

Recording in the emergency department: illegal or immoral?

Patients and staff should expect privacy in emergency departments and should not be recorded without giving their consent in advance. Emergency departments (ED) use audiovisual recordings to document clinical information and to assist with diagnosis and treatment. Images also may be sent to consultants who provide advice or follow-up care, to the patient's primary care clinician, or placed in the patient's chart to document disorders or treatment. Such recordings should protect patient privacy by complying with the Health Insurance Portability and Accountability Act and they should be included in the general consent to treatment or admission documents that patients sign—but rarely read.

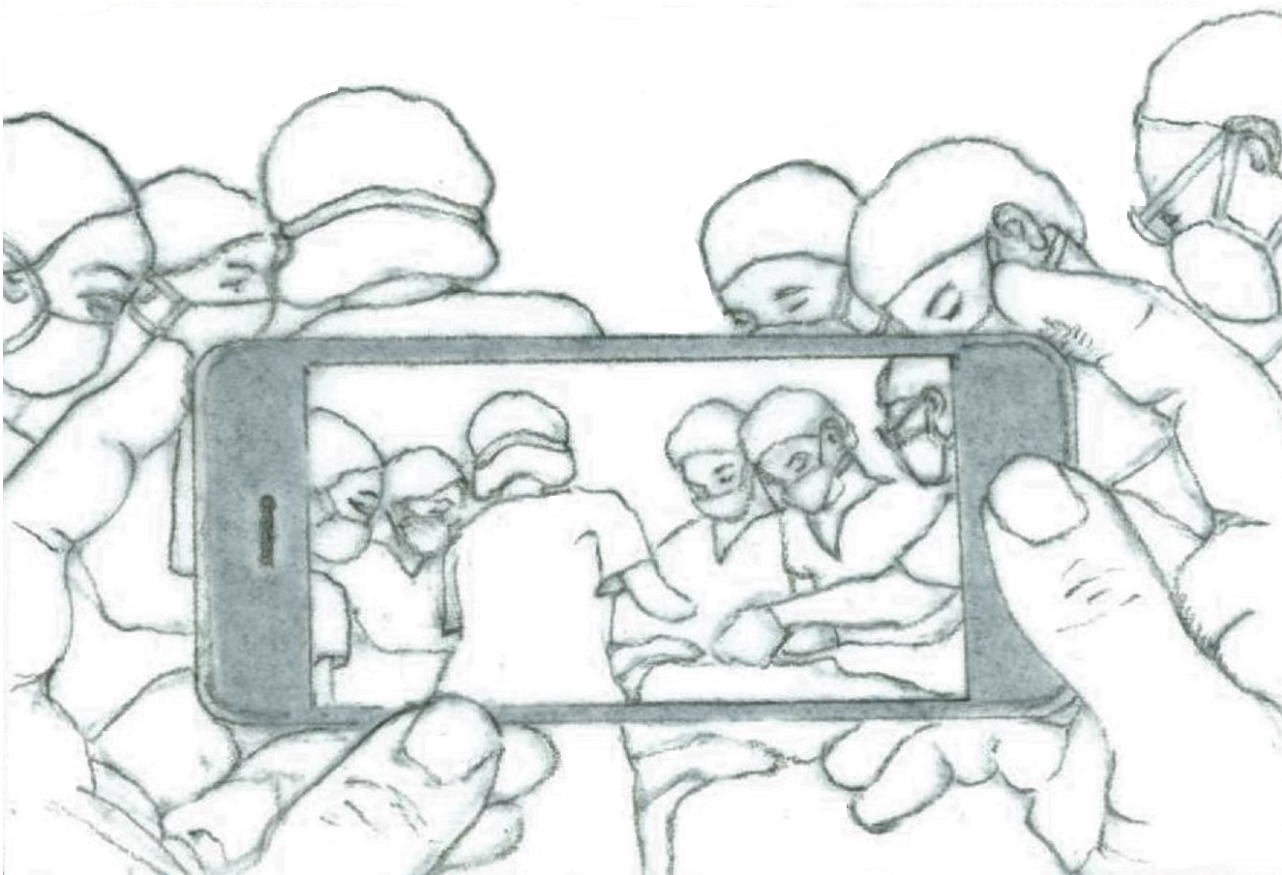


Fig. 1. Photographing ED patient and staff without permission.

Some recordings are created for education, research, or scientific publication to benefit other healthcare providers or the public. When recordings are being made for educational purposes, patients should be informed of the intended purpose and audience, and clearly told that once something is published, its use can no longer be fully controlled. EDs also use videos to monitor

the quality of medical and trauma resuscitations and as security measures.

Of more concern is the uncontrolled recordings made by patients and visitors. With nearly everyone carrying cellphones, ED personnel worry about the ethical and medicolegal implications of secret recordings. Patients and those accompanying them record, overtly or covertly, the ED staff interactions with patients who they are accompanying. Covert imaging during the medical encounter is morally problematic because it undermines and damages the foundational trust of the doctor-patient relationship. They may also record other patients, ED staff, and clinical procedures without permission. Some are posted to social media, violating the privacy rights of caregivers, staff, or patients.

So, why is this permitted? Laws and hospital policies permitting such recordings vary greatly. Many state laws, however, make this difficult to enforce, but the authors believe that hospitals should post policies banning all furtive audiovisual recordings. As of 2019, audiovisual recording without prior 2-party consent is illegal in at least 11 states, usually as part of their wiretapping laws. Some institutions, such as Cedars Sinai in Los Angeles and Vail Medical Center in Colorado, have policies that restrict most recording, even of family members who have given permission. These policies often carve out exclusions for filming relative's births, if the mother gives permission to do so.

When patients or third parties are discovered to have violated hospital policy or the law, whether intentionally or not, experience suggests that they are usually willing to delete videos or photos if asked. If they refuse, they cannot be forced to do so. Unless the person doing the recording is a patient with an unstable medical condition, they can be removed from the premises if the institution is private property and their behavior is in violation of clearly posted hospital rules.

Regardless of whether it is legal or controllable, both the authors and the American College of Emergency Physicians consider this covert, unconsented recording of ED staff and patients to be unethical, with ACEP stating that "The unauthorized use of recording devices. . . should be regulated and restricted in areas of patient care or where there are reasonable expectations of privacy and confidentiality."

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