

May I use this picture please?

The ethics for sharing

KEY WORDS

- ▶ Consent
- ▶ Copyright
- ▶ Ethics
- ▶ Permissions
- ▶ Photography

Wound photography can enhance the assessment of patients, their wound and environment if the images taken are good. Used in association with a medical and wound history, images will influence decision-making and the planning of treatment, providing an opportunity to map the wound and its progress. Pictures are powerful teaching tools, far more so than words, showing and teaching clinicians wounds they would not necessarily encounter in their daily practice. It is said about photography that *'You don't take a photograph. You ask quietly to borrow it.'* This is even truer these days, when reproducing and sharing photography is only a keyboard command away. In this article, Jacqui Fletcher explores the issues and ethics relating to copyright in a digital world.

Clinical photographs are an essential part of working in tissue viability, a good wound photograph serves as an excellent record of a starting point in care delivery, equally of progress, deterioration or even lack of progress. Photographs are also excellent teaching resources, allowing people to 'see' wounds they may not have seen otherwise — facilitating discussion and debate about how to assess, manage, refer the patient with that type of wound. Photographs are also a reference point for the patient to see how the wound has progressed over time; especially when daily change may be so small it seems insignificant. Importantly, they form part of the clinical record and as such images are constrained by patient consent (agreement). Consent may be requested for different purposes, the most basic being use in patient records, the next level covers consent for teaching and the final level covers consent for publication. The first two levels of consent appear straight forward, but publication is less so. This level of consent varies between organisations with some stating a general 'consent for publication' on their consent form (*Figure 1*) and others insisting that consent is only given for a specific publication, which must be named.

LIVING ONLINE

The advent of the digital age and particularly Google Images has made controlling the spread

of images much more difficult; once an image has been published either in print or other media (such as video), it is highly likely that it will appear in a system that allows it to be captured and reused. Programmes that allow you to 'snip' images or simply download a whole image are excellent tools to use when looking for interesting and engaging teaching materials — but do you have the right to do so (*Box 1*)? In the past, when presentations were made using slides, i.e. transparencies, the only way someone else could copy your clinical picture was by asking you for a copy of the slide — so it was very controlled. Now presentations are digital, using software such as PowerPoint or Apple Keynote, they can be easily shared online. Indeed, we are often actively encouraged to make our slides available, particularly by universities, prior to the presentation to help people with learning challenges. Handing out paper copies is discouraged, as it is not environmentally friendly, so again we are encouraged to share our content electronically — but how do we then protect our images?

DON'T SHARE WHAT YOU DON'T OWN

Many tissue viability nurses participate in regional support networks and, as a participant, I know how often requests are circulated to use a particular image for teaching purposes

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Independent Nurse, Senior
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Pressure Programme

Read Code: _____

Name & Address of GP Practice _____

Patient Agreement – Photography

Patient's details

Last name _____

First name _____

Address _____

Date of Birth _____ NHS no _____

I agree and consent to be photographed, as explained to me by _____

I understand that I am consenting for the photograph to be used for:

Patient Record
 Teaching/Research
 Publication

Other (please specify)

Details of clinical indication for Photograph

I understand that I can withdraw my consent at any time, although in the case of publication it may not be possible to recover the material once released. Refusal to consent will in no way affect my medical care.

Patient's or Parent/Guardian's signature

Name (& relationship to patient)..... Date.....

~~Confirmation of consent (to be completed by the doctor taking the photograph prior to the photograph being taken).~~ I have confirmed with the patient that s/he has no further questions and wishes the photograph to go ahead.

Signed:..... Date.....

Name (PRINT)..... Job Title

Definitions:

- Patient record – confidential images used as part of, or to record your treatment.
- Teaching – images used to teach health professionals in lectures, handouts, or as electronic teaching material. It is usual for your identity to be anonymous.
- Publication – used to illustrate articles etc. when published in journals, posters or as electronic publications (web site). These images may be available to the general public.

Figure 1. A typical consent form

Box 1. Not there for the taking

Even if a photo has been published online, including on a social network, the original rights-holder retains copyright. Any third party who wants to republish that image should contact the original rights-holder for permission. Permissions are often granted particularly when using for educational purposes. Some photographers encourage the free use of their pictures (through organisations such as Creative Commons).

and how supportive colleagues are in providing those less easily captured images. I have a series of episiotomy wounds that I have shared with several people that way. Equally, I have some images of device-related damage, which colleagues have kindly given me. When using these images I would also try to acknowledge the source (copyright 'x y'). However, keeping track of the origin of an image is not simple. And it's easy to imagine how a picture may get moved to a different presentation or dropped into a different type of resource, such as a hospital poster or patient leaflet, its origin forgotten. In my rather chaotic filing system, I have a folder of presentations clearly labelled 'not mine' with the name of the 'owner' and some other identifier — but I know I have cannibalised some for my slides and that will be the place I remember to go to the next time I need it — not the carefully labelled original.

REPRINTS, SISTER PUBLICATIONS, OTHER AUTHORS

Why does this matter? Well obviously there is the issue of consent and who owns the copyright to the picture. Most publishers work on the basis that the author has cleared any permission necessary to use the pictures for a particular article in a particular journal (*Box 2*). Publishers may reprint articles in sister publications, as well as update and reprint book chapters without you ever knowing (*Box 3*). But what if pictures end up being used by a different author — good images are difficult to obtain and therefore sought after — but did anyone go back and ask the patient? And who safeguards the copyright law?

PICTURES IN THE WRONG CONTEXT

There is also the frustrating problem of seeing an image used with the wrong medical story. It may be a minor detail — a patient's age or the wrong gender attributed to an elbow. But if it's put forward as a straightforward venous leg ulcer and it's actually a carcinoma — clearly this is clinically very relevant.

And what if an image had been taken for commercial purposes, for which a client had paid for but that has reproduced without the client's permission. Somebody paid for a good image

Box 2. Permission to use

Authors may not use pictures or illustrative figures without consent. Authors must make sure that they have patients' consent to publish their clinical pictures and any other necessary permission from employers, regulatory bodies and any relevant third parties prior to submitting any pictures. In addition, the onus is on the author to have gained any necessary permission to reproduce figures, tables, artwork from any websites, other journals or books before submitting their manuscripts.

Box 3. Transfer of author copyright

Wounds UK requests its authors to transfer of copyright for all articles published in order to:

- Ensure that the published article is used correctly, and to prevent its unauthorised or inappropriate use
- Have the ability to launch new journals and services and help enrich published content. Thus enabling the author to access other platforms and reach a broader audience
- Protect the integrity of the journal articles in cases of plagiarism, copyright infringement and other third-party infringements and swiftly bring about any necessary enforcement action
- Authors maintain the right to use the article for teaching purposes and presentations and may use extracts for other work or compilations.

Box 4. Images of patients

- *Wounds UK* adheres to maintaining patient confidentiality at all times. If there is any chance that a patient may be identified, the patient's written consent would be sought.
- Wound images are typically of undistinctive parts of the body. However, if necessary, any identifying marks or text that could reveal the patient's identity through clinical or personal detail will be removed.
- An exception to this policy of needing consent for recognisable photographs of individuals is when *Wounds UK* uses photographs from picture agencies. We state where these photographs have come from and rely on the fact that the agencies and their photographers have obtained the relevant permissions from the people shown in the photographs.

and other people are just using it?! All of this is wrong and we need to become aware that using pictures without obtaining permission to do so is wrong. To get permission to re-use a picture or illustration, you need to email the publisher of the journal or book (or owner of the website) and ask for permission to reuse the image. When asked, and if they own the copyrights, most publishers and owners of websites are happy to give permission to healthcare professional or fellow publishing colleagues when the re-use is for educational purposes (commercial use is more complicated and usually involves having to pay a fee).

THE POWER OF A GOOD PICTURE

A good picture can prompt lively and insightful debate; it encourages and embeds deeper learning. Most people remember pictures far better than words and diagrams. And what is the harm of reusing a picture if the patient is not identifiable in it (*Box 4*)? The picture in *Figure 1*, for example, was commissioned and paid for as part of an educational resource by a company. It is in print in an article and also used by the same company in an educational, freely available resource. Recently, I have seen it in a local teaching poster with no reference to the original source. Does it really matter that it has been reproduced? Apart from the company who commissioned the picture, the person that took the photograph and myself, would anyone mind or could anyone identify that patient? The patient gave consent to have the picture published in any medical/health care publication. The patient is young and social media-savvy — so probably would realise the potential for the image to be re-used. But does that make it OK?

What is my role in this — should I challenge the people who took the image without permission or acknowledgment? The picture is used appropriately and had they asked the company that commissioned the picture, I'm certain they would have been given permission. Am I making too much of a fuss?

I checked with the Institute for Medical Illustrators (IMI) who recently updated their guidance for medical photography — but it is only available to members. When I asked a medical photography colleague for a copy I was told “*the IMI guidelines do not have any sections on wound*

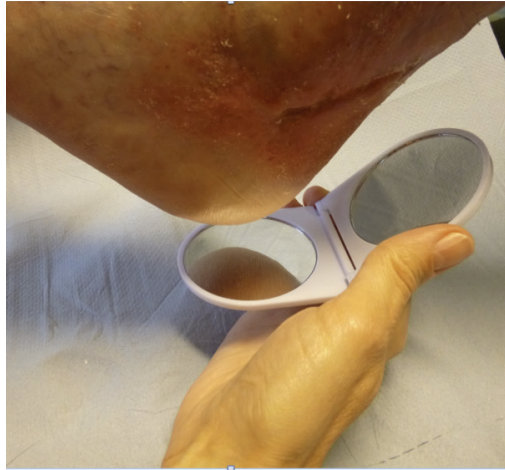


Figure 1. Professionally taken photograph of a nurse performing a heel check.

photography. That is something that is taught as a post-graduate course in clinical photography” and that “The IMI guidelines have no imagery in them apart from one which is about camera positioning which isn’t relevant to wounds etc. There is a section on consent but nothing that explains about using the images for publishing purposes”. So, although the 2006 guidelines addressed patient consent, it appears the more recent guidance does not and the only guidance there is on consent remains the Department of Health (DH) guidance (DH, 2009). This specifies that consent must be obtained and possible future use to be explained:

“Consent should be obtained for any visual or audio recording, including photographs or other visual images. The purpose and possible future use of the recording must be clearly explained to the person before their consent is sought for the recording to be made.” DH, 2009: p15

But the DH guidance (2009) does not capture the fact that once the image is in the public domain it may be out of your control.

The General Medical Council (GMC) website also has guidance for audio and video recordings (GMC, 2013) but it does not cover photography.

I understand the need for the ‘right’ clinical picture and how difficult it can be to obtain. There have been several discussions around setting up a library of images, with background information and identified level of consent, but it seems that legally this may be too challenging — although very welcome to clinicians.

It leaves me somewhat perplexed. I understand very clearly the guidance on consent, I am also very aware of how there seems to be, generally, a different attitude to images once they are in the public domain and this is really not addressed apart from in the DH statement:

“The purpose and possible future use of the recording must be clearly explained.”

And, of course, as professionals we are all bound by our codes of conduct.

This is clearly something that needs greater debate and some clearer guidance. I would be interested to get to know other people’s views. **WUK**

REFERENCES

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Call for papers

Wounds UK welcomes a range of articles relating to the clinical, professional and educational aspects of wound care. If you have written an article for publication or if you are interested in writing for us and would like to discuss an idea for an article, please contact Edda Hendry on 0207 960 9612 or email ehendry@omniamed.com

