

CLINICAL IMAGES (PHOTOGRAPHY/ VIDEO/ AUDIO RECORDINGS) OF PAEDIATRIC PATIENTS

POLICY AND PROCEDURE

DOCUMENT SUMMARY/KEY POINTS

- A clinical image includes ALL photographs, video or audio recordings which relate to a patient's face, or a patient's body or body part or images of the patient's carer. It also includes any photos or recordings taken of patient data or clinical information.
- For the purposes of a subpoena, a 'document' includes photos and/or video recordings and/or audio recordings.
- Refer to [NSW Health PD2015 047 Photo and Video Imaging in Cases of Suspected Child Sexual Abuse, Physical Abuse and Neglect](#) for information and procedures for forensic clinical images related to child protection matters, or clinical images used in the investigation of a crime.
- Refer to [SCHN Photography, Film and Video Recording for Media, Promotional, Fundraising or Social Events Policy](#) for information and procedures for images that are to be used for public relations, publicity or promotional purposes.
- Written consent must be obtained for all clinical images (photographs and video/audio recordings).
- Clinical photography and audio-visual recordings, whether reproduced in hard copy or maintained in digital format, form a part of the patient's medical record, and are protected under the health information and privacy laws. Compliance with privacy laws and the Health Privacy Principles (HPPs) is mandatory.
- Recordings sent from other organisations or individuals, including patient's, parents or other caregivers, to SCHN staff for consultation, for example, via mobile devices or emails, must be transferred to the electronic medical record (eMR) via the Health Information Unit as soon as practical. The image must then be permanently deleted from the staff member's personal electronic device.

This document reflects what is currently regarded as safe practice. However, as in any clinical situation, there may be factors which cannot be covered by a single set of guidelines. This document does not replace the need for the application of clinical judgement to each individual presentation.

Approved by:	SCHN Policy, Procedure and Guideline Committee	
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Team Leader:	Manager Medical Records	Area/Dept: Health Information Unit

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This Policy/Procedure may be varied, withdrawn or replaced at any time. Compliance with this Policy/Procedure is mandatory.

- Staff may only photograph patients if clinically indicated and express written consent is obtained
- **A Document Imaging (DI) Storage Facility is required for patient photographs that require a higher level of security, with password restricted access only available to selected key holders. Outside of business hours, clinical images can be sent securely via email to the HIU Department for uploading to the DI Storage Facility.**
- Staff MUST NOT take photographs or recordings of patients for private use. It is a breach of Health privacy legislation, and the NSW Health Code of Conduct and disciplinary action may result.

CHANGE SUMMARY

- Document due for mandatory review.
- Amended definition of clinical image to include photos or recordings taken of the patient's carer, clinical data or clinical information.
- Additional section added outlining use of MedSync
- Minor change: included Government Information (Public Access) Act in section outlining relevant NSW privacy laws

READ ACKNOWLEDGEMENT

- All clinical staff are to read and acknowledge that they understand the contents of this policy.
- All other staff are to be aware of this policy.

This document reflects what is currently regarded as safe practice. However, as in any clinical situation, there may be factors which cannot be covered by a single set of guidelines. This document does not replace the need for the application of clinical judgement to each individual presentation.

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Purpose

To establish protocols on the collection, use, disclosure, storage, confidentiality, and security of clinical images at The Sydney Children's Hospitals Network (SCHN).

Define requirements and minimum standards for the collection, use and management of sensitive images and video.

Guide staff when capturing, storing and managing images for the purpose of documenting health and clinical features and informing possible future judicial proceedings that require medical opinion. Clinicians requesting photographs or videos, need to take into account the patient's/carers wishes and understanding of the reason for taking photographs/videos. As well as the immediate and longer term physical, psychological and emotional needs of the child and their parent(s)/guardian, before taking the photos and video images.

Policy Statement

The SCHN shall comply with relevant privacy legislation and NSW Health policy directives with respect to the collection, use, disclosure, storage and security of clinical images. The SCHN **recognises that in different cultures, different body parts are considered sensitive, and effort must be made to demonstrate respect and mitigate harm. In recognition of this, no clinical photography should take place without consent.**

The SCHN also values the privacy of patients and families and recognises that digital recordings are easier to copy and distribute in an electronic form and may be at risk of image manipulation and inappropriate accessing or distribution, therefore compliance with this policy is mandatory.

Scope

This policy applies to **all** staff and students working at SCHN including temporary, causal, contingent workers, Visiting Medical Officers (VMOs) and private contractors. For the purposes of this document, a clinical image relates to a patient or a patient's body (or of the patient's carer) and includes photographs, video or audio recordings (digital or analogue), diagnostic images, or images of reports.

NOTE: This policy does **NOT** apply to **pathology images, medical images, or forensic clinical images.**

Pathology images include photographs or video recordings of any cells, tissues or organs removed from the patient's body; or recorded as part of a non-forensic autopsy.

Medical images include x-ray, fluoroscopy, ultrasound, magnetic resonance imaging (MRI) scan, computed tomography (CT) scan, and computerized axial tomography (CAT) scan.

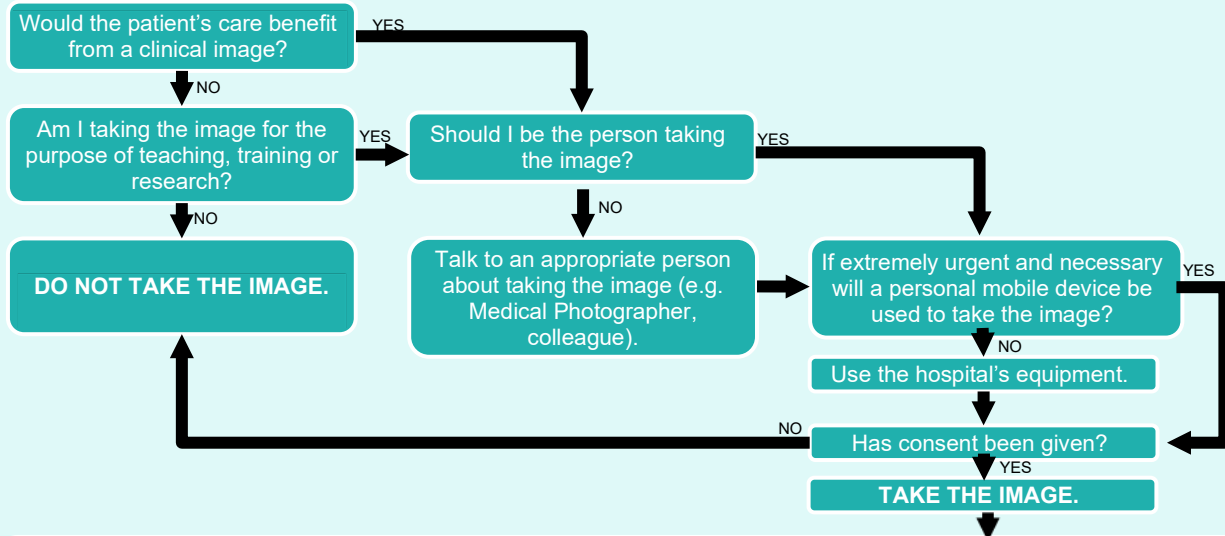
Forensic clinical images are clinical images used in the investigation of a crime and/or in child protection matters. Refer to [NSW Health PD2015 047 Photo and Video Imaging in Cases of Suspected Child Sexual Abuse, Physical Abuse and Neglect](#).

Related Documents

1. [Privacy Manual for Health Information \(2015\)](#)
2. Australian Medical Association's [Clinical images and the use of personal mobile devices](#)
3. [Privacy and Personal Information Protection Act 1998 \(NSW\)](#)
4. [Health Records and Information Privacy Act 2002 \(NSW\)](#)
5. [State Records Act 1998 \(NSW\)](#)
6. [Privacy Act 1988 \(Cth\)](#)
7. [Domestic Violence – Identifying and Responding](#) [PD2006_084]

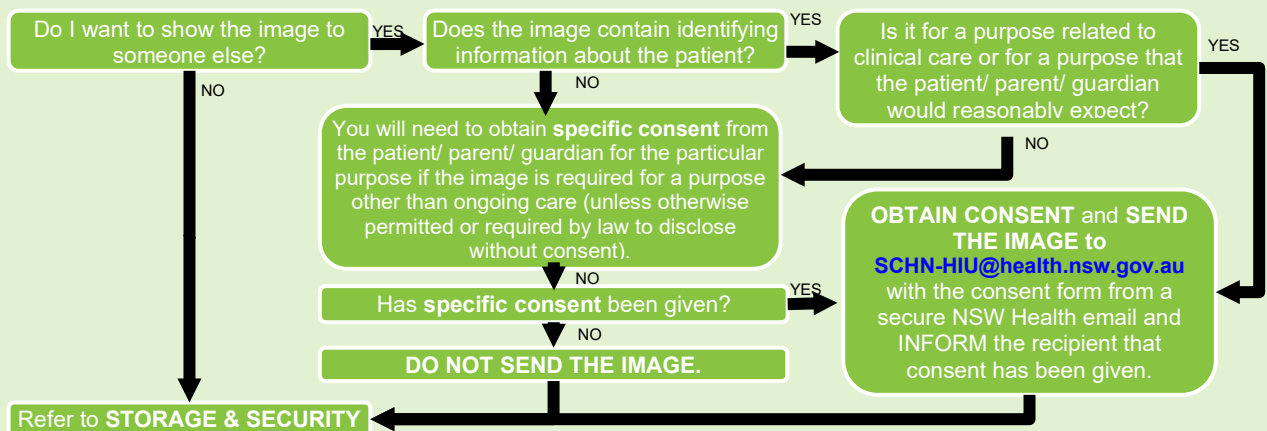
Collection, use & storage of clinical images for use in clinical care

Collection



- Email the image to **SCHN-HIU@health.nsw.gov.au** and include the MRN in the subject line of the email.
- In the email, document who took the image, and the date, time, location and mode of capture.
- If **written consent** is given, ensure the completed consent form is put into the medical record. This can be emailed with the image.
- If **verbal consent** is given, document this in the medical record and ensure the consent form is completed and put into the medical record as soon as practicable.
- If the image was taken on your personal mobile, ensure the image is deleted from the device after emailing it.

Use & Disclosure



Storage & Security

Clinical images taken or received on personal mobile devices for clinical purposes, are part of the patient's Health Record and are property of the hospital/ SCHN.

The recipient of a clinical image cannot forward it to a third party. The recipient must store the image in accordance with HPP5.

Ensure the photos on your personal device do not auto upload.

Ensure your personal mobile device is password protected and secure from unauthorised access.

Delete the image from your mobile device once it has been saved to the medical record.

Record the time, date, mode of capture and the name of the person who took the image.

The clinical image and the completed consent form must be in the patient's medical record.

Adapted from the Australian Medical Association (2014) *Clinical Images and the use of personal mobile devices*.

Health Privacy Principle

Refer to NSW Health's [Privacy Manual](#) or the [Health Records and Information Privacy Act 2002 \(NSW\)](#) for further information on HPPs.

For the purposes of this document and in the context of paediatric facilities, reference to "individual" also includes parent/carer/guardian.

Principle Type	HPP	Description	Summary
Collection Principles	1	Purposes of collection of personal health information	Personal health information must be collected by lawful means and for a lawful purpose. The purpose must be directly related to a function or activity of the organisation AND the collection of the information is reasonably necessary.
	2	Collection and information sought must be relevant, not excessive, accurate and not intrusive	The way the information is sought and collected must be reasonable in the circumstances (having regard to the purposes for which the information is collected).
	3	Collection from individual concerned	Health information about an individual is to be collected from that individual unless it is impracticable or unreasonable to do so. It is reasonable to expect that parents and/or guardians may provide health information about patients and their families.
	4	Individual to be made aware of certain matters	Reasonable steps must be taken to inform the individual about how the information may be used, who may access it (including their right to access), and the consequences of not providing it.
Security Principles	5	Retention and security	Personal health information, including clinical images, held by SCHN must be securely stored and protected against loss or misuse. Retention of information is in accordance with the <i>State Records Act 1998</i> (NSW).
Access and Amendment Principles	6	Information about personal health information held by organisations	As a holder of personal health information, SCHN must allow individuals to find out if information is held about them, the type of information, what the information is used for and how the individual can access it.
	7	Access to personal health information	Individuals must be allowed to access the personal information held about them without excessive expense or delay. There may be some circumstances where SCHN is not required to comply with this provision.
	8	Amendment of personal health information	Individuals may make requests to amend their health information to ensure that it is accurate, relevant, current, complete and not misleading.
Accuracy Principles	9	Accuracy	SCHN must take reasonable steps to make sure that the personal information held is accurate, relevant, current, complete and not misleading.
Use and Disclosure Principles	10	Limits on use of personal information	Personal information is to be used for the purpose for which it was collected (primary purpose). Personal information can be used for another purpose (secondary purpose) such as where there is consent for the use, the use is "directly related" to the primary purpose, for clinical management (including diagnostics), training and research activities, investigation and law enforcement, or where there are serious threats to individuals or the public.
	11	Limits on disclosure of personal health information	Personal health information is only to be disclosed for the purpose for which it was collected (primary purpose). This information cannot be disclosed for another purpose (secondary purpose) unless: the individual has consented to the disclosure; the use is "directly related" to the primary purpose; used for clinical management (diagnostics, training and research activities); investigation and law enforcement; or where there are serious threats to individuals or the public.
Other Principles	12	Identifiers	Identifiers can only be applied to personal health information if it is reasonably necessary for the organisation to carry out its functions, for example, the allocation of a medical record number (MRN).
	13	Anonymity	If it is lawful and practicable, individuals should be given the option of not identifying themselves when dealing with health organisations.
	14	Trans border data flows and data flows to Commonwealth agencies	Generally, personal health information must not be transferred to a person or organisation outside of the jurisdiction of New South Wales, however there are some exceptions to this, for example, law enforcement, transfer of health care services, the individual consents to the transfer. The receiving person or organisation must have privacy principles in place that are substantially similar to NSW.
	15	Linkage of health records	Personal health information must not be transferred to a Commonwealth agency or an organisation in another state jurisdiction unless the receiving agency/organisation applies health privacy principles that are substantially similar to NSW.

Clinical Images

What is a clinical image?

For the purposes of this document, a clinical image is a recording of a patient or a patient's body/body part (or of the patient's carer) for clinical or diagnostic purposes and includes photographs, video or audio recordings, including conference calls at NETS (digital or analogue), 3D surface scans, diagnostic images, or images of reports, that are undertaken by certified staff.

Medical images

Medical images includes x-ray, fluoroscopy, ultrasound, magnetic resonance imaging (MRI) scan, computed tomography (CT) scan, and computerized axial tomography (CAT) scan and are not the subject of this document.

Pathology images

Pathology images include photographs or video recordings of any cells, tissues or organs removed from the patient's body; or recorded as part of a non-forensic autopsy and are not the subject of this document.

Forensic clinical images

For the purposes of this document, '*forensic clinical images*' are defined as clinical images used in the investigation of a crime, particularly in establishing the causes of injury or death. There are different protocols that specifically relate to child protection matters which are not the subject of this document. Reference to these protocols must be made in child protection matters: [NSW Health PD2015_047 Photo and Video Imaging in Cases of Suspected Child Sexual Abuse, Physical Abuse and Neglect](#).

Why do we use clinical images?

Photography and recordings are used for many purposes including:

- Support clinical examination and assessment
- Aid in the diagnostic process
- Facilitate collaboration and learning
- Improve clinical practice and improve patient access to timely clinical care
- Record the patient's medical condition and facilitate clinical referrals and patient assessment.
- Demonstrate progression of treatment or capture changes over time
- Coordinate retrieval/transfer of patients (NETS)
- Teaching, research and publication

Clinical images and the medical record

Clinical images that relate to a patient or a patient's body (or of the patient's carer) form part of the health record (medical record) and are therefore subject to compliance with privacy laws. Clinical images can be classified as "personal health information" or "personal information".

Staff must not take photographs of clinical notes or any health information (for example, progress notes or patient lists) unless there is an urgent need to share this information for the purpose of ongoing clinical care and there are no other methods of transferring the necessary information. All photos must be deleted when they are no longer require and privacy laws must be adhered to at all times.

In NSW, the laws that relate to privacy are:

1. [Privacy and Personal Information Protection Act 1998](#)
2. [Health Records and Information Privacy Act 2002](#).
3. [Government Information \(Public Access\) Act 2009](#)
4. [State Records Act 1998](#).

The SCHN must also comply with the requirements of NSW Health's [Privacy Manual](#).

Personal health information

Personal health information includes information about a person's disability or diagnosis, MRN, health services/treatment provided or to be provided, healthcare identifiers, genetic information, and their wishes about future provision of health services.

Personal information

Personal information includes information such as name, address, family information, scars/markings/tattoos, body samples (including mementoes like hair), genetic characteristics (e.g. eye colour, hair colour) and so on whereby a person's identity is apparent or could be reasonably determined.

Information Protection Principles (IPPs) and Health Privacy Principles (HPPs)

In NSW, there are legal obligations that SCHN must comply with for the collection, use, disclosure, storage and security of personal information and personal health information. These legal obligations are known as the Information Protection Principles (IPPs) and the Health Privacy Principles (HPPs) respectively. While the SCHN must comply with both the IPPs and the HPPs, this policy shall focus on the HPPs, as these specifically relate to personal health information, clinical images and the medical record. Personal information and compliance with IPPs is not the subject matter of this policy, but should be considered when releasing information under GIPA and HRIPA legislation.

Refer to the summary table of the [Health Privacy Principles \(HPPs\)](#) for further information.

Compliance with the NSW privacy laws, including the Health Privacy Principles (HPPs) and NSW Health's Privacy Manual is MANDATORY.

Collecting Clinical Images

Is a clinical image required?

Before collecting personal health information such as taking a photo, video or audio recording of a patient, the clinician or health practitioner needs to identify the purpose and relevance of the clinical image. Requirements to be taken into account should include identification and consideration of the immediate and longer-term physical, psychological and emotional needs of the child and their parent(s)/guardian when considering taking or using photo and video images.

Clinical images may be required for a number of reasons such as: assist in the diagnostic process; provide a record of the natural course or impact of treatment; request or provide consultation on a medical condition; use serial photographs to compare images objectively over a period of time; teaching or research purposes or medico-legal purposes.

When taking a clinical image, particular care must be taken if the clinical image is of intimate areas of the body where images may be considered pornographic or obscene if taken out of context. The patient's modesty can be maintained by ensuring minimal patient skin exposure and by not including sensitive content in the clinical image, if it is not relevant to the clinical purpose. Do not include sensitive content in the clinical image if it is not relevant to the clinical purpose. It is a serious criminal offence to disseminate pornographic images electronically or by any carriage service as per the NSW Health PD2015 047 Photo and Video Imaging in Cases of Suspected Child Sexual Abuse, Physical Abuse and Neglect.

Obtaining Consent

Taking clinical images of a patient or a patient's body requires informed consent, even if the image cannot identify the subject. In a paediatric setting, consent may be obtained from the patient, parent or legal guardian depending on the age of the patient and capacity of the patient to give consent.

NOTE: Refer to [special circumstances](#) that deviate from the consent process.

Informed consent

Informed consent includes the following discussion with the patient/parent/legal guardian:

1. The purpose(s) of the clinical image(s), that is, why the clinical image is being taken, in the best interests of the child or young person and the consequences of not providing the image. (NOTE: The 'primary purpose' must be directly related to and reasonable necessary for health related needs of the patient or an organisation's functions or activities)
2. How the clinical image(s) will be used
3. Who will have access to the clinical image(s)
4. Where the clinical image(s) will be stored and how long it will be kept for
5. How the patient/parent/guardian can access the image(s) once recorded and stored.

6. The secondary purpose for which it may be used: the secondary purpose is directly related to the primary purpose and would be reasonably expected by the person, and may include consultation with colleagues, training or research purposes, or part of a medico-legal investigation.

For consent to be valid, it must be given freely, without coercion or intimidation. Consent must be documented in the medical record and the [SCHN Consent for Photography and Video/Audio Recordings Form](#) must be completed and put in the medical record and forwarded to the SCHN Health Information Unit.

In the first instance, it demonstrates respect for persons, and for the developing autonomy of any child, to gain assent to obtain an image from the child themselves if possible, regardless of legal considerations of age and consent (e.g. the child can imply assent by following simple requests, calming when spoken to and smiling to demonstrate agreement)

Who can give consent for clinical images?

1. For a young child under 14 years – consent is to be given by the parent(s) or guardian(s).
2. For mature minors , as defined in the NSW Consent to Medical And Healthcare Treatment Manual ¹– as “A Minor who has a sufficient level of understanding and intelligence to enable them to understand **fully** what medical or healthcare treatment is proposed” consent may be given by the mature young person independently of their parents or guardians. They should be able to adequately understand the purpose and implications of the why the clinical image is to be taken, in their best interests, and the consequences of not providing the image and stored, in their best interests.
3. Where consent is to be given by a young person who will undergo the procedure or treatment they should be able to adequately understand, balance and communicate the information and their decision
4. Where a young person has limited capacity, or is incapable of giving informed consent, the provisions of the *Guardianship Act 1987* (NSW) take effect, and consent is to be given by the parent(s) or guardian(s).

Where a parent or guardian has given consent and the child or young person does not want a clinical image to be recorded (and the child or young person has the capacity to understand the clinical situation), consideration needs to be given to the purpose for which the clinical image it is to be used, in conjunction with the child's express request. A Court may still override a mature minor's consent , or refusal of treatment, in the mature minor's best interests. The same would likely apply to the taking and storage of reasonable and necessary clinical images.

Who obtains the consent?

- The **treating clinician or health practitioner** is to obtain informed written consent from the patient or parent/legal guardian before any recording occurs.

¹ IB2020_010

- Complete the [SCHN Consent for Photography and Video/Audio Recordings Form](#) and put the form into the patient's medical record and email the form with the clinical image to the **SCHN Health Information Unit** schn-hiu@health.nsw.gov.au.

Consent Forms

- The SCHN Consent for Clinical Photography/ Video/ Audio Recording Form must be used.
- The consent must clearly specify the purposes for which the recording may be used, for example clinical care, education, research, medico-legal or publication.
- The consent form must be completed and signed by the patient and/or patient's parent or legal guardian. If an interpreter is involved in obtaining the informed consent, the interpreter must complete the interpreter's section.
- The SCHN Consent for Photography and Video/Audio Recordings Form must be used for all recordings of clinical care, education, scientific or teaching purposes.
- The signed consent form is placed in the patient's medical record or can be emailed to the **SCHN Health Information Unit** schn-hiu@health.nsw.gov.au.
- Where it is likely or foreseeable that clinical images will be taken over a period of time (for example, 3 months) or at regular intervals (for example, weekly for 1 month) and the purpose of the clinical images remains the same, this should be stated and one consent form can be used to cover the period of time for which the clinical images will be taken/recorded.

Who can collect or record the clinical images?

Health practitioners, staff providing a clinical service, and other professionals such as a Medical Photographer can collect or record clinical images, in accordance with the protocols described in this document.

Prior to collecting or recording the clinical image or the set of images, record or collect an image of the patient's identification band to ensure that the images are recorded in the correct medical record.

There is a Medical Photography Department at both the Randwick and Westmead campuses of the SCHN that can provide assistance to health practitioners in collecting and recording clinical images.

How can clinical images be recorded?

Clinical images can be recorded on either SCHN-owned mobile devices, digital or compact cameras, or digital video cameras. Mobile devices are small computing devices, typically small enough to be handheld, and may include tablets, smartphones (mobile phones), laptops, personal digital assistants, portable media players, or smartwatches.

Use of a personal mobile device facilitates communication for referrals and patient assessment; specialist care and decision making, however **care must be taken by the user to ensure compliance with privacy laws.**

Clinical images (photography and video or audio recordings) are to be imported to the patients' medical record as soon as possible after the recording or before the staff member leaves the SCHN premises for the day and deleted from the mobile device as soon as reasonable.

What information needs to be recorded for a clinical image?

- If written consent has been given ensure the completed consent form is put into the medical record. This can be emailed with the image.
- If verbal consent is given, document this in the medical record and ensure the consent form is completed and put into the medical record as soon as practicable.
- Email the image and consent form to schn-hiu@health.nsw.gov.au and include the MRN in the subject line of the email
- In the email, document who took the image, and the date, time, location and mode of capture.
- If you can't email the image directly to the Health Information Unit (Medical Records Department) at either campus (CHW or SCH), you can arrange for a time to download images and recordings with the assistance of HIU.
- NETS retrieval teams or clinicians from Referring Hospitals may email Clinical Images to help@NETS.health.nsw.gov.au. These images are then transferred to CHW eMR by NETS Administration Officer responsible for scanning NETS records.

Clinical images that are collected or recorded **MUST** be stored in the patient's medical record.

Transferring images from mobile devices and cameras

The SCHN's Health Information Unit has an email address whereby health practitioners, students and staff and external parties can send clinical images which will then be placed in the patients' medical record. The email address is schn-hiu@health.nsw.gov.au

When emailing images, include the following information:

- Include the MRN in the subject line of the email. For non SCHN patients (where the SCHN has been asked to provide consultation), include the name of the Local Health District/Specialty Network/ Organisation.
- Completed consent form - [SCHN Consent for Photography and Video/Audio Recordings Form](#).
- In the email, document who took the image, and the date, time, location and mode of capture. NETS Caveat: this information will be captured if available from referring hospitals.

If the image cannot be emailed directly to the HIU, you can arrange for a time to download images and recordings with the assistance of HIU.

Securing mobile devices

All SCHN health practitioners, students and staff have a legal duty to take reasonable steps to protect personal information that is held by SCHN (including clinical images) from misuse, loss, unauthorised access or interface, modification and disclosure.

Reasonable steps must be taken to implement access controls on mobile devices to prevent unauthorised access. This also includes ensuring that clinical images do not auto-upload to social media networks or back-up sites that may be publicly available.

Ensure that the mobile device has password protection, with the ability to erase images remotely if the device is stolen.

Leaving a clinical image on a mobile device increases the risk of unauthorised access if the device is lost or stolen and increases the risk of the image being sent to unauthorised third parties and also increases the legal risk to the SCHN.

Deleting clinical images from mobile devices

Once clinical images have been taken for the primary and secondary purpose and are securely stored in the patient medical record, they are to be immediately removed from the mobile device. The responsibility to delete the images stored on a mobile device resides with the health practitioner who took the image/ the owner of the mobile device.

MedSync

MedSync is an application that allows for clinicians to take clinical photos at the bed side securely. It is accessed via Microsoft Teams. Photos taken via MedSync are not integrated into the eMR but can be accessed via the EIR/HealtheNet.

This application can be used to securely share patient images during emergency, inpatient and outpatient encounters. It can also be used to take pictures for assessment and care planning purposes.

Photography or videos of others by families and visitors

SCHN owes a duty of care to its patients, visitors, staff or volunteers and is required to comply with NSW privacy legislation (*Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002*) and ensure privacy principles are upheld.

[Inclosed Lands Protection Regulation 2023 - NSW Legislation](#)

Patients, families, or visitors **MUST NOT** take a photograph of another patient, family, staff member or volunteer without the consent of the person or family. Under the [Inclosed Lands Protection Act 1901 \(NSW\)](#), the Network (including CHW and SCH) is deemed to be 'inclosed lands' and the principle officer (Chief Executive or their authorised delegate) or authorised persons such as the Directors and their authorised delegates (including health practitioners) have the legal authority to regulate, prevent or prohibit photography or recordings.

The "[No Photo Zone](#)" poster can be printed off for you to display in your department.

Occasionally, families/carers may be supported by staff members to take particular procedural images/ videos of a component of their child's care as a training mechanism or prompt to assist carers in safe, exercise or care of the child at home. This requires strict adherence to specific staff instruction regarding what images are relevant to ongoing care or task, and in agreement with, and without identifying the staff member themselves in images or video.

Withholding, Withdrawal or Refusal of Consent

Patients and parent/guardians have the right to withhold, withdraw or refuse consent. If consent is withheld or refused, the clinical image should **not** be taken; however, there may be specific circumstances such as where a court order requires the image be taken. In these specific circumstances, contact one of the following:

- "In Hours" - Network Manager Medico-legal or Director of Clinical Governance and Medical Administration
- "After Hours" – After Hours Nurse Manager or Executive on-call.

Document the patient/parent/guardian refusal or withdrawal of consent in the medical record.

Consent may be withdrawn at any time after the clinical image has been recorded. The reason for withdrawal of consent is to be documented in the medical record and the appropriate section of the [SCHN Consent for Photography and Video/Audio Recordings Form](#) must be completed to include the withdrawal of consent and must be included in the patient's medical record.

Special circumstances that deviate from the consent process

SCHN Staff receiving clinical images from external organisations for consultation.

There may be circumstances whereby a SCHN health practitioner receives a clinical image from an external organisation and is asked to consult or provide advice on medical conditions, treatment protocols and so on. There are various modes by which a recording can be sent to a SCHN clinician for consultation, including via email, or personal mobile device.

Consultation should only be provided once the SCHN health practitioner has:

- Confirmed that patient/carer Consent has been obtained by the sender, prior to the image being transmitted to the SCHN clinician; and/or

The SCHN clinician has received the completed consent form from the external organisation there is an emergency where obtaining Consent/ a signed Consent form may not be possible, the reason for the failure to provide the Consent Form should be fully noted by the recipient of the image, in a contemporaneous Medical Record entry.

A medical record is to be created for the patient receiving a clinical consultation by SCHN in these circumstances. The following details are to be recorded in the medical record: MRN, patient name, date of birth, date taken, recording taken by or agency name with their contact details, consultation notes and a copy of the consent form, if available, or the reason why it could not be obtained. This is particularly important in the context of medico-legal matters that may arise.²

Once consultation has been provided, the health practitioner must inform the SCHN Health Information Unit that they have provided an "external consultation" and then forward the consent form from the external agency, clinical images, and a record of the consultation that was provided within 24 hours of the consult taking place.

This information can be provided directly to the SCHN HIU via email or sent directly to the HIU. Once transferred to HIU, the recording must be **deleted** from the email or personal mobile device.

Consent is implied when calls are made to the NETS hotline as the answering call states *"Thank you for calling NETS. Please note that calls are recorded."*

The SCHN is required to have a record of the advice that was provided; this information is essential in medico-legal matters particularly where SCHN is a named defendant and where staff have provided advice to other LHDs or health practitioners.

Though the patient consent form for the recording may be provided with details to SCHN it is not suitable for use by SCHN other than for specialist consultation. The recording may not be distributed by SCHN staff to other clinician's other than those immediately involved in the patients' health care. Any additional use of the recording by SCHN such as use for education or training purposes authorised by the patient or parent/guardian in writing.

Copyright of all recordings sent to SCHN for specialist consultation is owned by the organisation supplying the recording and must be respected at all times The image may not

² In the event of any legal action or receipt of a subpoena, it is important to be able to identify the photographer and provide records of notes regarding the time, date and location of the recording. Refer to the SCHN Subpoena policy for more information.

be used or reproduced for any purpose, without specific Consent for the intended purpose first being obtained.

Child Protection Cases

Matters that fall under the jurisdiction of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) are subject to the NSW Health Policy Directive [PD2015_047 Photo and Video Imaging in Cases of Suspected Child Sexual Abuse, Physical Abuse and Neglect](#).

Deceased patients

If consent has been previously obtained and the patient dies the parent/guardian must be consulted to confirm if consent is still valid before the recording is used for any purpose, other than a medico-legal purpose.

Consent to conduct an autopsy is arranged by the referring health practitioner/local health district. Images and histology recordings are considered part of the autopsy and do not require specific consent.

In all cases, care must be taken to respect the personhood, dignity, ethnicity and cultural or religious beliefs of the patient and the patient's family.

Images and recordings in operating theatres

The health practitioner must obtain patient or parent/carer/guardian consent to take images or make recordings of internal organs, bones, joints and tissues (epithelial, connective, muscular, and nervous tissue) during surgery, or other procedures in the operating theatres. The appropriate selection on the **Request/Consent for Medical Procedure Treatment** form (SCN020.001) must be completed by the patient and/or parent/carer/guardian that indicates consent has been given.

Unconscious patient/ emergency situations

There may be occasions where a patient is unconscious and a clinical image is required, for example, in child protection matters, emergency or disaster situations, emergency ambulance (e.g. NETS) transfer and it is not possible, or appropriate to obtain written consent.

In these situations, respect for the dignity of the unconscious person remains paramount and verbal consent must be obtained from the parent/carer/guardian and noted on the [Consent for Clinical Photography, Video/Audio Recording form](#). Written consent from the patient and/or parent/carer/ guardian must be completed at the first opportunity.

Use and Disclosure of Clinical Images

Use of clinical images

Clinical images shall only be used or disclosed in accordance with this document, relevant privacy legislation and NSW Health's Privacy Manual.

Clinical images shall be used and/or disclosed:

1. For the direct or primary purpose for which they were collected
2. For a secondary purpose which is closely related to the primary purpose
3. In accordance with the patient or parent/guardian consent if the use and disclosure is different from the primary or secondary purpose
4. Where permitted by law – the use and disclosure of the image may fall within an exception under privacy legislation but may be permitted under other legislation or court order.

Disclosure of clinical images to third parties such as consultants can only occur if this is directly related to the primary or secondary purpose for which the image was collected, and for which the patient or their parent/guardian has given consent. It is unlawful to use or disclose clinical images outside of the boundaries the primary and secondary purposes for which consent was obtained.

De-identification of clinical images

Clinical images that are used for training, teaching, education or research purposes should be de-identified where possible and must comply with relevant research or ethical guidelines. Some features of the patient such as birthmarks or rarity of the clinical presentation and metadata (such as time/date of image capture, device that was used or location) can make the patient identifiable to others.

Copy of clinical images and requests for information

Copy of recordings requested by staff

- All requests for copies of recordings are to be forwarded in writing to HIU, regardless of the author of the recording. The Clinician who requested the recording be taken should be consulted about the request for release (or if such person is no longer contactable, the relevant Head of Department) and any release of clinical images shall be in accordance with their consent, or court orders.
- Consent and the issue of Copyright must both be checked in the medical record.
- Before a recording is reproduced and used for any purpose, including any publication in journals, books, advertising or the internet, the patient's prior permission for the specific use proposed must be sought. If the Consent Form on record does not cover the intended use, written consent must first be obtained before the recording is used for a purpose other than that indicated on the existing consent form
- This applies even if the image is de-identified.
- This additional consent must be obtained from the patient or parent/carer/ guardian

- If the Copyright lies outside of the SCHN, then consent to use the image must also first be obtained from the owner of the Copyright.

Copy of recordings requested by non-SCHN staff

Request by patients/guardian

Patients and guardians have the right to access and receive a copy of their child's recordings under the [Health Records and Information Privacy Act 2002](#), and NSW Health's [Privacy Manual for Health Information \(2015\)](#)

All requests for copies of recordings of clinical images are to be forwarded in writing to the SCHN Health Information Unit (Medical Records Department), or for NETS recordings to the Clinical Information Office (CIO).

Request by a third party

A copy of the recordings can only be released if the patient or their parent/guardian has provided written consent. The release of the information can only be provided with the support of the Medical Records service.

Subpoenas

In the event of any legal action or receipt of a subpoena, it is important to be able to identify the photographer and provide records of notes regarding the time, date and location of the recording. Refer to the SCHN Subpoena policy for more information.

Storage and Security of Clinical Images

Storage and Retention

Clinical images (digital and non-digital media) taken by SCHN health practitioners, students and staff on their personal mobile device, or camera, in the course of providing clinical care to any patient of the SCHN are part of the medical record, and must be stored securely in the patient's medical record (PowerChart) in accordance with *State Records Act 1998 (NSW)*.

Clinical recordings in non-digital media (such as videotapes, negatives, transparencies or prints) must be scanned and retained in digital format and will form part of the patient's medical record.

Retention of all medical records is in accordance with the *State Records Act 1998 (NSW)*.

All Audio recordings taken at NETS form part of the patient's SCHN medical record. These are not stored in the patient's medical record but are stored in the voice recording software in a secured location on NETS' servers. They are stored securely in accordance with *State Records Act 1998 (NSW)*.

All SCHN health practitioners, students and staff have a legal duty to take reasonable steps to protect personal information that is held by SCHN (including clinical images) from misuse, loss, unauthorised access or interface, modification and disclosure.

Copyright

Copyright of all clinical images recordings of any SCHN patient taken by any clinician in the employ of NSW Health, is owned by the State of New South Wales through the SCHN, and can only be used for the purposes specified on the consent form. **This applies to all clinical images taken in the course of providing clinical care, including images that were taken on a personal mobile device.**

Copyright notice and disclaimer:

The use of this document outside Sydney Children's Hospitals Network (SCHN), or its reproduction in whole or in part, is subject to acknowledgement that it is the property of SCHN. SCHN has done everything practicable to make this document accurate, up-to-date and in accordance with accepted legislation and standards at the date of publication. SCHN is not responsible for consequences arising from the use of this document outside SCHN. A current version of this document is only available electronically from the Hospitals. If this document is printed, it is only valid to the date of printing.

Appendix 1: "NO PHOTO ZONE" Poster

NO PHOTO ZONE



We politely ask that you do not take photos or video in this area unless you have special permission from staff.

