Corporate Compliance Policy

APPLIES TO: BJC HealthCare and All BJC Members

TITLE: PHOTOGRAPHY, VIDEOGRAPHY, VIDEO RECORDING, IMAGE / INFORMATION TRANSMISSION

NUMBER: 13.0

PURPOSE: To define allowable purposes for obtaining film and digital photographs and/or video images and/or recordings of patients created using a camera or other device (collectively “Photography”) at BJC Affiliated Hospitals (“Hospital”) and standards for the creation, use and retention of images.

Statement of Policy

1. Hospital may utilize Photography to collect patient health information for purposes of identification and patient care and treatment or as otherwise authorized by the patient or the patient’s caregiver or guardian.

2. Any member of the clinical team may refuse to allow or stop Photography when it may interfere with patient care and/or may affect patient safety, treatment, and/or healthcare operations and compliance.

Definitions

1. Consent – Written documentation of the patient’s agreement to the Photography process (e.g., consent to admit/treat, specialized consent, or documentation of verbal consent).

2. Person/Patient Identifiable Information – Any piece of information which can potentially be used to uniquely identify, contact, or locate a single person. Such identifiers include, but are not limited to: name, home address, email address, telephone number, social security number, medical record number, driver’s license number, credit card number, biometric identifiers (including finger and voice prints), facial photos or images, or any unique characteristic (including unusual tattoos, piercings, etc.).

3. Photography – For purposes of this policy, the term Photography includes film and digital photographs, and/or video images or recordings of any kind created using a camera or other device.
4. **Webcasting** – Broadcasting or distributing an audio and/or video file over the Internet using streaming media or other technology.

5. **Telemedicine** – Transferring medical information through phone, Internet or other networks for the purpose of providing medical treatment.

6. **Teleconferencing** – A live exchange of information between persons and machines remote from one another but linked by a telecommunications system, which often includes, audio, video and data services.

**Specific Information**

1. Circumstances under which Photography of Patients is Permissible
   a. Patient Care and Identification
      i. When Photography is used for purposes of identification and/or to document patient care and treatment, the resulting images must be included in the patient’s medical record and appropriately labeled and indexed. Images taken for purposes of identification (including scanned photo IDs) should be identified in some form as patient identification (for example – “State ID”). Images used to document patient care and/or treatments should be indexed as “Photo ___.”
      ii. Patient consent to Photography used for purposes of identification, diagnosis and/or documentation of patient care is addressed in the “Photographs, Film or Videotape” paragraph contained in the applicable standard consent for treatment form: Hospital Treatment and Consent.
      iii. Separate patient authorization is generally required for use of Photography for purposes other than treatment as specifically described below.
   b. Video Surveillance to Monitor Clinical Condition
      i. Video observation of patients may be used in critical care settings, PACU/ recovery settings, and certain other clinical areas where continuous visual observation of the patient and bedside activity is deemed important to provide treatment and a safe and responsive environment of care for patients.
      ii. Video monitors used for such surveillance are located at clinical workstations for viewing by hospital personnel only.
iii. Cameras may be temporarily turned off by staff to protect patient privacy during personal hygiene care (e.g., bathing, toileting). Clinical staff should ensure cameras are restarted as appropriate.

iv. Clinical areas employing the use of video surveillance will notify persons in family and visitor accessible areas of the unit that cameras are in use by posting signs regarding the use of the cameras in those areas.

c. Documentation of Abuse and/or Neglect

i. In cases of actual or suspected abuse and/or neglect, video surveillance or other Photography may be used by authorized personnel for medical documentation purposes.

ii. Authorization from the patient or other person(s) present in a patient’s room or other area is not required prior to such surveillance.

iii. Images recorded for documentation of abuse and/or neglect are not normally maintained as part of the patient’s medical record unless the images are used for medical treatment purposes. Photography for documentation purposes other than treatment should be maintained according to guidelines for storage, use, disclosure and retention as defined by the department conducting the surveillance.

iv. Copies of images captured under these circumstances may be released to authorized representatives of an investigating agency and/or pursuant to a valid subpoena or court order.

d. Requests by External Agencies or Law Enforcement

When an outside party (e.g., an insurance company, investigator, law enforcement agency) requests patient Photography for purposes other than documentation of abuse and/or neglect (addressed above), contact Risk Management for assistance.

e. Clinical Research

Photography may not be used for research purposes without the approval of the appropriate Institutional Review Board. The patient’s consent to Photography must be included in the patient consent for participation in the research protocol.

f. Education or Teaching Purposes – Internal and External
i. Photography that does not contain any Person/Patient Identifiable Information may be used for internal education and teaching purposes without patient/legal representative authorization.

ii. The written consent of the subject(s) of Photography is required prior to creating Photography that will include Person/Patient Identifiable Information for use in external education and/or teaching.

iii. If the patient or caregiver/guardian/legal representative is not able or present to provide the consent at the time of creation of the Photography, such written authorization for the use of the Photography is required prior to using any existing images. See Section 2 below.

g. Publications And/Or Digital Media for External Distribution

i. Photography that does not contain any Person/Patient Identifiable Information or any associated Person/Patient Identifiable text may be published in textbooks, journal articles, other externally distributed publications or digital media without patient/legal representative authorization and without a Business Associate Agreement with the publisher.

ii. The written consent of the subject(s) of Photography is required prior to creating Photography that includes Person/Patient Identifiable Information for use in textbooks, journal articles, other externally distributed publications, or digital media.

iii. If the patient or caregiver/guardian/legal representative is not able or present to provide the consent at the time of creation of the Person/Patient Identifiable Photography, until written authorization for the use of the Photography is obtained, no one may use any existing images.

h. Trauma Certification, Peer Review, Quality and Performance Improvement Purposes

i. Photography, particularly videotaping, may be obtained for internal Hospital training and/or performance improvement without patient/caregiver/guardian/legal representative authorization.

ii. The images recorded for performance improvement or trauma certification purposes are not part of the patient’s medical record and are maintained according to security protocols for storage, use, disclosure and retention as defined by the department and only as necessary for peer review or performance improvement files and may not be released to any parties.
i. Telemedicine, Teleconferencing or Webcasting

i. Use of Photography in connection with telemedicine or teleconferencing is limited to transmission through secure networks or using encryption of the images to protect the patient’s privacy and integrity of the data.

ii. Use of Photography in telemedicine for treatment purposes does not require additional authorization by the patient.

iii. If the use is not for treatment purposes, then the written authorization of the subject(s) of Photography is required prior to the transmission and/or use of images which include Person/Patient Identifiable Information.

iv. Absent separate written authorization by the patient or caregiver/guardian/legal representative, Photography used for Webcasting must be fully de-identified of Person/Patient Identifiable Information.

j. Photography by Family/Friends

i. Consent is not needed for Photography done by the patient’s family members or friends. However, the Photography must not interfere with patient care and the physician or other health care provider has the authority to instruct the Photography to be discontinued if deemed necessary in the interests of patient care, respect for privacy and/or dignity of the patient or others, or for hospital operations purposes.

ii. Video monitoring by family/friends in a patient’s room must be approved by the bedside nurse. The family/friends will be informed that the camera or monitor must be focused only on the patient and cannot be placed in a position that captures staff or other patients or activities in the room.

iii. Photography by a patient/family taken under circumstances causing concern to staff/faculty for any reason should be reported to Risk Management.

k. Photography of newborns and the Delivery

i. Hospitals are expected to protect the confidentiality of the patient and newborn, while preserving and supporting the patient’s decision to record the birth process.

ii. Patients and/or family members are generally allowed to photograph, video record or teleconference (SKYPE) deliveries in
accordance with limitations specified by the mother and with the agreement of the attending health care providers.

iii. The patient and family members may be asked and are expected to comply with the request to discontinue recording at any time if the attending physician or other clinical staff deems it necessary.

iv. Written consent of the parent must be obtained prior to taking of Photography of newborns by Hospital staff for any non-treatment reason.

l. Courtesy Photography Programs Made Available to Patients/Families

i. Consent is not needed for Photography of a patient and/or a patient’s family as part of a program or service offering made available as a courtesy to patients and families. Examples include Holiday Photos, Family Photo Night, or Bereavement Photos.

ii. Participation by patients and/or families in courtesy Photography programs is voluntary.

iii. Images produced as part of these courtesy programs are not maintained by Hospital and do not become part of the patient’s medical record.

m. Requests for Marketing/Publicity/Media Purposes

i. Photography for purposes of marketing, publicity, or other media uses is coordinated through the Hospital’s Media Relations Department.

ii. A representative designated by Media Relations should discuss the request with the patient or caregiver/guardian/legal representative and obtain written consent using the Media Relations Consent Form. The signed consent is kept on file in the Media Relations Office.

2. Documentation of Consent/Authorization to Photography Type

a. Patient or Patient’s Representative’s Consent

i. Generally, the patient, or caregiver/guardian/legal representative (if applicable) should give written consent before Photography is carried out by anyone other than a friend or family member of the patient. Exceptions (e.g., treatment) are covered in earlier sections of this policy.

ii. The appropriate authorization form (signed and dated by the patient or representative) must be retained in the patient’s medical record or in the Communications/Marketing Departments. Any verbal
authorization must also be documented in the patient’s medical record. A new authorization form is required for each new series of images taken or for separate uses of images, unless the authorization form specifically allows such use.

iii. When consent from a patient’s representative is obtained verbally by phone, such consent should be documented on the appropriate authorization form.

iv. The authorization for use of the Photography remains valid unless and until the patient/representative withdraws or restricts the authorization for future use. Photography obtained prior to the revocation of the consent and made part of the patient’s medical record shall be maintained as a part of the Hospital’s legal medical record.

b. Family or Other visitors Captured in Photography/Digital Media

i. Family members, friends, or other visitors who may be captured in Photography for treatment or other internal or external uses must be given an opportunity to move out of the range of the image.

ii. Individual consents from each person captured in large group Photography to be used for internal or external uses is not required so long as the individuals have been notified and given the opportunity to move out of the range of the image.

iii. If a family member or other visitor is to be featured in Photography as an individual, written consent from that person is necessary.

c. Hospital Workforce Members Captured in Photography/Digital Media

i. A Hospital Workforce Member is an individual performing work on behalf of Hospital and under the direct control of Hospital, whether or not the member is employed by Hospital. Examples include staff, faculty, temporary agency workers, students, contractors, and volunteers.

ii. Photography of staff/faculty during the performance of patient care or procedures is not permitted, except when the Photography is being taken for educational/training purposes or approved Communications/Marketing purposes and the staff/faculty has been informed that performance of patient care may be filmed for this purpose.

iii. Written consent from the workforce member is not required so long as the member has been notified in advance that Photography for internal use such as educational/training purposes may occur in the work area. Acceptance of a work assignment in the area where Photography is
occurring or can be expected conveys implied consent and waiver of any
ownership rights or rights to compensation associated with use of the
Photography.

3. Camera Recording Equipment Requirements

a. The Hospital staff or faculty member taking the Photography is
accountable for using a camera device that is capable of downloading from the
camera and uploading to Clinical Desktop in an appropriate image format.

b. Personnel authorized to take Photography are responsible for deleting the
images from the camera device used to take the Photography as soon as the
images have been recorded in the patient’s medical record/alternative secure
location (e.g., Communications/Marketing repository), or when the image is no
longer needed for the purpose for which it was created.

c. No personal equipment may be used to take Photography of patients,
except during approved Communications/Marketing situations when the
patient/caregiver/guardian/legal representative has already provided authorization.

4. Storage and Retention of Images and/or Recordings Taken for Treatment or Other
Medical Purposes

a. Digital images taken by or on behalf of Hospital for treatment or other
medical purposes are promptly uploaded to the patient’s electronic medical
record, except when the department or service that creates the image has a policy
for alternative documentation and retention due to the sensitive nature of the
subject of the image, or unique technical requirements. When the digital image is
not stored in the patient’s medical record, it must be stored in a secure database
and the specific location must be documented in the patient’s medical record.

b. Full motion video or video streaming cannot be uploaded to Clinical
Desktop. Video recording must be maintained in a separate system or file (e.g.,
PACS or a media server) and retained in accordance with Hospital Retention
policies.

c. Still photographs and other images taken for treatment or other medical
purposes will be scanned into the patient’s medical record for safekeeping.

d. Every image stored in the patient’s medical record contains the patient’s
name and medical record number.

e. All images stored in the patient’s medical record or alternative database
include the date and time the Photography was obtained and the name of the
person who created the image.
f. Regardless of the modality and equipment used to take and retain images, all such images are and remain the property of Hospital and are not the property of the employee, faculty member, or other person making the image.

5. Use and/or Disclosure of Photography Images

a. Viewing is limited to authorized staff based upon a need to know and consistent with the minimum necessary standard.

b. Images captured in the Photography should include no more than the minimum necessary direct personal identifiers. For example, do not use identifiers such as name, birth date, social security number, medical record number, home address or phone number except to the extent use of these identifiers is necessary to accomplish the purpose of the Photography.

c. Except for purposes of treatment, payment or health care operations or unless otherwise required by law, Person or Patient Identifiable Photography will not be released to outside requestors without specific authorization from the patient/legal representative.

d. Photography sent via internet and any telemedicine or webcasting must be encrypted, along with any attached Person/Patient Identifying Information.

6. Behaviors related to Photography of Patients that are not Permissible by employees or Members of the Medical Staff

a. Personal use of Photography of patients.

b. Use of Patient Photography for entertainment purposes without written or documented verbal consent from the patient/legal representative prior to the posting.

c. Posting Photography of patients in public areas or on internet websites or blogs without written or documented verbal consent from the patient/legal representative prior to the posting.

d. Sharing Photography via any electronic media (including, but not limited to, Facebook, Twitter, or other social networking websites) without written or documented verbal consent from the patient/legal representative prior to the posting.

e. Malicious use.

f. Including others (besides the consenting patient) in the Photography without consent (except as provided in Specific Information, Paragraph 2(c)).

g. Use of Photography to defame Hospital.

h. Taking Photography in a way that is disruptive to patient care or the work environment.

j. Taking photos without the individual’s consent except as outlined and allowed in the earlier sections of this policy.
k. Secretive recording or Photography (except for in cases identified in Section 1.c.iii – above).
l. Taking or participating in Photography without respect for the patient’s privacy and/or dignity.
m. Including in the Photography more patient identification information than is minimally necessary (e.g., SSN, phone number).

7. Disciplinary Action

Employees and/or medical staff failing to comply with this policy are subject to disciplinary action.

RECOMMENDED BY: Corporate Compliance Department  
                 Legal Services Department

EFFECTIVE DATE: September 28, 2012 (Original)

AUTHORIZED BY:  
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and Corporate Compliance Officer