

1. POLICY STATEMENT

The omnipresence of mobile devices is a reality that workers of the health and social services network have to deal with, in part because these devices can help record images and/or sound very discreetly, if not without the knowledge of those present. Therefore, there is a real risk of violation of privacy and dignity resulting from the use of mobile devices. It may also sever the relationship of trust between workers of the Centre intégré de santé et de services sociaux (CISSS) de la Côte-Nord and users.

At the same time, in certain contexts, the recording of information may be useful in the provision of care. Moreover, the CISSS de la Côte-Nord is a place that witnesses events from which users and their loved ones could legitimately want to preserve memories.

Given the need to balance the interests at stake and to clarify everyone's legitimate rights and expectations, we must establish guidelines regarding the possibility for users and visitors to take photographs, videos and audio recordings in the facilities of the CISSS de la Côte-Nord.

2. SCOPE

This policy addresses the use of mobile devices to record images and/or sound by anyone present in the facilities of the establishment.

3. DEFINITIONS

Care areas: Private space dedicated to the provision of care and services to users (examination room, therapy room, consultation office, patient room, resuscitation room, etc.).

Public areas: Space that is not dedicated to the provision of care (waiting room, hallway, cafeteria, etc.).

Mobile device: any device that can record and store information, in the form of images and/or sound, including but not limited to, any camera, smartphone, tablet, video recorder and laptop.

Recording: Use of a mobile device to store information in the form of images and/or sound. This term also designates the result obtained, namely the file containing the photograph, video or audio recording.

Identifiable/recognizable: Situations during which it is possible to identify or recognize the person who is the subject of the recording, directly (with a name, a face, etc.) or indirectly (with the presence of distinguishing signs that may lead to the identification of the individual).

| Other committee | | Executive Committee | | Board of Directors | |
|-----------------|------------|------------------------|------------|------------------------|------------|
| Approved on | Revised on | Approved on 22-02-2022 | Revised on | Approved on 15-06-2022 | Revised on |

Workers: Everyone working at the CISSS de la Côte-Nord, including but not limited to, physicians, dentists, pharmacists, other health care professionals, employees, self-employed workers, volunteers, resident physicians, interns and students.

Clinical information: Information relating to a user or their loved ones, which arises from the observation of a user as part of the provision of care (notes in the record, X-ray images, analysis results, etc.).

Confidential information: Data or information, including clinical and personal information, for which access and use are reserved to properly designated and authorized people or bodies. Disclosure of such information may be detrimental to a user, the organization or someone who works or practises within the organization.

Personal information: Information concerning a natural person and that allows the person to be identified.

Clientele: User or person who accompanies them in a facility of the CISSS de la Côte-Nord.

User: Anyone present in a facility of the CISSS de la Côte-Nord to receive health services or social services.

Visitor: Anyone present in a facility of the CISSS de la Côte-Nord that is not a user or the person who accompanies them and that is not a worker in the course of their duties.

4. GUIDING PRINCIPLES

Right to privacy: A person's privacy can be described as the part of their life that they want to keep to themselves or that they only want to share with people who are very close to them. This includes but is not limited to the person's health condition, anatomy or physical intimacy. In general, the right to privacy is recognized as corresponding to two prerogatives, namely opposing any investigation in a person's private sphere and opposing the disclosure of information related to this sphere.

Right to dignity: The right to dignity involves our conception of the person. It relates to the person's intrinsic value. It imposes the respect for the person for what they are, as an end in itself, and opposes the fact of them being considered as an object.

Right to honour: The right to honour relates more intimately to the person's perception of themselves, and is assessed subjectively. It does not involve public opinion, even though it depends in part on the person's circle.

Right to reputation: The right to reputation has another dimension that necessarily involves public opinion and relates more closely to the concept of recognition than dignity. It involves recognition by others of the person's value and qualities in a given environment.

Image right: The image is the reflection of the person.

Users' right to quality information: Within the context of a consultation with workers, complex information is often shared with the user, and it is often useful for decision-making and follow-up. In order to maximize understanding and integration of information, recording can be a beneficial tool.

Care safety: Recording should not interfere with the provision of care and services or with the functioning of a sector. The quality of care and services remain the priority.

Dialogue and transparency: Capturing a person's image or the sound of their voice without their knowledge may be perceived as a lack of consideration or delicacy and it may undermine trust between two individuals. Yet, in many cases, these actions in themselves are not illegal. Therefore, it is important to focus on dialogue and transparency.

5. FOUNDATION

This policy is based on a normative foundation including:

- Sections 4, 5 and 49 of the *Charter of human rights and freedoms*, CQLR, c. C-12;
- The *Act respecting health services and social services*, CQLR, c. S-4.2, regarding confidentiality regulations (section 19) and the respect of users' rights (section 3);
- The *Act respecting Access to documents held by public bodies and the Protection of personal information*, CQLR, c. A-2.1;
- Articles 3, 35, 36 (use of image and voice), 1463, 2085 and 2088 of the *Civil code of Québec*, CCQ-1991, c. 64;
- The *Regulation respecting the terms governing the use of monitoring mechanisms by a user sheltered in a facility maintained by an institution operating a residential and long-term care centre*;
- The *Code of professional conduct*.

6. APPLICATION RULES

6.1 Use of a mobile device

The use of mobile devices by the clientele and visitors is allowed within the establishment.

6.2 Restrictions to the right to record

At any time, a worker can require a member of clientele or visitor to stop recording or to record differently if they consider that it causes one of the following:

- Obstacle to the proper provision of care or compromised quality of care;
- Affront to the dignity of a minor user or of a user of full age under legal incapacity;
- Affront to the safety of the clientele or of a worker.

This request may include asking the person to stop using their mobile device temporarily if required by the situation. Such situations should be documented in the user's record when possible. If someone refuses to comply, a conciliation effort may be initiated with the manager of the unit. The absence of an agreement between the worker and the clientele regarding the recording cannot itself justify refusing to provide care.

It is important to note that sound recording in a public place is not prohibited. Distribution is prohibited, except for public interest elements, especially if it concerns care provided by workers. The user does not need authorization from the establishment or workers to record images and sound in their room. In Canada, surreptitiously recording a private conversation that you are not part of is prohibited.

6.3 Recordings involving clinical information

No person shall film or photograph personal or clinical information (photograph of a computer screen, extracts from a file, etc.). If such recording is made by a member of clientele or a visitor, they must be asked to destroy it (including deleting the image from the recycle bin). The situation must be reported to the manager of the unit, and then to the Direction des services multidisciplinaires, qualité, évaluation, performance et éthique using the accident and incident report form (AH-223).

6.4 Recording in public areas

Recording in public areas by the clientele and visitors is authorized only if it does not enable one to recognize or identify individuals unless these individuals have given their explicit consent in advance.

6.5 Recording in care areas

6.5.1 Recording of the clientele

No person shall record the image or voice of a member of clientele who is in a care area, both from inside or outside this area, unless the concerned person or their legal representative has given their explicit consent in advance. Any recording of a user, even if it is authorized by their legal representative, must be made while respecting the user's dignity.

6.5.2 Recording involving workers

Photo or video recording: A member of clientele or visitor who wants to make a recording on which the image of a worker is recognizable or identifiable should first obtain the authorization of this worker, even though the primary objective is not to capture this worker's image.

Audio recording: If a member of clientele or visitor wants to record a conversation held with a worker in the provision of care, obtaining the worker's agreement is recommended.

Important: Recording in public places does not require any authorization. However, dissemination is prohibited, unless it is information of public interest.

Semi-private spaces (semi-private accommodation): Recording may violate the person's rights. Dissemination is not possible without the person's consent, unless it is justified by public interest.

Private spaces (accommodation): Since it is a living environment, the user and their loved ones can make recordings. The user is entitled to film the care they receive. Dissemination is not possible without the person's consent, unless it is justified by public interest.

If the worker agrees to the recording, they are responsible for agreeing, with the person who makes the recording, on the use that can be made of the recorded sound/images. The worker is free to use one of the following means:

- Verbally specify the limits they set to the use of the recorded sound/images;

- Verbally specify the limits, record the discussion in the file, and support them with written material as proposed in Annex 1, with one copy given to the person who made the recording and one copy kept by the worker.

The absence of an agreement between the worker and the clientele regarding the recording cannot itself justify refusing to provide care.

If the worker disagrees with the recording, they should, as far as possible, explore the reasons for the request to record and look for a compromise solution. Following this discussion, if the worker maintains their refusal, they should ideally explain their motives to the visitor. Documenting this discussion in the file is recommended. If necessary, the worker may call upon their manager for support in such a situation.

If the worker notices or has good reason to believe that their refusal has not been respected and they have been recorded, they may take one or more of the following measures:

- Require that the current recording be stopped (if applicable);
- Ask (but not require¹) that the recorded sound/images are destroyed in front of them (they should also be permanently deleted from the recycle bin);
- Give the person who made the recording a letter based on the model suggested in Annex 2. This letter can be signed by the worker or by a manager. It should be entered in the worker's file and in the user's file, if appropriate.

6.5.3 Recording for souvenir purposes

As far as possible, when the clientele makes a recording to keep a souvenir of an event, the worker should, with a humanization approach, favour the possibility for the loved one to keep such a souvenir (e.g., suggest an angle in which their face will not be visible, avoid crossing the camera's field of view during the recording, or suggest specific times during which the loved one will be free to photograph or film in a way that the worker will not be on the recording).

6.5.4 Recording for purposes of care, follow-up or decision support

If there is no other option and the worker considers it relevant, the recording of images/sound by the clientele may be considered (or used) in order to facilitate care, follow-up or decision-making. The worker will remain free to set the guidelines enabling them to limit the recording of their own image or voice.

6.5.5 Impact of the absence of an agreement

Disagreement between a worker and the user or their legal representative regarding a recording does not itself constitute a reason enabling the worker to put an end to the therapeutic relationship. However, in some circumstances, if this situation is paired with other elements leading to the loss of the relationship of trust, the worker may decide to end the therapeutic relationship, as long as a colleague can ensure follow-up and it does not prejudice the user.

1. In order to force the destruction of images, an order must be issued by a judge following a complaint to the police. Such a scenario is exceptional, and it should be submitted to the Department of legal affairs.

7. ROLES AND RESPONSIBILITIES

Executive Committee and Board of Directors:

- Adopt this policy and its revised versions.

Direction générale (or the designated person):

- Is responsible for the application of this policy and its revision;
- Approves administrative or legal measures proposed by the Department of legal affairs when required by the severity of certain situations.

Direction des services multidisciplinaires, qualité, évaluation, performance et éthique (DSMQEPE):

- Receives accident and incident reports (AH-223 form) regarding all events involving the confidentiality of clinical information and the users' right to privacy, and runs the investigation along with the head of medical archives and concerned managers;
- Ensures that a victim of a breach of confidentiality benefits from the appropriate support measures, if applicable;
- Collaborates with the users' committee based on the recurring or problematic events.

Directions:

- Ensure that employees, physicians and anyone else working or practising under their respective direction are informed of this policy;
- Ensure that unit managers assist the worker and the user who go through a conciliation procedure when there is disagreement about a recording;
- Ensure that unit managers complete an accident and incident report form when there is a recording of clinical information;
- Support workers in their steps to ensure the respect of their rights.

Communications department:

- Disseminates information among workers in order to enable them to know this policy;
- Implements awareness and information tools to make the clientele and visitors learn about and apply this policy;
- Is notified by managers of any situation that may have a media impact and takes the necessary actions.

Supervisors and managers:

- Notify the Communications department of any situation that may have a media impact;
- Ensure that an accident and incident report form is completed and sent to the DSMQEPE for any situation that compromises a user's right to privacy;
- Ensure that workers under their responsibility, the clientele and visitors know this policy and comply with it;
- Support workers under their responsibility in their efforts to ensure the respect of their rights.

Department of legal affairs:

- Upon request from a manager, advises workers/teams on the interpretation of this policy and measures that can be taken based on the situations.

Workers:

- Apply this policy in situations that concern them;
- Report to their manager any situation that they witness and that may involve the clientele’s right to privacy and confidentiality.

Service Quality and Complaints Commissioner:

- Answers the clientele’s questions regarding this policy;
- Processes any complaint relating to the application of this policy.

Professional councils (Multidisciplinary Council (MC), Council of Nurses (CN), Council of Physicians, Dentists and Pharmacists (CPDP):

- Disseminate the policy among their members and facilitate its understanding.

Users’ committee:

- Answers the clientele’s questions regarding this policy.
- Collaborate with the DSMQEPE based on the recurring or problematic events.

8. IMPLEMENTATION AND CONSULTATION

| Versions | Prepared by | Bodies consulted | | | | | | Implementation |
|----------|----------------------|------------------|----|----|------|-----|--------------|----------------|
| | | EC | CN | MC | CPDP | BOD | Others | |
| 1 | Marlène Joseph-Blais | X | X | X | X | X | Unions, CUCI | June 15, 2022 |
| 2 | | | | | | | | |

- BOD** Board of Directors
- CN** Council of Nurses
- MC** Multidisciplinary Council
- CPDP** Council of Physicians, Dentists and Pharmacists
- EC** Executive Committee
- CUCI** Users’ Committee of the CISSS de la Côte-Nord

9. REFERENCES

- Politique sur la prise de photos, vidéos et enregistrements sonores par la clientèle et les visiteurs du Centre hospitalier universitaire (CHU) Sainte-Justine

Centre intégré
de santé
et de services sociaux
de la Côte-Nord



ANNEX 1

| |
|-----------------------|
| Last name: _____ |
| First name: _____ |
| DOB: _____ |
| File No.: _____ |
| Parents' name: |
| Mother: _____ |
| Father: _____ |

AUTHORIZATION – RECORDING OF A WORKER

Identification of the worker subject to the recording:

Last name: _____ First name: _____
 Title: _____

Nature of the authorized recording:

| | | |
|-----------------|------------------------------|-----------------------------|
| Photo recording | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Video recording | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Audio recording | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Details on the context and content of the recording:

Use of the recording:

The use of the recording is for strictly personal purposes. You are not authorized to disseminate the recorded images/sound in any way, on social media, on the Internet or in any other media.

Disseminating the recording could represent a violation of image right, which is a component of the right to privacy.

Other comments/restrictions:

Signature

Date

ANNEX 2

FORMAL NOTICE – UNAUTHORIZED PHOTO, VIDEO OR AUDIO RECORDING

Guidelines:

- Print two copies.
- Depending on the context, have the worker or a manager sign both copies.
- Give both copies to the person who made the unauthorized recording, ask them to initial one copy and keep it as provided by item 6.5.2 of the policy. The person who made the recording should keep the other copy.

SUBJECT: Unauthorized photo, video or audio recording

Greetings,

Today, you have made a video/photo recording on which I appear after I expressed that I did not want to be filmed/photographed [or: without first receiving my consent].

I am formally asking you to destroy this video/photo permanently since this recording was made without authorization.

I am advising you that transmitting this video/photo to third parties in any way, as well as sharing it in the media, on social media, on the Internet or on any other platform, would represent a violation of my image right.

Yours truly,

Name [Signature of the worker or manager]

Title

Received in person on

Date

Name [Signature of the person who made the unauthorized recording]