



Understanding biases key to achieving health equity, avoiding litigation

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"I think unconscious bias is one of the hardest things to get at."

— *Ruth Bader Ginsburg*

The AAP believes that “all systems of care should seek to promote and achieve health equity for all children.” The AAP Equity Agenda delineates actions to achieve health equity for children and make the pediatric workforce equitable, diverse and inclusive (<https://bit.ly/AAPequityagenda>).

One critical component of the Equity Agenda is to address bias within the health care system. Bias resulting in health inequity can be explicit or implicit. Explicit bias occurs when an individual is clear about his or her attitudes and acts with intent. Implicit or unconscious bias, on the other hand, operates outside a person’s awareness and beliefs.

In health care, unconscious biases can influence a provider’s understanding of a patient’s beliefs and core values as well as patient communication, leading to a breakdown in trust and the patient-provider relationship (van Ryn M, et al. *Du Bois Review*. 2011;8:199-218).

Litigation based on allegations of implicit bias

Anti-discrimination statutes were created to prevent intentional discrimination. An increasing body of litigation, however, is based on alleged implicit bias.

For example, a hiring decision thought to be affected by implicit bias surrounding protected classifications (e.g., race, religion, sex, gender, national origin or disability) could be subject to litigation. Therefore, it is critical to examine your organization’s hiring practices and ensure that hiring criteria are well-documented (e.g., criteria to determine research or clinical experience) and that employee hiring and promotion decisions document how candidates meet or do not meet selection criteria.

The Implicit Association Test (IAT) has been employed in legal matters to establish the existence of implicit bias. Even if admitted into a case, however, implicit bias typically is not sufficient to sustain a discrimination case without additional evidence. Implicit bias and repeated microaggressions (behaviors or words that subtly and often unintentionally express a biased attitude toward a member of a marginalized group) together may demonstrate systematic discrimination, which then can be deemed as intentional actions.

Medical malpractice cases based on implicit bias must prove that the biased treatment choice does not meet the standard of care.

Another avenue of litigation may be the violation of the physician's fiduciary duty to the patient by not disclosing motives (explicit or implicit) that may be impacting clinical decisions.

Risk management advice

Understanding your biases and those that may occur in your institution and among your providers is a crucial first step to limit their impact on decision-making and achieve broader health equity. Following are some actions that might assist systems and individuals in developing this understanding.

Establish an anti-racism climate in your organization.

Multiple toolkits are available to help you evaluate the anti-racism climate in your organization. Understand how policies that are meant to foster diversity and inclusion are perceived. Develop an understanding of where your organization stands on becoming an anti-racist, multicultural organization and whether this change is symbolic or integrated into the organization's functioning.

Implement a system to report discrimination, unfair treatment or microaggressions. Verify that your organization has a means to anonymously report and investigate microaggressions and implicit or explicit discrimination. Ensure that providers have resources to learn how to identify and define discrimination, unfair treatment and microaggressions.

Collect comprehensive patient health outcome data that include demographic and socioeconomic variables.

Monitor and evaluate your organization's strategies for achieving health equity for all children by gathering data and making it available to providers. Have a process of giving clinicians feedback, paired with an accountability mechanism for quality improvement.

Undertake training on implicit bias and partnership-building.

Verify that clinicians undertake implicit bias training and understand how to make a linguistically and culturally safe and effective medical home. The IAT (<https://implicit.harvard.edu/implicit/selectatest.html>), a free resource, is the most common means of measuring implicit or unconscious bias. Work to develop stronger partnerships with surrounding communities and involve them as you build solutions for equitable care. Utilize clinical decision pathways, which can help limit bias in clinical care.

Implement hiring practices that strengthen and diversify the pediatric pipeline.

Widen your hiring pool, diversify how you recruit candidates and ensure that job descriptions, social feeds and career pages are diversified and inclusive. In addition, ensure that your hiring process minimizes bias by reviewing your interview structure and questions and ensuring your hiring rubrics are standardized.

Equity in the pediatric workforce results in more equitable patient health care (Stanford FC. *J Natl Med Assoc.* 2020;112:247-249).

"Not everything that is faced can be changed, but nothing can be changed until it is faced."

— James Baldwin

Dr. Khanna is a member of the AAP Committee on Medical Liability and Risk Management.

Resources

- [Information on implicit bias in health care from The Joint Commission](#)

- [Crossley J. "Infected Judgment: Legal Responses to Physician Bias." *Vill L Rev.* 2003;48:195](#)
- [Pediatric Mental Health Minute Series](#)
- [Free PediaLink course: Fighting Racism to Advance Child Health Equity](#)

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