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OPINION

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OPINION AND RECOMMENDATIONS REGARDING FUNERARY PROCEDURES FOR DECEASED PERSONS INFECTED WITH VIH

The association of local councillors against ADIS (*Élus Locaux Contre le Sida*) has alerted the National AIDS Council to the difficulties encountered by families following the death of persons infected with HIV. Recently, the close family of a deceased person was not given immediate access to the body, because medical personnel, who suspected HIV infection, refused to authorize transfer of the cadaver to the funeral home. In order to justify retaining the body for several hours, they cited regulations that forbid embalming practices if the person has died due to HIV infection.

Beyond the specifics of this case, such regulations are dramatically painful for any family member who wishes to see the deceased person before burial. They add confusion and administrative complexity at a time when family and close friends are mourning and in pain. They also reinforce the perception of HIV infection as a dangerous disease necessitating exceptional procedures over and above the common law. However, such procedures appear entirely unjustified so long as the funerary personnel practices the universal precautions that should be applied when manipulating any cadaver.

REGULATIONS ARE UNNECESSARILY COMPLEX

A decree promulgated by the Ministry of Health on July 20, 1998 fixes the list of infectious diseases that necessitate additional restrictions regarding funeral practices.¹ The decree forbids several procedures relating to transporting, laying out and presenting the body of persons who have died from certain infectious diseases, which it lists : orthopoxvirus, cholera, plague, anthrax, and viral hemorrhagic fevers². The decree also bans issuance of permits to authorize embalming procedures on the body of persons deceased from several diseases, including HIV infection, viral hepatitis, rabies, Creutzfeldt-Jakob and severe sepsis.

In a decision dated November 29, 1999, the French Council of State (Conseil d'État) partially cancelled the decree of July 20, 1998. The Conseil d'État observed that the Ministry of Health may list, by decree, the infectious diseases which should incite doctors to oppose transport of the body, and incite funeral homes to employ hermetically closed caskets. However, the Conseil d'État observed that other issues fall under the authority of the local mayor³. Thus only the mayor of the district in which the person has died, or the mayor in the district where the person has been cared for, are authorized to decide whether an embalming permit can be issued, in accordance the French local government code of practice, the *Code général des collectivités territoriales*⁴.

Despite this, for procedural reasons the Conseil d'État cancelled only those sections of the decree that did not also figure in a preceding decree dated November 17, 1986 : the immediate obligation for an immediately closed casket, and the addition of new diseases considered to necessitate a ban on embalming procedures (hepatitis A, Creutzfeldt-Jacob, severe sepsis). Thus embalming procedures continued to be banned for the bodies of deceased persons infected with HIV.

¹ Arrêté ministériel du 20 juillet 1998 fixant la liste des maladies contagieuses portant interdiction de certaines opérations funéraires prévues par le décret n° 76-435 du 18 mai 1976 modifiant le décret du 31 décembre 1941, JORF du 21 août 1998, p. 12751.

² Article 1, "the bodies of persons deceased from the following infectious diseases (...) must be placed in a casket equipped with a system for gas purification, immediately after death in case of death at home, or before transportation out of the institution, in case of death at a medical centre. The casket will be definitively closed without delay."

³ "Considering that although the dispositions quoted, particularly those resulting from (article R2213-9 of the Code général des collectivités territoriales), authorise the Minister in charge of health, after consulting the Council for Public Hygiene, to list "infectious diseases" – and also, given the potential health risks to persons who treat or transport bodies, diseases that may spread by direct contact with certain pathogenic biological elements in the organism of the deceased, they do not authorise the Minister in charge of health to forbid, in an absolute manner, the possibility open to the Mayor, in application of (article R2213-2 of the Code général des collectivités territoriales), to practice embalming on the bodies of persons deceased from these diseases, nor to impose the immediate placement of these deceased persons in caskets, which is a matter for the Registrar, in application of (article R2213-18 du Code général des collectivités territoriales)", Fédération française des pompes funèbres, req. n° 200777, AJDA, 2000, p. 178.

⁴ Article R2213-2 of the French local government code of practice, the *Code général des collectivités territoriales*.

A few months after the Conseil d'Etat's decision, the authorities drafted a new decree relative to the protection of public health and funeral practices, and a new proposed directive fixing the list of infectious diseases in this regard. The National Council of Funerary Practice (*Conseil national des opérations funéraires*) issued a favourable opinion⁵ but these texts have not to date been passed.

Consequently, the decision of July 20 1998 has not been overturned. The Council of State limited its scope but did not nullify it completely, and it continues to be in effect. A request for an embalming permit may thus be refused by the Mayor if the deceased person was infected with HIV.

Moreover, from this postulate that a Mayor may refuse permission to embalm a cadaver infected with HIV, it has been extrapolated that if a person dies as a result of HIV infection, the doctor may oppose transport of the body prior to its placement in the casket. In the case that has been brought to the Council's attention, the medical services refused to deliver a permit for the transportation of the body before placement in the casket because HIV infection was suspected.

This refusal was not justified in law, for the doctor – whether the chief medical officer of the hospital, his or her representative, or the attending physician in a private institution -- is only authorized to oppose transportation of the deceased when he or she, at the time of death, is suffering one of the infectious diseases listed by Ministerial decree⁶, and HIV does not figure on that list⁷.

UNIVERSAL PRECAUTIONS ARE NECESSARY, BUT THEY SUFFICE

The National AIDS Council deplors the fact that embalming continues to be banned for persons deceased as a result of HIV infections. It further regrets the extrapolation of this principle to include forbidding transport of the body before placement in the casket. The Council observes that no technical or scientific argument can be made to justify the application of specific funerary measures regarding the body of deceased persons infected with HIV, beyond the universal precautions that should be taken during any funerary procedure.

Whatever the serological status of the patient or the practitioner, the National AIDS Council promotes strict respect of standard precautions of hygiene whenever there is risk of contact with or projection of blood or biological fluids⁸. These universal precautions were conceived in the late 1980s under the aegis of the World Health Organization, and have since been adopted by all health personnel. They require individual protective equipment for the professionals, measures to eliminate risk in the workplace, and practices to promote reduced risk of exposure.

Concerning funerary operations, these universal precautions are particularly necessary when the body carries bacterial flora composed of potentially pathogenic bacterial species that may proliferate in the post-mortem period. Every cadaver should be considered a potential source of transmission.

Thus personnel who effect funerary operations are strictly regulated in terms of medical surveillance and the practices they adopt during the funerary procedures.

In the case of the personnel of funerary homes and those in charge of transporting the cadaver before it is laid out in the casket, medical surveillance is reinforced to prevent risk arising from exposure to pathogenic biological agents. They are immunized against hepatitis B, la diphtheria, tetanus and polio⁹.

Regarding the workplaces where these personnel may enter into contact with the potentially pathogenic biological agents present in the organisms of deceased persons, appropriate measures are taken to preserve worker health and safety, notably via information on decontamination and disinfection procedures and safeguards that insure that contaminated waste is manipulated and eliminated without risk¹⁰.

In 1995 a ministerial circular detailed the procedures that should be observed when preparing bodies for burial¹¹. During embalming there should be no contact between the components of the deceased's body and the skin and mucous membranes of the personnel effecting the embalming procedure. Procedures for decontamination are detailed in case of accidental exposure to

⁵ Plenary session, May 31, 2000.

⁶ Article R2213-9 of the French local government code of practice, *Code général des collectivités territoriales*.

⁷ Note that HIV infection is listed in Article 2 of the directive of July 20 1998, which includes a list of complementary diseases in addition to the infectious diseases listed in Article 1.

⁸ National AIDS Council, *Recommendations and report on contaminated health personnel*, July 7, 1992, and *Opinion regarding HIV contamination of a patient during a surgical procedure*, March 21, 1997.

⁹ *Arrêté du 15 mars 1991 fixant la liste des établissements ou organismes publics ou privés de prévention ou de soins dans lesquels le personnel exposé doit être vacciné*, JORF, n° 79, April 3, 1991, p. 4464.

¹⁰ Article R4424-7 of the French workplace code of practice, the *Code du travail*.

¹¹ Circulaire n°DGS/VS3/MSP/MIE/SG/1995/36 du 31 juillet 1995 relative aux prescriptions applicables aux chambres funéraires, BO ministère de la santé publique et de l'assurance maladie, n°95-36, pp. 205-214. See also Circulaire n° DH/AF1/99/18 du 14 janvier 1999 relative aux chambres mortuaires des établissements de santé.

blood and biological fluids, notably in the case of HIV infection¹². Although the circular refers to the ban on embalming for persons infected with HIV, the text specifies precautions to be taken when the HIV serological status is unknown¹³. The precautions established by the 1995 circular are in this aspect very similar to the standard precautions intended to prevent exposure to blood and biological fluids, which were drawn up following expert advice¹⁴.

The National AIDS Council observes that the totality of these precautions and safeguards should be practiced by all personnel exposed to known or unknown infectious agents, whether or not such agents have been diagnosed, and that this includes all workers who come in contact with bodies after death. If the recommended procedures are fully applied, no scientific argument can justify additional measures, over and above the common law, on the sole basis of HIV infection of the deceased, whether or not such infection is simply suspected or clearly established.

The National AIDS Council observes that funerary operations should take place in accordance with norms and regulations, particularly those stipulated in the code of practice for local governments (*Code général des collectivités territoriales*) and the workplace code of practice, (*Code du travail*). Regulations should be independent of the supposed or established serological status of the deceased. Acting within the framework of its mission, the Council thus requests that Article 2 of the directive of July 20, 1998 should be nullified insofar as it mentions HIV infection in the list of diseases that necessitate a ban on embalming. Additionally, the Council invites the authorities to initiate a comparable re-examination regarding hepatitis and the other infectious pathologies that are listed in the directive.

¹² "The AIDS virus is inactivated by contact with a solution containing 2 to 6 percent of active chlorine for one hour, at no specific temperature. This is thought also to inactivate the various hepatitis viruses", Circulaire n°DGS/VS3/MSP/MIE/SG/1995/36 du 31 juillet 1995 relative aux prescriptions applicables aux chambres funéraires, *op. cit.*, p. 209.

¹³ "Regulations (directive of November 17 1986 published in the Journal Officiel) forbid the practice of embalming for a certain number of transmissible diseases. However the delay before appearance of systems meantk that people may be "healthy carriers" with no knowledge of their contamination.", *op.cit.*, p. 209.

¹⁴ Circulaire interministérielle n°DGS/R12/DHOS/DGT/DSS/2008/91 du 13 mars 2008 relative aux recommandations de prise en charge des personnes exposées à un risque de transmission du virus de l'immunodéficience humaine (HIV).