



Conselho
Nacional de
Ética para as
Ciências da Vida

PUBLIC HEALTH EMERGENCY
SITUATION DUE TO THE COVID-19
PANDEMIC

RELEVANT ETHICAL ASPECTS

Position of the National Council of Ethics
for the Life Sciences

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RELEVANT ETHICAL ASPECTS

A. The pandemic situation as a public health emergency

The occurrence of an outbreak of infection in the Hubei province in China originated by a new virus of the *coronaviridae* family, conveyed to humans by species transfer, was followed by the rapid development of an epidemic situation, which evolved to the declaration of a pandemic state (WHO, 11.03.20). Thus, a public health problem evolved from an initial limited geographic scope towards an infection that spread across borders and over continents, and today affects the whole world.¹

Some factors contributed to this pattern of evolution, some inherent to the infectious agent and others to the circumstances and ecology in which the infection developed. The virus was unknown to the human species; when crossing the animal-man barrier, it found our immune system without biological capacity for an effective (individual and collective) response and without the possibility of it being reinforced immediately by means of vaccination (there is no vaccine). In addition, the virus showed an extreme virulence and capacity for transmission that surprised scientists and infectologists and found health systems unprepared and with enormous limitations on the breadth of the required response.

The organization and functioning of globalized societies, characterized by the rapid movement of goods and, above all, by the great mobility of people, contributed to the accelerated spread of the disease in different areas of the world, without adequate time for an appropriate organization of the response to the pandemic, and for an immediate learning with the experiences of other countries.

The need to enact urgent measures and to plan its structuring to counter a natural evolution of the spread of the infection and prevent irreparable social effects is almost never compatible with public discussion or with sectoral hearings, namely of ethics commissions that,

¹ For the chronological framework of COVID-19: information resources from the European Centre for Disease Prevention and Control. Available at: <https://www.ecdc.europa.eu/en/novel-coronavirus/event-background-2019>.



under conventional circumstances, should be called upon to contribute to substantiate technical measures and policy options. The need to make decisions, in an escalation necessarily conditioned by the very development of the pandemic situation, is confronted with principles, values and rights of people and society in general. Some of the prescribed measures may even conflict with bioethical principles taken for granted, such as respect for autonomy and, through it, the protection of individual freedom.

It is up to the State, in situations of catastrophe or risk of such an emergency, to define and apply the appropriate measures, but citizens are also asked to play a very important role in their understanding, compliance and disclosure. Individual behaviours have a more pronounced dimension because, if the recommendations given are not followed, they expose the rest of the community to undesirable and harmful risks.

In view of this context and circumstances, it is justified that the National Council of Ethics for the Life Sciences issue a position with the aim to help decision-making with repercussions in the sphere of the rights and duties of the citizens considered individually, in the institutions and in the community at large.

In these decisions, public security is inescapably confronted with individual freedom, personal autonomy with the common good and public interest. The values of cooperation and solidarity, integrity and respect for vulnerability are called for at different levels and with different expressions. The ethical basis for decisions and the measures that carry them out must comply with principles that properly guide their application and ensure their social sustenance.



B. The ethical rationale for measures and interventions in a pandemic emergency

Interventions taken in public health contingencies, as with the current outbreak of COVID-19, must be scientifically substantiated and socially relevant. In this context, in the decisions taken and to be taken, it is important to recognize the following ethical principles:

The Principle of Necessity

The projected evolution of the outbreak of an acute infection by an agent of insufficiently known behaviour as to potential consequences, both individual (states of severe morbidity and mortality) and collective (risk of collapse of the health system and the supply of essential goods), represents a situation of current danger and serious threat to the integrity of each citizen and to public health that justifies isolation and confinement measures, designed to reduce the spread of the disease. These are limit decisions that have wide social repercussions and are based on the principle of necessity, which seeks to preserve what is considered to have a value, namely human life and the survival of all, that, in this situation, supersedes what is guaranteed by other principles, thus limited or even, when indispensable, sacrificed, namely the citizens' autonomy and privacy.

Accomplishing collective goals in a situation of public health emergency requires a careful technical-scientific assessment of its benefit and the respective social effects, which are constantly updated in view of the evolution of the pandemic situation and the availability of necessary and available resources.

The mandatory confinement of infected patients at home can justify the disclosure of their identity to third parties, for example to law enforcement authorities, which directly confronts their right to privacy, in an inevitable way, but is ethically and socially justified by the context.

The principle of necessity must take into account criteria of timeliness, proportionality and adequacy, so that in each decision the least violation of individual rights and the moral and ethical considerations that support them are taken into account, as is the case with restrictions on autonomy, freedom and privacy. This requires transparency of purpose and appropriate reasoning, conditions that are essential for citizens' trust and for creating a new sense of public



responsibility.

The Precautionary Principle

The current pandemic evolves in the context of a considerable lack of knowledge about the biology of the infectious agent, its virulence and behaviour in the short and long term. This fact (scientific information absent or very insufficient) generates natural uncertainties about the best measures to adopt and the right time to do so, so the decision in this regard must be based on the precautionary principle.

This ethical principle is enshrined in the European Union law and requires the competent authorities to take appropriate measures to prevent specific potential risks to public health (the same, by the way, is included in domains such as security and the environment) and this duty to protect human health should be given precedence when confronted with possible economic interests.

The emergency context entails recognized difficulties in the planning of prevention, monitoring and response actions, which requires special consideration, with a careful assessment of the available epidemiological information and the potential negative effects, in order to mitigate the inherent risks in a context of uncertainty. The objectives must be clear, transparent and, if possible, include citizens in their construction. The various options must be considered, namely in weighing their expected benefits, risks about doing and not doing, and final decisions must always be monitored and adjusted to the evolution of the epidemic situation.

The Principle of Proportionality

Health measures that aim to contain the progression of the pandemic must be proportionate, in the relationship that must exist between the dimension of the prescribed action and its effects, that is, what citizens are obliged to do, namely in restrictions on their individual choices. This purpose is based on the Aristotelian virtue of prudence, which seeks to delimit “the good” from what is “right” in the action, and which seeks to meet, in its application, the preservation of personal dignity.

There is little retrospective scientific evidence in situations of pandemic risk, which makes it difficult to delimit the proportionality of some measures. The teleological nature of the proportionality principle



focuses on the importance of objectives that, regardless of the means' "dimension", must reflect the most socially useful option. Measures such as recommendations on hand hygiene or social isolation will have different impacts from a personal and social point of view.

It is important, in accordance with the ethical principle of proportionality, to clearly define the objectives to be achieved, which is often difficult, as they are not always aligned. The causal relationship must be well identified as necessary and sufficient to define the benefits and risks of the measures to be taken. The option must be the most proportionate and adequate (e.g. the need for a *cordon sanitaire*), avoiding measures in which the means may compromise, by their "excess", the intended benefits.

The Principle of Transparency

The communication of decisions and their follow-up is a core axis of the health response in a pandemic emergency.

The information must be concise and adequate, just as its technical basis must be understandable. Communication must be directed to precise objectives, in a clear and transparent manner, and transmitted at the appropriate time. Citizens will better recognize the honesty and the beneficent purpose of decisions the better the communication is subject to these criteria, which concretize the ethical principle of transparency.

The choice of a language that can be understood by all, seeking to concentrate and align the messages of the different sectors implementing the emergency measures (health, internal security, protection) is a factor that promotes confidence in public decisions and allows citizens to identify various ethical principles on which the hierarchy of respective priorities is based.

The principle of transparency is thus key to build citizens' trust, facilitating the acceptance of restrictions on individual autonomy that certain measures imply (freedom of movement, quarantine) and the assumption of responsibility for the adoption of certain individual behaviours (hand hygiene, social distancing).

Information must also seek to be educational, which reinforces its ethical value, as it helps to empower citizens to act as active promoters of changes in social behaviours, in reinforcing their civic participation which is crucial for achieving more quickly results in containing infection within the community.



The Principle of Solidarity

Solidarity embodies a principle of cooperation between various social actors, which is always very important in situations of imminent disruption of services, such as a pandemic emergency. It has a close relationship with the principle of justice, since, in recognizing the individual value of each person, it emphasizes the need to help those whose life and dignity are most at risk, especially those belonging to vulnerable groups.

The principle of solidarity differs from the principle of subsidiarity, whereby responsibility is always shared by the social group or by the State(s). Through solidarity, when the individual is not able to take care of himself in all dimensions, other actors will be called upon to help do so. In a pandemic emergency there are always situations of social incapacity that affect personal health, rights and dignity and that call for help, in solidarity, to overcome them.

The transversal character and global extent of the pandemic calls for international solidarity, which is crucial to mitigate difficulties stemming from the state of development of different communities and to strengthen collective resilience. Countries' synergistic efforts in sharing relevant scientific information, in providing medical equipment needed for health care, or in innovative scientific development, both in the search for a cure and in primary prevention, are of recognized ethical value.

The Principle of Subsidiarity

In emergency public health situations, the ability of a society to meet basic health and safety needs, as well as other basic needs for goods and services, is affected. This condition of inadequacy or insufficiency requires subsidiary intervention by the State to establish contingency plans that allow the best allocation and distribution of resources to meet those needs.

The principle of subsidiarity has application in different fields of politics and governance and is particularly important in the current situation, in which public health decisions and measures are also influenced by interactions specific to the country's geopolitical insertion and justify the better articulation of national and international structures and institutions.



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Subsidiarity and cooperation promote the sharing of public policies and health intervention strategies, contributing to the establishment of more equitable and proportional measures. A close relationship with the principle of proportionality is also recognized, since, in the thread of measures to be proposed and adopted, the most complex decisions and those with the greatest potential risk are gradually introduced - only when simpler interventions are insufficient.



C. Health care and health professionals

Resource allocation in health care

The provision of care in a contingency context inevitably determines decisions that assume the hierarchy of priorities to be reflected in the different interventions. Care teams are responsible for assessing the clinical needs of each patient, namely their severity and urgency, and weighing the response according to the principle of equitable distribution of available resources, which, in a context of scarcity, is a highly demanding responsibility.

In situations of scarcity of human resources, special attention should be paid to the physical and mental exhaustion of professionals, promoting conditions and support that help to alleviate exhaustion and improve the clinical response capacity. Compassion fatigue and the burnout syndrome often stem from ethical conflicts inherent to the practice of intensive care, as with decisions to allocate available assisted ventilation equipment or to turn off such equipment.

Critical decisions related to the use of ventilators, due to their special sensitivity and difficulty in applying objective clinical criteria, may, in certain circumstances, not be taken exclusively by the doctor who has the sick person in charge. The ethical decision may benefit from being supported by elements of the health institution that are not directly involved in the provision of intensive care, to mitigate the negative effects of pressure on doctors and teams, relieving them of the responsibility of the individual decision on ventilation mechanics.

The screening process to define priorities in the clinical care of contingency situations, in which uninfected patients coexist with infected patients, requires that decisions be based on medical criteria grounded on sound ethical principles. The resulting behaviours and selection procedures must be ethically justified. As far as behaviours are concerned, the criteria of proportionality, reciprocity, equity, trust and solidarity must be recognized; as regards procedures, the criteria should be reasonableness, transparency, inclusion, responsiveness and institutional responsibility.



Health professionals

Health professionals are key elements in any planning process to respond to a pandemic situation, fulfilling their different assistance tasks. It is expected that they can respond without restrictions, assuming those tasks as agents on the different fronts in which they are qualified and competent, within the limits of their technical and human capabilities.

Among these tasks, caring for sick people severely affected by the disease is even more demanding. It is acceptable that the evolution of the pandemic outbreak may require the mobilization of untrained professionals (junior doctors, retired physicians and nurses and even medical students, namely in their professional year), who can be assigned tasks that do not require specialized technical action.² These medical and nursing professionals must act according to the same ethical principles and in the same deontological framework as their specialist colleagues. On-the-job rapid training in intensive medical techniques may also be allowed if the shortage of qualified specialists is expected to worsen, the former acting as supervisors.

Health professionals are a very vulnerable group in combating epidemic outbreaks. There have been deaths of professionals in several countries since the current pandemic began, as in past infectious outbreaks. In addition, there are risks of a psychological and social nature. Intervention strategies should be designed to reduce burnout and compassionate fatigue, as well as to support their families to reduce the impact on their personal and family lives.

The State, through health authorities and managers and political leaders, has a duty to guarantee security conditions and the means necessary for individual protection. In the exercise of the correlative right to integrity and security, professionals have a special duty to protect themselves and third parties, which points to the ethical responsibility for the use of individual protection measures.

Health professionals also intervene as agents to implement health and social decisions with sick people, families and citizens in general, for which they should help promote their adherence to primary prevention measures, explaining its need, its suitability and its benefits, as well as the personal and social risks of its violation.

² Worth noting, the response of non-active doctors to an appeal by the Medical Association, which already has more than 4,000 volunteers, or the response of more than 800 nurses to an appeal by the Nurses Association.



THE CNECV CONSIDERATIONS:

Attention to life and human dignity

Every citizen's life justifies immediate protection actions in contingent, emergency and catastrophe situations, because their value is paramount in relation to others that must also be protected. Special attention will be given to the most vulnerable groups, who have less means, conditions and self-defence capabilities.

The protection of citizens' lives, dignity and integrity is an ethical responsibility that involves political authorities at different levels, namely in the preparation of the health response, in the planning and in the organization of health care.

Under an ethics of responsibility, citizens are called to the need for the adoption of social restraint behaviours and to adhere to preventive measures taken for their own benefit - the good of the individual -, the benefit of their neighbours and, in a global sense, the benefit of all humanity - the common good - in the light of social justice.

Permanent and continuous ethical consideration of the measures instituted

The current pandemic situation entails a set of risks, both individual (disease and death) and social (negative effects on the economy, employment, access to essential goods and health), that justify the emergency measures, which, as a whole and each one considered, must have recognized ethical foundation.

In contingency situations, the measures to be taken and their implementing decisions must comply with the principle of necessity. They must be flexible and adapt, at each moment and in view of the specific contexts, in their effectiveness, proportionality (of resources, means and purposes) and precaution, assessing the beneficence impacts that justify them, but also their potential harmful effects, abiding by the principle of non-maleficence.

The needs of collective health cannot let the individual be forgotten in the sacrifices he/she makes for the common good, nor



in the palliation of the negative consequences that he/she can suffer. Therefore, the measures that condition coercion and intrusion into citizens' lives should be used proportionately and with caution.

It is therefore essential to consider the aspects of extrinsic vulnerability, whether of the sick and isolated person, at home or in hospital, or of their family members and caregivers. It is ethically and socially necessary to find new forms of end-of-life assistance and support in the grief process.

Guarantee of updated, rigorous, clear, complete and transparent information

It is important that citizens understand the global dimension and the ethical nature of the social health emergency problem. The beneficence of the decisions must be understood in a context of moral ideal and of safeguarding the common good, which also embraces the individual good, and comprises the limitations inevitably introduced to the free choices of citizens, which are proper to the exercise of individual autonomy.

The actions taken in the context of health emergencies must be explained in a timely and clear manner in their different steps, using a discourse that is understandable by all and that has adequate technical and scientific support. In this way, citizens' reliability, awareness and responsibility are reinforced for the social commitment to comply with public health strategies (confinement, social distance, personal hygiene and protection).

Strengthening solidarity

Public and private institutions, political actors, health professionals, professionals from other areas and citizens in general must reinforce their duties of cooperation and solidarity, assumed as a commitment to transgenerational responsibility and the promotion of the common good.

Political measures of a social nature aimed at mitigating the social and economic impacts of the contingency situation and



guaranteeing conditions for the functioning of society in the near future call for responsibility, both individual and collective, and must be sustained by interpersonal solidarity, which is developed at work and within each community, and must be reinforced in the global dialogue between countries.

Vulnerability in an emergency situation implies that all action is guided by values such as solidarity and justice, in the current situation and in its follow up. Solidarity is, therefore, a "practice of survival" of society, in the constant search for the condition of symmetry and expectations of reciprocity inserted in a social dialogue.

Use of health resources

The human and material resources needed to implement sanitary measures must be made available by political authorities, given their responsibility to protect the health of each citizen. These resources must be used prudently, in a perspective of sharing and cooperation between institutions, seeking to mitigate asymmetries and inequities.

In situations where there may be limited resources, namely medical equipment necessary for life-maintenance, careful ethical consideration is required, case by case, in parallel with the assessment of the respective clinical criteria, including the technical and scientific recommendations emanating from health authorities, professional bodies and scientific societies. The permanent support of elements of the hospital ethics committees may be justified, as they will assist professionals in the ethical foundation of such decision-making.

Protection of health professionals

The health professionals' activity in a context of high and continuous demand has considerable impacts at different levels (physical, psychological and social). Thus, the risks to which these professionals are subject go far beyond that of the potential infection, and therefore they must be taken into consideration in the planning and implementation of specific strategies to mitigate



them, as a condition to ensure the safety of professionals, the full functioning health institutions and the permanent care of patients at different stages of the disease.

Enhancing the participation of science

Science and scientists have an important role in situations of health emergency due to pandemic infection, helping to base political decisions (agent biology, epidemiological models) and looking for both new treatments to control the disease and vaccines for its prevention.

Dialogue and cooperation are especially important, not only between groups of researchers, but between countries, in order to enhance the results of research to better understand the biology of the agent, the behaviour of citizens and communities, the technological development of diagnostic methods and the strategies for the cure and prevention of infection.

The solidarity sharing of methodologies and results and the commitment to decisions on ethical review processes aimed at accelerating the approval of new drugs and vaccines is of paramount importance.

Affirming values of social justice and equity

The response to the current public health emergency situation has repercussions in other areas, which justify specific ethical considerations that deserve careful reflection.

Health care for people with acute or urgent and chronic health conditions should not be neglected during the period when health institutions are most mobilized to contain the pandemic outbreak. Therefore, it is important to try to avoid situations of inequality in access to diagnostics and treatments to those who need them.

The rationing of essential goods and means of treatment can be ethically and socially justified if the respective logistical chains of production and distribution are interrupted or disturbed, hence the application of the principles of equity, necessity and



proportionality in the reallocation of these goods and means to people and families is recommended.

The risk of a social crisis stemming from the sharp drop in citizens' income has implications for the most affected families' ability to access health care. In order to alleviate their condition of increased vulnerability, political decisions should involve the whole of society and appeal to the values of justice, solidarity and cooperation.

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