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## Legal Awareness

# What Everybody Needs to Know About Photographs/Images in Health Care Facilities Part 1



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In today's modern society, almost everybody has access to a camera on their mobile telephone. How should health care facilities and clinicians manage patients, families, friends, and visitors using cameras in patient areas? Alternatively, is it acceptable for clinicians to take photographs of patients for medical purposes?

and visitors regarding the policy is important too. Disseminating information properly to all staff about the policy is necessary to prevent potential violations so that they themselves can know when/when not/how to take photographs or so that they can inform the patients and visitors.

## How to manage patients and visitors taking photographs?

Take a brief search of social media or any forum in which health care clinicians may post and you will inevitably see people being accused of the dreaded Health Insurance Portability and Accountability Act violation (HIPAA). It is a HIPAA violation to post any type of patient photograph on social media (Zabel, 2016). However, many times, the accusation of a HIPAA violation is so casually thrown around on the internet by anyone, but it is actually not appropriate, given the action. HIPAA violations cover very specific information. Alternatively, just because the act may not qualify under HIPAA as a violation, there may still be some ethical or policy implications. There may also be potential state privacy law breach concerns as well.

Visitors or patients of a health care facility may inquire about the policy before taking a photograph. There may be reasons other than HIPAA why photography, video recording, or Facetime (or other livestreaming systems) is prohibited. For example, visitors may not realize that they are capturing protected health information that is in the background of a photograph or Facetime. These could show a patient or some piece of personal health information about a patient in the background without the person taking the picture or doing Facetime even knowing this. These might also show clinicians/other employees performing their duties.

Can clinicians and facilities be expected to stop others from taking photos? The answer is “Yes,” to a certain degree. It is so commonplace today that some may not even take a moment to consider the appropriateness of taking pictures in certain locations. Having adequate signage informing and reminding visitors of the policy is necessary. Reminding staff to educate and inform patients

## How does HIPAA apply?

First, it is necessary to understand what applies under HIPAA and who it oversees. HIPAA applies to health care providers, health care facilities, health plans, and health care clearinghouses (HIPAA Journal, 2017). HIPAA only applies to these “covered entities” (Centers for Medicare & Medicaid, 2019). A visitor in a hospital, for example, who does not work there and is not a clinician, is not subject to HIPAA. There could be other potential consequences in a civil or criminal court if deemed egregious enough or that it caused harm. The hospital may have a duty to stop the visitor if they are made aware of the act. Hospitals/health care facilities should have policies in place on how to manage this to help guide staff in the moment.

Facilities must take reasonable care to protect patients from other visitors taking photographs. If it is found that a staff member ignored a visitor taking a photograph, HIPAA may be relevant because it may be found that they did not take reasonable care or do their due diligence to protect patients from violations of their privacy.

## Clinicians taking photographs of patients for clinical purposes

If a patient has a wound, what is the appropriate manner to capture this information? Being able to view previous photos of a wound allows for real-time comparison of improvement or lack thereof. Before and after surgical procedure, photos may also be appropriately taken. There are some legitimate reasons for which clinicians will take photographs of patients. However, we must be sure that the device we are taking the photograph with (and what device it ends up on) is properly secured and encrypted. The necessary safeguards must be implemented to protect patient information (Zabel, 2016). These include actions such as password protection and encryption to access patient information (Zabel,

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2016). Following internal policies and using facility approved devices may be required as well.

Clinicians are able to take photographs of patients (ie, the wound example mentioned previously) if it is appropriate for their care and they abide by guidelines and institutional policies. It is all clinician's responsibility to know what their internal policies are and follow those and be sure to abide by HIPAA too. In radiology areas, patients and their visitors may be inclined to take a picture of an X-ray or scan for example. This may possibly be permitted because it may be taken in a room with privacy and protection from other patient information but ultimately the facility should dictate whether they deem this appropriate or not by taking all state and federal laws and regulations into consideration. Whether there are any potential risks involved will be taken into consideration also. If there is patient information on the actual image, it can lead to potential cybersecurity risks. There are official pathways that patients or their proxies can take to request records or images if necessary. If pictures of patients are to be used on something like a hospital website, then written permission is required.

### How to inform clinicians and the public about patient images?

One study conducted in Brazil found that due to lack of knowledge by most health care professionals, there should be more of a focus on how to manage images of patients taken in health care facilities in their educational program, workplace orientation, and training (Caires, Lopes, Okuno, Vancini-Campanhar & Batista, 2015). Caires et al. (2015) report that health care organizations should govern orientation and training on this subject. Once the staff is properly informed, they can then be more accountable in educating their colleagues, the public, patients, and visitors regarding

appropriate use of cameras in patient areas. The ultimate message to be aware of as a clinician is to be aware and abide by the institutional policy on patient images.

### Conclusion

Ever since having a camera on one's person became so commonplace, challenges regarding privacy issues have become almost as common. This is a complex area for clinicians to navigate in addition to all of their other patient and workplace obligations. Health care facilities and the educational programs that clinicians attend must do a better job at preparing the health care workforce for how to manage these issues. The health care facilities also have a duty to implement policies that guide the staff when these issues arise. They must also provide education and training for notifying how to manage and who to contact for more information. Part 2 of this article will include more information about examples of social media blunders and examples of patient or clinician photographs gone wrong.

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