

**PRIVACY OF PERSONS REGARDING PHOTOGRAPHS,
DIGITAL IMAGES, AND VIDEO OR AUDIO RECORDINGS**

- 1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) Directive establishes VHA policy defining the parameters under which members of the VHA workforce may produce and use photographs, digital images, and video or audio recordings of all persons, and it reinforces existing regulations covering these activities.
- 2. SUMMARY OF CONTENTS:** This Directive defines the processes for notifying persons and obtaining consent (if required) to overtly produce photographs, digital images, and video or audio recordings, and the process to authorize covert production of photographs, digital images, and video or audio recordings. It also defines how VHA may use such products.
- 3. RELATED ISSUES:** None.
- 4. RESPONSIBLE OFFICE:** The Office of Health Information Governance, VHA Information Access and Privacy Office is responsible for the contents of this VHA Directive. Questions may be referred to the Director, Information Access and Privacy Office at 704-245-2492.
- 5. RESCISSIONS:** None.
- 6. RECERTIFICATION:** This VHA Directive is scheduled for recertification on or before the last working day of November, 2019.

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PRIVACY OF PERSONS REGARDING PHOTOGRAPHS, DIGITAL IMAGES, AND VIDEO OR AUDIO RECORDINGS

1. PURPOSE: This Veterans Health Administration (VHA) Directive establishes VHA policy defining the parameters under which members of the VHA workforce may produce and use photographs, digital images, and video or audio recordings of all persons, and it reinforces existing regulations covering these activities. **AUTHORITY:** 38 U.S.C. 5701, 7301; 38 CFR 1.218; 41 CFR 102-74.420.

2. BACKGROUND:

a. As the largest integrated health care system specifically designed for Veterans, it is important that VHA honors the rights of Veterans, patients, residents, members of the VHA workforce, and visitors to give or withhold consent in the use of their image or voice when reasonably appropriate. The proliferation and widespread use of mobile devices has drawn attention to their impact on individuals' rights to privacy. Smaller mobile devices have become much more common, making it easier for individuals to take and share pictures, video, or audio recordings, often without explicit authorization from the subject. Some examples of these devices include camera phones, smart phones, tablets, laptops, cameras, video recorders, and voice recorders. Mobile government-furnished equipment (GFE), as well as personal devices has these capabilities. **NOTE:** *Appendix D, Department of Veterans Affairs (VA) National Rules of Behavior, in VA Handbook 6500, Risk Management Framework for VA Information Systems – Tier 3: VA Information Security Program, defines the responsibilities of members of the VHA workforce concerning the use of GFE.*

b. Additionally, VA's Office of the Inspector General in a report (OIG Report 12-03939-175) published April 11, 2013, reviewed existing policy concerning the use of overt and covert video surveillance cameras to produce photographs, digital images, and video or audio recordings. OIG concluded that VHA lacked a consistent national policy in this area and recommended that VHA issue policy guidance to address the clinical uses of overt and covert surveillance equipment in a clinical setting, including public notification, informed consent, approval, and responsibility for the use of these devices. The OIG also recommended that VHA detail procedures for staff to follow in obtaining video recordings for teaching, patient care and treatment, patient safety, health care operations, general security, and law enforcement purposes. VHA concurred in the OIG's recommendation.

3. POLICY: It is VHA policy to respect the privacy of all persons (e.g., Veterans, patients, residents, members of the VHA workforce, and visitors) consistent with the needs of operating a national health care system. Privacy protections on VHA premises vary according to the needs and purposes of different types of areas, the persons included, and the purpose of the production and use of photographs, digital images, and video or audio recordings. This Directive defines the processes for notifying persons and obtaining consent (if required) to overtly produce photographs, digital images, and video or audio recordings, and the process to authorize covert production of photographs, digital images, and video or audio recordings. It also defines how VHA may use such products. Members of the VHA workforce must ensure that photographs, digital images, and video or audio recordings they produce and/or use comply with the requirements and processes described in this Directive. This Directive does not apply to

meetings or encounters between members of the VHA workforce held during these members' non-duty hours. **NOTE:** *VHA's use of photographs, digital images, and video or audio recording before the publication date of this Directive (November 4, 2014) are not subject to this Directive's requirements. VHA's use of these products only needed to comply with policies and law in place at the time they were produced and used. Use of any photographs, digital images, or video or audio recordings after the publication of this Directive (November 4, 2014) must comply with the processes and requirements contained in this Directive, regardless of whether the products were created before or after the publication of this Directive.*

4. RESPONSIBILITIES:

a. **Medical Facility Director.** Except as provided for in paragraph (b) or (c) below, the medical facility Director is responsible for:

(1) Reviewing the functions of each area of VHA's premises and designating areas as treatment areas, secure areas, personal areas, or other areas.

(2) Ensuring the staff of the facility understand the four classifications of areas and the resulting standards and limitations (described in Appendix A) in terms of producing photographs, digital images, and video or audio recordings.

(3) Ensuring that video or audio monitoring equipment installed for patient safety purposes is only accessed and viewed by staff who are both responsible for ensuring the safe delivery of care and authorized to take action based on the monitoring. Equipment may only be used to monitor (rather than record) the patient. Recording images or sounds when using monitoring equipment for patient safety purposes is prohibited, because the purpose of monitoring for patient safety is to afford an opportunity to take immediate action based on the monitoring. **NOTE:** *This limitation does not apply to Security Surveillance Television (SSTV) installed under the supervision of VA law enforcement personnel.*

(4) Posting notices in public, secure, and personal areas where individuals are subject to photography or video recording.

(5) Posting notices in treatment areas with overt recording that the area is subject to photography or video recording. When the use of video or audio equipment is for patient safety purposes, patients must be notified verbally of the use of this equipment.

(6) Reviewing and approving (if appropriate) requests for covert use of equipment with Regional Counsel, the facility's Ethics Consultation Service, the facility's chief law enforcement officer, and the facility's chief human resources officer, as applicable. **NOTE:** *Appendix A defines the process and approvals required for the covert use of equipment.*

(7) Establishing and distributing to all members of the VHA workforce any facility policy and procedures consistent with this Directive.

(8) Ensuring no members of the VHA workforce produce a photograph, digital image, or video or audio recording of any person on VHA premises who is not a member of the VHA workforce for their own or another individual or entity's personal use. Members of the VHA

workforce may take photographs, digital images, or video or audio recordings of their own family members and friends when not acting in an official VA capacity or as a VHA employee (e.g., when making a personal visit to a family member or friend who is being treated at a VA facility). Members of the VHA workforce may produce a photograph, digital image, or video or audio recording on behalf of someone other than a member of the VHA workforce at that person's request (e.g., a patient asks a volunteer to take a photograph of the patient and his family using the patient's camera) and with the verbal consent of all persons whose personally identifiable image or likeness appears therein.

(9) Except as noted in paragraph (a) and (b) below, ensuring that no personally identifiable image, likeness, or recording of members of the VHA workforce is included in a photograph, digital image, or video or audio recording produced and used by VHA without the person's written or verbal consent to produce and use such products. Examples include, publicly posting photographs of members of the treatment team for patients with memory issues, posting photographs of key officers so patients and the public can readily identify them (e.g., medical center Director, chief of staff, patient advocate, privacy officer, or information security officer).

(a) Photographs, digital images, or video or audio recordings produced for treatment purposes do not require the consent of employees appearing or heard in such products. See paragraph 4.k.(1)(a) for information on obtaining the informed consent of the patient or the patient's surrogate (or personal representative) for treatment purposes. **NOTE:** *If the patient receiving treatment or care is also a member of the VHA workforce, he or she is considered a patient while receiving such care for purposes of this Directive.*

(b) The consent of a member of the VHA workforce is not required when photographs, digital images, or video or audio recordings are produced and used for production of identification cards or materials, such as PIV cards.

(c) Except as noted in paragraph (d) below, members of the VHA workforce intending to produce and use photographs, digital images, or video or audio recordings for official purposes must obtain the consent of persons whose personally identifiable image, likeness, or recording will appear or be heard in such products using VA Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA (<http://www.va.gov/vaforms/>), before producing any photograph, digital image, or video or audio recording.

(d) When members of the VHA workforce intend to produce and/or use photographs, digital images, or video or audio recordings for official purposes at an event or meeting in a designated "other" area on VHA premises, they must provide notice in advance, if possible, to invitees and participants of an event that such production and use may or will occur. This notice must also identify the intended use of the product (e.g., recording and transcription of a meeting or ceremony).

(e) Members of the VHA workforce who are communicating with each other or other persons using teleconferencing, video-conferencing, or other similar platforms (whether or not the equipment and software are capable of producing photographs, digital images, or recordings that are accessible at a later time) for official purposes do not need to obtain the consent of

participating parties using VA Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA. If the teleconference, video-conference, or other platform will be recorded or imaged, the organizers must provide notification at the beginning of the event announcing to all participants that they may be subject to recording or imaging and informing the participants that the recording or imaging will be used only for the purposes of the meeting or conference. All persons using such equipment and software consent to being photographed, digitally imaged, or recorded. Once the meeting or conference is complete, no other use of the photographs, digital images, or video or audio recordings is authorized, unless the persons whose likeness or voice appears in the photograph, digital image, or video or audio recording consent to further uses as documented by VA Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA.

(f) Any person may contact the organizers of an event or meeting described in paragraph 4.a.(9)(d) or 4.a.(9)(e) and ask verbally or in writing that they be excluded from any photographs, digital images, or video or audio recordings. If such a request is made, the organizers must take all reasonable steps to ensure the requesting person does not appear in a product that is used. *NOTE: If a member of the VHA workforce producing photographs, digital images, or video or audio recordings of an event, in the course of making such a product, inadvertently includes a person who has requested exclusion, that person must either take all reasonable steps to not use the product or to alter the product to remove or obscure any personally identifiable image or recording of the person who has asked to be excluded.*

(10) Ensuring members of the VHA workforce not on VHA premises use VA Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA, to obtain the consent of persons before producing and using a personally identifiable image, likeness, or recording in photographs, digital images, or video or audio recordings of such persons for official purposes. For example, a member of the VHA workforce attending a convention sponsored by a non-VA organization could take a photograph of a speaker at that convention for an official purpose with the consent of the speaker using this form, but would not need to secure consent from other persons who appear in the photograph if they are not identifiable. VA's use of any photographs, digital images, or video or audio recordings must be consistent with what is approved on the signed VA Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA. *NOTE: VA-approved research is not defined as an official purpose within the scope of this Directive. Members of the VHA workforce engaged in or supporting VA-approved research should consult VHA Handbook 1200.05, Requirements for the Protection of Human Subjects Research, for specific requirements.*

(11) Ensuring that any operating Call Center notify persons if calls will be subject to monitoring or recording and how any recording will be used. Such notice is sufficient to establish consent by participants on the call to the monitoring, recording, and use of any recording. *NOTE: Call Center operators do not need to obtain a signed VA Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA, from participants.*

(12) Posting notice at entryways or in other easily visible and accessible locations on VHA premises except in General Services Administration (GSA) building and in property controlled by the Department of Defense (DoD) that advises all persons that photographs for advertising or commercial purposes may only be taken with the written consent of the head of the facility or designee, and that photographs for news purposes may only be taken at entrances, lobbies, foyers, or in other places designated by the head of the facility or designee, pursuant to VA regulations at Title 38 Code of Federal Regulations (CFR) 1.218(a)(10).

b. **Director of a VA Medical Facility in a GSA Building.** The Director of a VA medical facility in a GSA building is responsible for:

(1) Complying with all requirements contained in Paragraph 4.a.(1)-(11); and

(2) Posting notice that, in accordance with GSA regulations at 41 CFR 102-74.420, persons entering in or on that Federal property (including patients, residents, members of the VHA workforce, or visitors) may be filmed or photographed:

(a) For non-commercial purposes, only with the permission of the facility Director or his or her designee.

(b) For commercial purposes, only with the written permission of the facility Director or his or her designee.

(c) For news purposes, only in building entrances, lobbies, foyers, corridors, or auditoriums.

NOTE: Almost all VHA facilities are not in GSA buildings, so GSA standards do not apply to most VHA facilities.

c. **Medical Facility Director of DoD Property.** The medical facility Director overseeing property controlled by DoD (including any of the branches of the Armed Forces) is responsible for:

(1) Complying with all requirements contained in Paragraph 4.a.(1)-(11) unless they conflict with requirements imposed by DoD; and

(2) Posting notice that advises all persons of any applicable limitations in Title 32 of the Code of Federal Regulations concerning the production of photographs, digital images, or video or audio recordings. *NOTE: For a list of these requirements, consult with the Office of Regional Counsel.*

d. **VHA Facility Chief Human Resources Officer.** The facility's Chief Human Resources Officer, in consultation with the medical facility Director, is responsible for reviewing and approving (if appropriate) requests for covert use of equipment to produce photographs, digital images, or video or audio recording that will be used to investigate suspected cases of employee misconduct. *NOTE: Appendix A defines the process and approvals required for the covert use of equipment.*

e. **VHA Facility Chief Law Enforcement Officer.** The facility's chief law enforcement officer is responsible for:

(1) Based on standards and policies published by VA's Office of Security and Law Enforcement, reviewing and approving (if appropriate) with the medical facility Director requests for covert use of equipment to produce photographs, digital images, or video or audio recording for law enforcement purposes. *NOTE: Appendix A defines the process and approvals required for the covert use of equipment.*

(2) Working with the medical facility Director and the facility's Privacy Officer to identify each area of the facility and designating such area as a treatment area, secure area, personal area, or other area (See Appendix A).

f. **VHA Facility Ethics Consultation Service Staff.** The VHA facility Ethics Consultation Service staff who are assigned to support the facility are responsible for:

(1) Reviewing and approving (if appropriate) with the medical facility Director requests for the covert use of equipment to produce photographs, digital images, or video or audio recordings in rare clinical circumstances, when the covert use of equipment is required for diagnostic or treatment purposes (e.g., for diagnosing suspected mental health disorders involving self-harm or self-created conditions or symptoms, such as Munchausen syndrome). *NOTE: Appendix A defines the process and approvals required for the covert use of equipment.*

(2) Advising staff, as requested, on other questions or issues of ethics in health care that may arise in the context of this Directive.

g. **VHA Facility Privacy Officer.** The VHA facility Privacy Officer assigned to support each facility is responsible for:

(1) Developing local policy, as needed, for the implementation of this Directive.

(2) Working with the medical facility Director and the facility's chief law enforcement officer to identify each area of the facility and designating such area as a treatment area, secure area, personal area, or other area (See Appendix A).

(3) Providing training and assistance to facility staff regarding policy required by this Directive.

(4) Collaborating with the record managers to ensure adherence to the record retention and disposition requirements for the consent forms. Record Control Schedule (RSC) 10-1 Veteran consent forms must be kept for the life of the record. All other consent forms must be kept for 6 years.

(5) Assisting departments and/or services who are collecting the consent forms with storage requirements.

(6) Ensuring staff at the facility understand and use confidentiality statements in accordance with national policy.

h. **VHA Facility Records Manager.** The VHA facility records manager assigned to support each facility is responsible for:

(1) Developing local policy, as needed, for the implementation of this Directive.

(2) Collaborating with the facility Privacy Officer to ensure adherence to the record retention and disposition requirements for consent forms. RCS 10-1 Veteran consent forms must be kept for the life of the record. All other consent forms must be kept for 6 years.

(3) Collaborating with the information security officer to provide assistance with meeting storage requirements to staff members who are collecting consent forms.

i. **VHA Facility Public Affairs Officer.** The VHA facility public affairs officer assigned to support each facility is responsible for:

(1) Informing members of the news media and other persons of the limitations on production of photographs as described in 38 CFR 1.218(a)(10).

(2) Attempting to ensure that all persons on VHA premises who are asked to appear or be recorded in photographs, digital images, or video or audio recordings by members of the news media or other non-VA persons or organizations complete VA Form 10-3203a, Informed Consent and Authorization for Third Parties to Produce or Record Statements, Photographs, Digital Images, or Video or Audio Recordings (see <http://www.va.gov/vaforms/>), unless the product is being created for the personal use of the persons appearing therein (e.g., a patient asks a visitor to take a photograph of the two of them together).

(3) Working with VA clinical staff to ensure that during such production of photographs, digital images, or video or audio recordings, VA staff do not directly or inadvertently (e.g. showing x-rays or MRI results) disclose health information regarded as part of the medical record unless the patient has completed a VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information (see <http://www.va.gov/vaforms/>).

(4) Encouraging patients who elect to reveal their own health information to complete VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information. *NOTE: Patients may always reveal their own health information. If a person chooses to release his or her own information when a non-VA person or entity is producing a photograph, digital image, or video or audio recording, no authorization for the release of information is required, but patients should still be encouraged to complete the form to help ensure their consent is explicit.*

j. **VHA Facility Voluntary Services Officer.** The volunteer program manager or officer assigned to support the facility is responsible for:

(1) Providing training and guidance regarding standards, policies, and protocols set forth in this Directive to all volunteers who serve within the facility.

(2) Collaborating with the facility public affairs officer to ensure that this Directive is followed at all activities and events at which VHA volunteers may produce or use photographs,

digital images, or video or audio recordings, including activities occurring on non-VHA premises (see paragraph 4.a.(10)).

k. **Members of the VHA Workforce.** All members of the VHA workforce, including those listed above (e.g., Medical Facility Director, VHA Facility Chief Human Resources Officer, VHA Facility Chief Law Enforcement Officer, VHA Facility Ethics Consultation Service Staff, VHA Facility Privacy Officer, VHA Facility Records Manager, VHA Facility Public Affairs Officer, and VHA Facility Voluntary Services Officer) are responsible for:

(1) Only overtly producing photographs, digital images, or video or audio recordings of persons for treatment purposes with the person's consent, except as noted in paragraph 4.k.(4) below.

(a) VHA practitioners in treatment areas must obtain the patient's (or patient's surrogate or personal representative's) informed consent for treatment or procedures according to VHA Handbook 1004.01, Informed Consent for Clinical Treatments and Procedures. The informed consent discussion between the provider and the patient must detail all elements of the treatment or procedure, including use of photographs, digital images of the patient for treatment purposes (e.g., X-rays, CT scans, nuclear medicine scans, MRI scans, ultrasound), or video or audio recordings. Under these circumstances, the informed consent for treatment covers the production and use of photographs, digital images, and video or audio recordings of a patient for treatment purposes. No additional consent to photograph or record for treatment purposes is required.

(b) All photographs, digital images, and video or audio recordings produced and used for treatment purposes must be placed in the patient's electronic health record and are subject to the requirements of VHA Handbook 1907.01, Health Information Management and Health Records. **NOTE:** All products taken for treatment purposes must comply with standards established under the Health Insurance Portability and Accountability Act (HIPAA) whether they have been formally placed in the patient's electronic health record or not.

(2) Only overtly producing photographs, digital images, or video or audio recordings of persons for official purposes with the person's consent, using VA Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA. **NOTE:** The definition of "official purpose" does not include photographs, digital images, or video or audio recordings produced or used as part of VA-approved research. See VHA Handbook 1200.05, Requirements for the Protection of Human Subjects Research, for specific requirements for producing and using photographs, digital images, and video or audio recordings as part of VA-approved research.

(3) Taking a Veteran's photograph, if authorized as part of their official duties, to produce a Veterans Health Identification Card for the purpose of identifying the patient when presenting for care. This is considered as part of the treatment process under the HIPAA Privacy Rule. **NOTE:** For additional information, see VHA Directive 1610.01, Veteran Identification Card.

(4) Submitting a request to the medical facility Director (except as provided in Appendix A) to request authorization to use covert equipment to produce photographs, digital images, or video or audio recordings of persons without their consent. Staff may not use covert equipment to

produce photographs, digital images, or video or audio recordings of persons without their consent unless the medical facility Director and, as necessary, based on requirements established in Appendix A, Regional Counsel, the Ethics Consultation Service, the chief law enforcement officer, and the chief human resources officer have approved the use of such equipment.

(5) Obtaining authorization from the patient or patient representative using VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information (see <http://www.va.gov/vaforms/>), prior to disclosing for official purposes a photograph, digital image, or video or audio recording if the product contains individually identifiable health information or protected health information (including facial images) and is expected to be seen, read, or heard by others outside of VA. **NOTE:** *Some examples of when this requirement applies are when the photograph, digital image, or video or audio recording containing individually identifiable health information is disclosed for a VA teaching or training program involving individuals from outside VA, for publication in a professional or academic journal, or for a seminar or conference where attendance by non-VA persons is expected.*

(6) Informing persons they may rescind their consent or authorization allowing VHA to produce a photograph, digital image, or video or audio recording for an official purpose. Members of the VHA workforce must honor such a request and cease production upon request and destroy, as appropriate and in compliance with records retention requirements, any photographs, digital images, or video or audio recordings produced for an official purpose in accordance with the provisions of VA Handbook 6500.1, Electronic Media Sanitization, and VA Directive 6371, Destruction of Temporary Paper Records.

(7) Informing persons they may ask VHA to no longer use a photograph, digital image, or video or audio recording for an official purpose. Members of the VHA workforce must honor such request and cease use if, after considering the following factors, the burden on VHA would not be unreasonable.

(a) The financial and administrative costs to VHA to comply with a request to cease using a product (e.g., the cost to recall or destroy products);

(b) The ease of complying with a request to cease using a product considering the medium of the product and other relevant factors (e.g., removing a photograph from a physical bulletin board versus editing a video production, deleting a picture after it has been taken but before it has been used);

(c) The number of parties whose cooperation is required to comply with a request to cease using a product (e.g., one facility is using a product versus many facilities or non-VA entities are using the product); and

(d) Other relevant factors as applicable.

5. REFERENCES:

a. 45 CFR 160.103 and 164.514(b)(2).

- b. 38 U.S.C. Chapter 9, Security and Law Enforcement on Property Under the Jurisdiction of the Department.
- c. 18 U.S.C. Chapter 119.
- d. 38 CFR 1.218.
- e. 38 CFR 1.218(a)(10).
- f. 41 CFR 102-2.5, 102-74.420.
- g. VA Directive 6371.
- h. VA Forms Web site at: <http://www.va.gov/vaforms/>.
- i. VA Handbook 6500.
- j. VA Handbook 6500.1.
- k. VHA Handbook 1907.01.
- l. VHA Handbook 1605.1.
- m. VHA Handbook 1200.05.
- n. VHA Handbook 1004.01.
- o. The Joint Commission, Comprehensive Accreditation Manual for Hospitals, Rights and Responsibilities of the Individual.
- p. VHA Handbook 1004.01, Informed Consent for Clinical Treatments and Procedures.

6. DEFINITIONS:

- a. **Chief Human Resources Officer.** The highest ranking official designated by the VA medical facility Director with responsibility for human resources management at the facility.
- b. **Chief Law Enforcement Officer.** For purposes of this Directive, the chief law enforcement officer is the Chief, Police Service, with responsibility for the security and law enforcement operations at the facility.
- c. **Covert Production.** For purposes of this Directive, covert production of photographs, digital images, or video or audio recordings occurs through a device that is concealed from view or hidden to disguise its intended purpose, and when at least one party or parties that appear or are heard in the product lack notice of the recording.
- d. **Digital Image.** A numeric representation (normally binary) of a two-dimensional image. The term "digital image" usually refers to raster images also called bitmap images. Raster images can be created by a variety of input devices and techniques such as digital cameras,

scanners, coordinate-measuring machines, airborne radar and more. Some examples of digital images include photographs taken with a digital camera, as well as images taken during an endoscopy, retinal scan, and MRI.

e. **Law Enforcement Purpose.** For the purposes of this Directive, a law enforcement purpose means an effort to enforce Federal laws (under authority provided by Title 38 United States Code (U.S.C.) 902) and the rules prescribed by the Secretary in 38 CFR 1.218(a) and (b). Photographing, imaging, and recording will only be conducted consistent with Federal law, Department regulations, and applicable VA and Federal policy. For example, security surveillance television (SSTV) is often installed in a VA Canteen or other retail operation for security monitoring, or cameras or recording devices may be installed to identify criminal activity.

f. **Official Purpose.** For purposes of this Directive, an official purpose includes any and all production and uses authorized by law, except for union activity, production and uses for treatment purposes, or as part of VA-approved research. Official purposes include but are not limited to performance improvement, quality improvement, health care operations, payment activities, legal services, and determinations of eligibility for VA benefits (including compensation and pension examinations). More examples of activities undertaken for official purposes include but are not limited to certain education activities (e.g., development of educational brochures, face-to-face or virtual training videos and materials, biographies on web sites; communication; outreach, including promoting services using a patient or group photograph in facility newsletters, facility outreach programs, or social media; or preparation of publications. *NOTE: The definition of “official purpose” does not include photographs, digital images, or video or audio recordings produced or used as part of VA-approved research. See VHA Handbook 1200.05, Requirements for the Protection of Human Subjects Research, for specific requirements for producing and using photographs, digital images, and video or audio recordings as part of VA-approved research.*

g. **Other Areas.** Other areas are portions of the VHA premises that are accessible subject to restrictions and limitations on access authorized in 38 CFR 1.218(a), where treatment and administrative operations do not occur, and where there is no reasonable expectation of privacy. Examples of other areas include but are not limited to hallways, elevators, stairways, lobbies, cafeterias, waiting areas, child care centers, outdoor areas, garages, and auditoriums.

h. **Overt Production.** For purposes of this Directive, overt production of photographs, digital images, or video or audio recordings occurs through a device that is in an area in which all persons have notice (e.g., through a posted notice or informed consent) that they are subject to photography, imaging, or recording.

i. **Patient Safety Purpose.** For purposes of this Directive, a patient safety purpose exists when a VHA clinician reasonably believes that there is a likely and serious safety risk to a patient and monitoring of the patient’s actions is needed to ensure staff can take immediate action to intervene. Examples of patient safety purposes include, but are not limited to, risks that a patient may slip and fall, may dislodge or remove a feeding or ventilation tube, or that a patient may develop a life-threatening health condition. A patient safety purpose is distinct from a

treatment purpose in that patient safety is intended to protect the patient from immediate harm, while a treatment purpose is intended to treat or improve a patient's medical condition.

j. **Personal Areas.** For purposes of this Directive, personal areas are portions of the VHA premises where persons have a reasonable expectation of privacy. Some examples of personal areas include a changing room or a bathroom.

k. **Personal Use.** For purposes of this Directive, personal use includes any and all uses not authorized by VA for official purposes, union activity, as part of VA-approved research, or for treatment purposes, including political activity. Personal use of a photograph, digital image, or video or audio recording can occur by posting, printing, or otherwise transmitting the photograph, digital image, or video or audio recording for personal use on or through a social media account (notwithstanding any privacy limitations in place for the account) or e-mail account of a member of the VHA workforce.

l. **Personally Identifiable Image or Likeness.** For purposes of this Directive, a personally identifiable image or likeness is one where a person could be identified based on the image. An image may be identifiable because of a unique physical characteristic of the individual or another factor that makes him or her uniquely identifiable.

m. **Production/Produce.** For purposes of this Directive, the production or producing of photographs, digital images, or video or audio recordings includes taking, creating, or otherwise manufacturing such images or recordings for any purpose.

n. **Secure Areas.** Secure areas are portions of the VHA premises where administrative or technical functions are performed or where security needs otherwise require a reduced expectation of privacy. Some examples of secure areas, include an office suite, maintenance facilities, cashier agent booths, or pharmacy vaults.

o. **Treatment.** Treatment means the diagnosis, provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. Refer to VHA Handbook 1004.01, Informed Consent for Clinical Treatment and Procedures, for additional guidance. A treatment purpose is distinct from a patient safety purpose in that treatment intended to treat or improve a patient's medical condition, while a patient safety purpose is intended to protect the patient from immediate harm.

p. **Treatment Areas.** Treatment areas are portions of the VHA premises where treatment is performed. Examples of treatment areas include but are not limited to inpatient rooms and wards; outpatient examination rooms, areas, or clinics; surgical suites and recovery areas; and intensive or specialty care units. In some treatment areas, a person may have a reduced expectation of privacy (e.g., if more than one patient shares a room, or in areas where treatment is provided as part of education for VHA trainees).

q. **Union Activity.** For purposes of this Directive, union activity is defined as activity relating to the internal business of a labor organization.

r. **VHA Premises.** VHA premises refers to property under the charge and control of VA (and not under the charge and control of the GSA or the Department of Defense, including any of the branches of the Armed Forces) used for official or treatment purposes. These include VA medical centers, community-based outpatient clinics outreach clinics, domiciliaries, community living centers (formerly called nursing homes), and Vet Centers.

s. **VHA Workforce.** For purposes of this Directive, members of the VHA workforce include all VHA employees, including without compensation employees (e.g., volunteers), contractors, and trainees (e.g., residents and interns).

APPENDIX A

**RULES REGARDING THE PRODUCTION OF PHOTOGRAPHS,
DIGITAL IMAGES, AND VIDEO OR AUDIO RECORDINGS IN
TREATMENT, SECURE, PERSONAL, AND OTHER AREAS**

1. Treatment Areas. Members of the Veterans Health Administration (VHA) workforce may engage in overt or covert use of equipment to produce photographs, digital images, or video or audio recordings in treatment areas as described below. Access to treatment areas is limited to those authorized to enter (e.g., patients, members of the VHA workforce whose duties permit entry to treatment areas, visitors of patients, etc.).

a. Members of the VHA workforce may use equipment in treatment areas to overtly produce photographs, digital images, or video or audio recordings for official or treatment purposes, including but not limited to treatment, staff education and development, patient or staff safety, and to promote awareness and communicate with the public. When overtly producing photographs, digital images, or video or audio recordings in treatment areas, except as provided in paragraph 2.b. below, VHA must obtain the written consent of all parties, other than the patient(s) and members of the VHA workforce, who may appear or be heard in the recording, prior to such production. If the patient's treatment involves or requires the production and use of photographs, digital images, or video or audio recordings, the consent of the patient or the patient's surrogate must be obtained in accordance with the process described in VHA Handbook 1004.01, Informed Consent for Clinical Treatment and Procedures. If the production of photographs, digital images, or video or audio recordings is for an official purpose, the consent must be obtained using Department of Veterans Affairs (VA) Form 10-3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA (see <http://www.va.gov/vaforms/>).

b. Members of the VHA workforce may use video or audio monitoring equipment installed for patient safety purposes without written consent of the patient or other parties to overtly produce photographs, digital images, or video or audio recordings subject to:

(1) The limitations set forth in paragraph 4.a.(3) of this Directive, and

(2) Notification being provided to the patients in the treatment area verbally and to other parties through signage, as required by paragraph 4.a.(5) of this Directive.

c. Paragraph 4.a.(3) of this Directive states that equipment installed and used for patient safety purposes must only be accessed and viewed by staff who are both responsible for ensuring the safe delivery of care and authorized to take action based on the monitoring. Equipment may only be used to monitor (rather than record) the patient. Recording images or sounds when using monitoring equipment for patient safety purposes is prohibited, because the purpose of monitoring for patient safety is to afford an opportunity to take immediate action based on the monitoring. **NOTE:** *If a patient is on psychiatric hold, restrained, in seclusion, or otherwise poses an immediate and serious risk of harm to self or others, neither the patient nor the patient's personal representative can refuse video monitoring that the responsible VHA*

practitioner has determined to be in the best interest of the patient and the best way to reduce the likely and serious safety risk.

d. VHA may use equipment to covertly produce photographs, digital images, or video or audio recordings without the consent of persons appearing in these products for law enforcement purposes, to investigate misconduct by members of VHA's workforce, or in rare clinical circumstances, when the use of equipment is required for diagnostic or treatment purposes.

(1) If the use of equipment to covertly produce photographs, digital images, or video or audio recordings is for law enforcement purposes, both the VA medical facility Director and the chief law enforcement officer of the facility must approve this use before the equipment may be used. Any requirements established by the United States (U.S.) Attorney of the servicing U.S. District Court must also be met to ensure the evidentiary use of covert surveillance. If the investigation would involve the VA medical facility Director, the following process applies:

(a) The party or parties seeking authorization to covertly produce photographs, digital images, or video or audio recordings must submit a request to the Veterans Integrated Service Network (VISN) Director overseeing that facility.

(b) The VISN Director, along with the chief law enforcement officer of the facility, will be responsible for reviewing and approving requests (if appropriate) before such equipment may be used.

(2) If the use of equipment to covertly produce photographs, digital images, or video or audio recordings is to investigate suspected cases of VHA workforce misconduct, the VA medical facility Director, the Regional Counsel, and the chief human resources officer of the facility all must approve this use before the equipment may be used. If the investigation would involve the VA medical facility Director, the following process applies:

(a) The party or parties seeking authorization to covertly produce photographs, digital images, or video or audio recordings must submit a request to the VISN Director overseeing that facility.

(b) The VISN Director, along with the chief law enforcement officer of the facility, will be responsible for reviewing and approving requests (if appropriate) before such equipment may be used.

(3) If the use of equipment to covertly produce photographs, digital images, or video or audio recordings is required in rare clinical circumstances for diagnostic or treatment purposes (e.g., for diagnosing suspected mental disorders involving self-harm or self-created conditions or symptoms, such as Munchausen syndrome or to identify individual(s) suspected of posing a direct clinical hazard to the patient), the VA medical facility Director, the Regional Counsel, and the facility Ethics Consultation Service must approve the use, based on a treating clinician's determination that the proposed recording is in the best interests of the patient and no other reasonable alternative is available to achieve the health care goal.

2. Secure Areas and Personal Areas. VHA facilities must notify individuals entering secure areas and personal areas if they may be subject to photography, digital imaging, or video or audio recording, except as noted in paragraphs 2.a.-2.b. below.

a. VHA facilities may use equipment to covertly produce photographs, digital images, or video or audio recordings for law enforcement purposes in secure areas and personal areas. Such use must be authorized by the VA medical facility Director and the chief law enforcement officer of the facility before the equipment may be used. If the investigation would involve the VA medical facility Director, the following process applies:

(1) The party or parties seeking authorization to covertly produce photographs, digital images, or video or audio recordings must submit a request to the VISN Director overseeing that facility.

(2) The VISN Director, along with the chief law enforcement officer of the facility, will be responsible for reviewing and approving requests (if appropriate) before such equipment may be used.

b. VHA facilities may use equipment to covertly produce photographs, digital images, or video or audio recordings to investigate suspected cases of VHA workforce misconduct in secure areas and personal areas. Such use must be authorized by the VA medical facility Director, Regional Counsel, and the chief human resources officer of the facility before the equipment may be used. If the investigation would involve the VA medical facility Director, the following process applies:

(1) The party or parties seeking authorization to covertly produce photographs, digital images, or video or audio recordings must submit a request to the VISN Director overseeing that facility.

(2) The VISN Director, along with the chief law enforcement officer of the facility, will be responsible for reviewing and approving requests (if appropriate) before such equipment may be used.

3. Other Areas.

a. VHA facilities must notify individuals entering these areas that they may be subject to photography, digital imaging, or video or audio recording by VHA. There is no need to obtain the written consent of persons in these areas prior to the production of photographs, digital images, or video or audio recordings. Notification may be in the form of appropriately placed signage.

b. The use of security surveillance television (SSTV) must be done in accordance with policies and procedures established by VA's Office of Security and Law Enforcement in the Office of Security and Preparedness.

c. For purposes of this Directive, VHA Call Centers are considered part of a designated other area, and Call Centers must notify participants if their conversations may be monitored or recorded. However, Call Center operators do not need to have participants sign VA Form 10-

3203, Consent for Production and Use of Verbal or Written Statements, Photographs, Digital Images, and/or Video or Audio Recordings by VA (see <http://www.va.gov/vaforms/>), in order to monitor or record these conversations.

d. If the investigation would involve the VA medical facility Director, the following process applies:

(1) The party or parties seeking authorization to covertly produce photographs, digital images, or video or audio recordings must submit a request to the VISN Director overseeing that facility.

(2) The VISN Director, along with the chief law enforcement officer of the facility, will be responsible for reviewing and approving requests (if appropriate) before such equipment may be used.