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Practice Guidance - Photos and Recording in the Practice Environment

Registrants of the College are responsible and expected to comply with applicable privacy legislation in the practice environment (BC Personal Information Protection Act), including with respect to storage of patient records, surveillance cameras, and imaging or videotaping of patients for therapeutic purposes. This also requires that registrants identify potential risks for breaches of privacy or confidentiality and requires them to implement and maintain appropriate measures to mitigate/manage any such risks.

What is considered an electronic recording device?

An "electronic recording device" is a device which may have features including photographic, video or audio recording capacity, and includes but is not limited to:

- mobile electronic devices for sending and receiving messages or information, such as cell phones or "smart phones";
- desktop computers and laptop computers; and
- tablets, cameras, and voice/sound recorders

It does not include any device which does not have photographic, video or audio recording capacity.

What is the practice environment?

The "practice environment" refers to the physical environment where the registrant delivers treatment and provides care to patients, as well as to the objects and equipment within that environment. Depending on the size and layout of the practice environment, it may include spaces such as waiting rooms, entry areas, exercise areas, staff rooms, washrooms, and treatment rooms. For registrants with a mobile practice that results in the delivery of TCM/Acupuncture services in locations such as a patient's home, the practice environment may be limited to the registrant's immediate workspace.

Some registrants provide treatment in practice environments that they themselves do not fully control (e.g. hospitals, educational institutions, multi-disciplinary clinics, or spas owned by others). It is each registrant's responsibility, however, to ensure the provision of care meets the minimum requirements for the practice environment as described in section 3 of the Safety Handbook: Risk Management of TCM Practice. All registrants should promote and maintain a safe treatment space within the practice environment for patients, colleagues, themselves, and others.

What is an acceptable use of a recording device in a practice environment?

Registrants should ensure that if an electronic recording device is used in the treatment room when a patient is present, it is only for a permitted clinical purpose, and with patient consent for that purpose.

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A permitted purpose is one or more of the following: intake, assessment, treatment, clinical record keeping or education (including home care instruction), as well as voice recording by a registrant for clinical record keeping purposes.

What steps should be taken when using a recording device in a practice environment?

If using an electronic recording device for a permitted purpose (as defined above), registrants should:

- Clearly explain the proposed use of the electronic recording device to the patient and explain to that it will not be used for any other purpose.
- Obtain the patient's consent to use the electronic recording device for the stated purpose.
- Record in the patient's health record that consent was obtained.
- Not use the electronic device for any purpose other than a permitted purpose to which the patient has consented.
- Ensure that whenever a patient is in the treatment environment, the electronic recording device is not positioned in a manner that would enable a video, photographic or audio recording of the patient without the patient's knowledge and consent.
- Maintain the confidentiality of all recordings in the same way as other clinical information.

Can I use an electronic or recording device to play music?

Playing music on an electronic recording device is a permitted purpose, but registrants should be mindful and respectful of patients when considering how and when such devices might require a registrant to manipulate or handle them while the patient is present (see Clinical Applications & Practice Scenarios #2 below).

Do I need patient consent to make a recording or take a photo?

Yes. Informed consent must always be obtained, and all necessary information should be presented in a way which the patient can understand (translations must be provided where necessary prior to signing the form). Patients should be given sufficient time to consider all the information and have opportunity to ask questions and/or refuse consent. Registrants should ensure that patients understand:

- the purpose of the recording or photo, where it will be stored, who will be allowed to see or hear it (including the names of the people if known), whether copies will be made, and how long the recording will be kept;
- that refusal to consent to the recording or photo will not affect the quality of the care being offered;
- that the recording or photo taking can be discontinued immediately on request;

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Practice Note: Consent must include the explanation of the purpose for making the recording (photo, audio, etc.) and opportunity provided to the patient to view the recording or photo (or listen in the case of an audio recording), prior to it being used. In addition, if a recording (photo, audio, etc.) is to be used publicly, registrants must ensure that the patient understands that once the recording (photo, audio, etc.) has been released to a media source, it may not be possible to stop any subsequent use, even if the patient subsequently withdraws their consent.

Where can recordings or photos/images be shared?

If the electronic recording device is being used to create a video, photographic or audio recording of the patient for the purpose(s) of intake, assessment, treatment, or education, registrants must obtain the patient's consent as required under the Personal Information Protection Act (PIPA).

If the recording is intended to be accessible in the public domain, (e.g. published online via social media, websites or as printed media), consent also has to be obtained for the disclosure of the recording outside of Canada as outlined in the Freedom of Information and Protection of Privacy Act (FOIPPA).

What should I do if my patient cannot consent due to a disability or other reason?

Where patients are unable to give consent because they suffer from a mental disability or for any other reason, consent can be obtained from the nearest relative or representative as defined under sections 1 and 2 of the Personal Information Protection Act (PIPA) regulations.

- Registrants working within a regional health authority must be aware of and comply with any hospital policies and Freedom of Information and Protection of Privacy Act (FOIPPA) regulations.
- In the case of minors who lack the ability to consent on their own behalf, the consent of a parent, guardian or representative must be obtained. The person giving consent must understand the full purpose of the recording and scope of rights of the minor.

Can I make a recording or use patient photos for educational purposes?

Where a recording is made for teaching, training, or research and as a result may be shown to people other than the registrant or health-care team responsible for the care of the patient, it is important that additional safeguards be utilized, even if the recording will be edited to anonymize the identity of the patient. As part of the informed consent process, registrants should ensure that:

- The patient clearly understands that the recording may be shown to people with no direct responsibility for the patient's health care.
- The patient's consent to the recording is documented in the patient's medical record.

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• The patient be offered the opportunity to view the recording, in the form in which it is intended to be shown, before the recording is used and, given the option to refuse or withdraw consent at that time for the use of the recording.

Can I use patient photos for marketing or advertising purposes?

Restrictions on advertising under College Bylaws are outlined in the Jurisprudence Handbook on page 41. It states that:

> The purpose of advertising should be to provide relevant information to the public in order for them to make informed choices with regard to their health care needs. However, advertising must not be dishonest, misleading, or irresponsible.
>
> …
>
> It should not include any information that is misleading by either leaving out relevant information, or including non-relevant, false, or unverifiable information. For example, providing before and after pictures of how one's services can enhance a patient's appearance is inherently misleading and unverifiable.

What should I do if the patient asks to stop or I notice they are uncomfortable during a recording, despite them giving consent?

The recording must be stopped immediately if the patient requests or, if in the opinion of the registrant, the recording is having a negative impact on the patient-registrant relationship or reducing the benefit that the patient might derive from the consultation. Include all observations and/or discussions with the patient into the clinical record.

Clinical Applications & Practice Scenarios

Scenario 1

For record keeping purposes, a registrant would like to take a photograph of a patient's tongue, or skin rash, etc., for upload into the patient's digital clinical record. To ensure that patient privacy is maintained the registrant should:

- Explain the purpose of the photograph/recording, how the photograph/recording will be used.
- Explain how the privacy of the patient will be maintained (i.e., the photo/recording must be maintained and stored in accordance with all ethical, professional, and legal requirements, including the College's Medical Records Documentation and Medical Records Management practice standards). Recorded content made with mobile

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recording devices must be transferred to a secure electronic medical record-keeping system and erased from the recording device as soon as practically possible after the transfer.

- Obtain the patient's informed consent and document evidence of it in the clinical record.

Practice Note*:* If a patient consents that a photograph/recording or other imaging be used for record keeping purposes, it may not be used of any other purpose. For example, a registrant may not use the same photograph/recording/imaging for teaching and/or case study purposes to be shared with colleagues, unless the patient has explicitly given their consent to do so. If a patient agrees after the fact to the photograph/recording/imaging to be used for a secondary purpose (other than to what they originally consented), a registrant would be required to obtain a secondary consent outlining the new intended use of said recording(s).

Scenario 2

A registrant uses a cellular device in the treatment room to play music during treatment. During treatment, the registrant handles the device and as a result an audible 'click' sound is heard. The patient, who is prone, is concerned that the registrant has taken a photo of them. The registrant also hears the sound and immediately communicates to the patient what has happened. To avoid this scenario, the registrant could:

- Refrain from handling the device during treatments unless the patient explicitly asks them to do so (to change music and/or volume)
- Remove the device entirely from the treatment space and consider the use of Bluetooth and/or other wireless speakers that connects the device remotely.

Useful links and resources:

Adapted from CMTBC and CPSBC:

https://www.cmtbc.ca/law-standards/standards-of-practice/practice-environment-standard-of-practice/ (CMTBC)

PSG-Photographic-Video-Audio-Recording.pdf (cpsbc.ca)