

UConn HEALTH

POLICY NUMBER 2014-03

April 11, 2017

POLICY: VISUAL, AUDIO OR RECORDING OF PATIENT DATA OBTAINED THROUGH ANY MEDIUM

I. POLICY STATEMENTS

Visual, audio or recording of patient data obtained via any medium includes but is not limited to:

- Photography, audio recording, video recording or monitoring in the clinical context
- Radiology Images (X-ray, MRI, CT Scan, etc.)
- Ultrasound images
- Images of internal body part(s) that are taken during a procedure using specialized equipment (e.g., through a lumen). Examples include, but are not limited to Arthroscopy, Endoscopy.
- Physiologic tracings such as EKG Tracings, EEG Tracings, EMG Tracings, Fetal Heart Rate Tracings
- Pathology or other slides
- Autopsy photographs or recordings

Medium used may include digital, tape, print, or video.

The data described above is herein referred to as “non-textual” data for purposes of this policy.

Non-textual data of a patient or patient’s body part in any medium by or on behalf of UConn Health for the purpose of patient identification, diagnosis, documentation, evaluation, management and/or treatment are a component of the patient’s medical record and therefore are managed in compliance with the UConn Health HIM Policies, UConn Health HIPAA Privacy and Security Policies, state and federal law and third party regulatory and accreditation requirements for medical record documentation.

The intent of this policy is to define the use and management of non-textual patient data and to further describe the protection of patient privacy and confidentiality by specifying the conditions and requirements for their use in various circumstances both internal and external to UConn Health. In addition, this policy is intended to provide guidance in establishing consistent processes and procedures to obtain patient/legal representative consent to obtain non-textual data of a patient and to assure ethical and consistent uses of this data.

II. POLICY SCOPE

This policy does not cover the video monitoring of premises for security purposes.

This policy applies to all staff of UConn Health:

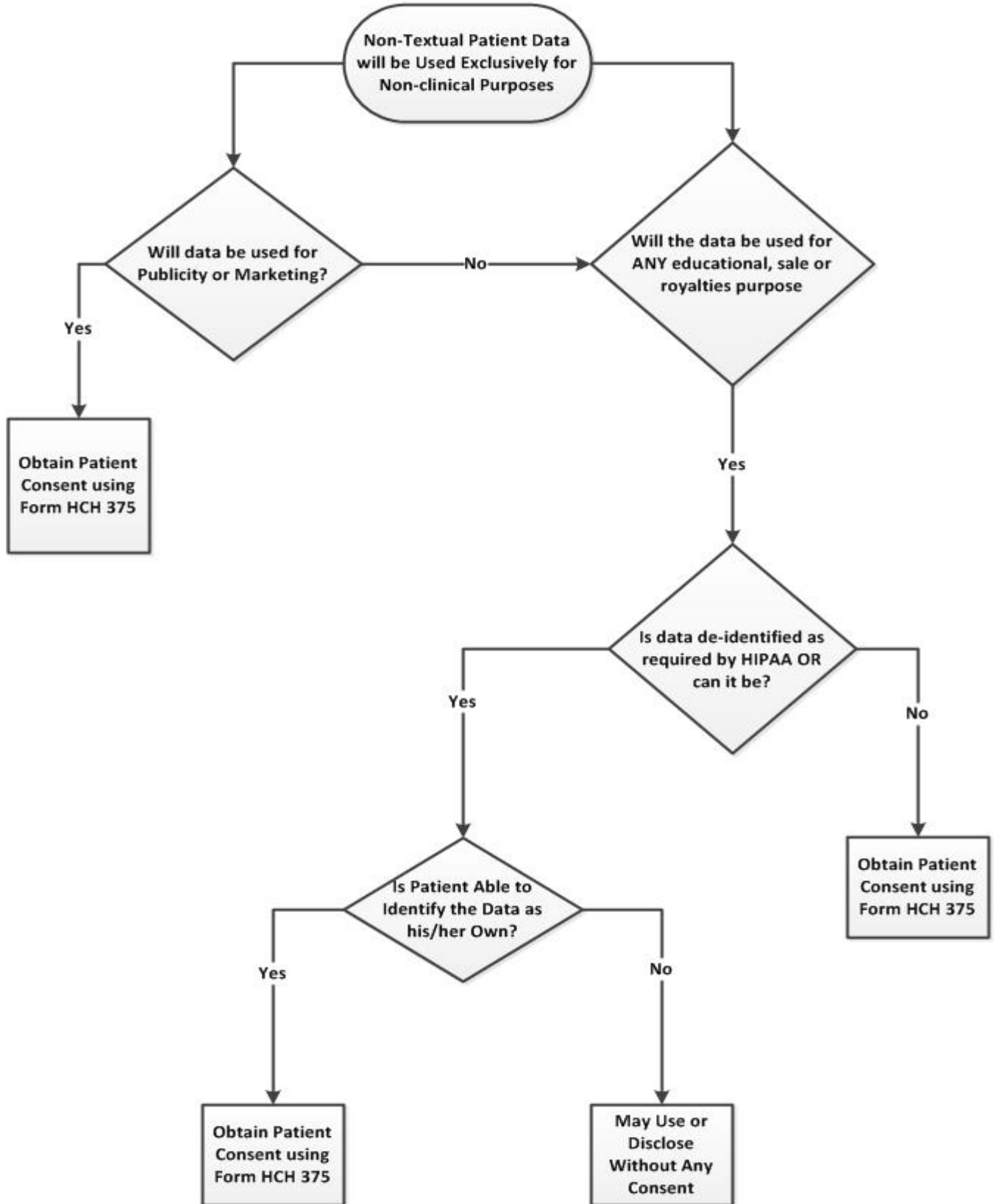
Employees (including faculty and staff)
Students and Residents
Agency/contracted/vendor staff

Volunteers
Temporary staff
Credentialed staff

SUMMARY TABLE FOR CONSENT INFORMATION

Original Purpose for Production of Non-Textual Patient Data	Consent Form Required	Title of Consent Form
Clinical Patient Care Purpose and/or Clinical Operations Function	Permission to Treat Form HCH901 consent obtained each year for all UConn Health patients	Permission to Treat Form HCH901
Diagnostic or therapeutic procedures where obtaining the non-textual data is part of procedure using specialized equipment	Informed Consent is obtained to undergo the procedure No consent in addition to Informed Consent is required for obtaining the non-textual data	Varies according to procedure
Internal Education which is outside the context of clinical care (including Documentation of trainee's experience)	Yes - Consent must be obtained if either of the following criteria apply: 1) The non-textual patient data is determined to be data that a patient would recognize as their own OR 2) The non-textual patient data has NOT been de-identified under HIPAA standards.	Form HCH375 Consent for Photographing or Recording Data of Patients (non-clinical care purpose)
External Education (this may include sale of the non-textual data)	Yes - Consent must be obtained if either of the following criteria apply: 1) the non-textual patient data is determined to be data that a patient would recognize as their own OR 2) The non-textual patient data has NOT been de-identified under HIPAA standards.	Form HCH375 Consent for Photographing or Recording Data of Patients (non-clinical care purpose)
Research	Yes and IRB Approval - obtained by investigator	Specific to the Research
Publicity/Marketing/Media (this may include sale of the non-textual data)	Yes in all cases	Form HCH375 Consent for Photographing or Recording Data of Patients (non-clinical care purpose)
By patient or family/friend/other as designated by patient	No	N/A
Child Abuse/Neglect or Vulnerable Adult Abuse/ Neglect or Domestic Violence Documentation	NOT required by law in Connecticut, however a discussion of the need/benefit to take photographs should be documented in the medical record	N/A
Sexual Assault	Yes - As required by the State of Connecticut Technical Guidelines for Health Care Response to Victims of Sexual Assault.	Form available in the Emergency Department
Neonatal Death	Yes	Form available from Maternal Child Department
Newborn pictures	Yes	<ul style="list-style-type: none"> • For Family Personal: Company Form • For Newborn Web: HCH2206

Patient Consent Determination for Photo/Video/Recording



III. DEFINITIONS

Clinical Purpose – Clinical Patient Care Purpose and/or a Clinical Operations Function further defined below.

Clinical Operations Function – Functions internal to or within UConn Health for one or more of the following activities:

- Morbidity & Mortality conference
- Death & Complications conference
- Conference or other initiatives to assess and/or document evidence of quality of patient care
- Peer review activity
- Risk management activity
- Quality improvement activities

Clinical Patient Care Purpose – Purposes of identification, diagnosis, evaluation, management and/or treatment of a patient: The term relates to one or more of the following:

- Documentation of a patient's health/medical status including evaluation, ongoing monitoring/measurement, and condition or progress following treatment and/or interventions; Diagnostic or therapeutic procedures where obtaining the non-textual data is part of the procedure using specialized equipment.
- Clinical communication, care planning, and clinical care conferences among the individual healthcare practitioners serving the patient to determine diagnosis, management and/or appropriate treatment strategy.
- Documentation for the patient's medical record and in support of reimbursement for services rendered to the patient.

Consent - The legally binding permission granted by a patient or a patient's legally authorized representative after being informed about the types and uses of the non-textual patient data.

Education-

A. Internal Education – This is defined as education that occurs outside the context of clinical care. Education, training or personnel performance activity provided to or directed only toward UConn Health Audiences and/or UConn Health patients and their family members. The term includes the use of non-textual patient data used for documentation of a trainee's educational experience.

- 1) **UConn Health Audiences** – UConn Health personnel including, but not limited to, faculty, house staff, staff, temporary employees, contractors, volunteers, and interns and students who are being trained at UConn Health, visiting clinical scholars, visiting observers and other students, visiting health professionals, and others who participate in patient care.

B. External Education - This is defined as education that occurs outside the context of clinical care. Education or training provided to or directed toward non-UConn Health audiences or at non-UConn Health locations. An example is an educational presentation to members of a state specialty or professional organization. Some of these uses may include sale of the non-textual patient data.

External use of non-textual patient data – Whenever used, disclosed, made available or presented to non-UConn Health audiences or at non-UConn Health locations. Examples include, but are not limited to, commercial filming, vodcasts and podcasts, broadcast programs, print media, the Internet and publicly available web sites, marketing to and education of external, non-UConn Health audiences. Some of these

uses may include sale of the non-textual patient data.

HIPAA - Health Insurance Portability and Accountability Act of 1996 including the Privacy and Security Rules, and any amendments thereto.

Non-Clinical Care Purpose – A purpose or reason other than a Clinical Patient Care Purpose and/or a Clinical Operations Function. The term includes, but is not limited to: grant applications, public relations and marketing activities. Some of these uses may include sale of the non-textual patient data.

Photographing and/or Audio/Video Recording arranged by patient – Images taken and/or recorded by the patient, the patient’s family members and/or friends. Also includes situations where a patient or legal representative authorizes an outside individual or agency to photograph, video record and/or film on behalf of the patient, e.g., a patient's attorney.

Protected Health Information (PHI) – As defined by HIPAA, any type of individually identifiable health information, whether electronically maintained, electronically transmitted, or in any other format (i.e. discussed orally, on paper or other media, photographed or otherwise duplicated).

IV. POLICY SECTIONS

A. General Guidelines

1. Consent
2. Obtaining Non-textual patient data before consent can be obtained
3. Right to stop at any time
4. Revocation/Withdrawal of Consent
5. Security and Storage
6. Protection of patient identity

B. Photographs for Clinical Patient Care Purposes – Storage in the Legal Medical Record

C. Proper Deletion from Photography or Recording Device

D. Use of Personally owned Devices by UConn Health Staff

1. For Clinical Patient Care Purposes
2. For any Purpose Other than Clinical Patient Care Purpose
 - a. Approved Consulting Activities

E. Photographing or Recording of Patients for Internal/External Education or ANY Other Non- UConn Health External Use/Purpose

1. Photographing or Recording for UConn Health Publicity or Marketing

F. Research

G. Photographing and/or Recording Conducted or Arranged by Patients/Families

H. Child or Vulnerable Adult Abuse/Neglect or Domestic Violence

I. Sexual Assault

J. Loss of Neonate/Neonatal Death

K. Law Enforcement Purposes

L. Photographing or Recording of Employees

A. **General Guidelines:** Notwithstanding the requirements set forth in this policy, unit or department-specific policies or guidelines may be more (but not less) restrictive than this UConn Health policy.

1. **Consent** – For quick reference, see Summary Table on page 2 and Flowchart on page 3 specifying when consent is required and if so, the appropriate form to be utilized.

a. **Clinical Purpose:** Consent to receive care at any UConn Health location includes consent for the capture of any non-textual patient data taken or made for a Clinical Purpose, as defined in this policy.

b. **Internal or External Education Purpose:** Under HIPAA, patient consent is not required to use a patient's PHI for internal educational purposes provided the information being shared is limited to that which is minimally necessary to achieve the educational purpose. Generally, for education occurring outside a clinical patient care context (e.g., a classroom lecture), the PHI must be de-identified, absent specific patient consent for this purpose. Therefore, patient consent is not necessary for educational use or disclosure as long as both of the following criteria are met:

i. The non-textual patient data is determined to be data that a patient would not recognize as their own

AND

ii. The non-textual patient data has been de-identified under HIPAA standards.

c. **UConn Health Publicity/Marketing/Media** – Consent is required in all cases.

d. **Research** – IRB approval is required and consent is necessary specific to the research.

e. **Child Abuse/Neglect or Vulnerable Adult Abuse/ Neglect or Domestic Violence** – Consent is NOT required in Connecticut, however documentation of the need/benefit to take photographs should be documented in the medical record.

f. **Sexual Assault** – Consent is required in accordance with the State of Connecticut Technical Guidelines for Health Care Response to Victims of Sexual Assault.

g. **Neonatal Death** – Consent is required and is available from the Maternal Child Department.

h. **Newborn Pictures** – Consent is obtained for personal family pictures by the Company used by UConn Health. For Newborn Nursery Web Pictures consent is required in all cases.

2. **Obtaining non-textual patient data before consent can be obtained** – When consent is required but the data is taken prior to obtaining written consent, and subsequently, the patient refuses to provide consent, the patient's refusal should be documented, and the data must remain in the organization's possession and cannot be used for any reason *except* Clinical Purposes; therefore if it is not used for the clinical care of the patient or otherwise legally required, the data must be either destroyed or the non-consenting patient removed from the data set.

3. **Right to stop at any time** – Unless otherwise specified by another policy, the patient (or legal representative) has the right to stop UConn Health staff from obtaining the non-textual data at any time by informing staff to cease the action.
4. **Revocation/withdrawal of consent** –Revocation/withdrawal of consent is only allowed when PHI as defined in HIPAA is the subject of the consent.
 - a. Should a patient withdraw consent before the non-textual data is used or placed in circulation, then the responsible staff member who obtained the consent will work with the patient and any external company that may own the photograph or recording to accommodate the patient’s right to revoke consent (See form HCH375 Consent for Photographing and/or Recording of patients (non-clinical care purposes).
 - b. If a patient should withdraw consent following reliance on said consent, such that the non-textual data has already been processed or published, such withdrawal will impact only future publications. The staff member who obtained the consent is responsible to assure that future publications do not contain the non-textual data.
5. **Security and storage** – Non-textual patient data made and/or used for a Clinical Patient Care Purpose must be permanently stored in the patient’s medical record in accordance with this policy. All other non-textual patient data that are not stored in the electronic medical record must be stored in a secure manner that also allows for timely retrieval and protects the patient’s privacy. The data must be stored for the retention period required by law, regulation and/or UConn Health policy and destroyed according to policies governing PHI.
6. **Protection of patient identity** – For all purposes other than a clinical purpose, to the degree possible, efforts should be taken to protect the identity of the patient. The patient’s face in a photograph or accompanying information that identifies the patient, should not be included if it is not relevant to the purpose or use of the data.

B. Photographs for Clinical Patient Care Purposes - Storage in the Legal Medical Record – This section applies specifically to photographs

1. Photographs taken in patient care areas are maintained by the Health Information Management (HIM) Department either in the original format in the paper record or uploaded into the applicable electronic medical record system.
2. To preserve Clinical Patient Care Photographs the photograph must be:
 - a. Sent to HIM in their hard copy original format labeled with the following identifying information:
 - Patient name
 - Encounter number
 - Medical record number
 - Date and time photograph or recording was taken
 - Subject matter and body part photographed (e.g. decubitus ulcer of coccyx)
 - Date photograph was taken
 - b. For digital photographs in Dermatology where the UConn Health shared drive is utilized for storage, staff will also photograph the patient’s label and/or ensure that the information listed above is included to properly identify the patient. These photographs

are uploaded to the patient's medical record in the applicable system as noted in Section B. 1 above.

OR

- c. Media can be directly uploaded to the appropriate patient electronic medical record.
3. Clinical Patient Care Photographs received from outside sources (medical records from an external provider or from the patient) should be forwarded to HIM and will be maintained within the HIM Department. It will be noted in the record, whether electronic or paper, that such photographs exist with further instructions for obtaining them.
 4. Clinical Patient Care Photographs are part of the UConn Health designated record set.
 5. Staff are expected to consider patient privacy and sensitivity as clinical photographs are taken. Consider that the patient may be viewing the clinical photographs if they request a copy of their medical record.

C. Proper Deletion from Photography or Recording Device

After proper preservation of any patient photograph or recording, the images stored on a digital camera, recording equipment, portable electronic devices memory card and/or any portable device (e.g., flash/thumb drive) must be properly deleted following the specific manufacturer's instructions.

D. Use of Personally Owned Devices by UConn Health Staff

1. For Clinical Patient Care Purposes –

- a. The use of a staff member's personally owned device to obtain non-textual patient data for this purpose is only allowed if the device is secured according to policy [2008-03: Mobile Computing Device \(MCD\) Security](#). If a personally owned device is utilized to obtain patient data for a Clinical Patient Care Purpose, the photograph must be handled as per Section B 1. + 2. above, to assure it is available in the legal medical record.
- b. The staff member is responsible for the device (e.g., it should be password protected, encrypted, etc.), and must follow all applicable UConn Health information security policies to implement physical and technical safeguards to protect the device and any data stored on the device. If a staff member's personally owned device cannot be secured using approved UConn Health security mechanisms, as is the case with most digital cameras, the user must promptly move the data to a secured location or system as noted in Section B above and approved by the HIM Committee. The individual must ensure proper deletion following procedures specific to the manufacturer's instructions, defined by policy in the respective clinical area.

2. For ANY Purpose Other Than Clinical Patient Care Purpose –

a. Approved Consulting Activities

See link to the [University's Consulting Policy](#)

- i. Consulting activity that meets the requirements of the University's consulting approval process allows use of a faculty member's personally owned device to obtain a patient's non-textual data for a professional consulting purpose. Please note that obtaining non-textual patient data that will result in royalties does NOT need to comply with the University's Consulting Policy. If the approved consulting activity will include non-textual data that the patient would recognize as his/her own or the data has not been de-identified per HIPAA standard the faculty member consulting must obtain consent using the HCH375 Consent for Photographing and/or Recording of patients (non-clinical care purposes) form. Because consulting inherently involves being paid for the consulting activity, the Consent Form addresses sale of the non-textual data and whether the information may be further exchanged for remuneration after sale.
- ii. In the event a consulting approval is obtained, the faculty member is personally responsible for assuring the non-textual patient data is maintained in a secure manner and if consent is required according to the guidelines of this policy, only used as described in the HCH375 Consent for Photographing and/or Recording of patients (non-clinical care purposes) form signed by the patient.
- iii. The University's consulting policy is specific to faculty only. All other staff members are prohibited from obtaining non-textual patient data for any external purpose that may involve royalties or sale absent approval by the Department Chair or Administrative Officer and unless reviewed with the UConn Health Privacy Officer.

E. Photographing or Recording of Patients for Internal / External Education or any Other Non-UConn Health External Use/Purpose - Unless de-identification contradicts the purpose of the intended use, whenever possible, patient images should be de-identified (e.g., identifiers such as patient name, medical record number/encounter number and date of birth should be removed or redacted/blocked out, facial images should be cropped so that the entire face is not showing, patient's eyes and nose should be blocked out, etc.) See UConn Health policy [# 2003-29 Creation, Use and Disclosure of De-Identified Protected Health Information](#)

Additionally: Whenever a patient would recognize the data as his/her own or the data cannot be de-identified, written consent using Form HCH375 Consent for Photographing and/or Recording Data of Patients (non-clinical care purposes) must be obtained and placed in the patient's medical record prior to obtaining the data.

1. Photographing or Recording for UConn Health Publicity or Marketing

Obtaining non-textual data of patients taken for UConn Health publicity or marketing must be approved by The Office of Communications and must accurately represent the organization. All non-textual data obtained for such purposes that will be heard or seen by non-UConn Health audiences must have a written consent using Form HCH375 Consent for Photographing and/or Recording Data of Patients (non-clinical care purposes). This data will be maintained in UConn Health's Office of Communications and shared internally and externally as determined by the Office in accordance with the consent form.

The following procedures must be followed:

- a. The UConn Health staff will contact The Office of Communications prior to obtaining the data.

- b. The Office of Communications will determine the need and level of its involvement and will decide who will obtain consent from the patient or his/her legal representative.
- c. If a patient or legal representative intends to work with any outside individual or agency media or marketing outlets, UConn Health's Office of Communications must be notified, and will obtain consent on Form HCH375 Consent for Photographing and/or Recording of Patients (non-clinical care purposes).
- d. UConn Health Sponsored Public Events: Obtaining non-textual data at public events does not require consent.

F. Research

Obtaining non-textual data of patients for research purposes requires an IRB approved informed consent.

G. Photographing and/or Recording Conducted or Arranged by Patients/Families

1. For Personal Purposes – Patients and their families/friends do not have a right to, but may, under certain circumstances, photograph or record on UConn Health's premises for their own personal purposes using their own devices. Photographing or recording is not permitted and must be discontinued immediately if it interferes with the UConn Health's clinical care or service to its patients, patient privacy and/or dignity, security, or efficient operations. UConn Health's staff members have the discretion and authority to require that such photographing or recording be discontinued. Where and when permitted, photographing and or recording by patients and/or their family members/friends/others as designated by the patient also is subject to the following:
 - a. Families or friends of a patient or others designated by the patient may only photograph or record that patient. No other patients may be included in the photograph or recording.
 - b. Photographs and recordings of UConn Health faculty or staff may be taken with their verbal permission.
 - c. Photographs and/or videotaping is allowed in the delivery room before and during labor or after the birth. Videotape of the actual birth is not allowed, however, photographing may be allowed at time of actual birth at the discretion of the delivering provider.
 - d. Photographs and recordings taken by family/friends are not entered into the medical record.
 - e. When a patient requests a UConn Health employee to take a photograph or recording solely for the patient's personal use, written consent is not required.
 - f. Photographs of newborns are managed by the Newborn Nursery under vendor contract.
 - g. Photographs of inmates may be subject to limitation on the basis of security concerns.

H. Child or Vulnerable Adult Abuse/Neglect or Domestic Violence

1. Consents for obtaining non-textual data are not required by law for child/vulnerable adult abuse documentation, however the need/benefit to take photographs should be documented in the medical record.
2. In the event it is determined that non-textual data is necessary, the data must be identified with the following information:
 - Patient name
 - Encounter number
 - Medical record number
 - Date and time the data was taken

- Subject matter and body part involved

I. Sexual Assault

UConn Health's Emergency Department follows the State of Connecticut Technical Guidelines for Health Care Response to Victims of Sexual Assault with respect to consent to photograph.

J. Loss of Neonate/Neonatal Death

Photographs or recordings following a neonatal loss are taken for remembrance purposes for the grieving family and handled by the Maternal Child Department in accordance with department-specific policy and procedures.

K. Law Enforcement Purposes

Obtaining patient non-textual data by law enforcement officers and any consent that may be required are the responsibility of the agency employing the officers.

L. Photographing or Recording of Employees

UConn Health employees may not be photographed or recorded without their verbal consent and may refuse to participate in the photographing/recording sessions.

V. ATTACHMENT

Attachment A: Form # [HCH375](#) Consent for Photographing and/or Recording of Patients (non-clinical care purposes)

VI. REFERENCES

- [HIPAA Privacy Rule](#)
- University Policy [Protection of Minors & Reporting of Child Abuse & Neglect](#)
- Hospital Administrative Manual policy [08-085 Patient care; Abuse: Child](#)
- Hospital Administrative Manual Policy [08-086 Patient Care; Abuse: Elderly](#)
- Unit Practice Manual Policies Labor and Delivery, OB/GYN, Newborn Nursery: Cell phone, camera and video equipment
- UConn Health Policy # [2012-07 Legal Health Record](#)
- UConn Health Policy # [2012-06 Designated Record Set](#)
- [Connecticut General Statutes](#) > [Title 17a](#) > [Chapter 319a](#) > § 17a-101f - [Examination by physician. Diagnostic tests and procedures to detect child abuse.](#)
- [Connecticut General Statutes](#) > [Title 17b](#) > [Chapter 319dd](#) > [Protective Services for the Elderly](#)
- [Connecticut General Statutes](#) > [Sexual Abuse and Assault](#)
- Emergency Department Protocol –Sexual Assault – Care of the Patient

Richard Simon (Signed)

4/17/17

Richard H. Simon, M.D.
Chief of Medical Staff

Date

Iris Mauriello (Signed)

4/11/17

Iris Mauriello R.N. CHC
Compliance Integrity & Privacy Officer

Date

Andrew Agwunobi (Signed)

4/19/17

Andrew Agwunobi, M.D., M.B.A.
Chief Executive Officer
Executive Vice President for Health Affairs

Date

New Policy: 7/8/14
Revised: 4/11/17