



LETTER TO THE EDITOR

Medico-legal recommendations for the safe use of medical photography in orthopaedic surgery and traumatology[☆]



Recomendaciones médico-legales para el uso seguro de la fotografía médica en cirugía ortopédica y traumatología

Dear Editor,

The use of medical photography (MP) for diagnostic purposes, medical-healthcare follow-up, teaching or the transfer of knowledge is currently essential in medical practice. Indeed it may be stated that MP has universally become an integral part of daily clinical practice, particularly in specialties termed as “visual”, such as dermatology,¹ plastic and repair surgery or orthopaedic surgery and traumatology (OST). There have even been proposals for the standardisation of MP in OST for scientific publication purposes.²

Today’s use of photography for medical purposes has also increased enormously due to the mass market and universal use of instant messaging platforms for smart phones. Thus, a recent survey demonstrated the generalised use of WhatsApp® for medical healthcare purposes among OST specialists who considered it as a useful tool in taking therapeutic decisions,³ often making use of photographs or imaging tests through this application.

Thanks to the ever-increasing demands we believe it is essential for professionals to receive some basic recommendations for the safe use of MP, taking into account the legal, medico-legal and deontological framework to be applied.

With regard to MP, we must first distinguish the actual management of it and this should be the same as any other document generated in the care process, and should therefore compulsorily be included in the medical record. In healthcare centres, the MP filing, preservation, maintenance and safety of access is the centre’s responsibility, whilst in the case of healthcare professionals who act

independently they themselves are responsible for the management and custody of the documentation involved.

Secondly, with regard to the actual use of MP, we can differentiate between 2 different layers of legal protection which should be assessed: on the one hand, the fundamental right to protection to the actual image (regulated by Organic law 1/1982) must be adhered to and on the other, personal data protection (regulated by the European Union 2016/679 General Regulation on protection of Data and its adaptation to the said regulation according to Organic Act 3/2018) must also be adhered to.

With regard to personal data protection it is important to underline that there have recently been legal modifications that strongly condition the way in which the professional may act, establishing demands which govern the cases of: (a) obtaining or taking photographs and their incorporation into the patient’s medical record, and (b) the possible exposure of the photography for teaching purposes or for scientific publication.

Regarding the taking of or obtaining of photographs, few legal doubts have arisen regarding the photograph being treated as one more element, like any other complementary proof of a medical-healthcare procedure, included in the patient’s medical record. However, although it is not legally necessary, to guarantee absolute transparency of the medical activity, it is advisable to offer information about the purpose of the photograph, and about aspects relating to data protection and the incorporation of that photograph in the patient’s medical record.

Furthermore, regarding exposure for teaching purposes or for scientific publication of a photograph which result from the professional activity of an OST specialist, we have to also distinguish 2 cases of different legal treatment. The first concerns the situation in which the photograph cannot identify the patient (not even from the additional information provided when the photograph is exposed), and the second refers to the situation in which the patient may be identified from exposure. When the photograph does not allow for identification of the person, no type of authorisation is required. However, when the patient may be identified, directly or indirectly from additional information, we must be given express authorisation for that exposure, and this must be as specific as possible (indicating the specific photograph to which authorisation refers and its authorised purpose whether this be, for example, for university teaching or continuous training, scientific publication, etc. purposes).

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Finally, when the legally regulated concept of identification is unclear and in cases when the professional doubts whether the photograph allows the patient to be identified or not, we would recommend obtaining the corresponding authorisation from the patient, when posterior exposure of the photograph is planned.

Level of evidence

Level of evidence V.

References

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