<table>
<tr><td>This policy applies to:
☑ Stanford Hospital and Clinics
☑ Lucile Packard Children's Hospital</td><td>Last Approval Date:
January 2008</td></tr>
<tr><td>Name of Policy:
Photographing of Patients by Physicians, Staff Members, Patients and/or Visitors</td><td rowspan="2">Page 1 of 9</td></tr>
<tr><td>Departments Affected:
All Departments</td></tr>
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I. PURPOSE

This policy describes when photographs or other electronic recordings of a patient are permitted to be taken by physicians, staff members, volunteers, visitors, patients, and the Media on or within Stanford Hospital and Clinics (SHC) and Lucile Packard Children's Hospital (LPCH), and the procedures to be followed when such photographs are taken, used or disclosed. *Workforce members* who take photographs of a patient pursuant to this policy are bound by the hospital's Code of Conduct policy to protect the patient's identity and confidential information. *Business Associates* are required to abide by the confidentiality provisions set forth in the Business Associates Agreement. Any other individual taking a photograph who is not bound by a confidentiality agreement or the hospital's Code of Conduct policy (excluding patients, visitors, or the media for publication purposes) will be asked to sign a confidentiality statement to protect the patient's identity and confidentiality and to only use the photograph in the manner consented to by the patient (e.g., vendors).

II. DEFINITIONS

For purposes of this policy/procedure, the following definitions apply:

A. Photograph: the term *photograph* shall refer to any photographs, motion pictures, videotapes, computer feeds or electronic recordings.
B. Patient shall refer to either the patient or his/her properly designated representative if the patient does not have capacity.
C. Consent refers to the agreement by the patient for an individual/entity to take a photograph.
D. Authorization refers to permission from the patient to use or disclose Protected Health Information to an individual or entity for purposes other than treatment, payment, healthcare operations or other uses or disclosures allowed by law without an authorization. For further information on authorizations, see the HIPAA: Disclosures of Protected Health Information policy.
E. Patient Identifiable Photographs are defined in Appendix A of this policy.
F. Visitor – An individual who comes to the hospital to spend time with or to visit a patient.
G. Visiting Observer – An individual who is invited by a SHC, LPCH or SoM employee to watch patient care or administrative functions for educational or training purposes..

III. POLICY STATEMENT

It is the policy of SHC and LPCH that consent be obtained from the patient when photographs are taken of a patient, any part of a patient's body, or any part of a procedure the patient may be undergoing and documented in the medical record as described below.

IV. PRINCIPLES

A. Consent to photograph is obtained from the patient when s/he signs the Terms and Conditions of Service in either the outpatient or inpatient setting. Photographs taken for the patient's treatment will be maintained in the patient's medical record. The permitted uses and disclosures are described in the Procedures section.

B. If the patient is unable to give consent, consent must be obtained from the properly designated representative if available, or from the patient as soon as reasonably possible by having s/he sign the Terms and Conditions of Service. The consent will be retroactive to the date of admission of the patient to the hospital or the date of the clinic appointment when the photograph was taken.. A photograph should not be used until the patient or properly designated representative consents, unless it is for treatment purposes.

C. Visitors and patients are not allowed to take photographs of other patients, visitors, staff members or physicians without that individual's permission. Further guidance is provided below.

D. Except for family or friends of the patient, any individual taking a photograph pursuant to this policy shall only photograph the minimum necessary amount of images required for his/her purpose. For example, if a photograph of identifiable characteristics of the patient is not required, such a photograph should not be taken.

E. Physicians, staff members, volunteers and business associates are not allowed to take photographs of patients or visitors with a personal cell phone or other portable electronic device except at the request of a patient with the patient's portable device.

F. Visiting Observers are not allowed to take photographs pursuant to the Visiting Observer policy.

F. All photographs taken under this policy, except for patient or visitor use or per agreement by SUMC, must be taken with hospital approved equipment and are the property of SHC, LPCH or Stanford University. Except for research, permission must be obtained from SUMC for use of the photographs external to SHC or LPCH. For research publication, permission must be obtained by submitting a protocol or proposed use to the IRB.

G. If the patient requests that the photography stop, photographs should not be taken after this request.
  1. If the photographs are a part of the patient's treatment, the patient's physician should be contacted to address the patient's concerns.
  2. If photographs have already been taken with consent prior to the patient's request to stop, then the photographs can generally remain in the medical record and be used for treatment and health care operations.
  3. If the patient signed a General Authorization form allowing for the photograph to be used for other purposes, the patient may revoke the authorization and the photographs will not be used to the extent the authorization has not been relied upon.

V. <u>PROCEDURES</u>

A. Photographs of a Patient, a Patient's Medical/Surgical Condition, or Treatment Taken for the Purpose of Treatment and Health Care Operations
  1. Consent for photographs taken for a patient's treatment or for hospital operations, such as quality assurance, training and education, is obtained when the Terms and Conditions of Service or the Consent to Operation form is signed (Form 15-01). This consent covers photographs with identifiable and de-identified information.
  2. These photographs, taken for treatment or operational purposes, can be used for:
     a. The patient's treatment;
     b. Internal or external activities consistent with the missions of SHC and LPCH, such as education and research, conducted in accordance with the Hospitals' policies.

3. Photographs that are taken for external purposes, such as for the media or on behalf of vendors, require separate, specific consent and authorization. Unless described in Section C below, the Privacy Office or Risk Management Office should be consulted for guidance on such consent and authorization.

B. Photographs for Patient/Family/Visitor Use

1. Hospital consent is not required for a patient, family member, or visitor who wishes to take photographs of the patient, family or visitor for personal use. The patient or properly designated representative must give permission for such a photograph to be taken.
2. Photographs of physicians, staff members, volunteers, other patients, or visitors are not allowed without that individual's permission.
   a. If a staff member or physician has questions about providing consent for their photograph to be taken, s/he should consult with Risk Management before any photographs are taken.
   b. If consent was given by the staff member or physician, they have the right to revoke the consent immediately after conclusion of the taking of the photograph.
3. In the event that a patient or visitor takes a photograph in violation of this policy, the following steps should be taken and Risk Management consulted:
   a. Staff should instruct the individual to immediately stop taking the photograph. If the individual refuses, hospital Security and Risk Management should be contacted.
   b. Inform the individual that hospital staff will need to view the photograph and determine whether appropriate permission was obtained.
   c. If proper permission was not obtained, the individual will be asked to destroy the photograph (by whom?). SUMC reserves the right to remove/destroy any photograph taken in violation of this policy.
4. Photographs of medical equipment or devices are not allowed (excluding tubes attached to the patient) unless the request to photograph the medical equipment or device(s) is for a business purpose and has been approved by Materials Management.

5. Visitors, patients and families are not allowed to take photographs, which may include photographs of other individuals in public areas of the hospital, such as the cafeteria.

C. Photography for Media Relations Purposes

1. If the hospital Media Relations office wishes to obtain photographs of a patient, a particular procedure involving a patient, or is contacted by an external media organization, the media relations staff will obtain approval from the patient's physician and request that the patient's physician discuss the concept with the patient.
2. Following approval by the patient's physician, the media relations staff will discuss the specific photographs to be taken with the patient, and have the patient sign the Consent to Photograph and Authorization to Use and Disclose Health Information for A Communications or Media Relations Activitity form (Form 15-2332). This form will be sent to HIMS for inclusion in the patient's medical record.
3. If the photographs are taken in the operating room, the media relations staff will also complete an OR observation request form, obtain the signature of the patient's physician and send it to Surgery Administration as soon as the media event is scheduled.
4. All requests by an external media organization (e.g., major networks) must be coordinated and supervised by the Media Relations staff.

D. Photography for Research Purposes

1. Special requirements exist if photographs are taken for research purposes. For more information, consult with the IRB at http://humansubjects.stanford.edu.

E. Photography for Other Reasons

1. If a physician, staff member, or other individual wishes to take a photograph of a patient for purposes other than identified above, s/he should contact the Privacy or Risk Management Office for guidance on whether or not this activity will be allowed and for the necessary consent and authorization forms.

VI. RELATED DOCUMENTS

A. HIPAA Use and Disclosures of PHI
B. HIPAA Education Policy
C. HIPAA Research and Patient Privacy Policy

D. HIPAA Definitions Policy
E. Form: Consent To Operation, Procedure and Administration of Anesthesia, (Form 15-01)
F. Form: Authorization to Use and Disclose Health Information for a Stanford University Medical Center Communications or Media Relations Activity

VII. DOCUMENT INFORMATION

A. Legal Authority/References
   1. JC RI 2.50
   2. Health Insurance Portability and Accountability Act (HIPAA) of 1996
   3. Title 22 Section 70763
   4. California Civil Code section 3344

B. Author/Original Date
   September 1987

C. Gatekeeper of Original Document
   Compliance Policy Manual Coordinators and Editors

D. Distribution and Training Requirements
   1. This policy resides in the Compliance Policy Manual.
   2. New documents or any revised documents will be distributed to Compliance Manual holders. The department/unit/clinic manager will be responsible for communicating this information to the applicable staff.

E. Review and Renewal Requirements
   This policy will be reviewed and/or revised every three years or as required by change of law or practice.

F. Review and Revision History
   August 1991, C. Price, Director of Physician Services and Risk Management
   May 1994, M. Eaton, PharmD, JD, Risk Management Counsel
   August 1995, to reflect Stanford Health Services title
   February 1997, M. Eaton, PharmD, JD, Risk Management Counsel
   January 2001, L. L. Smith, J.D. Vice President and Director of Risk Management
   January 2004, S. Shah, JD Risk Management Specialist
   October 2007, S. Shah, JD Director Risk Management, D. Meyer, Chief Compliance Officer, S. Stayn, JD, Office of the General Counsel

G. Approvals

December 2007 Quality Improvement and Patient Safety Committee
January 2008, SHC Medical Executive Committee
January 2008, SHC Board of Directors

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Appendix A

A photographic or electronic reproduction is deemed to identify the patient in the following circumstances:

1. If the photographic or electronic reproduction shows the full face or comparable image of the patient, or
2. If one or more of the following identifiers of the patient, the patient's relatives or household members, or the patient's employers are present, and the hospital does not have actual knowledge that the following identifiers could be used alone or in combination with other information to identify the patient:
   a. Name
   b. Social Security number
   c. Telephone number
   d. All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code, if, according to the current publicly available data from the Bureau of the Census: (1) The geographic unit formed by combing all zip codes with the same three initial digits contains more than 20,000 people; and (2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000;
   e. All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
   f. Fax number
   g. Electronic mail address
   h. Medical record number
   i. Health plan beneficiary number
   j. Account number
   k. Certificate/license numbers
   l. Vehicle identifiers and serial numbers, including license plate numbers
   m. Device identifiers and serial numbers
   n. Web Universal Resource Locators (URLs)

o. Internet Protocol (IP) address numbers

p. Biometric identifiers, including finger and voice prints

q. Any other unique identifying number, characteristic, or code (note this does not mean the unique code assigned by the investigator to code the research data)

3. And the covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.