



Issuing Department: Internal Audit, Compliance, and Enterprise Risk Management

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Photography Policy

I. Policy Purpose

The purpose of this Policy is to outline NYU Langone Health's requirements for the creation, use, and retention of photographic images in any format.

II. Applicability of the Policy

This Policy applies to employees, officers, faculty, medical staff, residents, fellows, students, volunteers, trainees, vendors, contractors, consultants, sponsored individuals, and agents of NYU Langone Health.

III. Definitions

Consent is the written documentation of the patient's or the patient's authorized representative's agreement for an individual or entity to take photographic images or video recordings.

Individually identifiable means the information (i.e., the photographic images) identifies the individual (i.e., patient) or there is a reasonable basis to believe the information can be used to identify the individual.

NYU Langone Health includes the NYU Langone Health System, NYU Langone Hospitals (including all inpatient and ambulatory facilities), NYU School of Medicine, NYU Grossman Long Island School of Medicine, and all entities that are controlled by any of them, except where specifically excluded. This Policy also has been adopted by the Family Health Centers at NYU Langone (the "FHC"); therefore, for purposes of this policy, "NYU Langone Health" also includes the FHC, and any entity controlled by it, except where specifically excluded.

Photography is the recording of a patient's likeness by a number of visual means, usually by still photographs or video recordings, in any medium, including film or electronic/digital format. Photography also includes live streaming of a patient's likeness. Photography, for the purposes of this policy, does not include diagnostic imaging stored in PACS (picture archive communication system) (e.g., MRI, CT, X-ray, Echo, ultrasound).

Protected health information ("PHI") is any information (including demographic information) created, maintained, received, or transmitted by NYU Langone Health that relates to health status, provision of health care, or payment for health care and can be used to identify the individual.

IV. Policy

This Policy provides general guidance on several types of Photography that takes place at NYU Langone Health and specifically addresses Photography of patients in clinical and academic settings.

The following behaviors related to Photography are not permitted:

1. Photography of patients without Consent, except as provided in this Policy.
2. Use of Photography beyond the scope of Consent.
3. Malicious use of Photography, regardless of Consent.
4. Including others (in addition to the consenting patient) in the image without proper Consent when indicated.
5. Any use of Photography to defame NYU Langone Health.
6. Disrupting patient care through Photography.

Workforce members reserve the right to stop any Photography that is not permitted by this Policy, or any federal, state, or local laws and regulations.

A. Privacy

Individually identifiable photographs and video images of patients are considered PHI and are therefore protected by the Health Insurance Portability and Accountability Act (HIPAA) and New York State privacy laws. An image containing the individual's full face or any individually identifiable unique detail (e.g., a tattoo, birthmark, scar, intake bracelet, or similar marking) is considered identifiable. A patient's image may not be altered in any way to achieve anonymity and avoid the need for consent or authorization.

Individually identifiable photographs may not be sent via text message because these are considered PHI. A secure messaging system, if approved and sanctioned by NYU Langone Health for use for PHI, may be used. Consult with the Privacy Officer as necessary to confirm. If the image must be transmitted electronically, the workforce member must use their NYU Langone Health e-mail account. If permitted by other policies and the image is to be sent outside of the institution (e.g., to non-@nyulangone.org or @med.nyu.edu accounts), Send Safe secure e-mail must be used.

B. Types of Photography

a. Clinical

- i. Obtaining photographs for the assessment, diagnosis, treatment, consultation, or documentation of a condition or illness is considered clinical Photography.
- ii. Patient Consent is generally not required, but may be obtained, for clinical Photography if (1) the images are taken by a NYU Langone Health workforce member, with some exceptions described in this policy and (2) if they are not intended for publication or distribution. Note: written consent is always required for any video recording or live streaming.
- iii. If a non-workforce member is involved (e.g., a professional photographer) or publication or distribution is intended, patient Consent is required. For certain encounters, this Consent is included in the patient's paperwork, for

example, the *Consent for Surgery and/or Interventional Procedures and Medical Treatment*. For others, the *Consent for Medical Photography* form can be used. Prior to any Photography, appropriate contracts (e.g., business associate agreement) and Consents must be in place with the non-workforce member/company.

- iv. Physical and sexual assault (domestic violence and child abuse) photographs are considered clinical Photography. However, there are additional specific procedures for creating, using, and documenting these types of images. Patient Consent must be obtained using the appropriate consent form.
- b. Academic
 - i. Academic Photography includes the creation, use, live stream, and retention of photographic images for academic purposes, such as teaching or education.
 - ii. Patient Consent must be obtained prior to taking photographic images for use in the academic setting. The *Consent for Medical Photography* form should be used or the *Consent for Surgery and/or Interventional Procedures and Medical Treatment* form if appropriate.
 - iii. Prior to use in an internal (i.e., all recipients of information are NYU Langone Health workforce members) educational setting, the image should be de-identified to the extent possible to carry out the educational purpose, in line with the minimum necessary requirements. Complete de-identification is ideal.
 - iv. Prior to use in an external (i.e., if one or more recipients of the information is not a NYU Langone Health workforce member) educational setting, the image must be completely de-identified in accordance with NYU Langone Health policies and procedures and HIPAA. In the limited circumstances where the image cannot be de-identified, the use of identifiable images may be permitted if the patient has signed the *Authorization for Use and Disclosure of Protected Health Information for Academic Purposes* form.
- c. Marketing, Fundraising, Media Relations
 - i. The Office of Communications and Marketing and the Office of Development are responsible for obtaining Consent and/or authorization, from patients and non-patients, for the use of images for marketing, advertising, fundraising, or other related activities. Consult the respective office or the Office of Internal Audit, Compliance, and Enterprise Risk Management for further guidance.
- d. Research
 - i. Photography for the purpose of research must be approved by the Institutional Review Board (“IRB”). Consent for such images must be incorporated into the form for participation in the research protocol. Consult the IRB standards or the IRB’s website for further clarification.
- e. Patient and Visitor
 - i. Photography carried out independently by patients and their visitors is not prohibited by this Policy. However, such Photography may be prohibited by other NYU Langone Health (including NYU Langone Hospitals and

NYU School of Medicine) policies. Patients are not permitted to photograph staff unless the individual staff member has verbally agreed to the photograph. This is referenced in the Patients Responsibilities document. Consult the Office of Communications and Marketing or the Patient Experience department for further guidance.

C. Equipment

Photographs, for purposes described in this Policy, should only be taken using department cameras, Medical Center Information Technology (MCIT) issued or encrypted devices, secure MCIT approved applications, such as Epic Haiku or Canto, or by approved third parties when applicable. Personal devices should not be used, unless the device is managed by MCIT and a secure application, as noted herein, is used.

D. Storage

Identifiable images must be stored securely. Images used for clinical purposes must be stored in the electronic health record (i.e., Epic). Film or video recordings that cannot be uploaded to the electronic health record must be stored on the MCIT network drive (e.g., H or G drive) or on an MCIT approved alternative (e.g., an MCIT encrypted hard drive or device). Non-clinical identifiable images, used pursuant to patient authorization or for only internal academic purposes as described below, must be stored on the MCIT network drive (e.g., H or G drive), with access limited in accordance with the minimum necessary standard, or if necessary to be stored on a portable device, on a secure encrypted device (e.g., IronKey).

Retain all documentation, including consent forms and patient authorization forms, for a minimum of six (6) years or in accordance with NYU Langone Health's Document Retention Policy.

E. Live Stream

Photography or video from surgical/interventional procedures may only be live streamed and saved for academic purposes.

F. Intellectual Property

Photographs which include or potentially could include confidential or sensitive business information (e.g., intellectual property) are not permitted to be published, posted, or otherwise shared (including on the NYU Langone Health website) without prior approval from the Office of Legal Counsel. Any question with respect to whether or not an image contains this type of information should be directed to the Office of Legal Counsel.

G. Implied Endorsements

Photographs which have the potential to imply an endorsement (e.g., a physician standing in front of a branded machine) must be approved by the Office of Communications and Marketing before publishing, posting, or otherwise sharing on media including, but not limited to, the NYU Langone Health website, publications, and marketing materials.

V. Procedures

A. General

1. Periodically check devices to ensure that photographs have been deleted, once properly stored in the record.
2. According to each department's procedures, appoint an individual to familiarize themselves with the device, to be able to instruct others on the use of the device and on the process to upload images to the electronic health record.
3. Periodically check the device to ensure it is working properly and has not been misplaced.

B. Clinical Photography

1. Only clinical care staff members (e.g., Physicians, Fellows, Residents, Physician Assistants, Nurse Practitioners, Nurses, and Medical Assistants), employees designated as medical photographers, or approved non-workforce members are permitted to take photographs for clinical Photography purposes, except that non-workforce members are **not** permitted to take photographs documenting suspected child abuse, domestic violence, and/or sexual assault.
2. Obtain patient Consent if required pursuant to this Policy, using the *Consent for Surgery and/or Interventional Procedures and Medical Treatment*, the *Consent for Medical Photography*, or the *Consent for Sexual Assault Exam and Evidence Collection* form. No Consent to photograph a child's injuries is required for cases which will be reported to the New York State Central Registry (suspected child abuse or maltreatment). Consent, using the *Consent for Medical Photography* form, is needed for cases which are not reported.
3. Take all photographic images in accordance with other NYU Langone Health and department procedures.
4. Document in the electronic medical record that photographs were taken.
5. Store the image securely by using the appropriate method:
 - a. Upload the image to the electronic medical record (i.e., Epic), in the media tab to the extent possible at the time of acquisition and not to exceed the next business day.
 - b. If appropriate, prepare the images for secure storage by uploading the image to NYU Langone Health email and sending to the Health Information Management (HIM) department (himphotos@nyulangone.org). HIM is responsible for uploading these images for secure electronic storage (e.g., OnBase). HIM is responsible for the release of these photos when requested and in accordance with all federal, state, and local laws and regulations.
 - c. If part of the treatment is obtaining identifiable video or film Photography, the recordings must be saved securely and made available to a patient upon request if the film and/or video are part of the designated record set.
6. Upload, if required, the signed Consent form to the electronic medical record (i.e., Epic).
7. Delete the image from the device in a timely fashion, following confirmation of the upload.

C. Academic Photography

1. Obtain patient Consent to be photographed or live streamed for use of the image for an academic purpose, using the *Consent for Medical Photography* form, if Consent is not already obtained using the *Consent for Surgery and/or Interventional Procedures and Medical Treatment* form.
2. For internal use, as described above, de-identify the image to the extent possible in accordance with the HIPAA Privacy Policies *Minimum Necessary Standard for Uses and Disclosures of PHI* and *De-Identification of PHI and Limited Data Sets* prior to using for the intended academic purpose.
3. For external use of images not de-identified in accordance with NYU Langone Health's HIPAA Privacy Policy *De-identification of PHI and Limited Data Sets*, obtain patient authorization to use and disclose PHI using the appropriate HIPAA authorization form based on the use or disclosure of the PHI (e.g., for academic purposes use the *Authorization for Use and Disclosure of Protected Health Information for Academic Purposes* form). Consult with the Privacy Officer on the appropriate form as necessary. This is a separate and distinct obligation from obtaining patient Consent to be photographed.
 - a. Upload the authorization form to the electronic health record (i.e., Epic) in the Media tab.
4. Providers who wish to save operating room live stream content for academic purposes must select and de-identify to the extent possible, in accordance with the HIPAA Privacy Policies *Minimum Necessary Standard for Uses and Disclosures of PHI* and *De-Identification of PHI and Limited Data Sets*, the material within thirty (30) days of the procedure. Material may only be saved for future academic purposes. Any use of material which cannot be completely de-identified must will require patient authorization for any external use as described in this Policy and in the HIPAA Privacy Policies. Consult with the Privacy Officer as necessary.

D. Photography for Other Purposes

Consult the appropriate office or policies for procedures related to marketing, fundraising, media relations, research, and patient/visitor Photography.

VI. Policy Enforcement

NYU Langone Health leadership is responsible for enforcement of this policy and will be supported by the Office of Internal Audit, Compliance, and Enterprise Risk Management. Violations of this Policy are subject to disciplinary action, up to and including termination of employment or association with NYU Langone Health, in accordance with NYU Langone Health disciplinary policies and procedures applicable to the individual in question.

VII. Related Policies and Documents

Abuse Reporting Policy

Authorization for Use and Disclosure of Protected Health Information for Academic Purposes

Consent for Medical Photography

Consent for Sexual Assault Exam and Evidence Collection

De-identification of PHI and Limited Data Sets

Epic Tip Sheets for Uploading Photographs, including Importing Photos and Haiku Clinical Image Capture
Filming, Videotaping, Photographing or Publicizing Medical Conditions or Care/Treatment for Personal or Professional Reasons at NYU Langone Health
Media Interviews, Filming, Videotaping or Photography on NYU Langone Health’s Campus
Minimum Necessary Standard for Uses and Disclosures of PHI
Photographs of Suspected or Actual Abuse Victims, Taking of
Requests for Filming and Photography at NYU Langone Health Facilities for Commercial or Entertainment Purposes

VIII. Version History

April 1, 2015	Original Policy
November 3, 2016	Reviewed and Revised
December 21, 2017	Reviewed and Revised
April 30, 2018	Reviewed and Revised
August 1, 2019	Reviewed and Revised

This version supersedes all NYU Langone Health (as defined in this Policy) previous policies, including but not limited to NYU Langone Hospitals NYU School of Medicine, Lutheran Medical Center, and Winthrop University Hospital.