SESLHD POLICY COVER SHEET



NAME OF DOCUMENT	Photography and Recording of Patients
TYPE OF DOCUMENT	Policy
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EXECUTIVE SPONSOR	Director, Clinical Governance and Medical Services
AUTHOR	SESLHD Health Records and Medico Legal Committee
POSITION RESPONSIBLE FOR THE DOCUMENT	Co-Chairs, SESLHD Health Records & Medico Legal Committee
	Mervat.Dawoud@health.nsw.gov.au
	Antony.Sara@health.nsw.gov.au
FUNCTIONAL GROUP(S)	Records Management – Health
	Clinical Governance
KEY TERMS	Photography; Recordings
SUMMARY	In line with respecting patient privacy and confidentiality, this policy is to provide clear and concise guidelines for obtaining consent to photograph, video or audio record patients and the subsequent taking and management of images and recordings.

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1. POLICY STATEMENT

- Photographs, video recordings and audio recordings of patients may be taken for use in clinical care, peer review, consumer and staff education. Violence abuse and neglect (VAN) services may take photographs for forensic purposes.
- This policy excludes the use of photographic images and recordings for the purpose of organisational publicity, health promotion and medical research.
- In order to protect the privacy and confidentiality of those working or visiting our facilities, no photograph or recording may be captured by patients, staff or visitors without informed consent unless the image is essential for clinical care.
- As per the State Records Act 1998 (NSW), NSW Health Code of Conduct and the Health Records and Information Privacy Act 2002 (NSW), all staff must maintain the security of confidential and / or sensitive information, including that stored on communication devices.
- The *Health Records and Information Privacy Act 2002* (NSW) applies to all patient photographs and recordings. The local health district is required to provide secure storage, access to, and use and disclosure of photographs and recordings.

2. AIMS

To inform staff of the requirement for obtaining consent to photograph video or audio record patients and the subsequent taking and management of images and recordings.

3. TARGET AUDIENCE

All staff that require the use of clinical photography to assist in the on-going assessment and management of patients/clients.

4. **RESPONSIBILITIES**

4.1 All staff will:

- Ensure informed consent is obtained where appropriate and documented for all photographs and recordings taken within SESLHD
- Use approved equipment (where relevant) and/or approved applications to capture all photographs and recordings in the first instance if available
- Use Bring-Your-Own personal devices with an approved application in accordance with the requirements of this policy and the NSW Code of Conduct
- Maintain the security of confidential and / or sensitive information
- Ensure the photograph or recording is managed appropriately and stored correctly.

5. DEFINITIONS

• **Approved Application**: Microsoft Teams is the approved platform for clinical communication and sharing of clinical images between clinicians, and MedSync is





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the approved platform for uploading images to the Electronic Image Repository. Approved Devices can upload via Cerner eMR Multimedia Manager.

- **Approved device**: any end-user computing device supplied by SESLHD, which would be expected to have proper advice from ICT and utilises Cerner eMR Multimedia Manager.
- **Approved Storage Solution**: The Electronic Image Repository (EIR) for use with personal devices that have Microsoft Teams installed and the eMR multimedia manager for approved SESLHD devices.
- Audio Visual Recording: relating to materials, such as films, video and tape and audio recordings, that present information in audible and pictorial form
- **Confidentiality**: the restriction of access to information, and the control of the use of release of personal information, in order to protect patient privacy
- Consent: permission for something to happen or agreement to do something. For more information see Section 5.4 - Consent of the <u>NSW Health Privacy Manual for</u> <u>Health Information</u>.
- **Identified information**: information or opinion about a person whose identity cannot be ascertained from the information or opinion
- **Electronic health record**: electronic health record applications/systems such as Cerner eMR, eMaternity, eRIC, MOSAIQ, ARIA, or any other similar
- End-user computing device: any electronic device which is capable of storing data and connecting to a digital data network, including but not limited to mobile phones, smartphones, tablets, laptops, personal computers, thin- clients, wearable technologies, smart watches, woven computing technologies and netbooks
- **GIPA Act**: *Government Information (Public Access) Act 2009* (NSW)
- Health Information:
 - (a) personal information that is information or an opinion about:
 - (i) the physical or mental health or a disability (at any time) of an individual, or
 - (ii) an individual's express wishes about the future provision of health services to him or her, or
 - (iii) a health service provided, or to be provided, to an individual, or
 - (b) other personal information collected to provide, or in providing, a health service, or
 - (c) other personal information about an individual collected in connection with the donation, or intended donation, of an individual's body parts, organs or body substances, or
 - (d) other personal information that is genetic information about an individual arising from a health service provided to the individual in a form that is or could be predictive of the health (at any time) of the individual or of any sibling, relative or descendant of the individual, or

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(e) healthcare identifiers,

but does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of the HRIP Act generally or for the purposes of specified provisions of the HRIP Act.

- **Health record**: a documented account, whether in hard copy or electronic form, of a patient's health, illness and treatment during each visit or stay a health service (note: holds the same meaning as "Health care record", "Medical record", "Clinical record", "Clinical record", "Patient record", "patient notes", "patient file", and so on
- HRIP Act: Health Records and Information Privacy Act 2002 (NSW)
- **Non-Approved Device:** personal devices that are not compatible with Microsoft Teams and/or do not have Microsoft Teams and MedSync installed.
- **Non-Approved Storage**: Any network shared drive or portable storage device (e.g. USB, Hard Drive)
- **Patient**: any person who receives a health service and to whom, as a result, a health practitioner owes a duty of care. (note: holds the same meaning as "client" or "consumer"
- **Photograph:** an image of an object, person, scene, or part thereof, in the form of a print, slide or digital image recorded by a camera on photosensitive material
- **Privacy:** the right of an individual to have their personal health information safeguarded from loss, misuse, and unauthorised disclosure in order to protect the privacy of an individual's personal health information
- **Security:** a tangible set of physical and logical mechanisms which can be used to protect information held in hard and soft copy, digital format, within computer systems, via telecommunications infrastructure, etc.

6. POLICY

- In line with protecting patients' privacy and confidentiality, this policy provides a clear and concise guideline for obtaining consent, the taking / recording of, and the subsequent management of photographs, videos and audio recordings of patients.
- This policy applies to images taken on cameras and other end-user computing devices, but excludes those images captured during routine diagnostic imaging such as x-ray, CT or MRI scanning.

Clinical

 In certain clinical contexts, the taking of patient photographs and recordings may be required for the care, monitoring, observation and treatment of patients. Some examples include burns, wounds, rashes, cancers, congenital conditions and patient behaviour.

Photographs and recordings, whether re-produced in hard copy or maintained in digital format, do form part of the patient's health care record.



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- For Use Case Scenarios on when to use Teams MedSync vs eMR Multimedia Manager (MMM) refer to <u>Appendix 2.</u>
- For wound photography, refer to <u>SESLHDPR/285 Wound Clinical Digital</u> <u>Photography</u>.
- For abuse / neglect photography, refer to <u>NSW Ministry of Health Policy</u> <u>Directive PD2015_047 – Photo and Video Imaging in Cases of Suspected Child</u> <u>Sexual Abuse, Physical Abuse and Neglect, SESLHDPR/777 - Forensic</u> <u>Medical Photography for Violence, Abuse and Neglect Services</u>, and consent form - SMR020.028 Consent for imaging - suspected child abuse.

Non-Clinical

- At times photographs and recordings may be taken for purposes unrelated to direct patient clinical care. Some examples include:
 - o Organisational publicity
 - o Health promotion
 - o Medical research
 - o Education of healthcare workers.
- For more information on non-clinical photography and recording, or the use of clinical photography for purposes unrelated to direct patient clinical care, contact the SESLHD Manager, Media and Communications.

6.1 Patient Identification

- Patient images may be taken for identification purposes in some facilities and units e.g., mental health, aged care facilities, community services including cardiac and respiratory rehabilitation and community nursing.
- Staff must ensure that the photograph is clearly identified with the client's name, date of birth, gender and medical record number. If printed, this must appear on the back of the photograph.

6.2 Consent

- Written consent is not required where the capturing of images is a necessary part of clinical diagnosis, clinical care or treatment. However the patient must be made aware why the taking of the images is / was clinically indicated and this must be documented in the patient's health care record.
- If the patient can be identified or potentially identified, and the purpose of capturing of the image is not a necessary part of clinical diagnosis, care or treatment, the consent of the patient must have been obtained in writing (*Patient Consent for Photographs / Images / Recordings for Non-Patient Care Purposes - SMR020.005* to be completed).
 (<u>Appendix 1</u>). Consent must always be obtained before intra-operative filming, photography or streaming of procedures for education or training, photographs/images that are to be used for quality improvement and training purposes.

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- If a patient cannot be identified in the photograph or recording, then consent may be verbal but must be documented within the patient's health care record.
- During the consenting process, it should be explained:
 - Why the photograph or recording is being taken
 - o How the photograph or recording will be used
 - The benefits of taking the photograph or recording to the individual / others / organisation
 - Who will see the image or recording
 - Where the image will be stored
 That the image will be deleted from the device after being saved to the appropriate health service information system
 - That consent can be withdrawn at any time, however images of the patient that are related to clinical care will form part of the health care record and cannot be deleted
- Patient photographs and recordings may be used only for the purposes covered during the consenting process. If staff wish to use an image or recording for purposes not covered in the consenting process, the patient is to be contacted to seek further consent for the additional use of the image or recording. Additional consent from the patient must be documented within the patient's health care record.
- Consent can only be given by a person who has the capacity to consent or substitute decision maker (refer to NSW Health Privacy Manual for more information).
- An interpreter should be used if required and documented in the health care record.
- A patient's refusal to consent should be documented in the health care record.
- Any consent for photographs or recordings is valid until withdrawn. Consent may be withdrawn at any time, however if the images are part of the health care record then they will not be deleted/removed. Withdrawal should be documented in the patient's health care record and / or by the appropriate department.

6.3 Photography and Recordings

- All photographs and recordings for clinical purposes should be captured on approved equipment as far as practicable.
- When non-approved devices, are used to capture images or recordings, this must be in accordance with the requirements of the Bring Your Own Device and NSW Health Smart Devices Policy Directive, the NSW Code of Conduct and other policies related to the privacy and protection of children, patients and clients.
- All photographs and recordings should be clear and accurately represent the purpose of the image or recording.
- Wherever possible, the use of identifying features should be avoided, unless required to support patient assessment and management.
- All images and recordings should be of the highest quality possible. Care should be taken to ensure the use of adequate lighting and clarity of an image. Forensic photographs should include at least one image with a ruler and a colour card.

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 Hand hygiene should be performed before and after handling photography equipment and care should be taken to prevent the equipment coming into contact with patients and their immediate surroundings.

6.4 Use of Personal Devices for Photography and Recordings

- The patient must be made aware that a personal device is being used to capture the clinical image via Microsoft Teams/MedSync.
- Staff members who use personal devices must take reasonable steps to have security controls on the device to prevent unauthorised access. Reasonable steps include the following:
 - Have controls on the device to prevent unauthorised access
 - Use MedSync Application in Microsoft Teams to ensure no photographs or recordings are saved on the device
 - Your mobile device must have password protection, and you are required to be able to erase images remotely if your device is stolen
 - Delete all images from your mobile device as soon as possible as leaving clinical images on a mobile device increases the risk of unauthorised access if the device is lost or stolen, and increases the risk of the image being sent by mistake to an unauthorised third party

6.5 Use of the Electronic Image Repository with Microsoft Teams and MedSync

- When images are uploaded to the EIR via MedSync, staff should take particular care to ensure that images are allocated to the correct site MRN. If a photo is uploaded to the incorrect patient record, staff must contact local health information unit as soon as possible so that the image can be transferred to the correct record.
- To ensure the images are allocated to the correct patient health care record, they must have:
 - 1. Patient identification label or;

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2. Name, sex, date of birth and MRN

Ref: T20/58319

• When images are uploaded, it is required that the clinician documents in the patient's Health Record.

6.6 Management and Storage of Clinical Photography and Recordings

- Photographs and recordings form part of the patient's personal health information and are therefore part of the health record. This includes both hard copy and digital format.
- All photographs and recordings should be stored in the Electronic Image Repository (EIR) which can be accessed via the HealtheNet tab in patient's electronic health record (refer to relevant system user instructions, guidelines or procedures for saving images). Photographs may also be stored in the paper file if the image can be produced in a clear and accurate format.
- It is the responsibility of the individual who has taken the photograph or recording to ensure it is managed appropriately and stored correctly.

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- All photographs and recordings must be uploaded as soon as possible after they are taken, and deleted from the device (if not using the MedSync application) for security purposes.
- The SESLHD supports the use of privately-owned end-user computing devices to access digital resources but prohibits the storage of information classified as confidential on privately-owned devices.
- For images taken by sexual assault nurse examiners as part of a medical and forensic consultation, SESLHD must follow GDA-17-General Retention and Disposal Authority Public health services: patient/client records and retain images for a minimum of 30 years after legal action is completed and resolved (where known), or after last contact for legal access or 30 years after the individual attains or would have attained the age of 18 years, whichever is the longer.
- In the case where SESLHD provides end-user computing devices to staff, the LHD does not condone the storage of confidential information on these devices, whether they are fixed or mobile, without written approval of the SESLHD Director Health ICT or their delegate.
- Photographs and video imaging for child abuse and neglect must be stored separately from the patient's health care record, as per the NSW Health Policy Directive PD2015 047 - Photography and Video Imaging in Cases of Suspected Child Sexual Abuse, Physical Abuse and Neglect.

6.7 Access

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6.7.1 External Access to photographs and recordings

- Under the Health Records and Information Privacy Act 2002 (NSW) (HRIP Act), the • Government Information Public Access Act 2009 (NSW) (GIPA Act) and NSW Health policy, patients or their authorised representative (such as solicitor, insurer, etc) may apply for access to information a health service holds about them. This includes any photography and/or recordings. All enquires for access to patient's health care records should be directed to the relevant site Medical Records Department.
- Compliance with a search warrant and / or subpoena (court order) is required by law and thus photographs and recordings may be requested.
- Other authorised Government agencies also have powers to access photography and recordings, such as the Health Care Complaints Commission (HCCC), the NSW Ombudsman and the Child Death Review Team.
- Forensic photographs may be considered 'sensitive evidence' under the Criminal Procedure Act 1986 (NSW) (Section 281B) and must be handled in accordance with Sections 281c through FG of that Act, inclusive.

6.7.2 Staff Access to photographs and recordings

Staff may access photographs and/or records in accordance with access guidelines set out by the Privacy Manual for Health Information and the code of conduct. This may include (but not be limited to)

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- Clinical staff providing care
- Complaint handling
- Quality assurance or audit activities
- Treating clinicians / staff may forward a photographic image to another clinician involved in the patient's care for the purposes of communication and clinical decision making via Microsoft Teams.
- Images that are shared between clinicians and that are used for clinical decisionmaking must be uploaded to the EIR. Images uploaded into the EIR must be accompanied by documentation in the progress notes that includes the rationale for sharing and uploading the images.
- Staff should consider that patients can be identified by not just their faces, but by birth marks, scars, tattoos, piercings, unusual diagnoses and other features which may be unique to them.
- For further information, contact the SESLHD Privacy Contact Officer.

6.8 Auditing

All Health Information Managers /Medical Record Managers will:

- Receive on monthly basis from eHealth an excel spreadsheet on the MedSync uploaded data
- Will perform monthly audit of 10-20 images per site and errors fed back to the manager of the relevant facility/ service/ stream.
- Audit criteria will include:
 - Was the image/videos appropriately uploaded to EIR / MMM
 - Clinical documentation is in eMR to indicate Images/videos are taken in MedSync and/or MMM and uploaded in EIR / MMM
 - o Image/videos attached to correct patient
 - Image/videos is of good quality, e.g. in focus and adequate field of view to show what it is.
 - Image/videos is correctly labelled: first and last name, date of birth, sex and medical record number (MRN)
 - o Image/videos appropriately described in EIR / MMM title, e.g. correct body part.
- Submit the results of all audits to the SESLHD Health Records and Medicolegal Committee.
- Retain a copy of the audits and provide as requested for accreditation purposes.
- Microsoft Teams and MedSync information such as Frequently Asked Questions, Quick Reference Guides, eLearning can be found on the <u>eHealth CRIS Training and</u> <u>Education sharepoint.</u>



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7. DOCUMENTATION

- Health Care Record
- Patient Consent for Photographs / Images / Recordings for Non-Patient Care Purposes - SMR020.005

8. REFERENCES

Legislation:

- <u>Health Records and Information Privacy Act, 2002 (NSW)</u>
- <u>Government Information (Public Access) Act 2009 (NSW)</u>
- <u>State Records Act 1998 (NSW)</u>

NSW Ministry of Health

- NSW Health Privacy Manual for Health Information (2015)
- NSW Health Information Bulletin IB2023_012 Privacy Management Plan
- <u>NSW Health Policy Directive PD2015_047 Photo and Video Imaging in Cases</u>
 <u>of Suspected Child Sexual Abuse, Physical Abuse and Neglect</u>
- NSW Health Patient Matters Manual for Public Health Organisations
- NSW of Health Consent to Medical and Healthcare Treatment Manual
- NSW Ministry of Health Health Records and Information Manual
- NSW Health Code of Conduct

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- SESLHDPR/292 Hybrid Health Care Record Procedure
- <u>SESLHDPR/285 Wound Clinical Digital Photography</u>
- SESLHDPR/426 Non-News Filming, Photography and Audio Recording
- SESLHDPR/777 Forensic Medical Photography for Violence, Abuse and <u>Neglect Services</u>
- SESLHDPD/310 Information Security Policy

9. VERSION AND APPROVAL HISTORY

Date	Version	Version and approval notes
May 2020	DRAFT	Co-Chair SESLHD Health Records & Medico Legal Committee
June 2020	DRAFT	Draft review and approved SESLHD Health Records & Medico Legal Committee
August 2020	DRAFT	Draft for comment period.
October 2020	DRAFT	Processed by Executive Services and tabled at Corporate Executive Council.
November 2020	DRAFT	Endorsed by Corporate Executive Council requesting policy be approved by Clinical and Quality Council.
December 2020	DRAFT	Approved at Clinical and Quality Council.



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February 2021	1	Published by Executive Services.
24 November 2023	1.1	Minor review including addition of Microsoft Teams and EIR information; addition of BYOD information; addition of forensic information; addition of Appendix 2; added auditing requirements; links updated. Approved by SESLHD Health Records & Medico Legal Committee
14 October 2024	1.2	Minor review: updated Appendix 2; updated Section 6.5 to include the words 'sex' and 'MRN'; updated Section 6.8 auditing. Approved by SESLHD Health Records & Medico Legal Committee.



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Appendix 1: Consent for Intra-operative and other Photos,	Images and Recording for non-
Patient Care	

	-82824-	FAMILY NAME	MRN		
	NSW Health	GIVEN NAME	GIVEN NAME		
		D.O.B//	M.O.		
	Facility:	ADORESS	21		
-					
	CONSENT FOR INTRA-OPERATIVE AND OTHER PHOTOS, IMAGES AND				
	RECORDING FOR NON PATIENT CAR	E COMPLETE ALL DETAILS			
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)	CONSENT				
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Appendix 2: Use Case scenarios

	Emergency Encounter	Inpatient Encounter	Outpatient Encounter	Community Encounter
General Communication	MedSync	MedSync	MedSync	MedSync
One off images for assessment and care planning	MedSync	MedSync	MedSync	MedSync
Multiple repeated images over a period time	N/A	Multi Media Manager / MedSync	Multi Media Manager / MedSync	Multi Media Manager / MedSync
Secure organisations	N/A	N/A	N/A	Multi Media Manager

DETAILED SERVICE SCENARIOS

COMMUNITY ENCOUNTERS				
Service	Detail regarding photos/images	Method of image storage	Documentation	Where to view
Community Health Nurses (Adult Teams)	Community Health Nurses take wound photos at a regular basis throughout the client journey. Clients can be registered to Community Health Nursing services for many months even years.	MedSync	Via the WATEP Power Note in the Wound tracing section/ Nursing Power Note.	Via HealtheNet and then Images (EIR) tab
Community and Outpatient Podiatry services	Podiatrists take wound photos at a regular basis throughout the client journey. Clients can be registered to Podiatry services for many months even years	Multi Media Manager / MedSync	SGH/TSH -via the WATEP PowerNote POW - Progress Note	MMF Gallery on Community Client Summary or MultiMedia Manager on the Menu bar and HealtheNet (EIR) tab



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COMMUNITY EN					
Service	Detail regarding photos/images	Method of image storage	Documentation	Where to view	
Paediatric Allied Health Services	Paediatric allied health teams including Occupational Therapy, Physiotherapy, Speech Therapy all take photos and videos of children in therapy sessions, as well as receive photos and videos from parents/carers of children at home doing specific exercises.	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab	
General Community Health Services	Occasionally, community health staff may take photos of a client or their environment, e.g., an occupational therapist taking photos of a home modification.	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab	
Secure eMR locations including all Sexual Health and Blood Borne Virus Services, and Violence Abuse and Neglect Services	All photos and videos that are taken by any secure service <u>MUST</u> be added to the MMF Media Gallery as this will load the photo/video against the secure encounter, meaning staff without access to the service will not be able to see these images.	Multi Media Manager	Progress Note	MMF Gallery on Community Client Summary or MultiMedia Manager on the Menu bar	
	For Southern Sydney Sexual Assault Service, note the PaCH Sexual Assault Services Forensic Medical Photography business rule for further information				
Drug & Alcohol	Drug & Alcohol clinicians take wound photos at a regular basis throughout the client journey. Clients can be registered to Drug & Alcohol services for many months even years	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab	

Photography and Recording of Patients

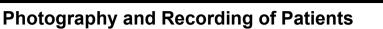
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EMERGENCY ENCOUNTERS				
Service	Detail regarding photos/images	Method of image storage	Documentation	Where to view
Emergency Department	Emergency department clinician consulting with other teams within hospital or with other hospitals	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab

INPATIENT ENCOUNTERS				
Service	Detail regarding photos/images	Method of image storage	Documentation	Where to view
Hospital in the Home (HITH)	HITH clinicians take photos and consult with admitting team or relevant speciality clinicians for assessment and treatment plan	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab
Stomal and Wound Care	Designated clinical staff take photos of stoma for ongoing monitoring. The patient maybe an inpatient or outpatient	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab
Wound Care	Designated clinical staff take photos of wound this could be a one off or a series of photos. The patient maybe an inpatient or outpatient.	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab
	For Sydney and Sydney Eye Hospital they are a tertiary referral for Ophthalmology and Hand Services so best place in Med Sync for that sharing of photos back to referring facility.			
Allied Health	Allied Health clinicians take photos especially occupation therapist with home assessments at discharge	Med Sync	Progress Note	Via HealtheNet and then Images (EIR) tab



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OUTPATIENT ENCOUNTERS				
Service	Detail regarding photos/images	Method of image storage	Documentation	Where to view
Stomal and Wound Care	Designated clinical staff take photos of stoma for ongoing monitoring. The patient maybe an inpatient or outpatient	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab
Wound Care	Designated clinical staff take photos of wound this could be a one off or a series of photos. The patient maybe an inpatient or outpatient.	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab
	For Sydney and Sydney Eye Hospital they are a tertiary referral for Ophthalmology and Hand Services so best place in Med Sync for that sharing of photos back to referring facility			
Dermatology Clinics	Dermatology registrars take photos at a regular basis at the outpatient visit. Patients can be seen for many months and even years	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab
Hyperbaric Services	Hyperbaric clinicians will take wound photos at a regular basis throughout the patient journey. Patients will be treated for many months	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab
Allied Health	Hand Therapists will take wound photos to monitor post op wounds and will be overseen by the plastics teams.	MedSync	Progress Note	Via HealtheNet and then Images (EIR) tab

Note: SESLHD Cancer Services will utilise their respective Oncology Information Systems of MOSAIQ (Prince of Wales Hospital and Royal Hospital for Women) and ARIA (St George Hospital) for clinical photography.