

# Photographs & Audio-Video Recording of Births

## Overview of Issue

Patients may advise any of their healthcare providers in healthcare organizations (e.g. hospitals/midwife-led birth centres/clinics) they wish to take a photograph or audio-video record the birth of their baby(s). Healthcare organizations take varying approaches to permitting the request to take photographs and/or audio-video record births. Once the photograph is taken or the birth is recorded, the healthcare organization has no control over what happens with the photograph or recording. Having a policy setting out organizational expectations and communicating these expectations to patients and staff is key to mitigating risk and maintaining patient safety.

## Things to Consider

### The Healthcare Organizational Policy

- There is no general legal requirement that consent be obtained before a patient can photograph or audio-record interactions with healthcare providers, however a healthcare organization can develop a *policy* under which patients, visitors and healthcare providers are asked and encouraged not to take photographs or make other recordings without the consent of everyone involved, in the interests of protecting privacy and not detracting from a positive healthcare environment.<sup>1</sup>
- Policies should address: what is permitted/not permitted, the requirement for consent, and documentation in the health record.

### Key Points

- Patients should be encouraged to obtain consent from all healthcare providers before photographs are taken or audio-video recording begins.
- Any healthcare provider can require the photograph or audio-video recording to be stopped at any time.
- The privacy of other patients must be respected.

### Communicating with Patients and Photographer/Videographer

- Explain the healthcare organization's policy on photography and audio-video recording of births with the patient during the antenatal period and on admission (consider providing an information sheet and/or posting on the healthcare organization's website).
- Remind the patient and photographer/videographer of **their obligations** to:
  - Obtain consent from all healthcare providers (e.g. midwives, birth attendants, nurses, anesthetists, obstetricians, family physicians, respiratory therapists, NICU clinicians) **before** the photograph is taken or audio-video recording begins;
  - Respect other patient's privacy (hospital or birth centre setting).
- Advise the patient and photographer/videographer:
  - healthcare providers are under **no obligation** to be photographed or audio-video recorded;
  - the most responsible practitioner or any other healthcare provider can require the photograph or audio-video recording **to be stopped at any time** (i.e. emergency arises or if any healthcare provider becomes uncomfortable then photograph or audio-visual recording must stop immediately);
  - sterile barriers cannot be violated;
  - there can be no interference to patient care.

<sup>1</sup> While some provinces have legislation that specifically protects the privacy rights of employees, others, like Ontario do not. Courts have found that hospital employees may also have a right to privacy, however, they have prioritized the right of patients and visitors to photograph or videotape care provided by hospital employees.

## Safeguards

- Consider prohibiting taking photographs and the audio-video recording of certain procedures/scenarios, e.g. epidurals, assisted vaginal deliveries (forceps/vacuums), and any obstetrical or neonatal emergencies, including shoulder dystocia, cord prolapse, emergent caesarean sections, and neonatal resuscitation.
- Consider an agreement that photographs and audio-recordings not be posted online.
- Ensure appropriate infection control precautions are followed.

## Documentation

- Document in the patient's health record the birth was audio-video recorded; indicate if the healthcare organization has a copy of the audio-video recording (and where it is stored).

## Other Considerations

- The position of healthcare organizations on photographs and audio-video recording of births varies and ultimately each healthcare organization has to decide what is appropriate. Some healthcare organizations restrict audio-video recording to the head of the bed, limit audio-video recording to low-risk patients, ask the mother to sign a waiver or consent, limit audio-video recording to only family members or only allow audio-video recording when the baby is placed in the mother's arms. Other healthcare organizations are more permissive.
- Anticipate some patients will share any photographs and/or the audio-video recording on social media.
- Anticipate that if litigation or college proceedings arise, the photograph(s) and/or audio-video recording most likely will be used as evidence.

## References

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