

Policy Number: **P-46**  
Issue Date: 11/2004  
Values: *Respect People*

Approved by: Executive Leadership Team  
Applies to: Downtown & Community  
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## Patient Consent for Photography or Other Visual or Audio Recordings by Upstate Staff

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| <i>Review Date:</i>  | <i>Change Description:</i>   |
| 03/28/2018           |  |
| <i>Revised Date:</i> | <i>Change Description:</i>   |
| 03/28/2018           | <i>Added section outlining University Police role in investigation and determination of criminal charges</i> |

**Applies to:** All Workforce involved in Patient Care

**Policy:** Upstate staff performing audio and/or visual recordings of Upstate University Hospital patients must obtain a valid consent permitting the audio-visual recording of patients in any medium, including, but not limited to, photographs, videotapes, audiotapes, and filming, from the patient or his/her personal representative prior to recording, with the exception of those uses outlined in Section 1A of this policy.

Recordings of patients by Upstate staff may only be made using Upstate owned or issued devices for purposes outlined in Part 1A of this policy. The use of cell phone cameras or other personal recording devices for such purposes is prohibited with the exception of the following: a) Recordings taken for care and treatment purposes may be done by credentialed medical staff or his/her designee using a personal device and b) an approved SUNY Upstate software application that imports the image directly into the electronic medical record via the SUNY IT System without storing it on the personal device must be used.

Credentialed medical staff may take a photograph for purposes outlined in Part 1A of this policy using his or her personal recording device without an approved image export application in urgent or exigent circumstances. The image, labeled with the patient's name, medical record number and date of recording must be reproduced for inclusion in the medical record as soon as practical and subsequently deleted.

Individuals not affiliated with Upstate may have authority or permission conferred by Upstate to make recordings while at University Hospital, and all such recording activity must comply with this policy.

University Police may be consulted and will fully investigate incidents in which a workforce member records a patient for unauthorized reasons using a personal recording device. If necessary, University Police will pursue criminal charges, as warranted, based on the outcome of the investigation.

(Please refer to policy C-06, Management of Child Abuse and Maltreated Children, for photographs made for purposes related to documentation of child abuse; and policy V-11, Victims of Violence, Abuse, or Neglect, for photographs for purposes related to documentation of injuries.)

**Procedure:**

1. The *Consent for Photography or Other Visual or Audio Recordings form (F81971)* is not required in the following circumstances:
  - A. Recordings that will be maintained as part of the Designated Record Set:
    - Photographs taken for purposes of patient identification
    - The patient has signed an operative consent which permits such recording, as provided for in section 5 below.
    - The recording is made for treatment purposes. The recordings must be labeled appropriately and filed in the medical record.
    - The recording is made for diagnostic medical imaging purposes.
    - The individual is an adult being treated for alleged sexual assault and has signed a consent for the collection of forensic evidence.
    - Educational Communications staff should be contacted upon completion of the recording using a University-owned device to ensure appropriate reproduction of the image and erasure of the image from the recording device.
  - B. Recordings that will not be maintained as part of the Designated Record Set:
    - The recording is for the patient's own use and will not be performed by a representative of Upstate University Hospital (note: Recordings made for the patient's own use must be made by the individual or a third party).
    - The recording is made for child abuse evidentiary purposes.
    - The patient has signed an IRB approved research consent/authorization form, which includes photography or other recordings. These will be maintained as part of the study record when solely for research purposes.
    - The recording is made for any other purpose not outlined above in section 1A of this policy. This includes, but is not limited to, marketing, education, scientific, and accreditation/certification purposes.
    - The recorder is responsible for reproducing images that are not part of the designated record set, with assistance from the IT Help Desk.
2. The *Consent* will be presented to the patient or authorized decision maker and explained by the individual who will be performing the recording and completed. The appropriate box will be checked off denoting the specific purpose and use of recording. (Note: The authorized decision maker is the patient's personal representative, as defined in Upstate University Hospital Administrative Policy, P-35, Personal Representative.)
3. When the patient or personal representative cannot reasonably be afforded the opportunity to sign the *Consent*, or if written informed *Consent for Diagnostic, Therapeutic, Invasive, or Surgical Procedures* is required for procedures requiring such consent but cannot be obtained, the recording may be performed for medical teaching, scientific, and research purposes but may not be used or disclosed until *Consent for Photography or Other Recordings for Marketing, Education, Research, or Scientific Purposes* has been obtained from the patient or his/her personal representative. Efforts to obtain such *Consent for Photography or Other Recordings for Marketing, Education, Research, or Scientific Purposes* will be made as soon as possible. In the event the patient is unable or declines to give *consent*, the recording will be destroyed after 24 hours.

4. If the individual being recorded is a current patient, the signed *Consent* will be retained in the individual's medical record and a copy given to the individual upon request with the exception of part 1B of this policy.
5. A patient or authorized decision maker must provide informed consent if requesting that credentialed medical staff perform recordings during an operative procedure for the patient's own use. Such recordings are not maintained as part of the designated record set.
6. Recordings in the Operating Room: Recordings in the Operating Room are prohibited unless authorized under one of the following provisions:
  - A patient or authorized decision maker may provide informed consent for recordings to be performed by Upstate staff during an operative procedure for the purposes of medical education if he or she is informed by the attending surgeon or his or her designee during the informed consent process that it is anticipated that the procedure or clinical condition of the patient may provide an opportunity to enhance medical education, and the specific information about what will be recorded, the format of the recording, and how it will be used in medical education is adequately explained and understood by the individual providing consent.

A *Consent* is not required for the recording of patients during a procedure for the purpose of medical education if the patient or authorized decision maker has signed the *Consent for Diagnostic, Therapeutic, Invasive, or Surgical Procedures*, following the informed consent process and the *Consent* specifically included the recording for medical education purpose.
  - If the *Consent for Diagnostic, Therapeutic, Invasive, or Surgical Procedures* did not specify permission for recordings and the patient or authorized decision maker has not made a decision in this regard, and the attending surgeon or attending anesthesiologist determines during the procedure that a recording would be useful for medical education purposes, the recording may be obtained by Upstate staff at the direction of the attending surgeon or attending anesthesiologist, but may not be used or disclosed until consent has been obtained from the patient or his/her personal representative on the *Consent For Photography or Other Visual or Audio Recordings* form. Efforts to obtain such consent will be made as soon as possible. In the event the patient is unable or declines to give consent within 24 hours of the making of the recording, the individual who made the recording is responsible to have the recording disposed of or destroyed.
  - A vendor who has been authorized to be present in the operating room, as reflected on the *Consent for Diagnostic, Therapeutic, Invasive, or Surgical Procedures*, and has obtained written consent to record the patient during the procedure from the patient or authorized decision maker, may be permitted by the attending surgeon or attending anesthesiologist to obtain a recording of the patient as long as the activity will not interfere with the care of the patient, and the operating room staff have been provided notice that the vendor will be making a recording and how it will be obtained. If staff will be recorded, staff must first provide verbal permission.

7. **Recordings by Law Enforcement or other authorized agencies:**  
Law Enforcement or other authorized agencies, such as Social Services agencies or Department of Health, may request access to the patient for purposes of obtaining photographs or other recordings, under their authority. Upstate staff will cooperate with such requests, as long as it does not interfere with the medical care of the patient, but will not agree to be recorded and will not conduct the recording. Upstate staff are not required to obtain consent for this activity.
8. **Recordings by Vendors, external media or other external entities outside the operating room locations:**  
A vendor, external media representative, or representative of another external agency who has obtained written consent on the agency's respective consent form to record a patient from the patient or authorized decision maker may be permitted by Upstate staff to obtain a recording of the patient as long as the activity will not interfere with the care of the patient. If staff will be recorded, staff must first provide verbal permission. Upstate staff are not required to obtain Consent for this activity.
9. **Recordings for Research Purposes:**  
Recordings for research purposes may be performed in accordance with an IRB-approved protocol if the patient has signed an IRB approved Consent/Authorization Form to Participate in the study.
10. **In the event that an individual revokes his/her consent to use the recording for the purposes authorized, the recordings will not be used for future purposes but may continue to be used to the extent that Upstate University Hospital has taken action in reliance on the authorization.**
11. **Educational Communications may be contacted to perform recordings of patients for care and treatment purposes. Areas of Upstate University Hospital in which there is a frequent and urgent need to make recordings for care and treatment purposes in which it is infeasible to contact Educational Communications should have a university owned or issued device available and ensure that the device is appropriately secured.**

The employee's immediate supervisor, the Administrative Supervisor, Institutional Privacy Office, or Office of General Counsel should be contacted for any questions or concerns related to the implementation of this policy.

**Education/Related Documents:**

C-06, Management of Child Abuse and Maltreated Children

D-09, Designated Record Set

P-39, Use and Disclosure of Protected Health Information for Marketing Communications

V-11, Victims of Violence, Abuse, or Neglect

**Form Name(s) and Number(s): F81971, Consent for Photography or Other Visual or Audio Recordings**

**Originating Department:** Upstate University Hospital Institutional Privacy and Security Board

**Contributing Department(s):** Upstate University Hospital Office of General Counsel  
SUNY Upstate Medical University Research Compliance

**Evidence-based References:** N/A