

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 003
(A-20)

Introduced by: Virginia, American Association of Clinical Urologists, Oklahoma,
West Virginia

Subject: Nonconsensual Audio/Video Recording at Medical Encounters

Referred to: Reference Committee on Amendments to Constitution and Bylaws

Whereas, Fifteen percent of physician-patient visits may be unknowingly recorded with the ubiquitous use of smartphones and other technologies; and

Whereas, Thirty-nine states and the District of Columbia conform to a single-party consent rule for recording a conversation between two parties. Eleven states (California, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Oregon, Pennsylvania, and Washington) require consent of both parties¹; and

Whereas, Audio/video recording of a medical encounter may be of benefit for a patient to recall the pertinent issues and instructions given. Conversely, a covert recording made without the physician or patient's knowledge may erode trust and harm the physician-patient relationship; therefore be it

RESOLVED, That our American Medical Association encourage that any audio or video recording made during a medical encounter should require both physician and patient notification and consent. (New HOD Policy)

Fiscal Note: Minimal - less than \$1,000.

Received: 02/28/20

References:

¹ Elwyn G, Barr PJ, Castaldo M. Can Patients Make Recordings of Medical Encounters? What Does the Law Say? JAMA. 2017;318(6):513–514. doi:10.1001/jama.2017.7511

RELEVANT AMA POLICY

E-3.1.3. Audio or Visual Recording Patients for Education in Health Care

Audio or visual recording of patients can be a valuable tool for educating health care professionals, but physicians must balance educational goals with patient privacy and confidentiality. The intended audience is bound by professional standards of respect for patient autonomy, privacy, and confidentiality, but physicians also have an obligation to ensure that content is accurate and complete and that the process and product of recording uphold standards of professional conduct.

To safeguard patient interests in the context of recording for purposes of educating health care professionals, physicians should:

- (a) Ensure that all nonclinical personnel present during recording understand and agree to adhere to medical standards of privacy and confidentiality.
- (b) Restrict participation to patients who have decision-making capacity. Recording should not be permitted when the patient lacks decision-making capacity except in rare circumstances and with the consent of the parent, legal guardian, or authorized decision maker.
- (c) Inform the patient (or authorized decision maker, in the rare circumstances when recording is authorized for minors or patients who lack decision-making capacity):
 - (i) about the purpose of recording, the intended audience(s), and the expected distribution;
 - (ii) about the potential benefits and harms (such as breach of privacy or confidentiality) of participating;

- (iii) that participation is voluntary and that a decision not to participate (or to withdraw) will not affect the patients care;
- (iv) that the patient may withdraw consent at any time and if so, what will be done with the recording;
- (v) that use of the recording will be limited to those involved in health care education, unless the patient specifically permits use by others.
- (d) Ensure that the patient has had opportunity to discuss concerns before and after recording.
- (e) Obtain consent from a patient (or the authorized decision maker):
 - (i) prior to recording whenever possible; or
 - (ii) before use for educational purposes when consent could not be obtained prior to recording.
- (f) Respect the decision of a patient to withdraw consent.
- (g) Seek assent from the patient for participation in addition to consent by the patients parent or guardian when participation by a minor patient is unavoidable.
- (h) Be aware that the act of recording may affect patient behavior during a clinical encounter and thereby affect the films educational content and value.
- (i) Be aware that the information contained in educational recordings should be held to the same protections as any other record of patient information. Recordings should be securely stored and properly destroyed, in keeping with ethics guidance for managing medical records.
- (j) Be aware that recording creates a permanent record of personal patient information and may be considered part of the medical record and subject to laws governing medical records.

AMA Principles of Medical Ethics: I,IV,V,VIII

The Opinions in this chapter are offered as ethics guidance for physicians and are not intended to establish standards of clinical practice or rules of law.

Issued: 2016

E-3.1.4 Audio or Visual Recording of Patients for Public Education

Audio and/or visual recording of patient care for public broadcast is one way to help educate the public about health care. However, no matter what medium is used, such recording poses challenges for protecting patient autonomy, privacy, and confidentiality. Filming cannot benefit a patient medically and may cause harm. As advocates for their patients, physicians have an obligation to protect patient interests and ensure that professional standards are upheld. Physicians also have a responsibility to ensure that information conveyed to the public is complete and accurate (including the risks, benefits, and alternatives of treatments).

Physicians involved in recording patients for public broadcast should:

- (a) Participate in institutional review of requests to record patient interactions.
- (b) Require that persons present for recording purposes who are not members of the health care team:
 - (i) minimize third-party exposure to the patients care; and
 - (ii) adhere to medical standards of privacy and confidentiality.
- (c) Encourage recording personnel to engage medical specialty societies or other sources of independent expert review in assessing the accuracy of the product.
- (d) Refuse to participate in programs that foster misperceptions or are otherwise misleading.
- (e) Restrict participation to patients who have decision-making capacity. Recording should not be permitted when the patient lacks decision-making capacity except in rare circumstances and with the consent of the parent, legal guardian, or authorized decision maker.
- (f) Inform a patient (or authorized decision maker) who is to be recorded:
 - (i) about the purpose for which patient encounters with physicians or other health care professionals will be recorded;
 - (ii) about the intended audience(s);
 - (iii) that the patient may withdraw consent at any time prior to recording and up to an agreed on time before the completed recording is publicly broadcast, and if so, what will be done with the recording;
 - (iv) that at any time the patient has the right to have recording stopped and recording personnel removed from the area;
 - (v) whether the patient will be allowed to review the recording before broadcast and the degree to which the patient may edit the final product; and
 - (vi) whether the physician was compensated for his participation and the terms of that compensation.
- (g) Ensure that the patient has had the opportunity to address concerns before and after recording.
- (h) Ensure that the patients consent is obtained by a disinterested third party not involved with the production team to avoid potential conflict of interest.
- (i) Request that recording be stopped and recording personnel removed if the physician (or other person involved in the patients care) perceives that recording may jeopardize patient care.
- (j) Ensure that the care they provide and the advice they give to patients regarding participation in recording is not influenced by potential financial gain or promotional benefit to themselves, their patients, or the health care institution.
- (k) Remind patients and colleagues that recording creates a permanent record and may in some instances be considered part of the medical record.

AMA Principles of Medical Ethics: I,IV,VII,VIII

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