

MEMORANDUM

To: COM Executive Committee

From: Andrei Boyarshinov

Date: January 18, 2018

Re: Law and relevant UF Health Policies on Voice/Video Recordings

Florida Consent Laws:

It is the position of UF COM to follow Florida law. In the State of Florida, all parties must consent to the recording and or disclosure of the contents of electronic, oral or wire communication. Fla. Stat. §934.03(3)(d). Florida's wire, oral and electronic communication law is a "two party consent" law. Under this statute, Florida has made it a crime to intercept or record a "wire, oral, or electronic communication," unless **all parties** to the communication consent. If two parties are engaged in a conversation, both of them must consent prior to recording. A third party must receive consent from all parties engaged in a conversation, even if that third party is not engaged in the conversation. For more information, *see* Fla. Stat. §934.03.

An exception to this law arises when the parties do not have a reasonable expectation of privacy in the conversation. Examples include when the parties are engaged in conversation in a public place where they might be overheard. In the present case, UF Health designates "public areas" in which individuals may congregate, even if they are not invited. What constitutes a "public place" from a private place may be difficult, but UF Health faculty, staff and students should recognize that many areas on UF Health's campus may be considered private for the purposes of this policy, even with public-like characteristics.

UF Health Physicians Policy:

UF Health Physicians reserve the right to prohibit photography and audio recording on its property, either generally or in specific circumstances. Photography and audio recording are prohibited in all indoor and outdoor public areas on UF Health Physicians property including, but not limited to, atriums, hallways, waiting rooms, driveways, sidewalks, parking lots and entry points, where patients and/or Protected Health Information (PHI) may be captured in the photograph unless consent or authorization is obtained as outlined below. UF Health employees,

medical staff, and allied health professionals may not be photographed or recorded without their advance verbal permission.

With a patient's verbal permission, friends and/or family members may take recordings of the patient. The patient may take photographs of himself/herself and may take recordings of other individuals who are not patients only with the permission of those individuals.

Recordings of patients by UF Health Physicians for medical treatment is addressed by the standard UF Health Physicians Consent and Authorization to Treat form. These recordings shall be taken only when approved by the patient's physician, the physician's designee, or by UF Health Physicians staff. These recordings may reveal the identity of the patient and become part of the legal medical record.

Recording of patients by UF Health Physicians for purposes of medical education is also addressed by the mentioned standard form. "Educational purposes" consists of education for and by UF Health Physicians or UF staff only. This does not include lectures, publications, etc. These recordings should not reveal the identity of the patient and do not become part of the legal medical record. Authorization is required for recordings that identify an individual.

Recordings to be used or displayed publicly and that may identify an individual patient require the patient's/ patient representative's written authorization prior to displaying such recording. Recording of patients taken for research purposes requires IRB review and approval, which is governed by IRB policies and/or the Informed Consent. For additional information, *see* UF IRB-01. Any recording of patients by external videographers and photographers, such as members of the media, should be handled through the UF Health Public Relations Department.

In the event that a patient or visitor takes a recording in violation of this policy, staff should instruct the person to immediately stop, and then destroy any recordings taken in violation of this policy. If the person refuses, then staff should contact UF Legal Services. For more guidance on recordings, see Policy UFP 8.82, Photography and Audio Recording in UF Health Physicians.

Regulations of the University of Florida:

Consistent with Florida law is §4 of UF Regulation 1.006 Non-discrimination / Harassment / Invasion of Privacy Policies. It states in relevant part that "the University prohibits making, using, disclosing or distributing a recording of a person in a location or situation in

which that person has a reasonable expectation of privacy and is unaware of the recording or does not consent to it; and any other conduct that constitutes an invasion of privacy of another person under applicable law or University regulations.” This policy, however, does not affect recording authorized by the Florida Sunshine Law, any other law or University regulation or policy. Recording is defined as any recording, visual, audio or both, in any medium, using any technology.

UF Health Shands Human Resources Policy and Procedure:

UF Health Shands similarly prohibits employees from taking smart phone or tablet pictures or doing any visual/audio recording in the workplace the same as it prohibits the unauthorized use of any cameras or photographic equipment.

All Mobile Devices used to communicate PHI or other Restricted Data must be encrypted and utilize approved and encrypted communication channels to transmit or share PHI. *See* UF Health Shands Core Policy and Procedure Policy Number CP03.012 for more information regarding encryption. Physicians are permitted to use Mobile Devices to communicate PHI when they are directly engaged in patient care. Employees are permitted when they are directly permitted in patient care or quality review of patient care. *See* CP03.012 for examples of permitted employees. Students are permitted when participating in a clinically affiliated educational program. Acceptable uses of Mobile Devices include facilitating the delivery of immediately needed patient care and/or to provide mass communication during medical emergencies/ disasters. *See* CP03.012 for examples or acceptable and unacceptable uses of Mobile Devices.

University of Florida Information Privacy Policies and Procedures, Operational Guidelines for Health Information:

§5.2 Personal Portable Data Devices/Mobile Devices states that all UF faculty, staff, students, and volunteers are responsible for maintaining the confidentiality of all health information, including but not limited to personal health information (PHI) and personal identification information (PII). The disclosure of unsecured PHI or patient data, including images, via electronic devices is strictly prohibited. The use of personal devices and cameras by workforce members is generally prohibited for work-related purposes in patient care areas,

except for the direct provision of patient care and/or during emergencies and disasters.

Workforce members should review §5.2 of the Operational Guidelines for Health Information for more information on the use of personal data devices and communicating health information.