



Facial Photos & Patient Consent

Simple Tracking System (STS) is often asked about the legality of utilizing facial photos during disaster operations. Not only is this legal, utilizing facial photos as a medical record identifier is considered a best practice that has been shown to significantly reduce medical errors.

Legality

It is legal to take someone's photo without express consent during a mass casualty (e.g., the patient is unconscious) when the incident takes place in a public place (street, festival, concert, school, etc.). If the incident takes place in a non-public location and there is an expectation of privacy (home, hotel room, bathroom, etc.) then you cannot take a picture without permission.

In the use case for STS, these events occur in public areas where there is no expectation of privacy. There is no law limiting photos in these cases, and photos are taken all the time in public and used for identification purposes for public safety and security.

Health Insurance Portability and Accountability Act (HIPAA)

In the use case of STS, the facial photo is considered to be protected health information and is thus HIPAA protected. Additionally, the responding public safety or medical entity is considered to be 'a covered entity' by the HIPAA Privacy Law so must have practices and systems to protect this information from disclosure. This means that the picture cannot be shared outside of the limitations of the HIPAA Privacy law. The picture can only be shared or utilized when used for treatment, shared with physicians or medical personnel involved in the direct care of the patient, or notification, shared in order to properly identify, locate and notify family members, guardians, or anyone associated with the care of a patient in a disaster situation.

STS utilizes technology and practices that are HIPAA compliant. We take patient privacy very seriously and have designed our technology to be effective and efficient without compromising patient privacy.

Medical Record

The facial photo used by the responding public safety agency or medical personnel on scene is considered a patient medical record within the STS system. The facial photo is an important part of the record utilized to ensure proper identification and registration of the patient. Like showing a driver's license or official identification at the hospital, STS uses pictures to ensure that you are who you say you are and to ensure that you are not confused with another patient. Many medical entities are now using a photograph as one of the two medical identifiers. This practice has helped hospitals in decreasing medical errors related to patient mis-identification and is now considered a medical best practice.

Your face is a very effective identifier – it belongs to you and you alone so it's a great way to ensure we know who and where you are!

Patient Refusal

STS has found that most of the time the patient denies having their picture taken because they do not understand the purpose.

If the patient is unconscious or altered and incapable of making a medical decision, the photo can be taken without express consent as explained above. Additionally, like most medical procedures, the picture is part of the medical record and ethically can be taken under implied consent for medical care.

If the patient is awake and capable of making decisions, the STS user should explain that the photo is being used as part of the medical record for identification purposes, and for family reunification. Explain that the photo is how STS tracks location within the medical system so that officials can ensure that family and friends can locate them. Also mention that the picture is part of the official medical record documenting patient location and is protected under the HIPAA Privacy Law just like any other part of the medical record.

If a patient refuses to have their facial photo taken all together, we advise users to take a photo of their official identification (driver's license or ID card) to have pertinent information captured and a photo on file, although the image matching technology is not as accurate when an image of a photo is used. Users can also capture photos of any unique features on the patient, such as a tattoo, birth mark, scar, or other marking that is unique to them. Image matching technology matches any similar images not just facial photos.

The database of patient records is still useful to an agency even if a facial photo is not attached to the patient's record. Users can search the database by any data field (name, DOB, destination, triage level, etc.) and patients can be identified and located via the search method in addition to image matching.

STS technology should be used with consent if at all possible. If explained that the photo is for identification purposes as part of the patient's private medical record, and that the photo is not saved or used for personal use or publication, patients almost always give consent. The photo is part of a medical record and is protected against sharing or publication by the HIPAA Privacy Law.