



CNECV – NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES

Corrigida pelo Prof. Dr. **Pinto Machado**

**OPINION**

**35/CNECV/01**

**TUBAL LIGATION IN MINORS  
WITH SEVERE MENTAL DEFICIENCY**

In response to the request by Her Excellency the Minister of Health regarding the recommendation expressed in an opinion by the Health Ethics Committee of the São Sebastião Hospital – to wit, that the due criteria for authorisation to perform tubal ligation in minors with severe mental deficiency should be brought into uniformity – the National Council of Ethics for the Life Sciences has emitted an Opinion, grounded on the Report in appendix.

Considering the importance of the matter in hand, especially on the ethical plane, the CNECV finds, however, that a brief statement of principles must precede the Opinion requested.

The necessity of resorting to such an extreme measure implies the recognition that the person at stake lacks the indispensable support that might protect her from sexual abuse (indeed, tubal ligation prevents pregnancy but not such abuse); thus, it is **mandatory** ethical obligation to avail minors (and adults) in such a vulnerable situation of the support they need to safeguard their dignity as persons, a dignity which their mental deficiency does not diminish, entitling them instead to special care.

As to the question addressed by Her Excellency the Minister of Health, it is the opinion of the **CNECV** that:

1. Tubal ligation/closure, a contraceptive method that is in principle irreversible and requires surgical procedure, must be considered a measure of last resort; reversing its effect, something that comes about in only a minute percentage of cases, requires a new, long, surgical procedure;
2. The necessary authorisation, under the competence of the Minor's Court, must be grounded on the following elements:
  - a) **A medical report** showing that sterility is not present, that the mental retardation is severe and irreversible, and that no non-surgical contraceptive method guarantees prevention of pregnancy; the report must be signed by one physician from each of the following specialities: psychiatry, neurology, gynaecology and paediatrics;



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- b) **A report by a social worker** on the present conditions of family, social and medical support to the minor, and on the possibility of overcoming the inadequacies verified in these areas;
- c) **A statement by the parents or other legal representatives** manifesting their agreement or disagreement with this intervention.

Lisbon, the 3<sup>rd</sup> of April 2001.

**Luís Archer, Ph.D.**  
President of the National Council of Ethics  
for the Life Sciences



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**Report on the  
Request for an Opinion dated 00.10.13  
by  
the Minister of Health**

**TUBAL LIGATION IN A MINOR  
BEARING A PSYCHIC ANOMALY**

1. On the 31<sup>st</sup> of January 2000, the Health Ethics Committee of the São Sebastião Hospital submitted to the Board of Directors an opinion that had been requested of it by the Obstetrics and Gynaecology Services, concerning tubal ligation for contraceptive purposes in an oligophrenic minor.

That Committee considers the procedure ethically admissible (if that be the medical option), recommending that a favourable judicial decision be secured and that “the Hospital’s administration should submit the same issue to the Ministry of Health, in order to obtain, in future, uniformity of criteria across the Health Services.”

On the 7<sup>th</sup> of July, the Chairman of the Board of Directors of the São Sebastião Hospital sent to Her Excellency the Minister of Health the said Opinion by the Health Ethics Committee, in accordance with the final recommendation therein expressed.

Pursuant to the Ministerial Order dated the 9<sup>th</sup> of October, the Head of Staff, on the 13<sup>th</sup> of that month, officially requested the President of the CNECV to emit an Opinion on the matter.

2. The issue thus raised falls within the vast compass of the rights of the mentally deficient and the protection of those rights – which obviously includes the prevention and punishment of any attempts against them. The elaboration of a document of ethical reflection would be opportune, undoubtedly. Yet, the actual writing would take long, given the complexity and sensitivity of the matter. Hence, given also that eight months have elapsed since the Chairman of the Board of Directors of the São Sebastião Hospital sought intervention by the Ministry of Health, I think that the report asked of me by the CNECV, on which it will base its Opinion, must be succinct and limited to the matter specified in the request for an Opinion expressed by Her Excellency the Minister of Health.
3. The issue raised by the Obstetrics and Gynaecology **Department** of the São Sebastião Hospital asked for an ethical appreciation over closure of the uterine tubes in a minor (age 16 at the time) who suffers severe mental retardation and manifests behaviour markedly lacking in sexual inhibition (“reactions to the opposite sex, clutching at them, which happens even with strangers on the street, always wanting to sleep with one of her brothers, denoting behaviour that is suspect in sexual terms”), “which might subject her to an unwanted pregnancy.” Her sexual development is normal.

The Committee’s opinion is that “this being a minor who suffers severe mental insanity and presents manifestations of lack of sexual inhibition that may lead to an unwanted pregnancy, it will be admissible, from an ethical point of view, to resort to



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the means of sterilisation by tubal ligation, as a last-resort method of contraception, provided the medical option is so inclined.”

The Committee is also of the opinion that, in legal terms, the medical option to perform tubal ligation and the mother’s agreement to it are not sufficient to make the intervention legal. Notwithstanding this, it concludes from the careful juridical analysis it carried out that there is no “legal provision to submit to the Court the performance of an irreversible sterilisation of a minor who suffers psychic anomaly,” which, “since our juridical framework is structured to uphold human life and the right to personal integrity, may only be understood as an oversight.” In this situation, the Committee, invoking Art. 10 of the Civil Code, considers that the case of this minor must be subject to authorisation by the Court, “for ultimately it is to the Court that falls the jurisdictional function of assuring protection of the legally protected rights and interests of citizens, in the case of a mentally insane minor, exercising caution over the validity of the mother’s willingness to subject her daughter to sterilisation, and also ensuring the legitimacy of the medical act.” From these considerations, two recommendations resulted:

- a) that “through the Hospital’s administration, this issue should be submitted at once to the magistrate [M.P.] at the District Court of the residential area of the minor in question, together with the appended medical and psychological reports and the present opinion, in order to obtain a judicial decision in favour of that surgical procedure”;
  - b) that “the Hospital’s administration should submit the same issue to the Ministry of Health, in order to obtain, in future, uniformity of criteria across the Health Services”.
4. I agree without reservations, with the opinion by the São Sebastião Hospital Health Ethics Committee, which I hold in high regard.

I think that the indication of an efficacious contraception in such cases should not raise doubts from an ethical point of view, given that:

- a) conception will be a consequence of sexual abuse (even if brought on by the patient’s lack of sexual inhibition);
- b) the pregnant girl will be incapable of being but a biological mother;
- c) the newborn will be in fact an orphan, unless there is no newborn (spontaneous or induced abortion).

The identification of the most advisable contraceptive method lies in the sphere of medical competence exclusively, and must take into account efficacy and drawbacks of diverse nature. From **these** points of view, closure of the uterine tubes is the most efficacious method, although it presents the drawbacks of imposing a surgical procedure and of inducing sterility that is in principle irreversible (is that not desirable, however, **as** oligophrenia is irreversible?).

It is obvious – but it is important to mention it – that tubal ligation will not impede sexual abuse. Hence, such persons must still receive from family and society all the care and support required to assist them.



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The indispensable submission to a minor's Court must be documented by a report demonstrating that the mental retardation is severe and irreversible, that closure of the uterine tubes is the only credible contraceptive procedure in the case under appraisal and also that sterility is not present (sterility being not uncommon in persons with severe mental deficiency). Given the sensitivity of the matter – truly a limit situation, imposing an exceptional measure of last resort – the medical report must be signed by no less than two physicians from each of the following specialities: psychiatry, neurology, gynaecology and paediatrics.

Equally advisable is the elaboration of a report by a social worker, relating the life conditions of the minor (economic, family, and support by specific services).

A statement by the parents or legal guardian should also be included, expressing their agreement or disagreement.

To finish off, let me note that the proposed procedural methodology is essentially identical to the one laid out in the opinion by the French "Comité Consultatif National d'Éthique pour les Sciences de la Vie et de la Santé", published in 1996<sup>1</sup>, whose final part I enclose in photocopy.

The 3<sup>rd</sup> of April 2001

The Rapporteur,  
Joaquim Pinto Machado, **M.D., Ph.D.**

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<sup>1</sup> *La contraception chez les personnes handicapées mentales. Avis Rapport no. 49, 3 April 1996.*