Surveillance and Monitoring in Residential Care

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Balancing Technology, Care, and Ethics

Advances in technology make it increasingly easy to incorporate ongoing surveillance into elder care.

Presenter Al Jina is both a lawyer and the Founder/President of Park Place Seniors Living, which has more than 20 years’ experience in seniors’ residential care.

This presentation will examine the use of surveillance in elder care from two significant perspectives:
1. What are the ethical implications?
2. What are the legal/regulatory implications?
3. When and Where should this technology be utilized?
Reasons for Surveillance in Residential Care

- Optimize the use of available staff on the floor by providing digital monitoring of spaces beyond visual range, such as building entrances/exits.

- Ensure standards of care are maintained to meet company policies and licensing requirements.

- Providing an accurate record of interactions between vulnerable and possibly non-verbal residents, including interactions with staff and with each other.
Issues to be considered:

- Ethics governing surveillance and monitoring
- Governing legislation in B.C., including the B.C. Residents Bill of Rights for seniors in residential care
- Criminal Code of Canada prohibitions
- Case Law: an example of video use by the B.C. Coroner’s Service
- U.S. Legislation – 2001 to the present
- Reasons for and against electronic surveillance/monitoring
Ethical Issues arising from Video Surveillance and Monitoring in Residential Care

This issue affects the following stakeholders:

Residents
Professional staff (Doctors, RNs, LPNs etc.)
Housekeeping/Care Giving/Dietary Staff
Care Home Administration
Families/Friends of residents
Visitors and Volunteers
Employee Unions

Regulatory Agencies – Licensing & Health Authorities
Provincial Funding Authorities
Ethical For Residents

Video Surveillance & Monitoring is only ethically justifiable if it provides:

- Improved Quality of Life;
- Improved Quality of Care;
- Freedom from abuse and/or neglect; while also
- Preserving personal privacy; and
- Preserving confidentiality.
Ethical for Professional Staff

Video Surveillance & Monitoring is only ethically justifiable for professional medical staff and consultants, including visiting doctors, if it provides:

- Reliable, valid data which can be used to guide assessment and improve treatment;
- Protection from malpractice or wrongful allegations; yet maintains
- Confidentiality of medical records; and
- Personal privacy for residents, staff and consultants.
Ethical For All Staff

Video Surveillance & Monitoring is only ethically justifiable for all staff, including housekeepers, care aides, and dietary staff, if it provides:

- Protection from wrongful allegations;
- A tool for improved monitoring of residents for their safety;
- Proof of the provision of quality care; while maintaining
- Privacy for Residents & Staff
Video Surveillance & Monitoring is only ethically justifiable for the administrators of a care home if it provides:

- A means to maximize the Quality of Life and Quality of Care for residents;
- A fiscally responsible tool to improve monitoring of the physical plant, including improved security for staff and residents at exits and entrances; and
- Reduced legal risks for the care home.
Ethical For Families/Friends

Video Surveillance & Monitoring is only ethically justifiable for the families and friends of residents if it provides:

- A means to maximize the Quality of Life and Quality of Care for their loved ones; yet still maintains
- Privacy for residents, their families and friends.
Ethical For Visitors & Volunteers

Video Surveillance & Monitoring is only ethically justifiable for visitors and volunteers if it provides:

- Improved security for those visiting the care home;
- Protection from wrongful allegations; yet maintains
- Privacy for visitors and volunteers.
Ethical For Employee Unions

Video Surveillance & Monitoring is only ethically justifiable for the unions representing employees if it provides:

- Improved workplace security for staff;
- Minimized risk of malpractice or wrongful accusations; yet maintains
- Privacy for staff
Video Surveillance & Monitoring is only ethically justifiable for regulatory agencies if it provides:

- Reliable, valid Quality of Life and Quality of Care data to support licensing/re-certification/contract renewals;
- A means of quickly and accurately investigating complaints or allegations of wrongdoing; yet maintains
- Privacy for residents and staff
Video Surveillance & Monitoring is only ethically justifiable for provincial funding authorities – usually a health authority – by providing:

- Proof that the care given meets the Quality of Life and Quality of Care standards of the contract;
- Information on the level of care required; yet still maintaining
- Privacy for residents and staff
Provincial Regulations: Protecting Privacy

The Province of B.C. has developed a substantial body of legislation governing privacy in residential care homes. Therefore, any utilization of Video Surveillance & Monitoring cannot contravene the following regulations.

*Community Care and Assisted Living Act, S.B.C. 2002, c. 75*

- Section 7 includes the following Standards for any community care home, which includes seniors’ residential care. According to this section, a licensee must:
  - (b) operate the community care facility in a manner that will promote
    - (i) the health, safety and dignity of persons in care, and
    - (ii) in the case of adult persons in care, the rights of those persons in care;
Provincial Regulations: Protecting Privacy

To ensure the Rights of Persons in Care are observed, the Act further provides that anyone licensed to operate a community care facility must:

• (c.1) display the rights of adult persons in care
  - (i) in a prominent place in the community care facility, and
  - (ii) in a form and in the manner acceptable to the minister;

• (c.2) make the rights of adult persons in care known, orally and in writing, to persons in care and their families and representatives;
Provincial Regulations: Protecting Privacy

The B.C. Residents Bill of Rights includes the following provisions under the Rights to Health, Safety and Dignity:

2. An adult person in care has the right to the protection and promotion of his or her health, safety and dignity, including a right to all of the following:

(a) to be treated in a manner, and to live in an environment, that promotes his or her health, safety and dignity;
(d) to have his or her personal privacy respected, including in relation to his or her records, bedroom, belongings and storage spaces;
(e) to receive visitors and to communicate with visitors in private;

Use of video surveillance and monitoring cannot contravene the rights to privacy established under the Rights of Adult Persons in Care.
Provincial Regulations: Protecting Privacy

As established in the *Hospital Act* and the *Patients’ Bill of Rights Regulation*, the Rights of Adult Persons in Care also apply to and must be posted in hospitals/extended care facilities.

*B.C. Residential Care Regulations (B.C. Reg. 96/2009)* further establishes:

**Privacy**

(Section) 53: A licensee must, to the greatest extent possible while maintaining the health, safety and dignity of all persons in care, ensure respect for the personal privacy of each person in care, including the privacy of each person in care's bedroom, belongings and storage area.
Further privacy protection for seniors in residential care ~ and also for staff or any individuals within and outside a residential care setting ~ is provided within the provisions of the:

- Freedom of Information and Protection of Privacy Act [RSBC 1996]
- Personal Information Protection Act [SBC 2003]
- Ombudsperson Act [RSBC 1996]
- Patient Care Quality Review Board Act [SBC 2008]
- Patient Care Quality Review Board Act: External Complaint Regulation B.C. Reg. 305/2008
- Seniors Advocate Act [SBC 2013]
Canada’s Criminal Code addresses unauthorized videotaping under Section 162: Voyeurism

- 162. (1) Every one commits an offence who, surreptitiously, observes – including by mechanical or electronic means – or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy.

However, there is a defence…

(6) No person shall be convicted of an offence under this section if the acts that are alleged to constitute the offence serve the public good and do not extend beyond what serves the public good.
Section 183.1 of the Criminal Code addresses the interception of private communication, which could occur during videotaping or monitoring in a care home.

- 184. (1) Every one who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

However, there is also a conditional defence...

183.1 Where a private communication is originated by more than one person or is intended by the originator thereof to be received by more than one person, a consent to the interception thereof by any one of those persons is sufficient consent for the purposes of any provision of this Part.
Federal Law: Criminal Code of Canada

To ensure there is no ‘expectation of privacy’ which could lead to inadvertent contravention of Federal law, any use of video surveillance or electronic monitoring in residential care must be publicly posted. In addition, the operator must also ensure all residents, staff, visiting professionals, family members, friends, visitors, and volunteers are aware that video surveillance/electronic monitoring are being utilized.

Acknowledging use of video surveillance/electronic monitoring does not remove the operator’s responsibility to respect individual privacy, as required under provincial statutes and the Rights of Adult Persons in Care.
A 2011, well-publicized coroner’s investigation utilized video footage from a North Vancouver Care Home. An 88-year-old male resident of the care home had died: the care home reported the resident had not shown signs of distress and had died after breakfast while alone in his room.

A family member contacted the B.C. Coroner’s Service with a conflicting report that the resident had died after choking on food while being fed breakfast by a staff member. The family had set up a ‘nanny cam’ in the room and had a video of the incident, which was turned over to the Coroner.
B.C. Coroner’s Report: Video Evidence

Based on the video, a forensic autopsy, and medical charting seized from the care home, the death was attributed to choking. An investigation found that floor staff had falsified the report to the Care Home administrators. Deficiencies in the Care Home’s operation and staff training were also identified and remedial measures/increased oversight implemented.

The coroner’s report concluded:
“----------- was a challenging patient to care for, and staff was ill prepared and incapable of dealing with his issues – issues known to exist in the elderly and vulnerable population that facilities such as ----------- cater to. *If not for the video brought forward by the family, Mr. -----------’s accidental death would not have surfaced.*”
Who’s Watching? Spy Ware Everywhere

Advances in technology have put affordable surveillance within reach of everyone. At the same time, some governments have enacted more legislation to protect personal privacy.

In the U.S., some states have passed legislation to allow video surveillance in nursing homes.
In 2001, Texas became the first U.S. state to pass legislation that expressly permitted installation of surveillance cameras in the rooms of care home residents. According to the legislation, the nursing home “shall permit a resident or the resident’s guardian...to monitor the room of the resident through the use of electronic monitoring devices.”

Prior to installation of the cameras, express written consent is required from the resident or the resident’s guardian.

Notice of the surveillance must be posted both at the entrance to the care home and at the entrance to the resident’s room.
The following states now permit surveillance cameras to be installed in the rooms of nursing home residents: Maryland (2003); New Mexico (2004); Washington (2008); and Oklahoma (2013).

Several states have also rejected the passing of such legislation.
Surveillance? Pro or No

**Reasons cited for installing surveillance**

- Suspicion of Abuse
- Families concerned that they are not receiving regular updates about their loved one
- Concerns about understaffing in a care home
- A history of violations at a care home, leading to a lack of faith in the care provided
- A belief that known surveillance will result in more attentive care

**Reasons for not installing surveillance**

- Respect for the personal dignity and privacy of a resident. An in-room camera will film the resident in their most intimate moments, including bathing, toileting, clothing, transferring, feeding etc.
- Belief in the care provided by the home, based on personal contact
- Legality issues, including privacy statutes and validity of consent from a cognitively impaired resident
- Negative reaction by caregivers
Alternatives to Surveillance by Family

Build Trust

• Improved engagement with residents, families/friends from the outset will establish a strong partnership of care between residents, family and staff.

• An ‘open door’ policy with visits welcomed and an active residents’ council involves residents/family/friends in care; educates about the care system and allocated hours; and eliminates unsubstantiated concerns.

• Best practices, resident-centered care, smiling residents and visibly compassionate and friendly caregivers reassure residents/families.

• Independent confirmation of quality care, including Accreditation Canada surveys and licensing reports, build confidence.
Alternatives to Surveillance by Family

Disconnected or Distant Family
• Establish regular video chats between resident and family members – this will also foster mental agility for residents;
• Utilize software and private, password-protected online logs to share daily reports of the resident’s activities. This can include information on daily care, resident attendance at social/recreational events like pub nights, bowling, entertainment.
Alternatives: Care Home Surveillance

Care Homes may also be tempted to install surveillance as a means of monitoring residents, protecting the home, or stretching staff resources.

In B.C., legislation strongly supports preserving the privacy and dignity of residents. Use of cameras is therefore restricted to public areas – such as the entrance/exit of a care home where surveillance can improve security for both residents and staff.

Better choices can retain the human touch while supporting resident care. These include:

• Designing and/or renovating/upgrading care homes to optimize sight lines;
• Assigning residents to smaller neighbourhood groups with assigned caregivers, so caregivers become familiar with the routines and needs of their resident group, resulting in more effective care; and
• Optimizing schedules to maximize one-on-one time with each resident.
Alternatives: Care Home Monitoring

Various electronic monitoring devices have been developed to assist in seniors’ residential care, including bed and chair alarms; wrist and ankle bracelet monitors; and GPS trackers.

Bed & Chair Alarms
These are used to signal when a resident is attempting to get out of bed or get up from a chair. Falls are a risk for many seniors and the alarms are an attempt to alert caregivers before a fall occurs. But some portable alarms are very loud and thus quite disturbing for residents. Alternatives are:

- If an alarm must be used, switching to a system which sends an alert directly to the care aide’s pager; or
- Adjusting staff scheduling in response to each resident’s personal timetables, so help is at hand when the resident needs it; and
- Using hip protectors and padded floor mats to minimize injury should a fall occur.
Alternatives: Care Home Monitoring

Proof that reliance on bed/chair alarms could be safely reduced by adopting alternative measures is demonstrated by two Park Place care homes.

- Spring Valley Care Centre, a 151-bed care home in Kelowna, was able to reduce the use of bed alarms to 10% of residents.
- Newport Harbour Care Centre, a 129-bed care home in Calgary, was able to reduce the use of bed alarms by re-structuring the care neighbourhoods to improve in-person monitoring by staff.
Alternatives: Care Home Monitoring

Wrist and/or Ankle Bracelet monitors are used at some care homes to prevent residents with dementia from eloping. The monitors sound an alarm if the resident tries to leave the unit. Residents find them annoying and will try to remove them.

Park Place does not use them. We do not believe our seniors deserve to be treated as if they are under house-arrest…instead we find less obtrusive ways to keep seniors who are flight risks from leaving. These include keypad access, decorative gates and fencing around landscaped internal gardens, and strategically placed nursing stations.

GPS locators have been tested with some seniors who have dementia and who are still living at home but these are not commonly used in residential care.
About Park Place Seniors Living

Park Place Seniors Living is a family owned company, founded, owned and operated by Al & Jenny Jina. Al is a lawyer by profession and Jenny is a nurse who specializes in geriatrics and adult education.

The company was founded more than 20 years ago with one private Care Home in Nelson B.C. Since then the company has steadily grown and now includes 19 operating sites in B.C. and Alberta, with two more in development. Park Place was recently chosen by Alberta Health to construct and operate a new assisted living home and a care home. The company was also the successful applicant to provide new care beds in Campbell River.

Park Place provides a continuum of care from independent living to assisted living to complex care, dementia care and palliative care. All complex care homes are accredited. All sites are owned and operated by the company from a small head office in Vancouver, B.C.

Park Place Seniors Living works in partnership with seven regional health authorities in Alberta and British Columbia.

Enriching the Lives of Seniors