

# Employment and Education: Are We Stigmatising and Discriminating HIV Patients?



**Assoc Prof Dr Jayakumar Gurusamy**  
 drjkumar@perdanauniversity.edu.my  
 Director of Longitudinal Clerkship  
 Perdana University Graduate School of Medicine  
 Perdana University  
 Life Member MMA

A seemingly healthy and single 21 year-old lady recently confided to me how she lost her first possible job offer as an Information Technology executive when her prospective employer was informed by the company doctor that she is a HIV patient. Her 'sin' was being born to a naive homemaker mother whose deceased husband was a drug addict. She was devastated. In between tears, the lady who spoke flawless English and with a good tertiary academic background said "I will never be able to secure a job, mingle with my family members or friends". Apparently, her prospective employer spilled the beans to her neighbourhood who used to look at her with awe.

I have come across HIV patients from politicians, doctors, lawyers, bankers to blue collar workers. Somehow, the white collar workers manage to stick on to their jobs whilst the blue collar workers who are in dire need of the job fall victim to discriminatory employment policies and practices.

In Malaysia, there were approximately 2.2 million new HIV infections, 1.7 million HIV-related deaths, and 34.2 million people with HIV worldwide in 2011<sup>1</sup>. Current medications for HIV infections, though expensive are very effective in curbing the spread of the disease. They reduce the risk of an HIV-infected person transmitting the infection to another by as much as 96%<sup>2</sup>. A recent International Labour Organisation (ILO) study revealed people living with HIV who are employed are almost 40% more likely to stick to HIV treatment than those without a job<sup>3</sup>.

Stigma and discrimination towards HIV patients remains a pressing problem in Malaysia and elsewhere. A study was conducted by Positive Malaysian Treatment Access & Advocacy Group which was funded by UNAIDS and published in 2012<sup>4</sup>. It revealed 15.6% of the people living with HIV respondents had suffered discrimination in relation to job or income, with 12.4% being refused employment and 6.4% having been refused promotion or having the nature of their job changed. A proportion of respondents reported that they were forced to undergo medical procedures against their will including HIV testing (13.1%) and 9.8% were denied health or life insurance. The stark reality is many of these unfortunate patients are discriminated by many private and Government employers, fellow employees and even by some healthcare professionals.

Similar to other countries, Malaysia has a Code of Practice on Prevention and Management of HIV/AIDS at the workplace<sup>5</sup>. This policy was adopted from ILO and adapted by the Department of Occupational Safety and Health, Ministry of Human Resources. One of the pillars of this policy is the employers' responsibility to be non-judgemental and having in place non-discriminatory policies towards HIV employees. HIV-positive status should not be the sole criterion for disqualification from any form of employment. The Code of Practice further emphasises that employment practices should be based on the scientific and epidemiological evidence that people with HIV/AIDS do not pose a risk of transmission of the virus to co-workers through

ordinary workplace contact. HIV-positive employees should have the right to continue in employment as long as they are able to work and do not pose any danger to themselves, their co-workers and other individuals in the workplace. The procedure for termination of employment on medical grounds for HIV-positive employees should be the same as for any other disease. Disciplinary action should be taken against any employer who discriminates or stigmatises HIV-positive or perceived HIV-positive employees.

Whilst we have a good Code of Practice on paper, many of us remain oblivious to it. HIV patients have an arduous task to secure employment. Many private companies insist on pre-employment HIV testing as a prerequisite before gaining formal acceptance to employment. Some doctors, especially those on company panels are caught in an ethical dilemma between divulging the HIV results to the employer, employee or both. Malaysian Medical Council's (MMC) guidelines stipulates where a medical practitioner has contractual obligations to third parties, such as companies, insurance companies or managed care organisations, the practitioner shall obtain a patient's consent before undertaking any examination or writing a report for the third party<sup>6</sup>. Though a written consent is generally obtained before a pre-employment medical examination, the manner the consent is obtained raises questions. It places an employee in a catch-22 situation. Non-agreement to go for a pre-employment HIV testing will generally result in non-acceptance for employment. Informed consent

does not mean just signing on a dotted line with a cross. Quite often, employees are just oblivious to what they are signing for when they give consent. MMC guidelines for Occupational Health Physicians also states that workers should not be dismissed from employment when detected to be inflicted with infectious or communicable diseases, such as tuberculosis or HIV. It is well to remember that persons living with HIV/AIDS need to be protected from social bias. They should be treated, and whenever possible, allowed to continue working in the same firm with appropriate precautions<sup>7</sup>. The other aspect is patient confidentiality. Companies need to maintain strict confidentiality when they have access to patient records.

Indiscriminate pre-employment HIV testing is a gross discrimination against HIV patients and is unacceptable. It goes against all tenets of social, ethical, economic and medical practices. HIV patients are functionally productive and can live a comfortable life till they get into the stage of full-blown AIDS. A good example is Magic Johnson, the great American professional basketball player who announced his HIV infection in 1991 and retired from active sports. After more than two decades, he still manages and runs Magic Johnson Enterprises, a multi-billion ringgit company successfully till today. HIV patients, like other diseases should not be discriminated. Do we discriminate employees with diabetes, hypertension or obesity? Though, some of the patients may have developed HIV infection through unhealthy lifestyles like sharing of needles for illicit drug usage and sexual proximity, there remain many in the society who developed the illness unknowingly through their sexual partners, especially mothers and children born to mothers infected with HIV. Being non-judgemental to the sick will be refreshing for all. The manner by some employers to exclude the productive sick from gainful employment should be chastised and outlawed. In many countries especially in Europe and North America, laws (Americans with Disabilities Act of 1990) are in place to prevent employers from discriminating against employees

with sicknesses. Many of the laws prohibit employers and doctors from using pre-employment medical examination to exclude prospective employees from employment. These diseases include diabetes, hypertension, obesity, Hepatitis B, Hepatitis C, and HIV.

After 13 years since the Code of Practice on Prevention and Management of HIV/AIDS was put in place by the Ministry of Human Resources, it is timely for the Government to create relevant laws and enforce this code of practice.

~ ~ ~

### Indiscriminate pre-employment HIV testing is a gross discrimination against HIV patients and is unacceptable

~ ~ ~

Another area of stigma and discrimination faced by HIV patients is education. Some institutions of higher learning mandate HIV testing as a prerequisite to further their education. This is surprisingly requested even by some Government agencies when students seek entry or scholarships to study at institutions of higher learning.

In many western countries, guidelines discourage or laws outlaw HIV testing even for medical students. Guidelines from United Kingdom discourage mandatory HIV blood testing for prospective medical students<sup>8</sup>. It recognises the fact the admission of students into medical schools should be a transparent process comprising competitive selection that provides equality of opportunity to all applicants, including those infected with HIV, Hepatitis B or Hepatitis C. However, when a positive result is seen among the prospective medical student, standard operating procedures have to be in place to handle the student while studying, handling patients or when one desires to work as a doctor after graduating. HIV testing for students is outlawed in

US institutions of higher learning.

The manner of handling HIV patients is changing rapidly globally. It is time we change our mindset. HIV patients need our support and assistance to move forward in society. Job modification policies should be encouraged or mandated where there is an adjustment or alteration to the way a job is performed. The modification may be temporary during recovery, or permanent.

Malaysia is in the threshold of being recognised as a developed nation by the end of this decade. We need to elevate ourselves; not only economically but in other parameters like Human Development Index (HDI) which takes into account how income is turned into education and health opportunities and therefore into higher levels of human development. They cannot be discriminated when they want to pursue education and employment. There is no place in the present era to use HIV testing to discriminate one from education, employment and social mobility.

Sean Strub, an eminent writer and HIV activist quotes, "At the beginning of the fourth decade of the HIV epidemic, profound stigma and discrimination is a fact of life for those with the disease – not just socially but within our legal system". As we reflect, this may be true in Malaysia!

#### References

1. Joint United Nations Programme on HIV/AIDS (2012) UNAIDS report on the global AIDS epidemic.
2. Cohen MS, Chen YQ, McCauley M, et al; HPTN 052 Study Team. Prevention of HIV-1 Infection with early antiretroviral therapy. *N Engl J Med* 2011; 365(6):493-505.
3. The Impact of employment on HIV Treatment adherence, International Labour office, Geneva, 2013.
4. Positive Malaysian Treatment Access & Advocacy Group (MTAAG+). PLHIV Stigma Index, Malaysia, 2012.
5. Code of Practice on Prevention and Management of HIV/AIDS at the workplace: Department of Occupational Safety and Health, Ministry of Human Resources, Malaysia; 2001.
6. Malaysian Medical Council guidelines on Confidentiality; 2011.
7. Guidelines of The Malaysian Medical Council: MMC Guideline 005/2006. Ethical Implications of Doctors in Conflict Situations.
8. Guidance from the Medical Schools Council, the Council of Heads and Deans of Dental Schools, Association of UK University Hospitals and the Higher Education Occupational Physicians Group; Medical and dental students: Health clearance for Hepatitis B, Hepatitis C, HIV and Tuberculosis; 2007.