The Use of Electronic Recording Devices (for GP Practices) Policy

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| Version Control |
| Developed in response to: | Practices requirements best practice  |
| Prepared By: | GP DPO Team NHS Kent & Medway CCG |
| Implemented By:  | Kent & Medway GP Practices Staff members |
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Quick Reference Guide

For quick reference, this page summarises the actions required by this policy. This does not negate the need to be aware of and to follow the further detail provided in this guidance.

This guidance provides clarity over:

* the potential legalities of staff being recorded whilst delivering services and care to patients and service users either by mobile devices or static CCTV systems [covert or overt] at the Practice’s premises or patient’s home;
* the appropriateness of service users and patients recording themselves and/or other patients when receiving care from **St Peters Surgery**; and
* processes to be followed where inappropriate recording is taking place.

**This guidance recognises that often staff will feel uncomfortable in the knowledge that they are being filmed, but should not terminate any consultation unless there is a valid reason to do so.**

**1.0 Introduction**

1.1 **St Peters Surgery** recognises that the ease and ability to record interactions has increased the likelihood of staff to patient and patient to patient interactions being recorded. Mobile devices with recording facilities are widespread and ownership of them now considered the norm.

1.2 Staff should bear in mind that just because a patient or their relative wishes to record a consultation or treatment, this does not automatically breach the Data Protection Act or Human Rights; furthermore there are times when it may be considered good practice for a patient or relative of a patient to record an interaction.

1.3 Similarly, family members may have recording devices set up e.g. CCTV in their loved ones homes and these may capture recordings of staff and carers who attend to deliver care. The camera may not have been set up to specifically record the interactions; but simply by being in situ records visits.

1.4 This policy is based on [NHS PROTECT’s guidance on ‘Patients recording NHS staff in health and social care settings’, dated May 2016](https://www.whatdotheyknow.com/request/379944/response/916674/attach/html/3/Patients%20recording%20NHS%20staff%20in%20health%20and%20social%20care%20settings%20guidance%20May%202016.pdf.html); the Care Quality Commission (“CQC”) [‘Using surveillance in your care service’](https://www.cqc.org.uk/guidance-providers/all-services/using-surveillance-your-care-service), last update June 2019; and the CQC [‘Using cameras or other recording equipment to check somebody's care’](https://www.cqc.org.uk/contact-us/report-concern/using-cameras-or-other-recording-equipment-check-somebodys-care), last updated June 2019.

1.5 In providing health and social care services to patients on site or at patients’ home, **St Peters Surgery**would consider the Department of Health, Social Services and Public Safety (DHSSPS) guidance on mental health regarding Deprivation of Liberty (DOLs) and incorporate the principles of “best interest” and “least restrictive intervention” whenever possible.

1.6 The CQC and the ICO both regulate things that are relevant to surveillance. And where such device is used to keep people safe or monitor their wellbeing, the CQC treat this a as part of their care. And this means it must meet the regulations under the Health and Social Care Act.

**2.0 Purpose**

2.1 The purpose of this policy is to ensure:

* That staff members are aware of the legal rights of both staff and patients (or their legal representative) who wish to record their medical consultations or treatments through the use of portable recording devices including CCTV on **St Peters Surgery’s**premises or during visits to patients’ homes, including both overt and covert recordings, either with or without the knowledge or permission of those being recorded; and
* That under no circumstances are the personal safety and wellbeing of all parties is compromised.

2.2 This policy informs staff about when recording is clearly not being used for legitimate purposes but intended to be used as form of abuse or threats and intimidation to staff.

2.3 This policy contains information on the management and guidance to staff in relation to patients (or their legal representative) who wish to record their medical consultations or treatments through the use of portable recording devices including CCTV on **St Peters Surgery***’s* premises or at patients’ home, including both overt and covert recordings both with and without the knowledge or permission of those being recorded at all **St Peters Surgery**sites and service users’ properties.

2.4 Applicable recording devices include but are not limited to mobile telephones, cameras, audio recording, microphones, CCTV etc. Notably, this is not an exhaustive list.

**3.0 Scope and Definitions**

 Scope

3.1 This document applies to all directly and indirectly employed staff by the Practice and other persons working for the practice been recorded in audio and/or visual images whether overt or covert in their actions by patient, their relative(s), representative(s) or any other party.

3.2 This policy covers both overt and covert recording and both video and audio recording of medical consultations or treatments through the use of portable recording devices or CCTV on the Practice’s premises or whilst delivering care in a patient’s home using a hidden recording device and without the knowledge or explicit permission of those being recorded.

3.3 There are no specific legal requirements that govern an individual making a personal recording of their medical consultation or treatment, either overtly or covertly, for their private use. Unlike medical professionals, who are expected by the General Medical Council to obtain patients' consent to make visual or audio recordings, patients do not need the health professional’s permission to record a medical consultation or treatment. Recordings made to keep a personal record of what the doctors said are deemed to constitute ‘*note taking’* and are therefore permitted when undertaken for this purpose. While a patient does not require permission to record their consultation, common courtesy would suggest that permission should be sought in most cases.

3.4 The content of the recording is confidential to the patient, not the doctor or healthcare staff. The patient can waive their own confidentiality as they wish; this could include disclosing the details of their consultation with third parties or even posting and/or sharing the recording in unadulterated form on the internet through social media.

3.5 The position may, however change once a recording is no longer used as a record of the consultation, for example where the recording is disclosed or publicised in a modified way which is not connected to the consultation. This could include an instance where it is designed to cause detriment to or harass another individual captured in the recording. Any such disclosure or publication, depending on the nature and context, may attract a civil action for damages and may also be a criminal offence.

 **Definitions**

3.6 Throughout this policy, the term ‘recording device’ automatically includes mobile phones, camera phones, laptops and chargers, tablet computers, CCTV and any device which connects to the internet or has the capacity to record either sound or pictures.

3.7 Throughout the policy, the terms patient and service user will be used to refer to any registered patient of **St Peters Surgery**

3.8 CCTV refers to Closed Circuit Television systems which can be overt (able to be seen) or covert (hidden). **St Peters Surgery**does not operate any covert system on its premises.

**4.0 Responsibilities**

4.1 The Accountable Person for the Practice: The senior partner has overall responsible for the health, safety and welfare of all persons on premises.

4.2 The Information Governance Lead: The Practice Manager will ensure the following:

* compliance with this policy on behalf of the Accountable Person;
* provide support and guidance at senior management Level for matters relating to security and welfare of Practice’s employees, service users and visitors;
* monitor the effectiveness of this policy..
* the point of contact to provide further advice as incidents may lead to other sanctions and legal, police or safeguarding involvement.

4.3 Data Protection Officer (DPO): The CCG appointed GP DPO may offer some support and guidance on compliance with the terms of this policy.

4.4 Medical Staff

* Medical staff should be aware of and familiarise themselves with the guidance issued by the Medical Ethics Department of the British Medical Association in relation to patients wishing to record consultations and meetings with medical staff; and
* Medical staff must warn any patients wishing to record consultations or meetings of the notes documented in the ‘Recordings’ section of this policy.

4.5 All Staff

* Staff are responsible for complying with this policy and behaving in an appropriate way in relation to patients recording practice’s staff in health and social care settings; and
* Staff must warn any patients wishing to record consultations or meetings of the notes documented in the ‘Recordings’ section of this policy.

4.6 Training

There are no specific training requirements for this policy but all staff should ensure that they are in date with regards to training relating to managing conflict and aggression as this will support them in managing potentially challenging behaviour that may be triggered by asking a person to stop recording or using their device in a way that causes upset or offense.

5.0 The Law

5.1 Overview:

* There are no specific legal requirements that govern an individual making a personal recording of their medical consultation or treatment, either overtly or covertly, for their private use. Recordings made to keep a personal record of what the NHS professional said are deemed to constitute ‘note taking’ and are therefore permitted when undertaken for this purpose. While a patient does not require permission to record their consultation, common courtesy would suggest that permission should be sought by the patient in most cases.
* The content of the recording is confidential to the patient, not the doctor or healthcare staff. The patient can waive their own confidentiality as they wish; however, this could include disclosing the details of their consultation with third parties or even posting and/or sharing the recording in unadulterated form on the internet through social media sites.
* The position may, however, change once a recording is no longer used as a record of the consultation, for example where the recording is disclosed or publicised in a modified way which is not connected to the consultation. This could include an instance where it is designed to cause detriment to or harass another individual captured in the recording. Any such disclosure or publication, depending on the nature and context, may attract a civil action for damages and may also be a criminal offence.

General Data Protection Regulations (GDPR)

The recording of a consultation is likely to constitute processing of personal data under the Data Protection Act 2018 and as such it has to comply with the provisions of the GDPR. There is an exemption in the DPA where personal data is processed by an individual for their own personal purposes. In such cases, the ‘processing’ does not engage the data protection principles of the act (the ‘domestic purposes’ exemption). However, further processing of the data would have to comply with the DPA 2018.

Potential legal action

If any part of a covert or overt recording of the patient’s consultation or members of the public, visitor and relatives, is disclosed to a third party without the prior consent of the other recorded parties, then depending on the nature and the context of such disclosure, a criminal offence may be committed, civil legal action may be taken for injunctions or damages, or a breach of the GDPR may occur.

5.2 Criminal offences

Criminal offences could arise from unauthorised disclosure of recordings, depending on how that disclosure or publication is made such as some postings placed on the internet and social media. However, the most likely offences could include:

1. An offence contrary to section 1 of the ‘Protection from Harassment Act 1997’: It is an offence under this provision to cause distress and upset to an individual if knowing that such action will cause distress and upset. This could apply if any individuals use the act of recording with the intention to cause distress and upset.
2. An offence contrary to section 4, 4A or 5 of the ‘Public Order Act 1986’;
3. An offence contrary to section 1 of the ‘Malicious Communications Act 1988’; or
4. An offence contrary to section 127 of the ‘Communications Act 2003’.
5. Criminal Justice and immigration Act 2008: If an individual is clearly recording with the intention to cause a nuisance then they may be committing an offence under the ‘Criminal Justice and Immigration Act 2008’ (section 119). This applies to persons who are not seeking medical advice, treatment or care could commit the offence if they, for example, use a mobile phone in such a way as to cause a nuisance or disturbance to any of our staff member and where they fulfil the other elements of the offence (subject to certain safeguards set out in the act).
6. Defamation: Actions for libel can be brought in the High Court for any published statements which are alleged to defame a named or identifiable individual (or individuals’; under English law companies are legal persons, and allowed to bring suit for defamation) in a manner which causes them loss in their trade or profession, or causes a reasonable person to think worse of him, her or them. A statement can include an implication; for instance, a photograph or image in a particular context (for example, a photograph with an accompanying headline implying wrongdoing or incompetence) could be held as a personal allegation about the individual featured in the photograph.

This list is not exhaustive and the specific offence charged would depend on the facts.

**6.0 Recordings**

6.1 Overt patient recordings

Although we cannot place restrictions on a patient wishing to record notes of a consultation or conversation with a health professional, where it is felt absolutely necessary by the patient to do so, we should ensure that:

* any recording is done openly and honestly;
* the recording process itself does not interfere with the consultation process or the treatment or care being administered;
* the patient understands that a note will be made in their health record stating that they have recorded the consultation or care being provided;
* the patient is reminded of the private and confidential nature of the recording and that it is their responsibility to keep it safe and secure;
* any recording is only made for personal use;
* patients are aware that the misuse of a recording may result in criminal or civil proceedings; and
* Patients are discouraged from undertaking recordings in the first place, unless it is deemed absolutely necessary by highlighting the above responsibilities.

6.2 Covert patient recordings

Although we cannot place restrictions on a patient wishing to covertly record a consultation or conversation with a health professional, where organisations are aware that covert recording is a significant issue they should aim to discourage patients from doing so by ensuring that:

* the organisation promotes the open and honest recording of consultations, where a patient deems it absolutely necessary (see the advice above, which applies equally to covert recording);
* patients are aware that the organisation takes proactive steps to investigate and address any issues regarding the patient’s treatment and care, to avoid them feeling it necessary to record their consultation;
* relevant staff should consider providing patients with a written record summary, and or a verbatim record (if practical) of their consultation for their own personal us;
* patients are advised that they are entitled to see their notes, if they so wish, by informally asking the healthcare professional in charge of the consultation, or to request a paper copy of their medical notes formally through a Subject Access Request (SAR) made under the General Data Protection Regulations May 2018. An application form is available on the Practice’s website; and
* patients are given information on how they can complain if they have an issue with their treatment and care, and their attention is drawn to the relevant guidance from the Care Quality Commission and Information Commissioner’s Office.

6.3 Recording of images in a clinical setting

* Patients or their relatives/carers may request to record the consultation or treatment. It should be considered that any recording forms part of the patient’s records and it could be good practice to ask for a copy of the recording to be stored within the medical records. It could also be good practice for a patient or their relative to record the consultation to refer to at a later stage as it increases the likelihood of guidance being followed improving patient’s well-being and safety.
* Health professionals such as GPs cannot without just cause, refuse to allow the consultation as this could potentially put a patient’s well-being and safety at risk.
* Patients/service users and carers are likely to bring mobile phones and electrical devices when attending appointments or for treatment. At all times the responsibility for the device remains that of the patients and **St Peters Surgery**takes no responsibility for any loss or damage.
* There will be other patients present within the clinic settings and they will have a rightful expectation that their patient confidentiality is upheld. The taking of photographs and recordings may not be taken within the waiting areas or public areas; this also includes the taking of “selfies” where other patients’ may be captured in the image or recording. Any agreed filming or pictures taken must be supervised to ensure no peripheral individuals are captured in recordings;
* The Practice has a duty to safeguard patient’s and staffs privacy and dignity and therefore any such actions involving the filming or picture recording should be stopped and images deleted;
* If individuals refuse to stop filming or delete images after being asked to, the most senior member of staff must consider the impact on other patient’s confidentiality and determine if the patient should be asked to leave; and
* If such unauthorised filming actions become aggravated, the police must be called.

6.4 Patient’s home

Patients or their legal representatives may have CCTV installed within their property or use portable recording devices to record interactions or consultation with visiting staff members. While staff may feel uncomfortable with being recorded, it would be inappropriate to decline to treat a patient because the recording is being made.

7.0 Audit and incident reporting under this policy

7.1 All incidents where a patient or visitor has photographed or recorded staff members or another patient/service user, other than their own family/friend, at the Practice’s premises or at patient’s home or any applicable site must be reported to provide a record of the incident and an audit trail. The report must include details of the actions taken as a result of the incident.

7.2 When staff becomes aware that inappropriate images have been uploaded to social media then they may report the “posting” as inappropriate so that the site may remove the images and narrative. Where appropriate the Information Governance Lead can provide support.

7.2 This policy will be audited by the practice manager on an annual basis. This audit will look at recorded incidents where staff members have reported incidents of recording by patients in line with the provisions of this policy.

8.0 Communication

8.1 The policy will be made available on the Practice’s intranet & website.

8.2 This Policy will be issued to Dr S Goldberg and Dr I Ali

9.0 References

* The Medical Ethics Department of the British Medical Association guidance;
* NHS PROTECT guidance on Patients recording NHS staff in health and social care settings, dated May 2016;
* NHS PROTECT ‘Misuse of social media to harass, intimidate or threaten NHS staff’;
* Protection From Harassment Act 1997;
* Public Order Act 1986 • Malicious Communications Act 1988;
* Communications Act 2003.
* General Data Protection Regulations (GDPR) May 2018;
* Data Protection Act (DPA) 2018;
* CQC Guidance - Thinking about using a hidden camera or other equipment to monitor someone’s care’; and
* Department of Health, ‘Using mobile phones in NHS hospitals’, (2005,2009)

**Appendix 1:** Patient information regarding the making of recordings

**Appendix 1**

Patient information regarding the making of recordings

**Overt patient recordings**

Although we cannot place restrictions on a patient wishing to record notes of a consultation or conversation with a health professional, where it is felt necessary by the patient to do so, we ask that:

* Any recording is done openly and honestly to avoid damaging the therapeutic relationship;
* The recording process itself does not interfere with the consultation process or the treatment or care that is being administered;
* You understand that a note will be made in your health records stating that you have recorded the consultation or care being provided;
* You are reminded of the private and confidential nature of the recording and that it is your responsibility to keep it safe and secure;
* The recording is only made for personal use;
* You are aware that the misuse of any recording may result in criminal or civil Proceedings;
* You are discouraged from undertaking recordings in the first place unless it is deemed necessary and to ensure that there is a clear understanding of advice, guidance and instructions provided.

**Covert patient recordings**

Although we cannot place restrictions on a patient wishing to covertly record a consultation or conversation with a healthcare professional, where we become aware that covert recordings are being made, we must remind patients that:

* We promote open and honest recording of consultations where it is deemed necessary by patients;
* We will take proactive steps to investigate any concerns that the patient or their family may have with regards to the patient’s care to avoid them feeling the need to install covert recordings;
* Staff can provide a written record summary, and/or verbatim record if practical) of their consultation;
* As a patient, you are entitled to see your notes, if you so wish by formally asking the healthcare professional in charge of the consultation, via the NHS App or to request a paper copy of your medical notes formally through a Subject Access Request (SAR) made under the GDPR and DPA 2018.
* If you are unhappy with your treatment or care you may raise a complaint.

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| I ………………. (a registered patient with **St Peters Surgery**/ legal representative of a registered patient with xxx Practice) confirm that I have read and understand the above stated information provided by **St Peters Surgery** |
| Name *(of patient)*:  |  |
| Authorised Signatory name *(if applicable)* |  |
| Signature: |  |
| Date: |  |