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Commentary

Attorney-Directed Screenings Can Be Hazardous

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Background *The history of occupational health screenings indicate that they are often necessary to protect the health and interests of workers. However, medical screenings for asbestos and other occupational diseases which are organized and funded by attorneys may result in serious adverse outcomes to those screened.*
Methods *We report a case of death that appears to have been heavily influenced by an attorney-initiated and -directed screening program.*
Results *While well-run medical screening programs are essential to disease detection in workers, attorney-run and corporate screenings can be fraught with ethical and practical problems. Screenings have been used by corporations to identify workers with occupational illness in order to terminate their employment and avoid legal liability. Screenings can also be used to motivate workers to stop smoking and implement workplace controls. However, these screenings must be conducted responsibly.*
Conclusions *Although this is only one case it illustrates the gravity and potential danger of attorney-directed screening programs.* Am. J. Ind. Med. 45:305–307, 2004.

BACKGROUND

Attorney-directed screenings are dangerous when they fail to provide adequate medical counseling or treatment for workers. As an example, one screening company, Healthscreen, based in Jackson, Mississippi, performs pulmonary function testing, X-rays, and CTs on workers who may have been exposed to asbestos or other workplace toxins [Bass, 2003]. Healthscreen has conducted screening on at least 13,000 workers, and probably more.[a] Currently Healthscreen employs 20 physicians [Physicians, 2003].

In a May 2003 deposition, a physican employee explained that attorneys, rather than doctors, order the X-rays performed by that company:

Q. And you're shooting them [the workers] with X-rays; are you not, Doctor?. . ..

A. Healthscreen, at the request of attorneys, does do some—takes some X-rays.

Q. Who orders the X-rays that are shot by Healthscreen?

A. I believe the attorneys request them and the patients consent to them. . ..

Q. Are you telling me no physician prescribed an X-ray that was shot by Healthscreen?

A. The physicians do not prescribe the X-rays, no, we do not, because we are not treating them. This is strictly an evaluation process that the patient agrees to and, you know,

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[a] One doctor, who worked for Healthscreen part time over a period of less than 4 years, reported conducting 6,600 examinations. He estimated that figure represented "definitely much less than fifty percent of the people [screened by Healthscreen]" [Bass, 2003].

the attorneys say, You need an X-ray. The patient agrees to have it done, and Healthscreen does it [Bass, 2003].

Healthscreen sends X-ray films to the B-reader of the lawyer's choice. After radiographic interpretation, lawyers continue to manage worker medical care. The company assures the referring attorney that after X-rays have been read, ''you decide on whom you want us to perform further testing and subsequent diagnosis'' [B-Readers, 2003].

Screening companies and employed physicians earn considerable income from these programs. One American Medical Testing physican made $80 per worker screened, and saw between 50 and 65 workers per day [Nayden, 2002]. Attorneys utilizing screening programs generate new clients, who bring in fees of up to 40% of potentially large settlements or verdicts. As one of us (DE) has reported previously, the compensation of B-readers can be even more problematic. A reading of 1/0 is the minimum necessary to show asbestos injury; in one screening program the B-reader was paid twice as much for a 1/0 reading as he was for a 0/1 or 0/0 reading [Egilman, 2002]. This same reader evaluated the X-ray for the case study that follows.

Case Study

Mr. X. was a 66-year-old white male maintenance worker at a vinyl chloride facility. He worked as a laborer and operator over a 30 year period, and had bystander exposure to asbestos. He had a number of medical problems including a carotid artery endarterectomy in 1996, hospital admissions for GI bleeding in 1996 and 1998, and pneumonia in 1998. In July 1998, he had a hospital admission for congestive heart failure (CHF) and during this admission underwent cardiac catheterization and quadruple bypass surgery. He was admitted to the hospital for heart failure and shortness of breath in August, treated for CHF and released from the emergency room in in November, and treated for atrial fibrillation in December. Mr. X. also ''smoked two packs a day 'all my life,'''[b] and had been diagnosed with COPD.

In January 1998, he participated in a lawyer-generated asbestos screening consisting of a one view chest X-ray (PA). The X-ray was read as a 1/0, and was accompanied by the following narrative:

The film quality is 2, secondary to cutoff of the right costophrenic angle. The heart, mediastinum, and pulmonary vasculature are normal. Irregular interstitial opacities are observed in the left upper and both mid and lower lung zones, the size and shape of which are classified as t/s and the profusion is 1/0. The pleural surfaces are normal and no other significant defects are found.

In July 1998, the law firm that sponsored the screening communicated the results of the screening to Mr. X in a letter which in part stated:

Enclosed is a copy of the report from your recent chest X-ray. The results show markings consistent with asbestos-related disease. You should bring a copy of this report to your personal physician at your next scheduled appointment. Please note, this is a ''screening'' test only and does not replace a complete examination. Periodic follow-up, preferably on an annual basis, is recommended through your family doctor. In order to begin working on your case and evaluate your asbestos exposure, we need specific information from you. Enclosed are forms that you need to complete for us. The materials are lengthy, but the information is necessary. Please complete as much information as you can recall and sign your name on all lines marked by an ''X.'' If you would like us to proceed with a review of your lawsuit, it is important that all of the material be returned to our office as soon as possible. We have strict legal deadlines that we must meet. Finally, if you are diagnosed with any form of cancer, experience any medical difficulties, are hospitalized for any reason, please have a family member or yourself call our office at 800–999–9999 or one of the numbers listed above to inform a severe health status. When you call our office be sure to ask for the asbestos department.

This is the only communication Mr. X received notifying him of screening results. He was not contacted by the physician who conducted the screening or referred to any other physician.

After receiving the letter from his attorney Mr. X became quite upset. Mr. X's children were deposed in his lawsuit and their comments show his strong reaction to the information that he had asbestos-related disease. Mr. X told his daughter that asbestos in his lungs was ''making his breathing bad.'' His son recalled that Mr. X was ''real worried about the fact that he would wind up like several of his friends, dying a slow death. . .he did not want to be an invalid and wind up on a breathing machine and feeders. . ..''

Mr. X was preoccupied with the attorneys' screening letter. Another daughter reported, ''He kept [it] on the bar by the phone. His house—his bar was sparsely furnished. There was hardly anything else there. He would push it over to me and say, 'Read that.''' And, ''We discussed the letter every time we were there with him. He—it was like a huge thing he couldn't get over, the letter.''

Subsequently Mr. X wrote a suicide note on the back of a form that accompanied his notification letter. On January 12, 1999 he was found at his home dead as a result of a self inflicted shotgun wound of the head.

An autopsy was conducted by medical examiner. Gross examination of the lung revealed severe chronic obstructive pulmonary disease, no tumor or infectious process. He had bilateral pleural plaques along the parietal surfaces.

Two psychiatrists who evaluated this case concluded that the diagnosis of asbestos-related disease and the fear he experienced of dying from that disease was a significant contributing factor in his suicide.

[b] As noted in a medical consultation report dated July 15, 1998. Mr. X noted that he ''quit several weeks ago.''

We had two independent B readers evaluate his X-rays and neither of them found ''evidence of interstitial fibrosis or asbestosis.'' One reader noted that the worker had an ''old rib fracture involving the right 8th rib, with adjacent pleural reaction.''

ANALYSIS

Mr. X. had many medical problems including serious lung disease most likely from smoking. While he did have bystander exposure risk, there was no evidence of asbestos disease from X-rays or pulmonary function tests. We believe this case report reveals some of the hazards of medical screening initiated and directed by non-medical personnel.

In a 2002 white paper submitted to the Department of Labor, the National Institute for Occupational Safety and Health (NIOSH) outlined elements of an adequate medical screening program. In this paper, NIOSH reaffirms the importance of medical screening and surveillance for workers exposed to asbestos, and stresses that such screening should be under the direction of a ''qualified physician or other qualified health care provider'' knowledgeable in the field of occupational health and in the administration of such a program. NIOSH recommends baseline and regular periodic examinations, accompanied by worker health education programs. NIOSH also advocates that written reports of screening results be submitted to both workers and employers [NIOSH, 2002]. Here the NIOSH guidelines are deficient: as this case report reveals, a qualified physician or other health care provider should provide post-screening counseling in person.

Mr. X's case demonstrates the importance of in-person medical counseling. It is not sufficient screening practice to simply tell a worker with a positive diagnosis that he should take a report to his or her family physician. Many workers have no family physician, and some family doctors will not have sufficient familiarity with occupational disease to appropriately counsel a worker. With health care screenings of this type it is important that, as an integral part of the screening, the people screened be given prompt, accurate, and realistic counseling concerning the meaning of any positive or negative findings. The health care provider must deal with the likely psychological consequences of any diagnosis. In 1930, when Merewether first recommended regular screenings and implementation of industrial hygiene controls for asbestos exposed workers he emphasized that, ''They also include the education of the individual, as in other dangerous trades, to a sane appreciation of the risk [of exposure]. . ..'' [Merewether and Price, 1930].

If properly and ethically done, screenings of asbestos exposed workers provide an opportunity for detection of cancer and other chronic diseases, for which they are at an increased risk. Screenings can also be used to motivate workers to stop smoking and implement workplace controls. However, these screenings must be conducted responsibly. A physician who diagnoses an occupational disease has an obligation to be aware of the potential legal ramifications of that diagnosis (including statutes of limitations), and to share that information with the patient. Likewise, an attorney with a client who has been diagnosed with an occupational disease has an ethical responsibility to make sure that the patient has appropriate health care advice and treatment.

When Nellie Kershaw became the first person diagnosed with asbestosis, the industry did not take heed, but continued to market their perilous product [Selikoff and Greenberg, 1991]. The legal community should not follow the asbestos industry's example. These workers, already victimized by the callous conduct of corporations and an economic and regulatory system designed to maximize industry profits at the expense of worker and public health, should not have their lawyers add insult to injury. Instead, we hope that the legal community learns from this case and alters their practices accordingly. As with Nellie Kershaw, we do not believe that an epidemiologic study or more research is needed before corrective action is taken.

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