

EDITORIAL

Ethics and legality in the era of digital imaging

Currently, easy access to new technologies by professionals in health care institutions means that we are confronted with new ethical considerations in daily practice. The majority of health professionals have a cell phone with a camera, which facilitates the capture and reproduction of images or situations experienced by the patient at the moment of his care. However, it is hardly ever remembered that, for this procedure, it is essential to obtain the prior consent of the patient or the responsible person(s)

The right to an image is an integral part of a set of rules aimed at protecting the individual, embodied in the Civil Code of 2002 and called *personal rights*. According to article 20, "Except as authorized or if necessary for the administration of justice or the maintenance of public order, the written disclosure, transmission of word, or the publication, exposure or use the image of a person may be prohibited, at his request and without prejudice to indemnification where applicable, if it achieves the honor, the good reputation or respectability, or if intended for commercial purposes."

⁽¹⁾ Therefore, it is up to holder of rights of the image to provide consent for its use.

According to the Federal Constitution of 1988, article 5, clause X, "These are inviolable: intimacy, private life, the honor and image of individuals, assuring the right to compensation for material or moral damage resulting from the violation." ⁽²⁾

Therefore, reflection about capturing images of everyday life is important from the ethical-legal standpoint, within units where patients are often sedated or unconscious. One must ask if there is even a scientific interest, without obtaining the prior consent of the patient, to capture and reproduce images, which can be considered a violation of the rights contemplated in the abovementioned articles.

In this sense, it is fundamental that there are questions about the exposure of the image of a person when its capture is not authorized, even with the discourse that it will be used to benefit society. It is therefore not acceptable to use the image of any person simply to make a sensational exposure of your situation. In this case, what is the real objective of filming or photographing a patient receiving care?

In analyzing the Code of Ethics for Professional Nursing with a focus on the problem of capturing images, it is important to highlight the following articles:

Responsibilities and rights: ⁽³⁾

Article 19 - Respect modesty, privacy and intimacy of human beings throughout their life cycle, including in situations of death and post-mortem.

Prohibitions ⁽⁴⁾

Article 85 - To disclose or make reference to cases, situations or events in a way that those involved can be identified.

Therefore, it is necessary to reflect upon the violation of both the Civil Code, the Federal Constitution and the Code of Ethics of the profession when photographing patients without prior authorization and disseminating these images to people not directly involved in care.

It is noteworthy that, when used well, technology is a great support for the actions of health professionals, provided it does not infringe upon the rights of patients and does not expose them to situations that might embarrass or harm them.

References

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Ruth Ester Assayag Batista

Paulista School of Nursing, Federal University of São Paulo (UNIFESP), São Paulo (SP), Brazil.

Cássia Regina Vancini Campanharo

Paulista School of Nursing, Federal University of São Paulo (UNIFESP), São Paulo (SP), Brazil.

Cibelli Rizzo Cohrs

Paulista School of Nursing, Federal University of São Paulo (UNIFESP), São Paulo (SP), Brazil.