Ethics Presentation Summary (Group I)

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Should Our Employers Be Privy to Our Medical/Genetic Conditions?

Rapid advancements in medical technology have drastically improved the variety and scope of medical tests available to people. However, differences in opinion occur in the debate over the use of such information by employers. The issue at hand is whether employees have to disclose their medical information to employers, and if so, how much.

There are several arguments against employers having access to employees’ medical histories and genetic compositions. Such access invades privacy and may result in discrimination during the hiring process due to fear, money issues, or prejudice. Loss of employment would then result in no medical insurance for a needy citizen. Another strong argument in favor of privacy is that not all medical and genetics conditions interfere with job performance. Furthermore, some medical and genetic conditions are race, class, and gender-related. For example, refusing to hire applicants with sickle-cell anemia discriminates against African-Americans and violates Title VII of the Civil Rights Act.

Disclosure of private medical information may also result in differential treatment by coworkers and clients, which disrupts the working environment and may make workplace interactions uncomfortable. Implementation of workplace measures to test employees constitutes a slippery slope towards our genes dictating what we can and cannot do with our lives. Such measures are deterministic and discriminate from birth, as we can never change our genetic composition.

The maintenance of individual confidentiality is upheld by current US law. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 is a current provision that regulates the information healthcare providers are allowed to disclose regarding a person’s medical record. The HIPAA Privacy Rule requires patient consent to view their medical record, thus limiting access so that information does not fall into the wrong hands.

However, despite not being able to take medical information by force, many precedents have already been set allowing employers to request employee medical information and informed medical testing in the workplace is commonplace. A 2004 survey of 503 U.S. companies conducted by the American Management Association found that 62.6% of them require some sort of medical testing for employees, both current and new hires. Therefore, it would seem unrealistic to expect complete medical nondisclosure.

When it comes to genetic testing and medical privacy in the workplace, the social implications of discrimination and determination are not the only emerging issues. One of the foremost engines driving the country, the American business, will be sandwiched in a lose-lose situation in which the singular citizen wants to have the proverbial cake—
and eat it. Thus, implications of both genetic testing/full disclosure and no testing/no disclosure policies must be considered from the financial standpoint of the workplace.

Embracing genetic testing is, of course, the most advantageous of potential policies for firms. Genetic testing is becoming cheaper and more reliable by the year. Healthcare costs are steadily increasing. Tort liability, often in the form of negligent hiring allegations, is as large a burden as ever. Put together, there is an alluring temptation to plunge into genetic testing. If genetic testing can help counter liability payments and healthcare costs, not to mention “optimizing” their workforces, then the decision to engage in testing should be an easy one to make—right?

Businesses seeking to optimize their operations with genetic testing will expose themselves to entire litanies of discrimination and privacy suits. The flip-side of the coin, forgoing genetic testing, implies minimizing exposure to litigation, but at the cost of risking increased tort liability.

For all the aforementioned cases against genetic testing, there are valid counterpoints. While cases such as Burlington Northern v. Equal Employment were settled in favor of the plaintiffs, the dynamics of the case are not as easily tossed as the money paid out. The foundation of the case lies on the Americans with Disabilities Act of 1990 and its protection of the “disabled”. The original intent of the ADA is, arguably, to prevent discrimination against those with expressed disabilities such as physical handicaps or mental impairments. Under this legally accepted interpretation, any individual carrying the gene in question should be considered disabled—even if the gene is not presently expressed.

At first glance, the issue at stake in Leonel v. American Airlines seems to be the discrimination against the HIV-positive job applicants on the basis of their infection. However, the real issue in play was the technical intricacies of the hiring process (in relation to medical privacy) and not the usual suspect of discrimination. The decision of the court in favor of the job applicants was based on a technical oversight on the part of American Airlines. The airline made conditional offers of employment to the applicants, contingent on both background checks and medical exams for each of the applicants. By protocol, medical exams and background checks cannot be connected in such a way. Exams are to be the last resort used by employers only after background checks have been exhausted. Since the job offers could be invalidated on this technicality, the intentional cover-ups of the applicants’ conditions are invalid as well—they “never” happened. If there had not been a technical error, who knows how the case might have turned out?

The ongoing debate regarding who has access to employee medical records is one not easily resolved. The crucial health information contained in medical records could be used by employers to protect their employees. However, such information could also be misused by employers at the employee’s expense. Our presentation aims to cover all of these viewpoints in order for the viewer to draw his or her own conclusions.