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Obtaining Proper Photograph Consent

Shannon Pace Brinker, CDA, CDD

Protecting patient information remains a top priority for dental practices. However, understanding HIPAA rules and regulations for safeguarding that information and specifically digital photographs can be challenging. Due to the HIPAA Privacy and Security Rules, dental practices must maintain all electronic patient health information with confidentiality, integrity, and accessibility. Dental practices are therefore responsible for protecting patient photographs, and yet require these images for a variety of uses.

Digital photographs aid in patient identification, disease diagnosis, and communication among members of the treatment team. They are also essential for research, publications, professional education, and marketing materials. Photographs are fundamental in demonstrating, explaining, and promoting specific procedures, treatments, and techniques, as well as verifying successful results. Thus, dental practices need to capture, protect, and utilize patient photographs while maintaining HIPAA compliance. In order to accomplish this, patients must sign photograph consent forms prior to dental team members capturing these images, protecting the practice and provider.

What is a Photograph Consent Form?

A photograph consent form is a legal document that gives the provider the right to photograph the patient and use the images. By signing the consent form, the patient waives his/her right to the images. The images are then the property of the practice and can be utilized accordingly, although the practice must still protect the privacy of the patient's personal data.

Photograph consent forms vary among specialties and practices. According to Bruce Seidberg, DDS, MScD, JD*, who maintains a private endodontic practice in Liverpool (Syracuse), New York, and serves as a dental-legal consultant, "A photograph consent form should include, but not be limited to, the purpose of the photographs, their projected uses, and that the images can be of the head and neck areas, including the profile, face, teeth, smile, and intraoral features." Dr. Seidberg explains that the photograph consent form should list the patient's features (i.e., full face, smile, etc.) so that the patient understands that all images may be used for the purposes listed on the consent form. Dr. Seidberg adds, "Although the clinician may have the intention of reducing the ability for identification of the individual, by including a comprehensive list of the photograph images, the form provides full consent of the images in their entirety." This component is essential, especially when case photographs are published and/or used in marketing campaigns.

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>
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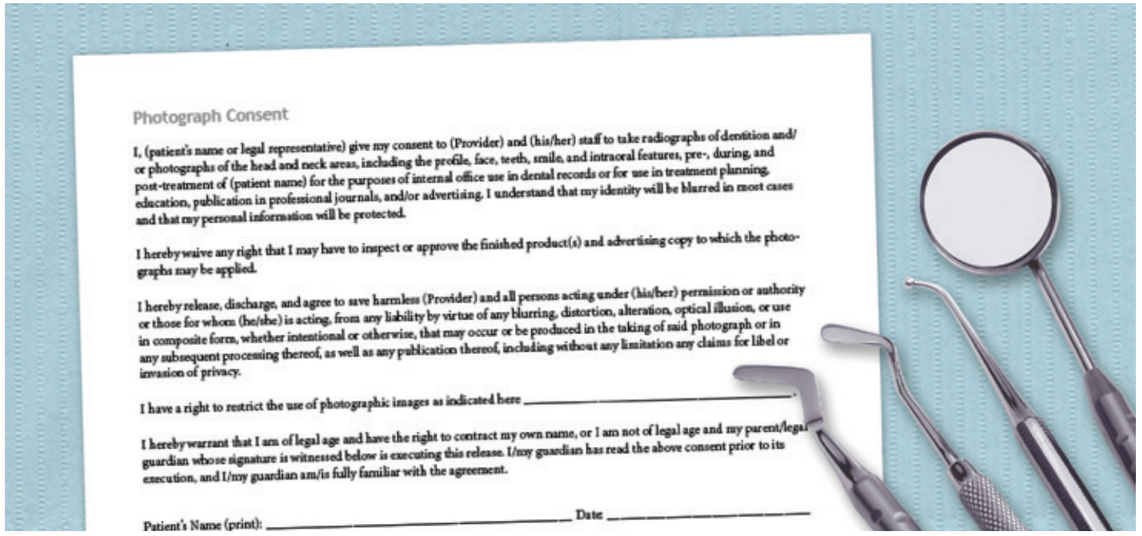
However, a patient may agree to use the photographs as a diagnostic tool, but not agree to publications or marketing materials. This is why it is also important to distinguish between the different anticipated photograph uses and allow the patient to opt out of certain aspects. Dr. Seidberg explains, "The photo consent form signed by patient and doctor should be specific and tailored to the case at hand. It should also separate the purposes to allow acceptance by the patient of all or some of the uses."

Importance of Photograph Consent

Signed photograph consent forms are necessary prior to capturing any type of photograph within a dental practice. Without proper consent, the clinician and practice are at risk for violating HIPAA-compliance laws, which can lead to various penalizations. Dr. Seidberg has found that, "The consequences relating to non-compliance depends on the agency hearing the allegations, as do the fines. Consequences can include, but are not limited to, action against the practitioner's license in the form of suspension and/or stay of suspension for a period of time, and a monetary fine or other remedies available through the state licensing agency."

In addition to legal complications, Dr. Seidberg also notes that these consequences more than likely lead to adverse publicity to the practice. Depending on the severity, these damaging effects can impact the practice's reputation, cause patient distrust, and make it more difficult to attract new patients. Thus, the importance of photograph consent is to ensure that patients understand why the photographs are being taken and their intended uses. By utilizing a consent form that allows the patient to opt out of specific aspects, dental practices can avoid complications associated with patients failing to understand or sign the photograph consent form.



Photograph Consent

I, (patient's name or legal representative) give my consent to (Provider) and (his/her) staff to take radiographs of dentition and/or photographs of the head and neck areas, including the profile, face, teeth, smile, and intraoral features, pre-, during, and post-treatment of (patient name) for the purposes of internal office use in dental records or for use in treatment planning, education, publication in professional journals, and/or advertising. I understand that my identity will be blurred in most cases and that my personal information will be protected.

I hereby waive any right that I may have to inspect or approve the finished product(s) and advertising copy to which the photographs may be applied.

I hereby release, discharge, and agree to save harmless (Provider) and all persons acting under (his/her) permission or authority or those for whom (he/she) is acting, from any liability by virtue of any blurring, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in the taking of said photograph or in any subsequent processing thereof, as well as any publication thereof, including without any limitation any claims for libel or invasion of privacy.

I have a right to restrict the use of photographic images as indicated here _____.

I hereby warrant that I am of legal age and have the right to contract my own name, or I am not of legal age and my parent/legal guardian whose signature is witnessed below is executing this release. I/my guardian has read the above consent prior to its execution, and I/my guardian am/is fully familiar with the agreement.

Patient's Name (print): _____ Date _____

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Photograph Consent Example

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I hereby waive any right that I may have to inspect or approve the finished product(s) and advertising copy to which the photographs may be applied.

I hereby release, discharge, and agree to save harmless (Provider) and all persons acting under (his/her) permission or authority or those for whom (he/she) is acting, from any liability by virtue of any blurring, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in the taking of said photograph or in any subsequent processing thereof, as well as any publication thereof, including without any limitation any claims for libel or invasion of privacy.

I have a right to restrict the use of photographic images as indicated here _____.

I hereby warrant that I am of legal age and have the right to contract my own name, or I am not of legal age and my parent/legal guardian whose signature is witnessed below is executing this release. I/my guardian has read the above consent prior to its execution, and I/my guardian am/is fully familiar with the agreement.

Patient's Name (print): _____ Date: _____

Signature: _____

Guardian (if under legal age): _____

Guardian Signature: _____

Witness: _____

Provider (print): _____

Provider Signature: _____

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Discussing the Photograph Consent Form with Patients

As a communication tool for patients and dental team members, photograph consent forms allow the practitioner to explain why photographs are necessary and what they will be used for once they are captured. Similar to a treatment consent form that must be signed prior to initiating any dental procedures, a photograph consent form must be signed prior to capturing the images, and should be used to educate and inform patients about their treatment.

During the initial treatment examination, the practitioner or dental team member can present the photograph consent form and explain why photographs are necessary. Once the purpose is understood, the team member can review the photographs' anticipated uses, outlining those that are listed on the form. Some practices may choose to utilize the photographs for promotion or marketing materials, while others may use them solely for treatment planning purposes. The dental team member should also review the types/scopes of any photograph, including full-face images, that should be included in the consent form. Once the patient understands and agrees to the form and the photograph types/uses outlined, he/she can sign and date the form along with the practitioner, and then receive a copy of the finalized consent form.

Dental team members explaining the consent form should be sure to present the form in an informative manner and explain it thoroughly, answering any questions the patient may ask. By offering a comprehensive explanation of the form, patients will have an understanding for why the photographs are necessary, what the dental practice plans to use the images for, and what they will include, avoiding any unnecessary confusion and surprise for patients.

Conclusion

Digital photographs are essential in today's dental practice for patient records, treatment planning, and marketing. However, these digital images are protected under HIPAA regulations and, therefore, require patient consent to be released for these uses. In order to comply with HIPAA laws, a signed photograph consent form is necessary to protect the patient and practitioner. Photograph consent forms include the purpose of photographs, their anticipated uses, what they will include, date, and a signature from the provider and patient. By utilizing photograph consent forms, practices can inform their patients about their treatment, comply with HIPAA regulations, and avoid unnecessary legal problems when using the photographs.

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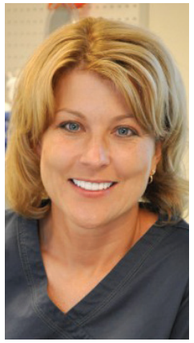

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