

**Policy and Procedure**

Title:	<b>Audio, Video and Photographic Recordings</b>
Policy Number:	01.103
Effective Date:	September 3, 2014
Revised Date:	
Approving Body:	President and CEO
Authority:	CancerCare Manitoba Act
Responsible Officer:	President and CEO
Delegate:	
Contact:	Communications & Public Affairs; CCMB Privacy Officer
Applicable to:	CCMB Community

**1.0 BACKGROUND:**

CancerCare Manitoba is committed to providing a workplace and patient-care environment that is safe for both staff and patients and that respects each person's right to privacy and confidentiality.

**2.0 PURPOSE:**

- 2.1 To establish effective and efficient processes in order to clarify the situations where Recordings may be made in relation to health care services within CancerCare Manitoba facilities.
- 2.2 To outline the process for obtaining consent for the purpose of making Recordings where such Recordings are permitted.
- 2.3 To assist Health Care providers in the provision of Health Care to Patients by documenting injuries, the progress of a disease, or other Health Care matters through Recordings. In addition to ultimately benefiting the direct care for the Patient, such Recordings may also serve as a valuable educational or scientific tool.
- 2.4 To benefit a Patient through recording information received from a Health Care provider which may serve to assist them in better understanding their disease, condition or care and following the advice of the Health Care provider.
- 2.5 To allow a Patient to record certain Health Care events for personal reasons.

**3.0 DEFINITIONS:**

- 3.1 **Consent:** Voluntary agreement or permission that is knowledgeable and free of fraud, duress, or misrepresentation. Consent is knowledgeable if the Patient who gives it has been provided with the information that a reasonable person in the same circumstances would need in order to make a decision.
- 3.2 **Health Care:** Any care, service or procedure:
  - provided to diagnose, treat or maintain a Patient's health;
  - provided to prevent disease or injury or promote health;

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- that affects the structure or a function of the body.

- 3.3 **Health Care Facility:** A hospital, personal care home, psychiatric facility, medical clinic, laboratory, CancerCare Manitoba, community health centre, or other facility in which Health Care is provided and that is designated in the PHIA regulations.
- 3.4 **Health Record:** A compilation of Personal Health Information about an individual that is typically created by health care providers and is maintained and stored by facilities or programs of CancerCare Manitoba as the official record of care and services provided. At CancerCare Manitoba, this is the electronic health record (EHR).
- 3.5 **Media:** Representatives of print, electronic and web-based news and current affairs outlets.
- 3.6 **Member of the Public:** Any person other than: a Patient; Staff; or Media as defined by the CCMB Media Relations policy 01.102.
- 3.7 **Patient:** A patient or client receiving Health Care from a CancerCare Manitoba facility and where applicable includes Persons Permitted to Exercise Rights on Behalf of the Patient.
- 3.8 **Personal Health Information:** The information defined as personal health information in *The Personal Health Information Act (PHIA)* (Manitoba).
- 3.9 **Personal Information:** The information defined as personal information in *The Freedom of Information and Protection of Privacy Act (FIPPA)* (Manitoba).
- 3.10 **Person Permitted to Exercise the Rights of the Patient**
- 3.10.1 (a) Any person with written authorization from the Patient to act on the Patient's behalf;
- (b) A proxy appointed by the Patient under *The Health Care Directives Act*;
- (c) A committee appointed for the Patient under *The Mental Health Act* if the committee has the power to make health care decisions on the person's behalf;
- (d) A substitute decision maker for personal care appointed for the Patient under *The Vulnerable Persons Living with a Mental Disability Act* if the exercise of the right relates to the powers and duties of the substitute decision maker;
- (e) The parent or guardian of a Patient who is a minor, if the minor does not have the capacity to make health care decisions;
- (f) The Personal Representative of a deceased Patient.
- 3.10.2 If it is reasonable to believe that no person listed in any clause of 3.10.1 exists or is available, the adult person listed first in the following who is

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readily available and willing to act may exercise the rights of a Patient who lacks the capacity to do so:

- (a) The Patient's spouse, or common-law partner, with whom the Patient is cohabiting;
- (b) A son or daughter;
- (c) A parent, if the Patient is an adult;
- (d) A brother or sister;
- (e) A person with whom the Patient is known to have a close personal relationship;
- (f) A grandparent;
- (g) A grandchild;
- (h) An aunt or uncle;
- (i) A nephew or niece.

**Ranking:** The older or oldest of two or more relatives of equal ranking described above is to be preferred to another of those relatives.

- 3.11 **Personal Representative:** An Executor/Executrix or joint Executor/Executrix named in a deceased Patient's will; or a court appointed Administrator or joint Administrator of a Patient's estate.
- 3.12 **Recording:** An audio, video, or photographic record in any form that is recorded, transmitted or stored in any manner or on any medium (including but not limited to cameras, smartphones and portable electronic devices), or by any means, including film, tape, analog, digital, graphic, electronic or mechanical means.
- A Recording may or may not contain Personal Health Information and/or Personal Information
  - A Recording includes live audio and/or video streaming through the internet
  - A record made by medical equipment that serves a medical purpose such as, but not limited to, x-rays, CT scans, MRIs, and ultrasounds are not included in the definition of Recording
- 3.13 **Secure Environment:** Reasonable administrative, technical and physical safeguards that ensure confidentiality, security, accuracy and integrity of the Recordings, including controls that limit the use and access to Recordings, verification of a person's authorization to use or access Recordings, and procedures to prevent the interception of Recordings by unauthorized persons.
- 3.14 **Staff:** Includes all directors, officers, employees, volunteers, students, researchers, medical staff, educators, information managers (as defined by PHIA), trustees (as defined by PHIA), health agencies, contracted persons, or agents of any of the above, that work, provide services, or otherwise operate in connection with CancerCare Manitoba.

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4.0 **POLICY:**

4.1 Recordings by Staff:

Staff shall adhere to PHIA and related CCMB policies and procedures when handling a patient audio, video, or photographic recording to ensure the protection of a Patient's Personal Health Information.

4.1.1 Recordings of Patients shall only be undertaken by Staff with the written or verbal Consent of the Patient and only if it relates directly to an existing Health Care service or activity of CancerCare Manitoba. Recordings for educational purposes, scientific research, Patient identification, marketing and public relations are included as a related and permissible service or activity, provided appropriate Consent is obtained.

4.1.2 In the event that a Recording of a Patient is required for forensic, educational, research, marketing, or public relations purposes, a written Consent must be completed by the Patient on a form approved by CancerCare Manitoba.

4.1.3 Prior to making a Recording of a Patient, Staff shall obtain the written or verbal Consent from the Patient who is the subject of the Recording. In the event that written Consent is obtained, the Consent shall be scanned into the EHR. In the event verbal Consent is obtained, it shall be documented in the Patient's EHR. The written Consent and the documentation in the EHR of verbal Consent shall include:

- (a) The type of Recording
- (b) The purpose of the Recording
- (c) The subject matter of the Recording
- (d) Verification and confirmation of Patient Identity
- (e) That Consent was obtained from the Patient
- (f) The name of the person who obtained the consent

4.1.4 In the event that Recordings of Patients are to be undertaken over the course of more than one treatment, Staff are only required to obtain the Consent from the Patient once prior to the first treatment if the Patient is made aware of the intent to make Recordings over the course of future treatments. The Consent shall be considered as authorization for a period of up to one year following the date the Consent was obtained. Any significant change to the course of treatment, or purpose or intended use of the Recordings, requires a new Consent.

4.1.5 Consent may be withdrawn by a Patient at any time and shall be documented by Staff in the Patient's EHR as being withdrawn.

4.1.6 In the event that the Recording of a Patient is taken for

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educational or scientific purposes, Staff shall, where feasible, ensure that the identity of the Patient cannot be ascertained by taking reasonable steps to avoid the inclusion of identifying features or information.

- 4.1.7 All Recordings of Patients shall be maintained in a Secure Environment to ensure confidentiality and shall not be used for any other purpose without the written or verbal Consent from the Patient except pursuant to PHIA, FIPPA, *The Mental Health Act* or other applicable federal or provincial legislation.
- 4.1.8 A Recording of a Patient shall be retained pursuant to the CCMB *Retention and Destruction of Personal Health Information* policy 06.008 and/or any other applicable CCMB policy regarding the retention or destruction of records. Where a Recording is to be destroyed, it shall be destroyed in a manner that ensures the Recording is permanently destroyed or erased and cannot be reconstructed or recovered in any way.
- 4.1.9 In the event that a Recording of Staff is to be made by the CCMB Public Affairs and Communications representing the organization, Staff Consent may be written, verbal or implied. Staff are not required to permit a Recording to be made of themselves. Staff may withdraw Consent to make or use a Recording at any time.
- 4.1.10 Consultation Recording Service (CRS) at CancerCare Manitoba
- (a) Staff shall follow the PHIA-compliant Procedures outlined by CCMB's Consultation Recording Service Advisory Committee when recording a patient consultation and providing a copy of the recording to the patient;
  - (b) Staff shall verify and confirm the patient identity on the recording with the patient being provided with the recording in accordance with related CCMB policies and procedures.
  - (c) A copy of the CRS recording will be maintained in a secure environment for the period of time determined by the Consultation Recording Service Advisory Committee.

#### 4.2 Recordings for Safety, Security or Crime Control Purposes

Recordings made by appropriate security Staff for safety, security or crime control purposes are managed by the host hospital and governed by the host region's policy on safety and security.

#### 4.3 Recordings by Patients:

- 4.3.1 Audio - A Patient may be permitted to make an audio Recording of the provision of Health Care or any other service or activity of CancerCare Manitoba that they are receiving or participating in if they obtain prior written or verbal Consent from every person, including Staff, who will be

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recorded.

**Regardless of whether Staff Consent to being recorded, Audio Recordings are not allowed where:**

- (a) The audio Recording would create a risk to the safety or health of the Patient or any other person; or
- (b) The audio Recording would be disruptive to the provision of Health Care or any other service, or activity of CancerCare Manitoba; or
- (c) The audio Recording would permanently or temporarily interfere with or disrupt the proper or safe operation of medical equipment as per the CCMB policy, or other electronic or mechanical devices or equipment being operated by or for CancerCare Manitoba; or
- (d) Information is being provided to inform a Patient or a Person Permitted to Exercise Rights of a Patient in respect to a Critical Incident pursuant to Part 4.1 of *The Regional Health Authorities Act*.

4.3.2 Video/Live-Streaming/Photographic - A Patient shall not be permitted to make a video, live-streaming, or photographic Recording of any service or activity of CancerCare Manitoba except:

- (a) Where Staff is providing necessary information to the Patient by way of a physical demonstration of Health Care or a service or activity that the Patient is receiving and they obtain prior written or verbal Consent from every person, including Staff, who will be recorded;

**Regardless of section 4.3.2(a), video/live-streaming/photographic Recordings are not allowed where:**

- (b) It would create a risk to the safety or health of the Patient or any other person; or
- (c) It would be disruptive to the provision of Health Care or any other service or activity of CancerCare Manitoba; or
- (d) It would permanently or temporarily interfere with or disrupt the proper or safe operation of medical equipment as per CCMB policy, or other electronic or mechanical devices or equipment being operated by or for CancerCare Manitoba; or
- (e) Information is being provided to inform a Patient or a Person Permitted to Exercise Rights of a Patient in respect to a Critical Incident pursuant to Part 4.1 of *The Regional Health Authorities Act*.

4.3.3 A Patient is not required to obtain Consent and is permitted to make a Recording of their own Health Care progress or other event unrelated to an existing service or activity of CancerCare Manitoba (such as a family or social gathering/celebration) where no other Patient, Staff, Member of the Public or existing service or activity of CancerCare Manitoba is being captured in the Recording.

4.3.4 Family and/or Members of the Public that are acting with the Consent

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and under the direction of the Patient or the Person Permitted to Exercise the Rights of a Patient may make the Recordings on behalf of the Patient provided that the Recording is otherwise permitted under this policy. In all other circumstances, family and/or Members of the Public are not permitted to make a Recording.

- 4.3.5 A Patient authorized pursuant to this policy to make an audio Recording may use an electronic device that records both audio and video simultaneously, such as a smartphone, if the video camera is covered or directed such that it does not capture images.
- 4.3.6 Consent may be withdrawn at any time in respect to Recordings by Patients.
- 4.3.7 Police are permitted to make their own photographic Recording of a Patient for the purposes of identification. In the event the police make a photographic Recording of a Patient for identification purposes, Staff shall document the event in the health record.

4.4 Recordings by the Media and other exceptional circumstances:

- 4.4.1 Media shall be permitted to make Recordings of Patients, Staff, Members of the Public at a CancerCare Manitoba facility, and/or the provision of Health Care or other services and activities of CancerCare Manitoba provided that they follow the requirements of the Media Relations Policy 01.102 and obtain prior written or verbal Consent from every person who will be recorded.
- 4.4.2 The President and CEO of CancerCare Manitoba may permit Recordings by any other person in exceptional circumstances on the condition that Consent is obtained from every person to be recorded and such consent is documented accordingly.
- 4.4.3 Consent may be withdrawn at any time in respect to Recordings made by the Media or in other exceptional circumstances.

5.0 **PROCEDURE:**

5.1 Recordings by Staff (other than by security Staff for safety, security or crime control purposes):

Staff shall adhere to all related CCMB policies and procedures when handling a patient audio, video, or photographic recording to ensure the protection of a Patient's Personal Health Information.

To ensure appropriate Consent is obtained, Staff shall:

- 5.1.1 Provide an explanation to the Patient including:

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- (a) Verification and confirmation of Patient Identity
- (b) The purpose of the Recording (e.g. medical, educational, forensic);
- (c) What will be captured by the Recording;
- (d) The approximate number of photos or images to be taken and/or the approximate length of time the session will take, or duration of the Recording as the case may be;
- (e) The Recording medium to be used (eg. film, digital, audio or video);
- (f) The identity of those persons who will observe the Recording, if known; and
- (g) The possibility that the Recording will be observed by others but only in accordance with the Patient's consent or applicable legislation.

5.1.2 Answer any of the Patient's questions concerning the Recording.

5.1.3 Ensure the Patient understands that they can refuse to provide or withdraw Consent, has the right to stop the Recording at any time, and that any decision in this regard shall not impact in any way the service they are receiving.

5.1.4 Consultation Recording Service (CRS) at CancerCare Manitoba

- (a) Staff shall follow the PHIA-compliant Procedures outlined by CCMB's Consultation Recording Service Advisory Committee when recording a patient consultation and providing a copy of the recording to the patient;
- (b) Staff shall verify and confirm the patient identity on the recording with the patient being provided with the recording in accordance with CRS Procedures and related CCMB policies and procedures.
- (c) A copy of the CRS recording will be maintained in a secure environment for the period of time determined by the CRS Advisory Committee.

5.2 Recordings for Safety, Security or Crime Control Purposes:

Recordings made by appropriate security Staff for safety, security or crime control purposes are managed by the host hospital and governed by the host region's policy on safety and security.

5.3 Recordings by Patients (including family members or Members of the Public):

5.3.1 In the event that Staff are requested to provide Consent to be recorded in a Recording, Staff shall promptly advise their direct manager or supervisor of the request prior to any decision to permit the Recording.

5.3.2 In the event that a Patient obtains Consent to make a Recording in accordance with this policy, the written Consent shall be scanned into the Patient's EHR, or an entry shall be documented in the Patient's EHR confirming verbal consent. The Consent shall indicate the type of



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Recording, the purpose of the Recording (informed consent, diagnosis, demonstration, etc.), the name of the person who performed the Recording, the subject matter of the Recording, and that written or verbal Consent was obtained from every person who was to be recorded.

5.3.3 In the event that Staff observe a person making a Recording contrary to this policy, Staff:

- (a) Shall either advise the person that the Recording is contrary to CCMB policy and request that the person cease making the Recording or promptly notify the applicable management or security personnel in order that they may take appropriate steps;
- (b) Shall promptly advise their direct manager or supervisor of the situation; and
- (c) May request that the Recording be deleted.

Staff, including security personnel, shall not seize the Recording device.

5.3.4 In the event that Staff observe a person making a Recording with a threat to release it to the media, Staff:

- (a) Shall follow steps as provided in 5.3.3 and;
- (b) Shall notify the Director of the Clinical Program involved;
- (c) Shall notify Communications and/or the Executive office as may be warranted in an escalating situation.

#### 5.4 Recordings by Media

5.4.1 Media shall abide by and follow the requirements of the CCMB Media Relations Policy 01.102.

5.4.2 In the event that Media makes a Recording of a Patient, the written Consent shall be maintained by Public Affairs and Communications and include:

- (a) The type of Recording;
- (b) The purpose of the Recording;
- (c) The subject matter of the Recording; and
- (d) That Consent was obtained from the Patient.

#### 6.0 **REFERENCES:**

6.1 WRHA Audio, Video and Photographic Recordings Policy # 10.40.280

6.2 The Personal Health Information Act (Manitoba)

6.3 The Personal Health Information Regulation (Manitoba)

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- 6.4 The Health Care Directives Act (Manitoba)
- 6.5 The Freedom of Information and Protection of Privacy Act (Manitoba)
- 6.6 The Privacy Act (Manitoba)
- 6.7 The Mental Health Act (Manitoba)
- 6.8 The Vulnerable Persons Living with a Mental Disability Act (Manitoba)
- 6.9 CCMB Confidentiality of Personal Health Information Policy # 06.001
- 6.10 CCMB Informed Consent Policy #03.20.401
- 6.11 CCMB Media Relations Policy # 01.102
- 6.12 CCMB Patient Identification Policy #02.006.
- 6.13 CCMB Public Use of Cell Phones and Other Wireless Communication Devices – Interference with Medical Equipment Policy # 03.005
- 6.14 CCMB Staff Use of Cell Phones and Other Wireless Communication Devices – Interference with Medical Equipment Policy # 03.009
- 6.15 CCMB Security and Storage of Personal Health Information Policy # 06.010
- 6.16 CCMB Consultation Recording Service (CRS) Procedures.
- 6.17 Appendix A - Consultation Audio Recording, Patient Consent Form
- 6.18 Appendix B – Communication and Public Affairs Photo/Interview Information Release Consent Form.

**Policy Contact:**

All enquiries relating to this policy should be directed to:

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**DOCUMENTATION**

**Policy Location:**

This policy is located (hard and e-copy formats):

1. The original signed and approved policy is on file in the Executive Office, CCMB
2. The e-copy is on file in the CCMB Governing Documents Library, SharePoint
- 3.

**Revision History:**

Date	Version	Status	Author	Summary of Changes
dd/mm/yyyy	#	Initial, Draft Final Minor/Major revision		
03/09/2014	1	Initial	Policy Team Sr Mgmt Communications Health Records	New CCMB policy adapted from WRHA policy.
06/04/2018	1	Minor revisions	S.Friedenberger	Reformatted to new template

**Approvals Record:**

This Policy requires approval by:

Approval	Date	Name / Title	Signature
		Not required.	

**FINAL APPROVAL:**

Date	Name / Title	Signature
Dec 5/14	Dr. S. Navaratnam President and CEO, CCMB	<i>Original signed by Dr. S. Navaratnam</i>