

Taking photographs of wounds and data protection

KEY WORDS

- ▶ Wound photography
- ▶ Data protection
- ▶ Patient consent
- ▶ Device and storage
- ▶ Distance and wound measurement

Although quality photographic equipment is often easily available and automatic cameras appear to enable people to take good pictures, many considerations need to be taken into account when taking photographs of wounds in a clinical setting. Sylvie Hampton and Anita Kilroy-Findley look at the overall issues involved when taking pictures of wounds. From device and storage, patient consent and data protection, to anatomical location, distances and measurements, this article provides an excellent overview of the issues everyone should be aware of before taking a photographic record. If done correctly, a picture is a powerful tool and can be worth a one-thousand words.

A good photograph of a wound can be an extremely useful tool when evaluating the healing of wounds. Wound photos can be used as an adjunct to clinical care, for discussions about care with colleagues, for education, for publication in nursing (or medical) journals or as part of medical research (Sperring and Baker, 2014). A recent 'straw poll' of clinicians at a UK conference revealed that none of the delegates had received training in wound photography and they were not aware of any local policies in their UK Trusts relating to photography.

Since the introduction of the Data Protection Act in 1998, healthcare professionals in the UK must be very careful when using photographs and take measures to protect the patient's identity. This means that if the photographs are meant to be shown for research or education, the face of the patient should not be in the photograph and identification should be coded so that only the researchers can identify the patient.

The Data Protection Act (DPA) controls how personal information is used by organisations, businesses or the government. Everyone responsible for using data has to follow strict rules called 'data protection principles.' They must make sure the information is:

- ▶ Used fairly and lawfully
- ▶ Used for limited, specifically stated purposes

- ▶ Used in a way that is adequate, relevant and not excessive
- ▶ Accurate
- ▶ Kept for no longer than is absolutely necessary
- ▶ Handled according to people's data protection rights
- ▶ Kept safe and secure
- ▶ Not transferred outside the European Economic Area without adequate protection.

There is stronger legal protection for more sensitive information, such as:

- ▶ Ethnic background
- ▶ Political opinions
- ▶ Religious beliefs
- ▶ Health
- ▶ Sexual health
- ▶ Criminal records.

For instance, if a photograph was taken detailing personal information on a personally owned camera and was then lost on public transport, the individual could possibly be identified. Taking the camera containing personal information that could potentially be obtained by others on public transport would contravene DPA rules. The contravention would not be due to the act of taking the photograph, but the failure to download it to a safe area and then remove it from the camera.

With the proliferation of published images on the Internet it has become particularly important

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to obtain permission for all uses of medical images (Cunniff et al, 2001) and informed consent must always be obtained from the person being photographed. The Declaration of Helsinki says that the subject of a photograph has the right to withdraw their consent even after having signed the consent form.

There are three levels of consent, depending on the intended use of the photographs and the level of consent the subject is willing to sign.

- » Level 1: Confidential Record. The photographs will only be used in medical records.
- » Level 2: Confidential Record and Teaching. The photographs may be used for education without disclosure of personal information.
- » Level 3: Confidential Record. Teaching and publication.

For publication purposes, the subject will need to sign for consent. Photographs will not be published unless this level of consent has been signed.

THE DATA PROTECTION ACT AND HOW IT GOVERNS INFORMATION AND PHOTOGRAPHY

The DPA 1998 defines UK law on the processing of data on identifiable living people. The DPA gives people the right to know what information is held about them and provides a framework to ensure that personal information is handled properly. The act came into force on 1 March 2000 and covers personal data held on computer and in manual files. This includes any photographs that have been taken.

The DPA applies only to information that falls within the definition of 'personal data'. Pictures taken at an event attended by large crowds, such as a sports event or a festival, are regarded as a public area so it is not necessary to obtain permission as it is not illegal to take photographs or video footage in public places unless it is for criminal or terrorist purposes. However, patients have an absolute

Acknowledgment

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right to confidentiality with photographs in order to preserve the trust between patients and health professionals and they are subject to legal and ethical safeguards.

THE DEVICE AND STORAGE

Most photographs will be stored in an electronic patient record and will be used to assess the condition of the wound and monitor progress at the next appointment. This is the main purpose of taking photographs and provides the most accurate record of progress or deterioration. However, how photographs are obtained is important. Consideration must be made about whether photographs are taken on cameras or phones and whether the device used is owned by the clinician or the Trust. If it is in the Trust's possession, the camera should be stored securely and the photographs downloaded to a computer as soon as possible and deleted from the camera.

If the mobile device belongs to the person taking the photograph, then the photographs must be downloaded to the Trust's computer as soon as possible and deleted from the device immediately. This is common sense. However, mobile telephones should not generally be used for clinical photography because the process involves unacceptable risks to the security and confidentiality of the images and there is the potential for legal action to be taken against an individual clinician or organisation if a patient's privacy or rights were compromised (IMI National Guidelines, 2012).

OBTAINING CONSENT

Historically, the focus of clinicians and medical journals has been to preserve the anonymity of their patients and subjects. Over the past decade, however, this focus has shifted toward obtaining full consent for all images, even those that do not identify the patient (Smith, 1998).

The simplest matter is to gain consent to cover the period of care or the time the patient is likely to have the wound. If the patient consents verbally but is unable to write, this should be recorded in the case notes. However, this all relies on the patient having full capacity and the ability to give informed consent.

OBTAINING CONSENT WHEN AN ADULT LACKS CAPACITY

If an adult patient appears to be unable to consent, either temporarily or permanently, the Mental Capacity Act (MCA) 2005 should be used to formally assess capacity and consider the need for a 'best interests' decision. Some groups of patients to whom this may apply, such as the cognitively impaired, those with learning disabilities and those in an active phase of mental ill health, will need support during the 2-step capacity test to ensure information relating to the decision is given in a way the person can understand with alternative means of communication and accessible formats being used.

All decisions and processes used to gain consent must be recorded in the patients notes. Where photography is concerned, practitioners should also be aware of 'passive consent' as this could be challenged in a court of law. If a person does not have the capacity to make a decision about their treatment, the healthcare professionals treating them can continue with treatment if they believe it is in the person's best interests. However, the clinicians must take reasonable steps to seek advice from the patient's friends or relatives before making these decisions. Passive consent has not yet been challenged in law but this may well happen in the future.

Where capacity is assessed as lacking, the practitioner can consider making a 'best interests' decision, ensuring they follow the guidance for this set out in the MCA. Where wound photography is concerned, practitioners need to reflect carefully on whether a picture is in the patient's or the Trust's best interests. If clinical photography can be demonstrated to be in the best interests of the patient, the most senior healthcare professional responsible for the patient may authorise the action and complete the necessary permission form. The resulting photographs must be used for clinical purposes only (IMI National Guidelines, 2012).

CHILDREN

Consent for clinical photography of a child is the responsibility of the parent/guardian until the child reaches an age where they are considered to have the maturity to understand what is being asked of them, what it involves and the implications of their decision. This is known as being 'Gillick competent' and reflects Lord Scarman's comments to the House of

Lords (British and Irish Legal Information Institute, 1985). He extended understanding by stating 'parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision'.

A young person aged 16–17 is considered to have capacity to consent providing consent is given voluntarily and the principles of the MCA apply.

DIGNITY

Always consider the patient's dignity when taking a photograph. It is important to cover genitals if they are slightly exposed, or the anus if the wound is on the sacrum. Should the patient be incontinent, it is important to ensure they are fully clean

before taking a photograph. Where wounds are on genitalia, the perineum or anus, consider whether a photo is absolutely necessary and reflect on what purpose it will serve.

IDENTIFYING DATA ON THE PHOTOGRAPH

This is a difficult matter and depends on the intended use. If it is to be added to the patient's notes and not used for any other purpose, then there is value in placing identification on the measuring strip, such as name (or initials), date, NHS number. However, none of these should be used if the photograph is destined for publication of any kind. In that case, a unique identification code should be used which could be formed of

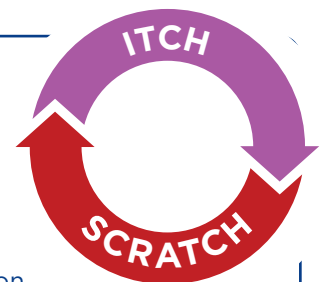
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¹Breneman, DL et al. J. Derm Tmt. (1997);8:161-168

²Cocks-Eschler D & Klein P J. Drugs in Dermatol. (Aug 2010). Vol 9 (8)

³Greaves MW. Pathophysiology and clinical aspects of itch in: Fitzpatrick TB, Eisen AZ, Wolff K, et al eds. Dermatology in General Medicine. 4th ed. Vol 1 New York, NY: McGraw Hill, Inc; 1993: 413-21

⁴Leung DYM, Rhodes AR, Geha RS, Schneider L, Ring J. Atopic dermatitis in: Fitzpatrick TB, Eisen AZ, Wolff K, et al eds. Dermatology in General Medicine. 4th ed. Vol 1 New York, NY: McGraw Hill, Inc; 1993: 1543-1564

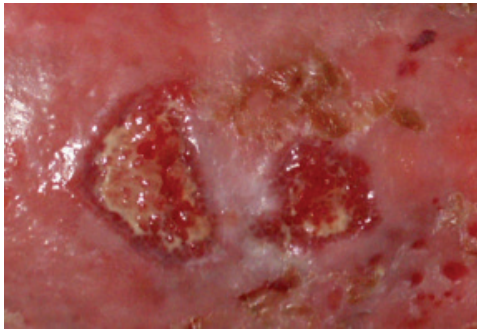


Figure 1. In this photo, it is impossible to know where the wound is situated



Figure 2. The wound in close up



Figure 3. Demonstrating the position of the wound

numbers and/or letters. There will be occasions when a photograph may be wanted for education purposes, yet has identifying data on it. In these instances it is imperative that the data is shaded out or covered over before the image is used.

Clinicians should always be aware that the photograph may be used in a court of law at a later date. Therefore, photographs should always be taken with great care and while the patient's privacy should be protected, it should be possible to identify the time, date and patient if necessary.

ANATOMICAL LOCATION AND DISTANCES

In many instances, a photograph of a wound does not show the position or location of the wound on the body (Figure 1). Therefore, the photograph should be taken close-up and at a distance. The distance picture would demonstrate where the wound is located and whether it is on the left or right (Figures 2 and 3).

MEASUREMENTS

Wound measurements are subject to practitioner variables, body morphology and patient positioning. It has long been acknowledged that measurements should be done by using greatest length by greatest width (Shah et al, 2013). However, this is quite subjective and different practitioners may view these points on the same wound slightly differently. For the purpose of comparison it is important the patient is in the same position each time the wound is photographed. If the wound is on a curved body contour, the measurements would need to be made across the wound in order to indicate size. Depth can also be problematic as the wound bed is rarely uniform and there may be pocketing which can be discovered by probing the wound.

CONCLUSION

Photographs of a patient's wounds need to be treated in the same way as personal data held in other formats. They need to be stored securely and disposed of securely when no longer required.

Written permission is required when taking a clinical photograph and there are strict rules on data protection and principles for making sure the information is used lawfully and for specifically stated purposes, kept safe and secure and handled according to people's data protection rights.

Clinical photography provides an opportunity to monitor healing and deterioration as well as being an essential aid to education, however to do this the photo needs to be clear, have the relevant identifying data with specific consent recorded in the patient's notes. All clinical photography must be respectful of patients' personal dignity.

Overall, clinicians should be taking photographs of their patients' wounds as it is an accurate method of recording outcomes and they should not be afraid to do so as long as confidentiality is maintained. WUK

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