Pre-employment medical testing in Brazil: ethical challenges

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Abstract

Pre-employment medical tests, considered to be a practice within the subspecialty of occupational medicine, are ordered by physicians on behalf of employers. Candidates for a job may be rejected if they are found to suffer from a condition that can be worsened by the job, or one that may put other workers at risk. As the physician who orders pre-employment tests is chosen by the employer, pre-employment tests can violate both the autonomy and the privacy of the individual. This paper discusses ethical conflicts inherent in pre-employment medical testing.

Introduction

Pre-employment medical tests are used to identify risks that potential employees might face in a new work environment, as well as risks they may pose to others at work. However, these tests are often used to deny people work. There have been several cases in Brazil of candidates being excluded from work on medical grounds without good reason. In Case 1, a 27-year-old woman 1.67m tall and weighing 90 kg, qualified to be a schoolteacher, participated in a public selection process for teachers in her city and did very well in the written tests. However, following a medical examination she was judged to be unsuitable for the job as she was obese. She sued the employer for illegal discrimination and was eventually given employment (1). In Case 2, a 35-year-old schoolteacher was in a car accident in which she fractured a hip and spent four months in a wheelchair before she returned to work. A year later, she participated in a public selection process for a better job in her school and did well in the written tests and classroom observation (2). In spite of this, the doctors who conducted her medical examination concluded that she was not capable of handling the new job. They did not change their decision even after she underwent a series of new tests to prove that she had completely recovered from her injuries. Case 3 is of a 32-year-old man who was considered unfit to work at a government office because an electroencephalogram recorded "non-specific alterations" (2). These cases are only illustrative.

In other words, pre-employment medical tests can be used in a manner that puts excessive and arbitrary powers into the hands of the medical professionals who conduct these tests. Considering that work is essential for human survival as well as self-realisation, an employer's right to refuse an applicant employment for health reasons should be exercised with care. This paper will discuss the ethical limitations of pre-employment medical tests, first on the broader social plane, and then on the individual plane, that is in the relationship between the candidate and the physician. Two case studies –of testing for HIV and of genetic testing – will be presented to illustrate the ethical principles involved.

The social context of occupational medicine

Work-related diseases have been documented since antiquity in Egyptian and Judaic texts, as well as in works from the times of Hippocrates, Plato, Virgil and Galen. In 1700, the Italian physician Bernardino Ramazzini published his book *De Morbis Artificum Diatriba* (Treatise of occupational diseases), which established him as the founder of occupational medicine (3).

The Industrial Revolution led to the creation of new occupations and environments that were extremely harmful to the health and safety of workers. New chemicals, radiation and extreme conditions of temperature, humidity and noise, resulted in epidemics of occupation-related illnesses. The impact of these illnesses was exacerbated by low wages and excessive hours of work (3). In fact, initially, medical services were offered to workers as 'additional payment' in some big companies. In effect, employers offered these services to deflect workers' complaints about their working conditions, in preference to making substantial changes in the work environment At the same time, pre-employment medical tests – conducted as a part of occupational medicine -- also came in useful to refuse jobs to sick persons with tuberculosis, for example, as being a threat to the health of other workers (3).

Occupational medicine was developed by the state as a sub-speciality of public health medicine (3). Since all occupational diseases are products of the environment, it follows that all of them can be prevented by modifying that environment. In this sense, the fundamental purpose of occupational medicine is to study work environments and their harmful effects on employees. Occupational medicine is based on the understanding that employers must appoint medical professionals to create healthier work environments, protect workers against occupational diseases, and promote workers' health in all possible ways. As a medical speciality, it is devoted to finding solutions to health problems identified as occupationally-based. Since the focus of occupational medicine is the collective, it does not by definition look at individual candidates' 'aptitude to work" (6).

Ethical conflicts in the worker-physician relationship

Traditionally, the relationship between patient and doctor has been a contract, although unwritten. The patient accepts or refuses the suggested treatment of the professional. Thus,

although medicine is practised in a complex social and cultural context, routine clinical services are rendered individually, based on a presumption that the patient is exercising autonomy and free will (7,8).

In pre-employment screening, however, the situation is different. The contract is between the doctor and the company. The relationship between the worker and the company physician contains a conflict. It places the right of employers to hire healthy and physically able persons against the right of workers to work and also protect their privacy (9). Here, the doctor's role is distorted from that of alleviating suffering; s/he could be the figure who denies a person access to a livelihood (10).

The reality is that the same employer pays the salary of doctors and of all other workers. The doctors and, by extension, occupational medical services in general, are as immersed in the competition of the labour market as are other employees. Thus, it is in the doctor's interests to ensure that the company always has the advantage (11), by hiring workers without medical conditions that would have to be treated at company expense. This loyalty is necessary for the doctor to keep his/her job.

This loyalty is contradictory to the State's responsibility to protect public health. It is not enough for the State to order the setting up of health services. It must implement laws and regulations to guarantee that these medical services are provided to everyone within these companies (11).

As the norms for granting candidates "medical approval" are unclear, excessive discretionary powers are exercised by the authorities. In other words, the concept of a medical examination gets distorted. From a strictly medical point of view, the doctor's function is to determine a candidate's suitability for work in a potentially harmful environment, and the objective of the medical examination is to protect workers from a hazardous work environment. In the absence of clear guidelines, the doctor's role may extend to the diagnosis of diverse health conditions that are unrelated to, and not worsened by, the work.

These issues are illustrated through three scenarios:

1. A candidate presents with a medical condition which would worsen if s/he took up the job on offer. For example, a patient with sickle cell anaemia applies for work as a miner. In this situation, it might be argued that the ethics of informed consent requires that the candidate be informed of the risks and given the opportunity to accept or refuse the job. However, illnesses that occur within the company premises may be considered the company's responsibility (10,12). Generally, when there is a conflict of rights, the rights of the individual must give way to collective rights (13). Since a company is not an individual but a collective entity, individual rights are put aside for the protection of a collective right, and the applicant will be refused employment.
2. A candidate presents with a medical condition which will not be worsened by the work environment, but could put the safety of others at risk. For example, an epileptic patient applies for the job of a bus driver. Here, the safety of third parties cannot be compromised, so there is no ethical conflict in refusing employment to the candidate.
3. A candidate presents with a medical condition that will not be worsened by the job, and will not put the safety of others at risk. According to the ethical and historical principles of occupational medicine, as also the International Code of Ethics for Occupational Health Professionals (ICOH), the nature of the desired job determines the qualifications required and the criteria for rejecting a candidate (6,14).

The inclusion of laboratory tests and the creation of exclusion criteria with no strong clinical and epidemiological basis and unrelated to the job can lead to various kinds of discrimination. It would clearly be unfair to deny a person employment on the basis of criteria unrelated to the job, after s/he clears a fair process of selection (15).

However, it may be that the employer wants to be assured of the candidate's job skills, which can only be judged after s/he joins work. In this situation, the company doctor, who is paid by the employer, may be asked to identify candidates with health conditions so that the employer can reject those candidates who are likely to have high rates of absenteeism.

The doctor can also be asked to conduct periodic medical tests post-employment to pick up nascent signs of occupational disease; employees can be dismissed before the condition worsens enough to become grounds for legal recourse against the company (16). This is a subversion of the intended aims of medical testing. Instead of reviewing the environment and the procedures entailed in the work, the physician helps the company recruit healthy people and send them back into the labour market as sick people who, since they are sick, are rejected as potential employees by the doctors of other potential employers.

Two case studies

The genetic test

According to Murray (11), genetic testing when applied to the job selection process could give rise to at least three important ethical questions: First, what are the implications of the inequality between the worker, who has only labour power, and the company, which owns the means of production? Second, are there limits to the information that a company may hold regarding its employees? Finally, how much influence is a company allowed to have over its employees outside the workplace and time (11,17)? Genetic tests could potentially be used to identify persons vulnerable not only to some risks at work but also outside the workplace. What about the interplay of genetic predisposition and behaviour such as unhealthy diet, a sedentary lifestyle, alcoholism, etc (11)?

The moral argument used to justify such selection is that this would be a way to protect these workers from greater harm. This argument is wrong for at least two reasons. First, the risks

of the workplace are a human creation and hence, can be modified. Second, conclusions about such genetic tendencies will be based only on probabilities (11).

The possibility of genetic testing has raised some ethical questions: in general, what are the limits that should be placed on clinical and laboratory testing in the context of recruitment? Considering that such tests are based not on a certainty but on a probability, what is the correct way of using them? Further, the validity of many tests is not sufficiently established (7). This is not only a question of validating scientific clinical data. In the context of pre-employment genetic tests, the ethical issue is whether they can be used to exclude workers from a livelihood.

Screening for HIV infection

Soon after the HIV virus was identified, together with the serological tests for diagnosis, tests for HIV infection were incorporated into several selection processes. Since then, technical and bioethical debates have led to a ban on testing for HIV in pre-recruitment medical tests (18,19).

The reasoning goes beyond questions of the autonomy and privacy of candidates (20). Studies have shown that in healthcare settings, where the greatest risk of occupational HIV transmission exists, seropositive persons are still able to work, and universal precautions (gloves, hand washing, etc) are sufficient for the protection of other workers and hospital patients. Therefore, testing for HIV is considered unethical in the context of job recruitment (18,19,21). If it is unethical to discriminate between candidates based on HIV tests, the same principles should be applied to should be applied to tests for other conditions .

The use and misuse of medical tests

Medical testing prior to job recruitment goes against certain fundamental principles of medical practice. A medical test is an extension of the case history and physical examination and aids in diagnosis when a person presents with a given clinical manifestation. So it amounts to a subversion of the correct use of a test if it is prescribed only to ascertain that the candidate has 'nothing' (19).

Further, even the most accurate test does not have the capacity to prove that the candidate will *not* get sick within a short period. Also, conversely, some tests are very sensitive, and several individuals may have positive results without any clinical manifestation.

In other words, medical tests do not, generally, give useful information outside a defined clinical context. Further, a normal result in an examination cannot guarantee that diseases will not occur in the near future. And finally, alterations shown in these exams are not necessarily followed by clinical manifestations.

From the point of view of ethics, it is not fair to exclude a person from the productive process because a laboratory test finds that s/he has a predisposition to develop a disease. The medical exam, if carried out without sound criteria, may exclude capable persons based on a possible eventuality. The possibility of a disease is treated as a certainty, which is absurd. Even otherwise, if the job environment is unhealthy, what protection do healthy employees have?

Conclusion

In conclusion, it is unethical for a physician to use medical tests to exclude candidates because they have clinical conditions that do not present a direct relationship with the job. Both the judiciary and legal professionals should be aware of such practices and respond accordingly to those occupational health professionals who insist on such practices that not only ignore the autonomy of candidates but also violate their right to work.

Acknowledgements: *We thank Cláudio Garcia Fortes Lorenzo for his comments on the abstract, Neil Hume Wilson for his assistance with translation, and the firm Content Concepts for corrections in the English version.*

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