



Consent for case reports and medical images

Frank Frizelle

Medical images and case reports are considered by many to be interesting and educational. Most readers are clinicians so clinical-based problems are easy to engage. Many journals have a long history of including them such as the *New England Journal of Medicine* clinical problem solving or their previous “Case reports for Massachusetts General Hospital”. Other journals have more recently returned to including them and, though usually not cited and thus may have a discouraging effect on a journal's impact factor, they are recognised as being amongst the readers' favourite parts of journals (just behind obituaries).

The issue of consent for publication and the patients' right to privacy however needs to be married with this interest especially as most journals now use a web-based medium in part or whole.

The ICMJE (which the NZMJ is a member) Uniformed Requirements state in regard to this issue (<http://www.icmje.org/#privacy>):

...Patients have a right to privacy that should not be violated without informed consent. Identifying information, including names, initials, or hospital numbers, should not be published in written descriptions, photographs, or pedigrees unless the information is essential for scientific purposes and the patient (or parent or guardian) gives written informed consent for publication.

Informed consent for this purpose requires that an identifiable patient be shown the manuscript to be published. Authors should disclose to these patients whether any potential identifiable material might be available via the Internet as well as in print after publication. Patient consent should be written and archived either with the journal, the authors, or both, as dictated by local regulations or laws. Applicable laws vary from locale to locale, and journals should establish their own policies with legal guidance.

Nonessential identifying details should be omitted. Informed consent should be obtained if there is any doubt that anonymity can be maintained. For example, masking the eye region in photographs of patients is inadequate protection of anonymity. If identifying characteristics are altered to protect anonymity, such as in genetic pedigrees, authors should provide assurance, and editors should so note, that such alterations do not distort scientific meaning.

Societal expectations are constantly evolving in regard to privacy and consent issues (as are the ICMJE uniform requirements). Not surprisingly the expectations and needs of one generation of editors were not perceived the same by the previous generation. An example of this evolving problem is a journal putting back issues (archives) on the web, in that patients originally gave consent for publication in print and may now find their image and case report published on the web (and more easily accessible to a much wider audience than in print). Editors are still developing policy to address this particular issue.

Another issue that has developed is over what to do with the consent details. Journal editors (and others) feel having the patient's consent sent to the journal is an infringement of privacy as the journal editorial and production staff then are privy to the patient's details. As such the ICMJE has recommended that the consent be

retained by the author in the patient's records and the journals just to accept an author's written statement that consent has been gained.

An email recently received by the *NZMJ* from Dr Philip White (Amity Health Centre, Dunedin) raises another issue. It reads...

The sources of medical images published in the *NZMJ* represent true global medicine. A look at those published this year to date takes us from New Zealand to the USA by way of Australia, Taiwan, Iran, Turkey, Italy, and the United Kingdom with a significant minority coming from New Zealand. The origins may not be significant but the medical image published in the issue dated 19 September 2008 entitled *Fatal tyre blast injuries including bowel evisceration and forearm amputation*¹ made me pause to consider.

This contribution comes from the United Arab Emirates. If this particular injury had happened in Dunedin the headline in the *Otago Daily Times* may well have been very similar and many people would be aware of the identity of the person fatally injured. The *NZMJ* in its instructions to contributors requests that patient-identifying information is removed. It also advises that issues older than 6 months have free public access. Is it possible to completely remove patient-identifying information when many interesting images are of unique medical cases or result from unique events which may well have been reported in the local or not so local media?

At about the same time as I was pondering the ethics of publishing pictures of the tyre blast injury I was sent an editorial from the *BMJ*^{2,3} outlining their policy on publication. This stated that the policy had been that (with few exceptions) any patient-identifiable material had to be submitted with the patient's consent. Exceptions were allowed if the educational interest of publication was deemed important and consent was difficult to obtain. The editors subsequently reviewed guidance from the UK's Information Commissioner, who oversees the workings of the Data Protection Act, which stated that medical information about a living patient can be published only with the explicit consent of the patient.

The editors came to the conclusion that the only way that they can publish information relating to individual patients without explicit consent was to truly anonymise it. I hope I have demonstrated above, that in many cases, medical images are impossible to anonymise either by virtue of the rarity of the condition, the identity of the medical team involved, or the public knowledge of the accident causing the condition.

Might there be a relationship between the paucity of medical images submitted from New Zealand and our regard for the Health Information Privacy Code⁴ which states that health information should only be disclosed if authorised by the individual concerned or his/her representative? In contrast to the UK, in this country this protection goes beyond the grave.

I would ask the *NZMJ* to reconsider its policy regarding publication of medical images in order to prevent possible distress to the people in the images or their families, by requiring specific consent to publish in line with the *BMJ* who

provide a suitable consent form with translations into other languages in their instructions to authors.⁵

Dr G Philip White

References:

1. Hefny AF, Eid HO, Salim K, Abu-Zidan FM. Fatal tyre blast injuries including bowel evisceration and forearm amputation. *N Z Med J*. 2008;121 (1282):72–3.
2. Godlee F. Getting a patient's consent for publication. *BMJ*. 2008;337:a1633.
3. Smith J. Patient confidentiality and consent to publication. *BMJ*. 2008;337:a1572.
4. <http://www.privacy.org.nz/assets/Files/Codes-of-Practice-materials/HIPC-1994-2008-revised-edition.pdf>
5. <http://resources.bmj.com/bmj/authors/checklists-forms/patient-consent-form>

To clarify and summarise, the *NZMJ* policy regarding publication of medical images and case reports is as follows:

- The *NZMJ* does require consent from the patients for case reports and medical images.
- We do not require a patient consent form to be sent to us.
- We do require the corresponding author to confirm in writing that patient consent was obtained and we require that consent to be both for web publishing (online *NZMJ*) and print (in the case of subsequent publication in the hard copy *NZMJ Digest*).

The *NZMJ* policy is the same as the ICMJE policy which the editor of the *NZMJ* helped develop.

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