



CONSELHO NACIONAL DE ÉTICA PARA AS CIÊNCIAS DA VIDA
NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES
Presidency of the Council of Ministers

49/CNECV/06

**OPINION N° 49 OF THE NATIONAL COUNCIL OF ETHICS
FOR THE LIFE SCIENCES**

**OPINION ON HIV TESTING
FOLLOWING OCCUPATIONAL
EXPOSURE**

(July, 2006)



NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES
Presidency of the Council of Ministers

The reflection of the National Ethics Committee for Life Sciences (CNECV) to determine the legality of testing for infection by HIV (Human Immunodeficiency Virus) in users of the health system following accidental contamination of a health professional with biological products was sparked by a concrete question, posed to the CNEVC by the Administrative Board of the Hospital of Montijo.

The Opinion of the CNEVC is issued under the authority provided by paragraph b) of n.º 1 of article 2, combined with what is determined in paragraph e) of article 7, both of Law n.º 14/90, of 9th June.

Thus, and taking into consideration:

- a) That in the face of occupational exposure to biological products by a user the pattern of treatment implies, ideally, the diagnosis of seropositivity (or not) to HIV (and other viral diseases) in the contaminating patient, for the subsequent determination of the state of seropositivity of the health professional and for the application of the suitable prophylactic treatment;
- b) That it is not current practice to carry out a detection test as a requirement prior to the intervention of the health professional and that in any event that practice, given its nature and restricted means, would not be all encompassing;
- c) That within the context of assessment of the user (potential infector) the main objective is to carry out a laboratory test to detect HIV/AIDS, whether or not the patient is suspected of HIV infection;
- d) That the health services – public, private, cooperative and social – should be provided with the necessary structures for the rapid detection of these situations and to implement the measures which are indicated for the diagnosis and treatment of health professionals who are victims of a potential occupational disease;



NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES

Presidency of the Council of Ministers

- e) That, in accordance with the *leges artis*, a case of occupational exposure to HIV is considered to be a medical emergency for the health professional due to the associated risk of infection;
- f) That it is important to preserve the ethical wellbeing and legal wellbeing of the personal integrity of the user as well as the user's rights to personal privacy and to non discrimination;
- g) That, in the absence of informed consent, medical intervention upon a person's body, by law, violates that person's self-determination (except in situations in which it is legitimate to presume that consent) and may constitute a lesion to the person's physical wellbeing if not carried out for the benefit of that person's health;
- h) That having determined the state of seropositivity in the user, the doctor attending the health professional (or the occupational health doctor, if there is one in the institution) should propose that the health professional take an HIV detection test to establish whether infection existed prior to the contamination by biological products of the user;
- i) That the health professional has an ethical responsibility to be submitted to an HIV detection test and eventual prophylactic treatment for this infection so as to guarantee adequate protection to other health system users;

The National Council of Ethics for the Life Sciences is of the opinion that:

1. It is the user's duty, guided by the ethical principles of solidarity and individual responsibility and in face of the possibility of contamination of third parties, to consent to an HIV detection test following a case of "occupational exposure" of a health professional.
2. However, a person capable of consent (a "competent" person) can refuse that the test be performed, as there is no legitimate obligation making testing compulsory.



NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES
Presidency of the Council of Ministers

3. This problem could be avoided in situations where there is a risk of transmission if tests to detect infectious diseases were carried out as a requirement prior to the intervention of the health professional.
4. Neither would the problem arise if the patient's consent to an HIV detection test were presumed; however there is no respective regulation in effect.
5. In this context, therapeutic privilege cannot be invoked because the purpose of carrying out the test is not in the interests of the user, but is for the protection of the health professional.
6. Consequently, the free, explicit consent of the user should be obtained, in general terms, for the HIV detection test to be administered.
7. In the event that the user refuses to be submitted to the test it is strongly recommended that the user be given ample advice as to the decision and its consequences, namely for the health of the professional and of the persons with whom the latter is in contact.

Lisbon, 11th July, 2006

Paula Martinho da Silva

President

Conselho Nacional de Ética para as Ciências da Vida

(National Ethics Committee for Life Sciences)

This opinion was approved in a plenary session on the 11th July, where the following were present: Paula Martinho da Silva, António Vaz Carneiro, Daniel Serrão, Fernando Regateiro, João Lobo Antunes, Jorge Biscaia, Jorge Sequeiros, Jorge Soares, José de Oliveira Ascensão, José Pedro Ramos Ascensão, Maria do Céu Patrão Neves, Maria Fernanda Henriques, Marta Mendonça, Michel Renaud, Miguel Oliveira da Silva, Pedro Nunes, Pedro Fevereiro, Rita Amaral Cabral, Rui Nunes and Salvador Massano Cardoso.