



RISK NOTE

SUBJECT: Procedures Recorded by Patients or their Families

This Risk Note covers videotaping, digital camera/recorder and cellular telephone recordings where permission to record has been sought by the patient or family. Please refer to our publication entitled: "[When surveillance is turned on the caregiver](#)" for a discussion of surreptitious recording by video or digital camera/telephone.

Patients, clients or their families and/or their paid assistants e.g. doulas may wish to videotape procedures (e.g. birth, circumcision, patient teachings etc.).

The organization is at liberty to refuse any such recordings after considering the reasons for the request to record.

There are several risk management issues to consider before agreeing to or declining recording and development of clear guidelines should assist in resolving disputes.

- 1) All persons who are present during the procedure (e.g. patient, physicians, nurses, technicians etc.) must consent to the recording. Any objections must be resolved to everyone's satisfaction, otherwise the request should be refused. Grounds for refusal should be well considered and documented.
- 2) Establish a list of conditions/restrictions to provide individuals wishing to record certain procedures. For example, "the staff and/or responsible physician may request that recording stop at any point" or "the number of cameras/tripods in any given room is limited to X" or "staff may request that security staff attend to assist in clearing a room in an emergent situation" or "recording without prior consent of all persons affected is forbidden".
- 3) Indicate in the patient's chart that the patient and family have been informed of the restrictions and that the consent of all parties to the recording and their agreement on any conditions/restrictions has been obtained.
- 4) Be clear that the Health Care Agency (HCA) always reserves the right to stop a

recording at any time. Any complications arising during recording will be treated as emergent and the recording must stop.

- 5) Be aware that recordings by family/friends/assistants may eventually be used as evidence in litigation if a serious incident and complaint ensues. These recordings may differ from the documentation and recordings generated by the staff dealing with an emergent situation, especially respecting critical times and subjective measures where there are inconsistencies or omissions in caregiver documentation.
- 6) Non-staff recordings in the form of video or digital imagery with embedded times may ultimately form the basis of preferred evidence in court.
- 7) All parties need to be aware of the potential for electronically recorded images to be used in unanticipated or damaging settings (e.g. internet postings, computer desktop, etc.).

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It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note please contact your organization's risk manager or chief risk officer to discuss.