Section 9 Subject 9.3 **Policy 9.3.2**	Clinical Policies Patients' Rights **Use of Photography, Video/Audio Recordings and/or Televising Patients**	04/01/90 -Originated 06/03/11 -Reviewed w/ changes -Reviewed w/o changes Compliance - Author

Use of Photography, Video/Audio Recordings and/or Televising Patients

Definition

Photography: For the purposes of this policy "photograph(s)" and "photography" will be used to indicate a recording of a patient's likeness by a number of visual means, including but not limited to still photography, videotaping, digital imaging, scans and other media. Radiographic imaging is not included in this definition.

Policy

UTMB may utilize photography for purposes of identification, patient care (including UTMB's treatment, payment, and healthcare operations), and as authorized by the patient or the patient's legal representative. Photography may be disallowed or discontinued at the discretion of the responsible health care provider if it might interfere with patient care or negatively affect patient safety, treatment, or healthcare operations. Employees involved in taking photographs for allowed reasons above must be aware of their surroundings and ensure that any such photographs will in no way include other patients or staff who have not consented to inclusion in the photographs and do not include other PHI that has not been consented to in the image, including in the background (for example, information that includes patient names, such as a white board, room assignment, and/or printed copies of patient information.)

Consent must be obtained and specific requirements met before taking or producing photographs, recordings, or television productions of UTMB patients.

General Consent Form for Photography involving Treatment, Payment or Health Care Operations (TPO)
This consent form limits the use of photography to purposes related to treatment, payment and health care operations, and includes the use of photography in training and educating the workforce within UTMB. For any other education purpose, such as presentations given at conferences, UTMB personnel must first obtain a patient's authorization for that particular use, or de-identify the photograph as provided below.

Authorization for Photography, Video/Audio Recordings and/or to Televise Patients Form

Policy, continued

This authorization form must be obtained for the use or disclosure of photography for purposes other than treatment, payment or health care operations. For example, if a patient requests a copy of his/her photograph, UTMB must first obtain a signed Authorization Form for the Use/Disclosure of Photography for purposes other than TPO before releasing the photograph.

Violation of this policy may result in disciplinary action up to and including termination for employees; a termination of employment relationship in the case of contractors or consultants; or suspension or expulsion in the case of a student. Additionally, individuals may be subject to loss of access privileges and civil and/or criminal prosecution**.**

Documentation

The use of photography as part of the patient's treatment process must be documented in the patient's health record.

Security and Storage

Employees shall not use personal devices (including but not limited to digital cameras, storage media or cellular phones) to photograph patients for any reason. Only equipment owned, leased, or controlled by UTMB may be used to take photographs pursuant to this policy.

Employees shall delete all photographs from authorized cameras and/or memory cards after transferring them to a secure computer.

All patient photographs, videotapes and other images will be stored in a secure manner that protects the patient's privacy. These images will be maintained as provided by IHOP Policies 2.1.4, *Records and Information Management Retention* and 9.2.13 *UTMB Medical Record Policy*).
Images which are not stored with the patient's paper or electronic health record must be stored in a manner that allows for timely retrieval. These images are generally considered "source data" PHI, and must be used, disclosed, or destroyed according to institutional policies governing other PHI.

Documentation of Abuse and Neglect

Reportable cases of actual or suspected abuse and neglect do not require prior authorization from the patient prior to photographing, videotaping, or other imaging and may be submitted to the investigating agency upon receipt of appropriate authorization or court order.

Research

Photography taken as part of a research protocol must be approved by the Institutional Review Board (IRB). Consent for such images must be incorporated into the patient's initial consent for participation in the research protocol. Furthermore, if such photographs are to be disclosed for any purpose or to any outside entity, the Primary Investigator (PI) must obtain the research subject's authorization first.

Marketing

Written authorization must be obtained from the patient prior to photographing of the patient for marketing or publicity purposes as delineated in IHOP Policy 6.2.17, *Use and Disclosure of PHI for Marketing.*

Family and Friends

Generally, patient consent is not required for the patient's family and friends to photograph the patient while receiving treatment at UTMB; however, this is permitted only with (1) the agreement of both the clinician and the patient (i.e., must be medically consistent with the patient's best interest and/or not disruptive of overall patient care), and (2) acknowledgement by the patient's family and friends that they may be asked to discontinue photographing the patient if the clinician deems it necessary. Employees should ensure patients and their family and friends are aware of their surroundings and that any photographs taken do not include PHI or patients or other staff who have not consented to being photographed (e.g., patients in the background, information such as patient names and room assignments written on a white board, printed copies of patient information, etc.).

Disclosure/ Release of Photographs

All requests for disclosure or release of photographs for reasons other than treatment, payment or health care operations must be approved by the Department of Health Information Management, and require either a signed authorization form from the patient or a valid subpoena or court order.

Manuscripts/ Conferences

Written authorization must be obtained from the patient prior to the use of any photographs identifiable to a patient in manuscripts or presentations at conferences or professional organizations external to UTMB, or in any public forum where such photographs may be viewed by unauthorized individuals.

De-identification of PHI/Disclosure

Unless otherwise required by law or for purposes related to treatment, payment or health care operations, UTMB will not release photographs, videotapes, or other images to outside requestors without specific authorization from the patient.

However, if UTMB determines a photograph is not PHI (i.e., because identifiers of the patient, their relatives or other household members, or employer have been removed in accordance with IHOP Policy 6.2.29, *De-Identification of PHI*) or cannot be used in any way to identify the patient, the photograph may be used for outside purposes without patient authorization.

Revocation

As with all patient authorizations for the disclosure of PHI, every patient has the right to revoke their consent for photographing, videotaping, or making other images at any time. UTMB will not be liable for any use of such images prior to such revocation.

Additional Guidelines for UTMB Employees

UTMB and its employees may take or produce photographs, video/audio recordings, and/or television productions of patients under the following guidelines:

1. The patient must sign a witnessed consent form for if the photograph is used for TPO purposes, or authorization form if the photograph is used for purposes other than TPO.

A patient who is a minor must have this consent form signed by a parent or, as the case may be, a legal guardian.
In the event a patient is unable to provide informed consent prior to being photographed, any photographs taken of the patient shall remain in UTMB's possession and may not be used for any purpose until and unless such consent is first obtained. Additionally, if such consent cannot subsequently be obtained, UTMB shall either destroy or de-identify the photograph as provided below.

The following behaviors are prohibited:

1. Use of patient photographs, including posting of images to social networking sites, other internet websites or public areas;
2. Use of patient photography for entertainment purposes or malicious use;
3. Including other patients, or other PHI in photographs without written consent obtained in accordance with this policy;
4. Taking photography in a way that is disruptive to patient care

Additional Guidelines for UTMB Employees, continued

or the work environment;

5. Taking any photos without the individual's consent unless an exception is provided in this policy ;
6. Taking or participating in photography without respect for patient privacy and/or dignity,

Offender Patients

Photographs of offender patients (Texas Department of Criminal Justice, Federal Bureau of Prisoners, Texas Youth Commission, etc.) may be subject to the rules of the agency responsible for their care. Specific permission to photograph, video/audio record, and/or televise an offender patient must be obtained from the respective penal agency.

Guidelines for Media and Other Third Parties

In the event the media wishes to interview, film, or record a UTMB patient, the conditions stated above in 'Guidelines for Families and Friends' must be met. Additionally, a representative from the Office of University Advancement must accompany the media at all times during the taking of any such photographs, films, or recordings.

A written request from other third parties (e.g., insurance company personnel, attorneys, etc.) to film, record, or televise UTMB patients should be directed to either the patient's attending physician or the appropriate nursing or medical director. Such requests must also be accompanied by a duly authorized and signed information release, which must be received prior to obtaining patient, family, or parent/legal guardian consent (as applicable). The conditions specified above in 'Guidelines for Families and Friends' apply, and any questions regarding this process may be directed to the Department of Legal Affairs.

All third parties who are not already subject to UTMB's confidentiality policy must sign a confidentiality statement in order to protect the patient's identity and confidential information.

References

IHOP Policy 2.1.4, Records and Information Management Retention
IHOP Policy 6.2.0, General Policy on Use & Disclosure of PHI
IHOP Policy 6.2.17, Use & Disclosure of PHI for Marketing
IHOP Policy 6.2.18 Use & Disclosure of PHI for Fundraising
IHOP Policy 6.2.29, De-Identification of PHI
IHOP Policy 9.2.14, Medical Record Retention
IHOP Policy Use of Social Media