1. **Video and audio recordings and photographs**

Recordings and photographs made for clinical purposes are part of the medical records, and are subject to the same duty of confidentiality. The GMC advises that it is necessary to obtain the consent of the patient or, in the case of a child who is unable to give consent, to obtain consent from someone with parental responsibility prior to a recording or photograph being made. In relation to adults lacking capacity, video and audio recording should only take place if it is in the patient’s best interests. They should only be used for the purpose for which consent was granted, and must be stored securely. Clinical recordings should not be used for teaching purposes without consent if the patient is identifiable.

2. **CCTV and surveillance**

CCTV equipment should only be installed for a specific purpose, such as for the prevention and detection of crime. Patients using health care facilities should be made aware by notices if surveillance cameras are in use in public areas of GP surgeries and hospitals. The Information Commissioner provides guidance on the use of CCTV and the standards that should be followed. Disclosure of CCTV footage may take place, for example, to the police where it is justified in the ‘public interest’ but care must be taken to ensure that only relevant images are disclosed.
The BMA and GMC have particular concerns about the use of covert surveillance on health care facilities and the GMC states that doctors ‘must obtain permission to make, and consent to use, any recording made for reasons other than the patient’s treatment or assessment’. There are a few exceptions in which covert surveillance is acceptable, for example, in an in-patient setting where there are grounds to suspect relatives or carers of causing injury to a child, in which case legal advice should be sought and the involvement of police and social services agreed.

3. Out of hours service
Calls to an out of hours service are confidential and patients should be informed that their call may be recorded. The recording forms part of the patient’s medical record and is accessible under the Data Protection Act. No call from a patient should be secretly recorded.

4. Television, radio, internet and print
The written consent of the patient or, in the case of a child who is unable to consent, written consent from someone with parental responsibility is required for all publications or recordings for broadcast or use in media to which the public will have access, including medical journals. This applies whether or not the patient is likely to be identifiable. Patients need to be informed that once they have agreed to the publication or recording, they may not be able to withhold their consent for its subsequent use. In relation to adults lacking capacity the law is untested. In the BMA’s view it is difficult to see how such publications or recordings
could be in the individual’s best interests. Before making any arrangements for individuals or organisations to film patients in a health care setting, permission should be sought, where appropriate, from the employing or contracting body and the organisation in which patients are being treated if this is different.

5. The press
Under normal circumstances there will be no basis for disclosure of confidential and identifiable information to the press. There will be occasions, however, when health professionals are asked for information about individual patients:

- comment on the condition of a celebrity patient. When the patient has the capacity to make decisions about disclosure, consent is essential before any information is released to the media. When the patient lacks capacity, legal advice should be sought
- after incidents involving harm to many people. During or after major disasters, for example a fire, road traffic accident, terrorist attack or outbreak of infectious disease, it is important that requests for information are dealt with sensitively, while not breaching the confidentiality of patients. It will not usually be necessary to give identifying or detailed clinical information about the people involved
- where a patient or a patient’s relatives use the press as a vehicle to complain about the treatment and care provided. Many health professionals feel strongly that patients forfeit their rights to confidentiality by going to the press, and that they should be entitled to ‘set the
record straight’ and correct any inaccuracies. In practice health professionals who do this would risk criticism and breach confidentiality if the patient does not give consent. Where misleading information has been presented to the press, health professionals who wish to respond should limit their comments to pointing out that the information is inaccurate or incomplete.