



DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
7700 ARLINGTON BOULEVARD
FALLS CHURCH, VA 22042

IN REPLY REFER TO
BUMEDINST 3104.2A
BUMED-M3
8 Feb 2013

BUMED INSTRUCTION 3104.2A

From: Chief, Bureau of Medicine and Surgery

Subj: USE OF PERSONALLY OWNED IMAGING AND RECORDING DEVICES

Ref: (a) SECNAVINST 5720.44C
(b) BUMEDINST 3104.1
(c) DoDINST 6025.18-R of January 24, 2003
(d) SECNAV Manual 5210.1 of Jan 2012

Encl: (1) Definitions
(2) Sample Exemption to Policy Request Letter

1. Purpose. This instruction provides guidance and establishes Navy Medicine policy and responsibilities for the use of personally owned imaging and recording devices for all Medical Department health care personnel.
2. Cancellation. BUMEDINST 3104.2.
3. Scope. This policy extends to all Navy Medical Department personnel, without regard to duty station or status. Medical Department commanders, commanding officers, and officers in charge shall develop local instructions and regulations based upon the policies established herein to mitigate the potential for privacy and ethical violations that may arise from the use of such devices. The definitions provided in enclosure (1) are to be used in the development of any subordinate instruction or policy. Medical Department Public Affairs Officers (PAOs) and Combat Cameramen are governed by reference (a). Biomedical Photography Laboratories are governed by reference (b), and are exempted from this policy in the execution of their official duties. Violations of this instruction subjects military members to disciplinary action under the Uniform Code of Military Justice (UCMJ). Violations of this instruction by DoD civilian employees and contractors may result in adverse administrative action.
4. Background. As the popularity and availability of digital recording devices increases, so does the potential for violating patient privacy and the trust inherent in the provider-patient relationship. Once a recording is transmitted to the Internet (to include social networks), the ability to protect the subject's confidentiality or restrict its distribution is inherently lost. All parties have a duty to protect Individually Identifiable Health Information (IIHI). Photographic and comparable images where a patient is identifiable falls within the definition of "protected health information" per reference (c). This extends beyond any regulation or law and is a matter of basic respect for our patients, shipmates, and colleagues. Furthermore, as health care professionals, we are bound to a high ethical standard and an inherent duty to protect our patients from any real or potential harm.

5. Responsibilities

a. Navy Medicine Education and Training Command. Develop and incorporate training programs that address the policies established herein and emphasizes the ethical importance of protecting patient privacy.

b. Medical Department Commanders, Commanding Officers, and Officers in Charge. Publish the moral, ethical, and legal standards associated with this instruction and ensure compliance by issuing local instructions to provide detailed guidance.

c. Medical Department Personnel. All personnel, as defined by enclosure (1) must adhere to the policies set herein and fully understand that as health care professionals, they are held to a high moral and ethical standard to protect their patients at all times. They are also directed to report any possible violations of this instruction to their immediate chain of command, without delay.

6. Policy

a. It is hereby prohibited for any Navy Medicine personnel (military, civil service, contract, or volunteer) to utilize personally owned imaging and recording devices to make any recording of patients, patients' families, or human remains in a health care setting, unless authorized by their commander, commanding officer, or officer in charge.

b. Clinical photography of patients may be appropriate for the diagnosis and treatment of medical conditions and for the purpose of professional education, board certification, licensure, and for the advancement of science. Health care professionals must ensure all appropriate documentation, permissions, and images are per current policies and are maintained as part of official records. Clinical photography can be accomplished through a variety of multimedia technology to collect, analyze, and store patient protected health information. Use of these media will be carefully controlled and executed in compliance with all regulations as well as other organizational policies and procedures.

c. When available, government-owned facilities and equipment shall be utilized to the maximum extent possible. However, commanders, commanding officers, and officers in charge may, at their discretion, provide for exceptions where a personally-owned device may be used for mission-essential purposes. Enclosure (2) is provided as a sample request and approval for exemptions and may be modified to suit command-specific requirements.

d. Commands desiring to authorize utilization of personal imaging equipment must establish local policies and procedures to ensure consistency with this instruction and shall include provisions for:

(1) Requesting and approval of non-government recording devices. Approvals may be granted for up to 1 year and must be documented in the staff member's professional record. Use of mobile devices such as cell phones and personal digital assistants are strictly prohibited and may not be authorized.

(2) Establishment of procedures, training, and equipment to transfer images taken with personal devices onto government computers. Once transferred, photographs must be included as part of the patient's medical record if clinically relevant, protected as Personally Identifiable Information (PII), and immediately destroyed/deleted from the camera and memory card.

(3) All patient recordings, regardless of recording mechanism, are subject to the various protections noted in law (Privacy Act, Health Insurance Portability and Accountability Act of 1996 (HIPAA), Department of Defense Regulations, and The Joint Commission (TJC) accreditation requirements. Photographs for education and training are meant to stay within the facility and shall not be released for outside conferences or included in handouts without clearance from legal (HIPAA/Privacy) and approval from the commander, commanding officer, and officer in charge.

(4) Images may not be transmitted via unsecure e-mail and must be stored on government equipment authorized for PII.

e. No clinical photography may occur without a separate written informed consent of the patient, legal guardian, or next of kin and must be appropriately labeled for storage. Consent for any clinical photography shall be provided on DD Form 2870, Authorization for Disclosure of Medical or Dental Information and include the following provision in block (8): "Photographs are for the purpose of inclusion in my medical records, educational purposes and/or possible use in medical exhibits, publications of medical knowledge, and lectures for the training of medical and paramedical personnel."

f. Photography or filming of human casualties, as well as the possession, distribution, transfer, or posting, whether electronically or physically, of visual images depicting patients or human casualties, except as required for official duties, is prohibited.

7. Patients and Visitors. Commanders, commanding officers, and officers in charge should respect that many important life milestones occur within medical treatment facilities (MTFs) and Department of the Navy (DON) health care settings. Patients and their families should be afforded the opportunity to record those events per local instructions and regulations, but shall attain the permission of an authorized staff member prior to making any recording. At any time, a staff member may request that recordings cease if they deem it to be in the best interest of the patient or interferes with the delivery of care.

8. Consent. Under no circumstances will any recording be made without the explicit consent of all whose identifiable image is captured. A parent or guardian must provide consent for any recording made of a minor and the authorized Next of Kin must provide consent for recording of human remains.

9. Public Affairs. Official photography in MTFs and during medical missions in support of Navy, command and unit Public Affairs goals is permitted. Approval and release of imagery will be in compliance with Chapter 2, section 0210 of reference (a).

10. Existing Recordings. Any Medical Department personnel and MTF staff members who possess recordings of patients or human remains stored on a personally owned imaging or recording device shall take immediate corrective action to delete those records. If members believe a recording is of educational or scientific value and needed in the performance of official duties, they may request support from their command Information Assurance Manager to transfer the files onto a government-owned system for management per paragraph 6b. Once files are securely transferred, all files must be immediately deleted from their personally-owned device(s).

11. External Agencies Working in DON Health Care Settings. Personnel from external agencies (e.g., other Services, other Government agencies, coalition partners, and non-governmental organizations), working in DON health care settings are subject to the policies set forth in this instruction.

12. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed per reference (d).

13. Form and Sample Format

a. DD Form 2870, DEC 2003, Authorization for Disclosure of Medical or Dental Information, is available electronically at:

<http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2870.pdf>.

b. The Sample Exemption to Policy Request Letter (enclosure (2)) is provided as a Word template at: <http://www.med.navy.mil/directives/Pages/SampleFormats.aspx>.



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Distribution is electronic only via the Navy Medicine Web site at:
<http://www.med.navy.mil/directives/Pages/BUMEDDirectives.aspx>

DEFINITIONS

Health Care Setting. Any location where medical or dental care may be delivered to include, but not limited to MTFs, dental facilities, and expeditionary medical capabilities ashore or afloat.

Medical Department Personnel. Any person employed, contracted, or sponsored by the Department of the Navy to carry out official duties within any health care setting under the technical and professional control of the Chief, Bureau of Medicine and Surgery. For the purposes of this instruction, it includes military, civil servants, contractors, and volunteers.

Next of Kin. Any person designated by law to make medico-legal decisions for a person.

Recording and Imaging Device. Any apparatus capable of recording images, videography, and/or audio.

BUMEDINST 3104.2A
8 Feb 2013

SAMPLE EXEMPTION TO POLICY REQUEST LETTER

3104
Date

From: Name of individual requesting the exemption
To: Title and Name of Activity Approving the Request

Subj: REQUEST FOR EXEMPTION TO PERSONALLY OWNED RECORDING AND
IMAGING DEVICES POLICY ICO (REQUESTOR)

Ref: (a) BUMEDINST 3104.2A
(b) (Insert Local Instruction Number)

1. Per reference (a), I respectfully request permission to utilize a personally owned recording/imaging device in the performance of my official duties as (Title). As such, the audiovisual documentation of patients is required for (provide explanation detailing reasons for request and why government equipment cannot be used – e.g., requirement for clinical residency program, board certification, etc.).
2. I understand that should this request be approved, I am only authorized use of exempted equipment for documenting clinical cases necessary for the performance of my official duties and this exemption expires on (date of end of program/project, or 1 year from request date, if applicable).
3. I further understand that patient consent must be obtained prior to making any recording per reference (a) and that patient dignity and privacy is paramount. I have read and understand all pertinent orders and instructions pertaining to the use of such equipment and the consequences for their misuse.
4. I also know and understand local policies contained in reference (b) that detail the procedures for the transfer, storage, and transmission of recordings. Images taken on a personally owned device must be transferred onto an authorized government computer and all files deleted from my personal device prior to being removed from the facility.

(Other information may be added that is command-specific)

I. M. SAILOR

Copy to:
Professional Records
Director of Clinical Program/Project

Enclosure (2)