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GUIDELINES ON HIV/AIDS INFECTION RISKS FOLLOWING SEXUAL ASSAULT

The present statement is the result of the work undertaken several weeks ago by the National AIDS Council. It endeavours to fuel the debate on the issue of possible testing of suspected rapists, with or without consent. Many physicians are concerned about the traumatic situation of rape victims who not only have to cope with the disorders and distress caused by the assault but must also face possible infection by HIV/AIDS or another sexually transmitted disease (STDs). Furthermore, the Council has been informed of the National Academy of Medicine's press release on " Raped children's exposure to HIV "[1] and of the various statements or opinions publicly expressed by medical, charity and political personalities.

1 PROVIDING THE BEST POSSIBLE CARE TO THE VICTIMS

Possible HIV/AIDS infection fully warrants that a prophylactic antiretroviral treatment be prescribed to the victim of a sexual assault, despite the side effects incurred. Treatment can also help reassure the victim who may fear infection.

The circular of April 9th 1998[2], currently being revised, recommends that treatment be initiated within 48 hours and, if possible, during the first hours following exposure to risk, in this case the sexual assault[3]. Adverse effects of treatment, whose complete duration is 28 days, must of course be limited as much as possible. The Council wishes to draw the public Authorities' attention to the fact that recommendations on these treatments must be regularly updated, for instance within the framework of a yearly dialogue with the practitioners. The day to day experience thet acquire in the management of antiretroviral therapy enables to select those drug combinations which present a lesser risk of adverse effects and the simplest mode of administration. Moreover, so as to reduce the duration of exposure to such side effects and to keep the victim from constant reminders of the assault as represented by the regular intake of medication, the treatment must be discontinued as soon as can be reasonably considered. To that end, the rapist's HIV status is an essential piece of information.

The information provided by the test carried out on the suspect can enable to discontinue the prophylactic treatment. It must however be emphasized that owing to the period of time between infection by HIV and seroconversion, a negative test result does not guarantee absence of infection. Therefore, decision-making remains difficult. Continuation or discontinuation of treatment, for which the physician is responsible, can only be recommended once all data collected have been analyzed and once the matter has been discussed with the victim. Moreover, if the suspect is not quickly taken in for questioning, the test carried out a long time after the assault, is of no use to the victim : in the meantime, treatment will have been continued or even completed.

[1] According to the National Academy of Medicine, the perpetrator should not be allowed to refuse the test: " Physicians need a legal framework defining the standard procedure for care to victims and conditions of taking a blood sample from the perpetrator who should not be allowed/able to refuse, in the same way that he cannot refuse samples for a DNA analysis. ", Bulletin de l'Académie de Nationale de Médecine, 2002, 186, no 7, session of October 22nd 2002.

[2] See Circular DGS/DH/DRT/DSS no 98-228 of April 9th 1998 on recommendations for the implementation of antiretroviral treatment following exposure to HIV infection. This circular, like that of April 20th 1998 on the prevention of infectious agents borne by blood or body fluids during care in health facilities (DGS/DH no 98-249), also deals with HBV and HCV transmission risks.

[3] Data communicated at the Barcelona conference in July 2002 suggest that for 4 025 cases of sexual exposure studied in France, the median period of time between sexual exposure and the beginning of treatment was 17 hours. This is much longer than the median one between blood exposure and implementation of treatment for exposed health carers (4 hours) and does therefore not ensure optimal efficiency of treatment. See no 37 of ANRS Information, special Autumn issue 2002 " Barcelone, XIVème conférence internationale sur le sida ", 7-12 juillet 2002.

2 UPHOLDING A PUBLIC HEALTH PURPOSE FOR HIV TESTING

The legislative and statutory texts which regulate HIV testing and screening policy clearly state that no test can be carried out without the person's consent. The National AIDS Council remains firmly in favour of this principle that it has regularly advocated in previous reports, statements and recommendations[4]. In specific circumstances, such as coma or prolonged loss of consciousness[5], the Council considered that it is ethically acceptable to assume that the person would have consented to the test had he or she been able to say so. Subsequently, the Council asserted in that same statement that " testing without consent must be outlawed whenever the patient previously expressed opposition to an HIV test. "[6]

Moreover, the analogy frequently established between a suspect's HIV/AIDS test and the DNA identification procedure, set up by the Law of June 17th 1998[7] whereby a national data base on genetic fingerprints (FNAEG) was created, is not appropriate.

In the first place, the difference in nature and purpose between the two procedures must be stressed : the former is exclusively designed to offer the best possible treatment to the victim ; the latter has to do with a specific investigation procedure for the pursuit of evidence and truth.

Also, even though they can be carried out swiftly considering the relatively long average duration of an investigation, collecting and processing genetic fingerprints need to be authorized by the investigating magistrate or the Public Prosecutor and samples must be analyzed by experts legally approved by the Council of State. Such a procedure does therefore not seem compatible with the emergency situation that an HIV exposure risk constitutes. Also, genetic print samples are most often taken in saliva and not blood, which makes consent easier.

Last, during the debate on the 1994 Law on the respect of the human body, the amendment put forward to allow samples for genetic prints to be taken under duress in criminal cases, was rejected[8].

Under current law, and in accordance with the Council of Europe's Recommendation R (92) 1[9] and the 1994 Law[10] on the respect of the human body, the principle of consent to sample taking is always required. The 1998 Law which created the FNAEG did not question that principle.

3 IMPLEMENTING A CLEAR AND EFFICIENT MEDICAL AND LEGAL PROCEDURE TO PROMOTE VOLUNTARY CONSENT

So as to provide as much solace as possible to the victim, the Council once again stresses the importance of appropriate and immediate physical and psychological care and prophylactic treatment. This requires adequate organization of hospitals' emergency wards where victims are prefrentially referred. To this end, an initial medico-psychological contact, and subsequent referral to a physician competent in HIV care must be offered. It is also important that police and constabulary be aware of these medical and psychological imperatives and give top priority to the health emergency rather than to the inquiry and charges, also obviously necessary. Lastly, the possibility of taking antiretroviral medication in case of sexual exposure must be known to all and the public must therefore be regularly informed.

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[4] See the Report followed by a Statement of December 18th 1991 on compulsory or routine HIV testing and screening. Moreover in 1992, the High Committee for Public Health and the National Advisory Ethics Committee on Ethics both opposed, as did the National AIDS Council, compulsory testing for pregnant women and future spouses; the French Medical Association and the National Academy of Medicine were in favour of such testing. The National AIDS Council recently confirmed its position in its Statement followed by Recommendations of March 14th 2002 on HIV testing during pregnancy and the perinatal prevention of mother-to-child transmission.

[5] Report, Statement and Recommendations on Testing in health care settings following exposure to blood and without possible patient consent to a test, p. 8

[6] Id, p. 9.

[7] Law no 98-468 of June 17th 1998 on the prevention and repression of sexual offences and on the protection of minors.

[8] See the Rapport sur la valeur scientifique de l'utilisation des empreintes génétiques dans le domaine judiciaire, no 3121, by Christian Cabal, Jean-Yves Le Déaut and Henri Revol, Office parlementaire d'évaluation des choix scientifiques et technologiques, June 7th 2001, § 2.1.

[9] Recommendation R (92) 1 from the Ministers' Committee to the Member States of the Council of Europe on the use of deoxyribonucleic acid (DNA)within the criminal system, adopted on February 10th 1992.

[10] Law no 94-653 of July 29th 1994 on the respect of the human body. It can also be observed that following this Law, article 16-11 of the Civil Code on the consent to identification by genetic fingerprinting states that " in civil matters, this identification can only be pursued if so ordered by a magistrate, in charge either of a case requiring or opposing a filiation, or the obtention or suppression of subsidies. Consent from the individual must be formally obtained beforehand ".

Simultaneously, a procedure for the obtention of the suspect's consent, consistent with the principles of HIV/AIDS testing and screening (consent and confidentiality), must be scheduled so as to enable possible discontinuation of treatment[11].

In order to implement an efficient medical and legal procedure, it is necessary to have full knowledge of the current procedure against a suspected rapist. It may be useful to bear in mind that the pace of a legal procedure and that of the medical procedure generally do not coincide. Suspects are seldom caught in the act or within hours.

It has been observed that when the victim is a child, abuse has often been going on for months or years and the perpetrator is often somebody the child knows quite well. Offences are frequently reported or discovered months or even years later and any emergency prophylaxis is irrelevant.

Also, rape can mean a variety of different situations that must all be taken into account. The offender may not have been identified by the victim[12]. He may have been identified but is on the run. Or he may have been taken in. In that case, the suspect can : confess to having raped ; admit that sexual intercourse did take place but deny any coercion ; deny any sexual connection. Also, rape does not necessarily mean sexual intercourse[13].

Lastly, rethinking the medical and legal procedure to be implemented should not be limited to victims under age, however dramatic they are. The idea is to contribute, from a public health standpoint, to the creation of a global procedure able to deal with all the cases of infection risks related to sexual assaults[14].

To this end, the National AIDS Council recommends that a physician be called upon by the judicial authority for a medical examination that should take place during the very first hour of custody and during which an HIV test would be offered and explained to the suspect so as to get his consent and prescribe the actual test. Available data suggest that a physician's intervention would ensure consent in nine cases out of ten[15]. In accordance with rules of confidentiality the suspect's physician will inform the victim's physician of the possibility to discontinue treatment or to complete it or even to change it. If the case arises, the physician will inform the suspect in custody of a positive HIV result discovered at that time and establish care modalities. It is important that the medical procedure, included in the legal procedure, be able to progress separately.

The usefulness of compulsory testing can therefore be questioned, especially as it is unthinkable that the test be out under physical duress, which is contrary to all ethical principles, to international law requirements and to all medical ethics.

[11] After the required time, should the victim be HIV positive, it remains important to know the suspect's HIV status and especially to know if he has received antiretroviral therapy. Such knowledge can help adapt combination therapy prescribed to the victim by taking into account the drugs previously taken by the suspected rapist.

[12] Should be included in such cases: collective rapes where it is often difficult to determine quickly who perpetrated the crime; ;rapes committed on persons who were under the influence of legal or prohibited drugs which affected their memory.

[13] According to article 222-23 of the Criminal Code, rape is defined as " any sexual penetration, whatever its nature, perpetrated on a person through violence, coercion, threat or surprise ". Thus a finger penetration can be considered as rape.

[14] The medical care for such cases is defined by the 1998 circular on accidents with exposure to HIV. However, regarding rape it must be completed and the need for effective psychological care must be added.

[15] Data collected at the medical-legal emergencies of the Hôtel-Dieu in Paris on tests offered and explained by a physician during custody.