



CNECV – NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES

OPINION

ON

MEDICAL
CONFIDENTIALITY

32/CNECV/2000

00.10.23



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The National Council of Ethics for the Life Sciences (CNECV) received from the President of the Executive National Council of the Medical Association (official letter no. 003939 of the 1st of September 2000) a request for an Opinion on the ethical evaluation of the following concrete situation.

A patient assisted at a Care Centre for Drug Addicts is HIV-positive, yet, despite all insistence that he do so, he has never informed his wife of his condition and continues to have unprotected sexual intercourse with her.

In view of the dangers consequent from this situation, the assisting physician faces a conflict between two duties: that of protecting the privacy of her patient pursuant to medical confidentiality, and, on the other hand, that of protecting the health and life of her patient's wife and any future children of the couple.

In such circumstances, the CNECV, considering that:

- a) medical confidentiality stands as an extremely important right of the patient and an ethical and a deontological obligation upon the physician;
- b) the CNECV only makes pronouncements on ethical questions, leaving deontological questions to the competent entities;
- c) life has priority as a value, and safeguarding it is the foremost ethical duty, to which all others must be subordinate;
- d) direct and confidential communication to one person in order to safeguard that person's life may not be construed as an act of publicising a given fact;
- e) finally, actions undertaken to safeguard human life may not be considered as violation of any lesser obligations, wherefore we deem there is no ethical offence here, nor even, from an ethical standpoint, violation of a duty of confidentiality.

Issues the following opinion:

1. The assisting physician must continue to make every effort to persuade her patient within a short time of the serious obligation upon him to communicate to his wife his HIV-positive condition and the risk of transmission. If necessary, the physician must even explain that, under these specific circumstances of danger in the short term to the health and life of third parties, the ethical norms of



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respect for the legitimacy and life of those third parties justify such a communication.

2. If, even so, she cannot persuade her patient, the physician must inform him that she will discharge her obligation to communicate to the patient's wife the HIV-positive condition of the husband and the risk of transmission, which, in this case, does not presuppose a breach of medical confidentiality.
3. This communication is indispensable to allow the patient's wife to undergo diagnostic tests, and initiate treatment if she has been infected already.

Lisbon, the 23rd of October 2000

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



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DECLARATION OF VOTE

While I agree with the Opinion, I think it opportune to distinguish Ethics and Deontology more precisely.

In its most common meaning, Deontology concerns itself with the specific duties and norms of behaviour that are to be practised in a certain professional activity.

On the one hand, such duties and norms always imply, directly or remotely, some ethical grounds or ethical principles, so that the CNECV is able and competent to make pronouncements on the contents of those principles or grounds.

On the other hand, although its function is not to replace the organs competent to determine specific deontological rules, norms or attitudes, the CNECV is also able and competent to make pronouncements about such precepts, when a grave doubt over any of them places at stake the hierarchical structure of fundamental ethical principles.

Michel Renaud, Ph.D.