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Ethical dilemmas of expert evaluations in the workplace

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Abstract

Decisions on issues concerning the health of public servants, such as leaves for treatment, are based on the results of medical examinations conducted by a medical professional. These workers are examined by the so-called Integrated Subsystem for Civil Servant Health Care. However, the experts who work in it and the patients work in the same governmental bodies, which can create conflicting situations and ethical dilemmas. This article addresses the issue from the perspective of an expert of the Federal Public Administration, seeking to emphasize ethics, respect for ethical principles, technical excellence, and common sense as guidelines for the balance between the role of expert and personal closeness to co-workers.

Keywords: Expert testimony. Ethics, medical. Public sector.

Resumo

Dilemas éticos do exercício pericial no local de trabalho

Decisões sobre questões concernentes à saúde do servidor público, como o afastamento para tratamento, baseiam-se em resultados de perícia médica realizada por profissional médico. Os servidores são periciados por meio do chamado Subsistema Integrado de Atenção à Saúde do Servidor. No entanto, os peritos que nele atuam e os periciados exercem seu trabalho nos mesmos órgãos, o que pode criar situações conflitantes e dilemas éticos. Este artigo trata do tema sob a ótica de um perito da Administração Pública Federal, buscando enfatizar a ética, o respeito aos princípios deontológicos, o primor técnico e o bom senso como norteadores para o equilíbrio entre a função de perito e a proximidade pessoal com o colega de trabalho.

Palavras-chave: Prova pericial. Ética médica. Setor público.

Resumen

Dilemas éticos del ejercicio pericial en el ambiente laboral

Las decisiones sobre temas relacionados con la salud de un funcionario, como la abstención para tratamiento, se basan en los resultados de una evaluación médica realizada por un profesional médico. Los funcionarios son examinados por medio de un Subsistema Integrado de Atención de Salud del Funcionario. Sin embargo, tanto los peritos que trabajan en él como los examinados comparten el mismo ambiente laboral, lo que puede generar situaciones conflictivas y dilemas éticos. Este artículo aborda el tema desde la perspectiva de un perito de la Administración Pública Federal, con enfoque en la ética, el respeto a los principios deontológicos, el primor técnico y el sentido común como los elementos orientadores para el equilibrio entre la función de perito y la proximidad personal con el compañero de trabajo.

Palabras clave: Testimonio de experto. Ética medica. Sector público.

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Work is related to the very human life and, as it is a source of provision for human beings, it is necessary in any historical context. With regard to State society organization—and considering the concept of a modern State—, leaders have to provide services to its population. The figure of the public servant emerges from this type of organization, an individual who performs paid work for the benefit of the community and on behalf of the political and administrative organization of a geographic territory, a model that, in the Brazilian context, was consolidated especially after the arrival of the Portuguese royal court, in 1808¹.

Currently, Law 8,112/1990² regulates the work of public servants at the federal level and establishes not only issues intrinsic to the performance of functions, but also aspects of the field of ethics relating to the exercise of the function, as described in article 116: *exercise with attention and dedication the duties of the position* (item I); *be loyal to the institutions served* (item II); *treat people politely* (item XI); *maintain a conduct compatible with administrative morality* (item IX); *and maintain secrecy on department matters* (item VIII)².

This legislation conditions the enjoyment of some rights of State workers, such as sick leave, based on medical examination by a medical professional (articles 202 and 203). Another regulatory framework, Federal Decree 6,833/2009³, reinforces this idea and also creates the Brazilian Integrated Health Care Subsystem for Civil Servants (SIASS), which, in its 2017 Official Health Expert Assessment Manual for Federal Public Servants⁴, establishes that physicians that examine federal civil servants must have been contracted after a competitive examination, that is, they need to be a permanent public servant.

Due to such regulations, in many cases, the public servant is submitted to medical examination (single or by a three-member board) by a medical professional (or dentist) who is also a public servant working in the same body, that is, a colleague in the work environment. Ethical and moral conflicts are potential in this expert relationship between people who already know each other and share different everyday contexts, such as meetings, use of cafeterias and common spaces, breaks, get-togethers, and so on.

This article addresses the experience of a physician who is an expert in an education body of the Federal Public Administration (APF), the Federal Institute of Education, Science and Technology of Pará (IFPA), in the city of Belém/PA.

Contextualization of expert assessment in the Federal Public Administration

Federal public servants count on the SIASS, formed by multidisciplinary teams that aim to work towards the fullness of the Federal Public Servant Health Care Policy. A “SIASS unit” can meet the demands of the body that hosts it or even of several bodies, and there are units in all Brazilian states. One of the areas of activity of SIASS is precisely the performance of expert assessments (medical and dental examinations). According to Martins and collaborators⁵, underfunding has affected the subsystem, and its actions are, in practice, restricted to expert assessments and periodic exams.

Professional insertion in the SIASS expert environment occurs as follows: a public servant holding the position of physician (of various specialties or without specialization) is appointed as a medical expert by a specific ordinance of the body and begins to carry out several-nature expert assessments for the SIASS unit of the body that is assigned, without standardized training prerequisite or experience in the expert field. Once assigned to the role, the expert has to deal with many doubts and lack of uniformity of training for the work performance, especially because the legal procedures related to paid absence have particularities and distinctions in the Brazilian federal public service compared to the private sphere.

If employees are subject to the consolidation of labor laws (*celetistas*), when they are sick and have to leave work, must prove the illness by means of a medical certificate from the *social security institution with which they are affiliated, and, in the absence of this and successively, from a physician of the Social Service of Commerce or Industry; from the company's physician or designated by it; from a physician at the service of federal,*

state or municipal representation in charge of hygiene or public health matters; or if they do not exist in the place where they work, from a physician of their choice (original spelling of Law 605/1949 and amendments)⁶.

On the other hand, APF servants, as a rule, need to present the medical certificate from their assistant professional and then they are submitted to the official health expert assessment at a SIASS unit. The expert assessment may not be required in specific situations (depending on the number of days off). In some cases, this is at the discretion of the manager.

APF expert assessments are not limited to the work context—such as leave for treatment of one's own health or removal to another location for health reasons, for example—but also cover the social security context—assessment of income tax exemption).

Law 13,846/2019⁷ establishes the career of federal medical expert for Social Security medical experts—who work with the population linked to the General Social Security System, that is, the private sector—, assigning them various functions, including expert assessments of APF servants, and says nothing about physicians who perform similar functions in the context of SIASS.

As there was no legal change in the functioning of the SIASS units, it is still necessary to regulate each career in a clear manner. Currently, public body physicians are appointed as experts and become part of the SIASS units, examining co-workers from the same public department, as well as from others.

The expert assessment

Medical expert assessment is characterized by the Federal Council of Medicine (CFM) and by the Regional Council of Medicine of the State of Goiás (Cremego) as a medical examination that aims to clarify facts that matter in a judicial or administrative procedure⁸. Therefore, from the observation and propedeutics of the subject, and also in view of the medical documents presented—exams, specialized reports, previous medical records, etc—, the expert assessment will offer conclusions about the individual's health status, in terms of the motivating theme of the assessment.

The history of medical expert assessment is extensive. In Ancient Egypt⁹, the medical priest was responsible for determining whether or not the cause of death was natural. In Rome, the physician helped the authorities in the interpretation of topics such as marriage, abortion, interdiction, etc. Over the centuries, the forms of labor relations have improved, and the need to certify health conditions and determine the causal nexus between health and work has brought the medical expert activity as much or closer to work than to the original function related to legal discussions.

Currently well delimited, the expert act in our environment is regulated by the Code of Medical Ethics (CEM)¹⁰ and by CFM resolutions, in addition to jurisprudence. In its chapter XI, the CEM lists the main aspects of medical expert assessment, of which we highlight article 93, on prohibitions: [it is prohibited] *to perform expert assessments of themselves, of a person in their family or any other person with whom they have relationships capable of influencing their work or the company in which they work or have worked*¹¹.

Conflicting situations

This topic will address potential conflict situations in the daily life of an APF/SIASS medical expert, hypothetical or based on their professional experience. Conflicting relationships in the work environment can result in moral harassment, damage to career development, or even a tense organizational environment, problems that can affect both the medical expert and the public servant who undergoes assessment.

For the medical expert in the context of an APF body the *delimitation of people capable of influencing their work or the company in which they work or have worked*—as stated in the Code of Ethics¹⁰—, is not clear. The range of people with the potential to influence the work and career of the medical servant who performs the assessment is quite wide, putting them in conflict with the leadership and the SIASS legislation itself.

Sick leave is common in the work environment. In order to be able to leave work, the public servant must present to the medical expert the medical certificate from their assistant physician. It is not uncommon that the medical expert concludes

differently from the assistant, which can cause displeasure. There may also be occasions of veiled threats in the face of potential unfavorable outcomes to the demands of the servants undergoing assessment, leaving the medical expert exposed to possible retaliation in their work environment in case of appropriate measures.

It is also understood that the expert work in a public body can find an obstacle in the face of the common paternalistic view that the civil servant usually has in relation to the State as a boss, reinforced by poorly defined criteria regarding the public servants' health in the moments before the 1988 Federal Constitution¹² and even Decree 6,833/2009³. The dissatisfaction of the servant who undergoes assessment in the face of the medical expert decision not to allow a family companion, medical technician or even a technician from another area, in addition to the legal one, during the assessment, indicates the misunderstanding of the "public power environment" as of indistinct order.

Another potentially conflicting condition is the expert's attitude of not providing assistance in elective conditions, a condition aggravated by the fact of dealing with professional colleagues and sometimes co-workers. Reinforcing the aforementioned article 93 of the CEM¹¹, the Official Health Expert Assessment Manual for Federal Public Servants⁴ is also emphatic in separating expert from assistance attributions.

Ethics in the expert performance of the Integrated Health Care Subsystem for Civil Servants

Certainly, the medical expert cannot claim to their class the exclusivity of the risk of harassment and conduct potentially harmful to their work decisions. In a context where their role has important administrative and legal repercussions that affect people they know and, sometimes, their private social environment, the physician may face ethical questions of their own, worrying about the influence that social relationships with co-workers may have on their conduct, causing them to reach inappropriate conclusions.

It is noteworthy that in the context of the APF/SIASS medical expert, there is a fine line that separates co-workers who fit from those who do not fit the prohibition provided in CEM's article 93¹¹—prohibition of assessing person "with whom they have relationships capable of influencing their work." On the other hand, the expert may act with excessive rigor by not including people from the body in which they work in the prohibition, creating for themselves administratively contestable situations and even in relation to the Regional Council of Medicine. If the expert disregards article 93¹¹, they may compromise their professional practice by issuing questionable decisions in the administrative and judicial spheres, in accordance with the system of the jurisdiction unit (English model) of management control adopted by Brazil¹³.

Similar to the social security context described by Lise and collaborators¹⁴, SIASS expert assessment not only observes and describes, but produces value judgments, which can conclude in favor of the sick leave, change of the place/city where the servant works, and so on. The expert opinion about a civil servant can generate administrative repercussions on the expert's position, even if the servant who undergoes assessment is not someone who is directly involved in the sharing of functions or even exercises a function that may influence the expert. All these nuances demand from the SIASS expert maximum attention to ethical and medico-legal concepts, continuous expressions in the work routine.

Borrowing the concepts of Cavalcante¹⁵ and adapting them from the business sphere to that of the public service, the expert should also not allow that their work ethic does not become formalized or bureaucratized to the point of their conduct, such as prescribing norms and even the apparent "power to punish," be used as a false expression of authority, extrapolating attributes of the expert act, medical ethics, and public service.

Regarding the unclear criterion that establishes who should and who should not be examined for being a co-worker, the impressions of Quirino Cordeiro and collaborators are highlighted, according to which *the norms of conduct and codes of ethics are the result of social consensus in relation to the most common dilemmas that permeate a certain social group, since the*

*relationships between people need to be mediated by laws, resolutions and codes of behavior. Therefore, the codes of ethics are consensuses that govern different types of conduct*¹⁶.

This excerpt demonstrates that if the codes of ethics are applied to the case of the SIASS expert, the difficulty of limiting the public potential to be examined cannot be used as an argument in the face of inadequacy of decisions and conduct resulting from conflicts of interest in the investigation.

Therefore, the medical expert should apply deontological precepts in order to circumvent the dilemmas and carry out their work properly. However, there may still be difficulties in understanding the body management. In the public service, as in the case of dental care described by Camargo, Batista and Unfe¹⁷, the physician can be intimidated or even pressured to carry out assessments of colleagues characterized in article 93¹¹.

What to do?

Proposing solutions to a problem that involves the entire APF in Brazil is not a simple task. However, the author's experience allows for some considerations.

The heart of the matter is the proximity between experts and those who undergo assessment. From a realistic point of view,

it is understood the difficulty of public bodies and their managers in avoiding expert situations that put the medical servant in a conflict of interest. In this way, the proposition that the expert assessment takes place in centralized locations, serving servants from different locations, would avoid these ethical dilemmas—since there would be several physicians, and not just one, as in many cases when the assessment takes place where the servant works.

Another possible strategy would be to determine that the medical expert of each body would only carry out assessments referring to servants from other departments. However, such a measure would cause discontent and local conflicts, as the servants undergoing assessment would have to go somewhere else, despite the presence of a physician in the same place.

Final considerations

The medical public servant who is an expert in SIASS is continually submitted to the ethical dilemma about the adequacy or not of their compliance with article 93¹¹, which prohibits the expert assessment of a person with whom they have relationships capable of influencing their job. It is up to this professional, therefore, to maintain morality, respect for deontological principles, technical excellence, and common sense as a constant exercise of their professional activity.

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