

Patient audio and visual recordings – Receiving and storing sensitive imagery

Consolidation of Current Guidelines for
Healthcare Providers

29th May 2020

About

The Covid-19 pandemic has considerably decreased the number of face-to-face appointments. In response to this, the health and care systems have been working hard to continue to meet people's needs through an increase of remote online consultations and use of digital channels. As a result, the exchange of photographic images, audio and video recordings from patient to clinician has become a more popular method to share information and aid diagnosis.

At the request of Our Healthier South East London ICS, the Health Innovation Network (HIN) has consolidated the key points of information governance to be aware of from a variety of reliable national guidance and resources. This includes the MDU's recent publication "receiving and storing patient images from online consultations" (May 2020), advice from the GMC, BASHH/FSRH standards for remote consultations and the Medical Advisory letter referencing Telemedicine (30th April 2020).

NHSE are currently working on further guidance relating to this topic that should be published imminently. In the meantime, if there are still uncertainties, please contact England.IGPolicyTeam@nhs.net

Code of conduct

The GMC provided guidance in 2013 for clinicians [on making and using visual and audio recordings of patients](#), including photographic images. This is still valid and should be familiar to clinicians. The guidance makes clear that appropriate information sharing is an essential part of the provision of safe and effective care. It states that patients may be put at risk if those who are providing their care do not have access to relevant, accurate and up-to date information about them. However, health professionals have a legal and ethical duty to ensure patient's privacy and dignity are respected, and that the individual has the capacity to consent to the sending and storing photographic/audio information. This is sensitive data and should be treated as such. The topics of consent and confidentiality in handling patient information are heavily discussed in the GMC's guidance.

In light of COVID19, the GMC article ["Supporting doctors through COVID-19 epidemic in the UK" \(March 2020\)](#) made two important statements:

- "We want doctors, in partnership with patients, always to use their professional judgement to assess risk and to make sure people receive safe care, informed by the values and principles set out in their professional standards. A rational approach to varying practice in an emergency is part of that professional response."
- "Clinicians may need to depart, possibly significantly, from established procedures in order to care for patients in the highly challenging but time-bound circumstances of the peak of an epidemic"

Clinicians should use their professional judgement in line with national guidance. Managing under 18yr olds still appears to be a complex area where it may be still unclear whether sharing intimate images or undertaking video examinations is appropriate. NHS England are aware of this grey area and are soon to release national organisation wide guidance relating to this topic.

Clear communication of actions between patient and clinician

- The purpose for sharing audio or visual imagery should be discussed with the patient. This should be detailed on the Privacy Notice and the location of this (e.g. website) should be indicated to the patient.
- If the clinician is likely to need to physically examine the patient, the GMC's [remote consultations COVID flow chart \(April 2020\)](#), along with Professor Trisha Greenhalgh guidance for GPs on [when video is appropriate \(March 2020\)](#), both suggest a scheduling face-to-face appointment.
- The clinician should consider if a photograph or video consultation is likely to be enough to progress the diagnosis or treatment plan. If not, then the clinician should reconsider the patient's plan of care and whether it may be more appropriate to schedule a face-to-face appointment.
- A clear explanation should be provided to the patient detailing how and where the imagery or recordings will be stored. This should also be detailed on the Privacy Notice.
- The content should be sent via trust/organisation policy, either to a secure NHS encrypted email account or through the specific software that some practices and NHS organisations have chosen to use. The clinician should upload the recordings to the patient's confidential medical record and delete from their account. Deleting records from NHS Mail can be problematic and the email containing the image would need to be deleted from the inbox, deleted folder and any email archive folder.
- All these key elements of discussion should be recorded in the patient's medical record.

Capacity to consent

- The patient must have the capacity and full understanding of the information they are sharing and how it will be used.
- The clinician must ensure that the patient feels under no pressure to consent for a photo to be taken/transmitted. In particular, the patient should not receive an inferior level of care through not providing a photo. Consent to send (process) an image cannot be relied upon as a lawful purpose for processing where there is an imbalance of power and no real option to agree or not.
- Children or young people under the age of 18 who have the understanding and the capacity to consent to sending audio and visual recordings may do so, but they should be encouraged to involve their parent or guardian in the decision process.
- If the child or young person lacks capacity, then the person with parental responsibility may consent on their behalf.
- Adults who lack capacity should not be making and sending recordings as part of their care unless a person who has legal authority to make the decision in their best interest has given consent, or if the recording must be made to help immediate treatment or form an integral part of an investigation in accordance with the mental capacity act (2005).
- With all this in mind, consent must be explicitly given by the patient for the information to be received and stored securely. This must be recorded in the patient's notes can only be shared with other healthcare professionals caring for that patient.
- Digital images obtained from a patient may be used for educational purposes or teaching but full written consent must be obtained from the clinician and the information shared must not go wider than the agreed scope ([BASHH/FSRH Standards, January 2020](#)).

Sensitive/intimate images

- It is best to avoid patients sending images of genitalia, anus and breasts. They are considered to be intimate images that create medico-legal risks for clinicians.
- However, so long as the patient is over 18, has full capacity and understanding of the requirement of the photo, has given consent for the photograph to be sent and stored in their medical records, then in line with [the medical advisory letter "Telemedicine" \(30th April 2020\)](#) no criminal offence would be committed if an adult (18 and above) sent a photo of their own genitals to their GP.
- Clinicians should also remember that taking, receiving and sending intimate images of children under 18 or patients lacking capacity, is a serious breach of the code of conduct and could potentially lead to a criminal investigation. No clinician should be receiving sensitive images of under-18-year-old children.
- As discussed on page 1, national guidance regarding sensitive imagery for under 18s is soon to be made available by NHS England which should help to best protect patient and clinician where a decision may be difficult to make.

Intimate examination

- Medical professionals should treat the sharing of sensitive images or examination via video in the same way as they would treat a patient requiring an intimate physical examination. In this situation, a chaperone would always be offered to the patient. This is difficult to replicate in a remote consultation setting.
- The GMC's guidance on [intimate examinations and chaperones \(April 2013\)](#), details the role and expectations of a chaperone. This would usually be another health professional as a friend or relative is not an impartial observer. One requirement is that the chaperone is expected to "be able to see what the doctor is doing" which would be practically impossible to do through a computer or other technical device. The other expectation is that a chaperone "would be able to reassure the patient if they show signs of distress or discomfort". This again is something that would be very difficult to do remotely. Therefore if it is a situation where a chaperone is needed, then clinicians are advised against suggesting a video consultation.
- Following the same guidance, chaperoning a child or young person, as above, is not recommended via video for the same set of principles. However, if this were to go ahead, the clinician would need to assess that the patient had capacity to consent to an intimate examination. If they lack capacity, it will fall to the parent to consent on their behalf.
- If there is the need to see an intimate part of a patient's body, the clinician should consider a face-to-face consultation, with suggestion of a chaperone, as the most appropriate course of action.
- If, under rare circumstances, chaperoning of a patient image is required, this should include the chaperone checking that the image in the receiving email account has not been forwarded and watching the image be deleted from the inbox, deleted and archive folders of the receiving email account.
- Clinicians should be aware of records management procedures and be aware that all computer and clinical systems are auditable which can include audit of a computer drive for images stored. Once an image is uploaded to the patient record system, no other copy of the image should be saved elsewhere. This will also prevent images being inappropriately accessed during disposal of computer assets.

Clinicians should balance the GMC guidance on intimate examinations and chaperones against the COVID-19 remote consultation advice highlighted on page 1.

Still unsure?

- Clinicians are also encouraged to look at their own trusts relevant information governance policies that refer to this topic as it may have additional information.
- The key documents that have been highly useful include the [MDU \(May 2020\) guidance on Receiving and storing patient images from online consultations](#) and the [Medical Advisory letter \(30th April 2020\) in reference to telemedicine](#).
- **NHSE are currently working on further guidance relating to this topic that should be published imminently.**
- In the meantime, if there are still uncertainties, please contact England.IGPolicyTeam@nhs.net

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The Health Innovation Network is the Academic Health Science Network (AHSN) for south London, one of 15 AHSNs across England. As the only bodies that connect NHS and academic organisations, local authorities, the third sector and industry, we are catalysts that create the right conditions to facilitate change across whole health and social care economies, with a clear focus on improving outcomes for patients.

This means we are uniquely placed to identify and spread health innovation at pace and scale; driving the adoption and spread of innovative ideas and technologies across large populations.



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