for the purpose of certification or re-certification by professional organizations.

I understand that the foregoing Authorization is subject to the following limitation: **Under no circumstances** will any such publication, film, photograph, video tape or material exhibited contain my **name** unless voluntarily disclosed by me.

Baystate Health may reuse these materials for other print and electronic formats in addition to their original use consistent with the uses described on this release. I understand Baystate Health does not have final control over the use or distribution of this material and that, once disclosed, this information may no longer be protected by federal privacy laws. Except to the extent allowed by law, Baystate Health will not condition treatment on my signing this Authorization. I waive my right to royalties or to inspect or approve the final product or copy. I give this Authorization voluntarily.

I release Baystate Health and its officers, agents and employees from any and all liability arising from the photographing, and/or videotaping and any subsequent publication or broadcasting of that material. This authorization will expire 5 years from the date signed unless otherwise revoked by me in writing. I have the right to revoke this Authorization in writing at any time except to the extent that Baystate Health has used or disclosed information based on its reliance on this Authorization. To revoke this Authorization, I have been informed that I must complete the Authorization Revocation form which is available from Baystate Health, Health Information Management, 361 Whitney Avenue, Holyoke, MA 413-794-4203.

Signature Date

If signed by patient’s personal representative, describe relationship to patient

Witness Date

