



Recording (photographing, videotaping or audio recording) by Clients and Visitors



16.6.6P

Policies are directing required organizational practice/behaviour

Purpose:

To provide guidance to Island Health staff, medical staff and other agents, collectively called **Staff**, to assess and manage situations where patients/clients/residents (Clients), visitors or other members of the public (Visitors), collectively called **Clients and Visitors**, wish to photograph, videotape or audio record Staff or other Clients and Visitors (Record or Recording) in Island Health facilities and other service areas.

This policy is in compliance with legislation including the [BC Privacy Act](#), [BC Freedom of Information and Protection of Privacy Act \(FIPPA\)](#) and the [BC Workers Compensation Act](#).

Scope:

- Applies to any situation where a Client or Visitor wishes to Record Staff or Clients and Visitors in any Island Health-owned or operated facility or other external setting where care or service is offered, including if that service setting is a Client home.
- **Does not apply to:**
 - Clients and Visitors Recording only themselves and where such Recording does not capture or impact other Clients, Visitors or Staff.
 - Media requests for recording, which must be referred to and managed by [Island Health Communications, Planning and Partnership](#).
 - Recording undertaken by Staff. Please refer to [Policy 16.6.1](#).

1.0 Policy

1.1 Client and Visitor Recording

Clients and Visitors sometimes wish to Record interactions with Staff or other Clients and Visitors in settings where Island Health provides care or services (Recording Activities). Reasons for and the Perceived Value from doing so will vary based on the particular situation, circumstances and the potential or actual impact the proposed Recording Activities will have on the involved Client, Visitor and/or Staff.

All proposed Recording Activities *that may or will identify other Clients, Visitors or Staff* are considered a collection of an individual's Personal Information (see section 3.0 Definitions). All such proposed Recording Activities will first be assessed by Staff before they are initiated to determine if they are a permissible activity as set out in this policy. A patient-centric, principled and risk-based approach, guided by this policy and its supporting resources (see Section 5.0), is to be used by Staff when determining the appropriateness of proposed Recording Activities in any given situation.

1.2 Permissible Recording Activities

Recording Activities by Clients and Visitors are permitted in care or service locations where those activities are not disruptive to Staff performing their work duties, do not violate the privacy or experience of safety and wellness of Staff, or other Clients and Visitors, and enable Clients, Visitors and Staff to be compliant with their respective legislative obligations.

Clients or Visitors who wish to conduct Recording Activities are required under the [BC Privacy Act](#) to first obtain consent from anyone who may be captured in the images or recordings *in a manner that could potentially or actually identify them* and as such, be a collection of their Personal Information. Consent may be provided verbally or in writing (hereafter noted as Permission) as relevant to the specific recording situation. Failure to obtain Permission may violate personal privacy rights¹ and may violate the safety and/or wellness of Staff, Clients and Visitors captured by these Recording Activities.

¹ While the [BC Privacy Act](#) provides a statutory right to privacy it is not absolute or an all-or-nothing obligation. A person's awareness of or consent to being recorded is a relevant but not, on its own, determinative factor of a person's expectation of and right to privacy. The nature and degree of the privacy right at play is fluid and is dependent on all factors specific to the situation, which include the lawful interests of all parties.

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Recording Activities that are assessed by Staff as improving the experience of the Client or Visitor engaging in the Recording Activities, such as Perceived or actual improvement in their experience of safety, communication or interactions with Island Health, and where the safety and privacy of Clients and Visitors and/or Staff impacted by the Recording Activities are also improved or at a minimum not negatively or unlawfully affected, are considered **Permissible Recording Activities**. *Staff will support and honor requests from Clients and Visitors to undertake Permissible Recording Activities whenever reasonably possible.*

1.3 Unauthorized Recording Activities

Recording Activities in care or service locations that are assessed by Staff as disruptive to Staff performing their work duties, may introduce health risks to a Client (e.g. introduction of non-sterile equipment, individuals or activities in an Operating Room), and/or violate the lawful privacy rights or experience of safety and wellness of Staff, or other Clients and Visitors, are considered **Unauthorized Recording Activities**.

In such cases Staff will make reasonable efforts to work with Clients and Visitors to modify their proposed Recording plan to become a Permissible Recording Activity. However, in instances where such modifications cannot be achieved, Staff may use discretion to prohibit Clients and Visitors from engaging in Unauthorized Recording Activities.

In non-urgent situations Island Health may choose to withdraw Staff from care situations where they feel threatened or intimidated². This includes situations where Clients and Visitors intend to or are engaging in Recording Activities with perceived or stated inappropriate or malicious intent or when no Permission to be captured in an identifiable manner by the Recording Activities has been obtained by the Client or Visitor or situations involving minors, vulnerable or unconscious Clients who may or will be unable to provide Permission for the Recording Activity. In these circumstances, Staff will ask Clients and Visitors to refrain from or cease Recording.

1.4 Responsibilities

1.4.1 Island Health:

- Is committed to improving Patient and Care Team experiences with Island Health and to bringing together what matters most to the individuals and communities who *receive care* to improve the experience for those who come into contact with Island Health and to do the same for those who *support and provide care*.
- Must improve the safety and wellness of employees, volunteers, medical staff, students and residents within Island Health. It must provide a safe workplace where Staff are not subjected to harassment or intimidation, including in the form of unwarranted recordings, as required by [Workers Compensation Act Occupational Health and Safety Regulations](#) (Part 2, regulations 2.2; Part 3 - regulations 3.12, 3.13; and Part 4, regulations 4.27 – 4.31).
- Must establish policies and mechanisms, such as this policy, that provide direction on the responsibilities of Island Health to balance the requests of Clients and Visitors who wish to Record with Island Health’s obligations to protect the Personal Information and associated Information Privacy rights (see 3.0 for definitions) of its Clients and Staff as required by [Section 30](#) of the [BC Freedom of Information and Protection of Privacy Act \(FIPPA\)](#).

² Canadian Nurses Protective Society consultation with A Clark, February 2019: Despite any legislative rights that might exist, nurses remain bound by BCCNP’s Practice Standards with respect to the duty to provide care (https://www.bccnp.ca/Standards/RN_NP/PracticeStandards/Pages/dutytoprovidecare.aspx). Moreover, while there is justification for a nurse not to provide care in non-urgent situations where they feel threatened or intimidated, such decisions should be made in collaboration with the employer and only after considering all factors specific to the situation and not be based solely on the basis of perceived or stated inappropriate or malicious intent (e.g. threat of litigation) or when no permission has been obtained. Efforts should be made to negotiate a mutually acceptable withdrawal of service, arrange for a suitable alternative or replacement service or allow the employer a reasonable opportunity to arrange for alternative or replacement services.

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1.4.2 Staff will, within the scope of their respective roles:

- Support the commitments and goals of Island Health.
- Take reasonable measures to protect the Information Privacy rights of their Clients and other Staff as required by [Section 30 of FIPPA](#).
- For all proposed Recording Activities that may or will identify other Clients, Visitors and/or Staff:
 - Discuss proposed Recording Activities with Clients and Visitors and seek to understand their stated reason(s) for conducting them or refer the matter to the appropriate Staff Supervisor/Manager to do so; and
 - Consider and assess each potential Recording Activity in light of:
 - Island Health priority to provide excellent care and to improve patient and care team experiences with Island Health;
 - Resource - Recording Activities Decision Support Tool;
 - Remind Clients and Visitors of their obligation to obtain the Permission of those whose Personal Information may or will be captured by the proposed Recording Activities *before* initiating the Recording Activities;
 - Support Clients and Visitors in conducting Permissible Recording Activities whenever reasonably possible;
 - Explore and attempt to resolve the concerns of a Client or Visitor about care or communication, if and when such concerns may be prompting the Recording Activity;
 - Sensitively and with explanation decline a Client or Visitor’s request to conduct Unauthorized Recording Activities;
 - Document in the Client health record key decisions with respect to the Recording Activities, as required under Island Health Clinical Documentation [Policy 16.1.3P](#); and
 - Immediately report any potential privacy breach as a result of an Unauthorized Recording Activity to Island Health’s Information Stewardship, Access & Privacy (ISAP) office.

If a Client or Visitor disregards a Staff request to refrain from or cease an Unauthorized Recording, Staff will:

- First seek assistance from their immediate or most appropriate Supervisor, who may contact Island Health’s Clinical Risk Management, Patient Care Quality Office (PCQO) and/or ISAP offices for support and assistance; or
- In instances where Staff or Patient safety may be or is at risk, seek assistance from Protection Services and/or the Administrator On-Call as needed; and
- Consider tracking the incident in the Patient Safety and Learning System.

1.4.3 Staff will not:

- Obtain Client or other Staff Permission on behalf of the Client or Visitor initiating the Permissible Recording Activity – this is an obligation of the Client or Visitor to do and confirm to the Staff this is complete.
- For any Unauthorized Recording, attempt to confiscate any recording device belonging to a Client and Visitor, or attempt to erase Recordings.

1.4.4 Immediate or most appropriate Supervisors/Managers will:

- Support and work with Staff and Clients and Visitors to explore reasonable strategies and options to ensure the proposed Recording Activity is Permissible, and/or modify an Unauthorized Recording plan to become a Permissible Recording Activity.
- Support Staff engaged in proposed Recording discussions and assist in resolving disagreements about or complaints arising from Clients and Visitors regarding Recording Activities.

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- Engage their senior leadership, Clinical Risk Management and as needed, other key stakeholders such as ISAP, PCQO and/or Protection Services in their development of reasonable strategies, or discussions/decisions about potential withdrawal of care in non-urgent situations, or in resolving disagreements about Recording Activities by Clients and Visitors.

1.4.5 Senior Leadership, Clinical Risk Management, and as required, ISAP and PCQO will:

- Collaborate with each other and Supervisors/Managers and make decisions as relevant to the specific situation, to support Staff in reconciling involved parties' differing interests in a manner that respects Island Health's goals and commitments to its Clients, Visitors and Staff and its regulatory obligations.

1.4.6 Protection Services will:

- Respond to requests for security assistance arising from Unauthorized Recording Activities in instances where Staff or Patient safety may be or is at risk.
- Not attempt to confiscate any Recording device belonging to a Client or Visitor, or attempt to erase Recordings.

1.5 Consequences of Making an Unauthorized Recording

Clients and Visitors are expected to respect the privacy, wellness and safety rights of other Clients, Visitors and Staff who may be impacted by Recording Activities and to respect the decisions of Island Health Staff regarding those circumstances. Those who choose not to do so may be asked to leave Island Health facilities. In non-urgent situations, Island Health may choose to withdraw Staff from service or care areas, including a client's home.

Wilfully undertaking Unauthorized Recordings of Staff, Clients and Visitors without Permission may result in legal action against the individual conducting the Unauthorized Recording Activity by other affected Clients, Visitors or Staff.

Staff who fail to comply with this policy and its supporting guidance may be subject to disciplinary action or penalty up to and including termination of the employment or business relationship with Island Health.

2.0 Monitoring and Evaluation

Program Directors/Information Stewards are responsible for monitoring the application and effectiveness of this policy in the respective practice area, and to report any opportunities for improvement to ISAP.

ISAP is responsible for monitoring the currency and effectiveness of this policy and its alignment with various organizational and statutory obligations, and also for revising it as necessary and required.

3.0 Definitions

Audio Recording – A Recording Activity	The action of capturing a voice or other sound by any form of electronic and/or tape recording device (e.g. tape or digital recorder cell phone, Smartphone, tablet, Skype or other streaming application, voice recognition software or applications, wearable computing device such as Smartwatches, fitness trackers or personal home automation systems such as Smart appliances and personal assistant speakers).
Consent	In the context of this policy, the verbal or written action of an individual confirming his/her agreement with and permission to conduct the proposed activity in relation to its impact on that individual. Providing Permission assumes that the individual understands: the purpose of the activity, what image or other personal identifiers will be captured, the uses and disclosures to which that personal information will be put, the associated impacts on the consenting individual, and how long and where that information will be stored.

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Contact Information	Information that enables an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual (see FIPPA Schedule 1).
Clients and Visitors	Includes patients, clients, residents, visitors and members of the public.
Facility	Includes all Island Health-owned, operated, leased or contracted facilities, grounds or vehicles, as well as Clients' homes where care is provided by Island Health Staff.
Information Privacy	Refers to the right of an individual or data subject to determine with whom his/her personal information is shared, under what circumstances and to know of – and exercise control over – the collection, use, disclosure and access to any Personal Information collected about him or her.
Perceived	To understand or interpret something in a particular way.
Perceived Value	To understand or interpret the worth, importance or usefulness of something to someone in a particular way.
Personal Information	Recorded information about an identifiable individual, other than Contact information. This includes but is not limited to: <ul style="list-style-type: none"> • The individual's race, national or ethnic origin, colour, or religious or political beliefs or associations; • The individual's age, sex, sexual orientation, marital, racial or family status; • An identifying number, symbol or other particular assigned to the individual; • The individual's fingerprints, blood type or inheritable characteristics; • Still or moving images of the person or his/her body parts, or identifiable audio recordings that alone or in combination with other information may uniquely identify the person; • Information about the individual's health care history, including a physical or mental disability; • Information about the individual's education, financial, criminal or employment history; • Anyone else's opinions about the individual; and • The individual's personal views or opinions, except if they are about someone else.
Personal Privacy	The right to exercise control over the integrity of one's body as provided by the fundamental rights of "life, liberty and security of the person" enshrined in Sections 7 and 8 of the <i>Canadian Charter of Rights and Freedoms</i> .
Photographing – A Recording Activity	The act of capturing any still image using any form of electronic or photographic equipment (e.g. Smartphone, digital film camera, standard camera, tablet, wearable computing devices such as Smartwatches, fitness trackers or personal home automation systems such as Smart appliances and personal assistant speakers).
Staff	All Island Health employees, medical staff and designated Island Health agents. An Island Health agent is any individual or organization that has a business relationship with Island Health. Examples include, but are not limited to, contracted health care providers, researchers, volunteers, students, contractors, sub-contractors, vendors/suppliers or any individuals directly or indirectly associated with Island Health.
Videotaping – A Recording Activity	The act of capturing a still or moving image using any form of electronic and/or film recording device (e.g. video camera, surveillance camera such as a Nanny Cam, Smartphone, digital film camera, Skype or other streaming application, tablet, wearable computing device such as Smartwatches, fitness trackers or personal home automation systems such as Smart appliances and personal assistant speakers).

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4.0 Related Island Health Policies

- [16.6.2P](#) Confidential Information Management Code of Practice
- [1.5.1P](#) Confidential Information – Privacy Rights of Personal Information Policy
- [1.5.4P](#) Privacy and Related Information Security Breaches Policy
- [5.5.2P](#) Respectful Workplace Policy
- [5.8.5P](#) Workplace Violence Prevention Policy
- [5.8.5PR](#) Workplace Violence Prevention Program
- [5.5.1P](#) Conflict of Interest Policy
- [5.5.12P](#) Safe Reporting Policy
- [5.5.12PR](#) Safe Reporting Procedures
- [6.1.1P](#) Fair Business Practices Policy
- [16.1.1](#) Information and Data Governance
- [16.6.1P](#) Maintaining Respect for Individuals and their Personal Information when Staff and physicians Undertake Recording Activities in Island Health Facilities and Service Areas
- [4.3.1OP](#) Visitors and Observers – Operating Room
- [16.6.3PR](#) Photography of Wounds in the Electronic Health Record

5.0 Resources and Key References

- [Island Health’s Annual Priorities Plan 2018/2019](#)
- Recording Activities Decision Support Tool (DST) (*will be posted on ISAP website*)
- [Interim Guidance Document](#) for front-line staff: Responding to requests from patients/visitors to record care interactions
- Patient Privacy Notification [sign](#)
- Recording Permission [Poster 1](#)
- BCCNP Practice Standards - duty to provide care
https://www.bccnp.ca/Standards/RN_NP/PracticeStandards/Pages/dutytoprovidecare.aspx
- Canadian Medical Protective Society (originally published March 2017), Smartphone recordings by patients: Be prepared, it’s happening <https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/legal-and-regulatory-proceedings>
- R v Jarvis, 2019 SCC 10, Reasonable expectation of privacy, at paras 28-41 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17515/index.doc>

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