

Avant Risk IQ factsheet

FAQs – mobile technology and digital photography

Mobile technologies, such as smartphones, can help doctors work more efficiently and effectively, and improve patient care. Increasingly, doctors are using personal mobile devices in the clinical environment to take and transmit digital photographs. This can raise issues around privacy and confidentiality of patient information, reliability of decision-making and data security.

Some hospitals do not permit the use of personal mobile devices. You should ensure you are aware of your hospital's policy before using your personal mobile device in the clinical environment.

Digital images can be taken for many different purposes including to provide clinical care, for teaching or for research purposes. Different issues can arise depending on the purpose for which the image is taken.

Why is privacy such a concern? Does it really matter that much?

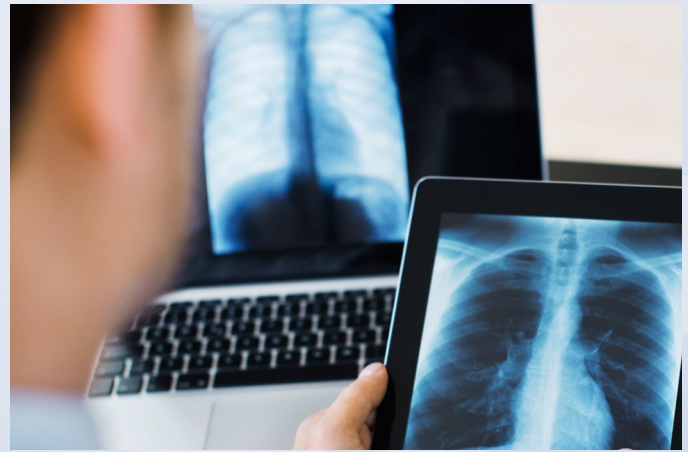
Patients are entitled to privacy – it is a fundamental legal right, enshrined in Commonwealth, state and territory privacy legislation.

So, "yes", privacy does really matter. If you breach your patient's privacy, you may be opening yourself up to litigation or complaints, and there are now significant penalties under Commonwealth legislation for breaches of privacy.

People are now more worried about security than looking after the patient. Unless the photos are of an intimate nature, is it such a big deal?

Digital images (that are identifiable) are "health information" and must be treated with the same privacy and confidentiality as any other health record or information. They must only be taken with appropriate consent, stored securely and only disclosed in accordance with that consent or where there is a legal obligation to do so. You are bound by the requirements of privacy legislation, and your legal and ethical duty of confidentiality.

As to whether the photograph is 'intimate', what you may feel is 'intimate' may not be the same as the patient's definition of 'intimate'.



Can I take photos as a biofeedback tool? For example, a patient viewing her perineum, then straining to view her prolapse and then seeing it disappear when she contracts her pelvic floor.

Photographs taken by a practitioner for clinical purposes form part of the medical record so photos such as these should be added to the patient's medical record. Practically, the simplest approach will be to print the photos, and add them to the patient's medical record. Some organisations have systems that provide a secure way of electronically transferring a photograph from your personal mobile device to the clinical record.

As with all patient images, you are responsible for the secure storage and safe transmission of the image in accordance with relevant Commonwealth, state and territory laws.

I'm an on-call specialist and I am often sent photographs to comment on. Imagine, for example, the issues that arise in a case of a photo of a toddler sent to me with the question, "Is this paraphimosis?"

Because you're receiving, not sending the photos, obtaining consent is the onus of the person who took the image. The sender should have included the image in the medical record.

It is reasonable for the recipient of the image to assume that a copy has been placed in the patient's medical record, and therefore you may delete the copy from your phone once it is no longer required for the purposes of clinical care. You cannot use it for any other purpose without clarifying the scope of the consent obtained from the parents or guardian of the child.

You should also ensure you have taken adequate security steps on your phone – encryption, passcodes and ability to remote wipe. Just keep in mind what may happen to your professional career if that photo were to end up on a child pornography site as a result of your incorrect handling of the photo.

Again, make sure you comply with any policy your organisation may have about taking patient photographs and/or about using your personal mobile device.

The medical director of the public hospital at which I work feels that using non-identified clinical pictures for educational purposes is permissible. Is this potentially risky from a privacy point of view?

While it may be technically permissible to use non-identified clinical images for educational purposes, it is not a good idea to do so without consent of the patient. Most journals require signed consent before publication of even non-identifiable pictures. Sometimes what you think is not identifiable may actually be identifiable (e.g. a tattoo). If a patient finds out, or a neighbour or family member can identify the patient from the 'non-identifiable' clinical photo, this could lead to legal sanctions and disciplinary action. If you are unclear about your legal obligations when using patient images for educational purposes, seek advice.

What if you have a high quality pocket camera – does this solve a lot of the technical issues?

The only difference is a camera lacks the ability to directly send photos elsewhere. You still have the same professional and legal obligations regarding privacy and security. Cameras may in fact be less secure than personal mobile devices as you cannot password protect a camera, and most consumer cameras aren't able to encrypt their contents. Always give thought to what would happen should the camera be stolen or you leave it in a taxi, or in an airport, unprotected.

If you do use one, keep in mind that memory cards provide a unique problem. Even if you delete files from a memory card, unless the data is overwritten the files can still be recovered quite easily.

Is it enough to obtain a verbal consent for a clinical photo?

If your hospital or practice has a policy that requires patients to sign a consent form for clinical images, you should ensure you follow that policy, and place the consent form in the records with the image.

It is not always possible or necessary to obtain written consent. If you can only obtain verbal consent, ensure that you document in the notes that it was obtained. If possible, have the patient initial the notes.

Where sensitive clinical photos are involved, it is prudent to err on the side of caution and obtain written consent where possible.

In regards to maintaining the photo for seven years etc., if we take a picture of an x-ray that is already on a medical record and ask a consultant for advice via telephone, do we need to keep the picture saved on the phone for seven years?

If you are planning to send, or receive a photograph of an x-ray or document for diagnostic purposes, you should consider whether the photograph is of a sufficient quality to rely on it.

If the x-ray is on the medical record it is not necessary for you to save a photo of the x-ray – the image already exists on the file. However, the recipient may want to keep the received image as record of the information they were provided with. If the photo is kept, it should be placed in the medical record and deleted from the phone.

I've had patients email pictures of their lesions to me. Is the fact they took the picture and emailed it to me an implied consent? Is email secure enough to satisfy security regulations and laws?

If a patient independently sends you their own health information then, yes, it is implied that they consent to your looking at the picture for the purposes of their treatment. It does not, however, imply consent for any use or disclosure beyond this purpose. An image received from a patient (by email or otherwise) is subject to the same privacy and security requirements as any other health information.

A patient of mine had surgery in a major city, went home after a week, and then telephoned after 10 days with what may have been a wound infection. A photo she took and sent to me was useful as it allowed me to reassure the patient. The photo has ended up in my notes and her GP's notes. It has not been made public. How do you use consent here?

Consent for storing the image in your notes would be implied by the fact that the patient sent the image to you. It is also likely to be within the reasonable expectation of the patient that you would send a copy of the image to the GP who referred her to you. If you had any doubt, it would be prudent to obtain consent from the patient to keep a copy of the photo in your records and to forward it to the GP, and to document that consent in your records.

For more advice, call Avant's Medico-legal Advisory Service on **1800 128 268**.

Visit avant.org.au/risk/iq for Avant Risk IQ resources including webinars, eLearning courses, case studies and checklists.

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