

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS[□]

CEJA Report 12 - A-03

Subject: Filming Patients for Educational Purposes

Presented by: Leonard J. Morse, MD, Chair

Referred to: Reference Committee on Amendments to Constitution
 and Bylaws
 (Donna A. Woodson, MD, Chair)

1 Respect for the patient should be central in every interaction within the health care system.¹ This
2 should extend to respect for patient privacy,² and to confidentiality. Indeed, whenever patient
3 privacy or confidentiality is compromised, trust in the patient-physician relationship may be
4 weakened.

5

6 Moreover, the *Principles of Medical Ethics* require physicians to be committed to providing
7 competent medical care for the individual patient; to remain committed to medical education; and
8 to participate in activities that will better public health.³ Although filming for medical education
9 can be used as a tool to facilitate these goals, it can create a conflict between the physician's
10 ethical obligation to protect the privacy and confidentiality of patient,⁴ and a professional
11 obligation to further the education of current and future health care providers. This report
12 examines the balance between patient autonomy and patient privacy, and the educational value of
13 films. Similar ethical concerns exist when filming patients for commercial use. These concerns
14 were examined in CEJA Report 3-A-01, "Filming Patients in Health Care Settings."

15

16 FILMING FOR MEDICAL EDUCATION

17

18 It is important to recognize that filming patients for educational purposes has direct implications
19 in relation to privacy, which itself has become the object of detailed laws including recent federal
20 regulations. Nevertheless, issues arising from filming require analysis from the perspective of the
21 ethics of the patient-physician relationship.

22

23 Filming is an important tool both in teaching and evaluating medical students and physicians-in-
24 training. For example, videotaped patient encounters can be used to demonstrate interviewing
25 skills, physical exam skills, or other specific medical techniques. Films may also be used to
26 review and evaluate the skills of medical trainees.

27

28 Filming offers unique advantages over other forms of observation. Films can be stopped at
29 pertinent points for instruction, something that is not possible during real-time patient encounters;
30 they can be shown to large groups; and they can illustrate rare cases that trainees otherwise may
31 not be exposed to during their training.

[□] Reports of the Council on Ethical and Judicial Affairs are assigned to the reference committee on Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

1 ETHICAL CONSIDERATIONS WHEN FILMING

2
3 Ethical questions that were previously examined in the CEJA Report on commercial filming are
4 re-examined here in light of the unique educational opportunities filming offers.

5
6 *Privacy*

7
8 Privacy limits the access others may have over a person. In law, it is linked to freedom from
9 intrusion by the state or other persons. In the health care context, it generally designates a
10 domain of personal decision about important matters related to bodily integrity. In its report
11 devoted to privacy, the Council referred to four types of privacy relevant to patients: 1) physical,
12 which focuses on individuals and their personal spaces; 2) informational, which addresses
13 personal data; 3) decisional, which focuses on personal choices; and 4) associational, which refers
14 to family or other intimate relations.² In the context of filming for educational purposes, several
15 aspects of a patient's privacy may be affected, since the patient's image and related information
16 will cease to be within the patient's absolute control.

17
18 *Confidentiality*

19
20 In relation to confidentiality, filming for educational purposes raises fewer concerns than when it
21 is intended for commercial broadcast, since the intended viewers are ethically bound to respect
22 confidentiality. Indeed, educational filming may be compared to sharing patient information
23 with medical professionals directly involved in the care of a patient, a common and acceptable
24 practice. For example, Opinion E-7.025, "Records of Physicians: Access by Non-Treating
25 Medical Staff," permits disclosure of personal information without specific authorization when it
26 is (1) relevant to patient care and (2) made to persons who are bound to uphold confidentiality.
27 Arguably, these guidelines may be of limited value if the filming has limited direct impact on the
28 care of the filmed patient. Alternatively, filming may resemble more closely informal case
29 consultations, where all patient identifiers are removed, another generally accepted practice.

30
31 *Patient Consent*

32
33 When privacy or confidentiality may be compromised, it is important that patients be given an
34 opportunity to assess the consequences. In the context of filming, this can be achieved by
35 obtaining the patient's consent. The Joint Commission on Accreditation of Healthcare
36 Organizations maintains that filming patients for medical education is appropriate as long as
37 consent is obtained prior to filming or as soon as possible thereafter and the film is not used until
38 consent is obtained.⁵ The Society for Academic Emergency Medicine also states that educational
39 filming is appropriate provided that informed consent is obtained and patient confidentiality is
40 respected.⁶

41
42 A recent study revealed that current methods of requesting consent from patients for video
43 observation may fail to include the standard components of informed consent, namely: (1) that
44 the patient understands that participation is voluntary, (2) that the procedure is described such that
45 a "reasonable person" can understand, (3) that risks are clearly identified, (4) that a viable
46 alternative is provided (such that the patient knows that his or her care will not be affected if
47 consent is not given), and (5) that the patient is clear about implied benefit (e.g. educational
48 benefits to health care professionals viewing the film).⁷ Failure to inform the patient of these five
49 criteria seriously undermines the patient's ability to make an informed decision.

1 A discussion regarding the potential benefits of filming for educational purposes requires careful
2 attention, because patients may be unclear of the exact purpose of the film. Also, physicians
3 should be mindful that patients may assess benefits very differently. To prevent
4 misunderstanding, potential direct benefits (filming itself may be therapeutic or filming provides
5 information that is subsequently pertinent to the patient's care), should be distinguished from
6 indirect benefits (patients are helping future patients by helping to educate physicians).
7

8 Using films for educational purposes is not intended and is unlikely to benefit a patient medically,
9 so consent should be sought from the patient. Surrogate decision-makers may substitute for the
10 patient only when the patient temporarily lacks capacity to consent to the filming. When the
11 patient regains decision-making capacity, his or her consent should be obtained before the film is
12 used. As in the case of commercial filming, it is permissible to obtain consent for filming from
13 the parent or guardian of a minor child or the guardian of a permanently incompetent patient (see
14 Opinion 5.045, "Filming Patients in Health Care Settings").
15

16 When to Obtain Consent

17

18 Respecting patient autonomy and protecting patient privacy requires that every effort be made to
19 obtain consent before filming for educational purposes. If it is not possible to obtain consent
20 from the patient before filming, then consent must be obtained before using the film for
21 educational purposes. If consent cannot be obtained from the patient or the surrogate, as
22 discussed above, educational use of the film is not justifiable.
23

24 The discussion about the possibility of filming should be afforded all the privacy of any other
25 consent process. Patients should be encouraged to speak candidly about any apprehension they
26 have toward filming. If a patient is inclined to refuse participation, the medical team may offer
27 the patient an opportunity to make a final decision as to the use of the film after reviewing it.
28

29 One study has shown that consenting patients had varied responses to the presence of a video
30 camera.⁸ Physicians should recognize that, at the end of a filmed encounter, patients may regret
31 their decision to allow filming, particularly if they feel it has negatively impacted the clinical
32 encounter. Therefore, a patient's expression of unwillingness for filming to continue, or for a
33 film to be used for educational purposes, should be respected.
34

35 *Filming and Medical Records*

36

37 Some uncertainty persists as to whether audiovisual records of patient-physician encounters are
38 part of a patient's medical record. The American Health Information Management Association
39 states that the recording should be treated as part of the patient's medical record.⁹ It is worth
40 noting that the Privacy Rule under the Health Insurance Portability and Accountability Act offers
41 protections to the designated record set, which is composed of the official medical record and
42 billing record, along with any other information related to the health of an individual or the
43 provision of care and payment for it.¹⁰
44

45 In determining whether to include a film as part of the medical record, it may be appropriate to
46 distinguish between films that may contain relevant information, e.g., films made of a patient
47 interview or made during surgery, and films with little information relevant to the individual
48 patients, such as films used to improve trainees' communication skills.

1 *Error Prevention and Disclosure*

2
3 Educational filming can serve as an important tool to prevent errors. By reviewing films, it may
4 be possible to analyze and discuss complicating factors and help improve the overall competency
5 of physicians. However, because films will allow physicians to scrutinize medical interventions,
6 errors may be more readily detected. In such circumstances, physicians should act in accordance
7 with existing policies on the reporting of errors and follow available ethical guidance on
8 disclosure to patients.
9

10 CONCLUSION

11
12 Filming patient encounters and medical procedures offers an important means to enhance medical
13 education, particularly as audiovisual technology becomes more widely accessible in health care
14 institutions. Educational films can facilitate the demonstration of skills and can also permit
15 detailed evaluation of medical trainees. Physicians should use these educational tools, but should
16 be mindful that filming may compromise patient privacy and confidentiality. With proper
17 safeguards in place, patients should be encouraged to participate in the education of medical
18 students and other physicians in training, including through the use of films in which patients are
19 featured. To ensure that the use of films for education purposes in which patients are featured
20 respects their autonomy and privacy, patients generally should consent prior to the filming. If
21 consent cannot be obtained at that time, nor before use of the film for educational purposes, the
22 film should not be used.
23

24 RECOMMENDATIONS

25
26 The Council recommends that the following be adopted and the remainder of the report be filed:
27

28 It is important to recognize that filming patients for educational purposes has direct
29 implications in relation to privacy, which itself has become the object of recent detailed
30 federal regulations. Therefore, filming for educational purposes in the health care setting
31 should comply with relevant laws and regulations. In addition, filming for educational
32 purposes should be analyzed from the perspective of the ethics of the patient-physician
33 relationship. In this regard, an important distinction can be drawn between filming for
34 commercial purposes (see Opinion 5.045, "Filming Patients in Health Care Settings") and
35 filming for educational purposes, since the latter is performed and viewed by members of the
36 health care team, who are bound by ethical responsibilities regarding patient autonomy,
37 privacy, and confidentiality. Specifically:
38

- 39 1) Informed consent should be obtained before filming whenever possible. If it is not
40 possible to obtain consent from the patient before filming, then consent must be obtained
41 before the film is used for educational purposes. A surrogate decision-maker may give
42 consent for filming only if the patient temporarily lacks capacity to give consent before
43 the filming. When the patient regains decision-making capacity, his or her consent
44 should be obtained before the film is used. In the case of minor children or permanently
45 incompetent adults, consent may be obtained from the patient's parent or guardian (see
46 Opinion E-5.045, "Filming Patients in Health Care Settings").
47
- 48 2) When obtaining consent, physicians should disclose information similar to that provided
49 for other medical interventions, including an explanation of the educational purpose of
50 film, potential benefits and harms (such as breaches of privacy and confidentiality), as
51 well as a clear statement that participation in filming is voluntary and that the decision

1 will not affect the medical care the patient receives. Moreover, physicians should be
2 aware that filming may affect patient behavior during a clinical encounter. The patient
3 should be given ample opportunity to discuss concerns about the film, before and after
4 filming, and a decision to withdraw consent must be respected.
5

6 3) Information contained in educational films must be held to the same standards of
7 confidentiality as other patient information. If filming requires the presence of non-
8 clinical persons, these persons must agree to protect the patient's privacy and
9 confidentiality. Viewing must be limited to health professionals, professionals-in-
10 training, and students in the health professions, unless it has been disclosed to the patient
11 that non-health professionals would view the film and the patient has consented to such
12 viewing. If the film is to be distributed outside the institution in which it was produced,
13 disclosure of the distribution must be made and explicit consent obtained.
14

15 4) Films contain a record of personal patient information. Depending on its content, a film
16 may or may not be considered part of the patient's medical record, and may be protected
17 under privacy law. Irrespective of these legal standards, films should be securely stored
18 and final disposal should ensure that they are properly destroyed.

References are available from the Ethics Standards Group.

REFERENCES

The Council would like to acknowledge with appreciation Ms. Erin Talati for her assistance on this Report.

¹ Council on Ethical and Judicial Affairs. "Principle VIII." *AMA's Code of Medical Ethics: Current Opinions*. 2002-2003 ed. American Medical Association: Chicago, IL.

² Council on Ethical and Judicial Affairs. "Report 2-I-01, Privacy in the Context of Health Care." American Medical Association: Chicago, IL (June 2001).

³ Council on Ethical and Judicial Affairs. *AMA's Code of Medical Ethics: Current Opinions*. 2002-2003 ed. American Medical Association: Chicago, IL. See Principles I, V, VII.

⁴ Council on Ethical and Judicial Affairs. "Principle IV." *AMA's Code of Medical Ethics: Current Opinions*. 2002-2003 ed. American Medical Association: Chicago, IL.

⁵ Joint Commission on Accreditation of Health care Organizations. "Standards – Frequently Asked Questions". JCAHO: Chicago, IL. http://www.jcaho.org/standard/faq/faq_frm.html (Accessed July 26, 2002).

⁶ Society of Academic Emergency Medicine. "Filming of Patients in Academic Emergency Departments." Society for Academic Emergency Medicine Newsletter. May/June 2001.

⁷ Butler, DJ. "Informed Consent and Patient Videotaping." *Academic Medicine*. (2002) 77(2): 181- 184.

⁸ Shafir, MS et al. "Patient Consent to Observation." *Canadian Family Physician*. (August 1995) 41: 1367-1372.

⁹ AHIMA. "Practice Brief: Managing Multimedia Medical Records: A Health Information Manager's Role." *Journal of AHIMA*. (February 1998).

¹⁰ "Standards for Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Parts 160 and 164. Federal Register 65, no. 250 (December 28, 2000).