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Stopping Discrimination Before It Starts: The Impact of Civil Rights Laws on Health Care Disparities - A Medical School Curriculum

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Module Overview

After this module, participants will be able to:

- Discuss the relevance of civil rights law to health care practice
- Describe the current extent of health disparities
- Identify and address potential discrimination under Title VI of the Civil Rights Act of 1964
- Apply the law to a hypothetical health care scenario
- Understand how the HHS Office for Civil Rights (OCR) enforces Title VI through investigations and technical assistance to health care providers and entities



Title VI of the Civil Rights Act of 1964 (Title VI)

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”



How does Title VI apply to health care practice?



Excerpt from the “Worlds Apart” video: “Robert Phillips’ story”

Film: “Worlds Apart: A Four-Part Series on Cross-Cultural Health Care”
Produced by Maren Grainger-Monsen, M.D. and Julia Haslett
Available from Fanlight Productions at 1-800-937-4113,
www.fanlight.com or by email at orders@fanlight.com



Reflection

What were your reactions to Robert Phillips' perceptions of the treatment he received?



How extensive are health disparities?



Patient Perceptions

Patient perceptions:

- “Race affects my health care”:
 - 17% of African-American patients agree
 - 3% of White patients agree
- “How often do you think our health system treats people unfairly based on race or ethnic background?”
 - 47% of the public responded “very/somewhat often”
 - 29% of physicians responded “very/somewhat often”

Agency for Healthcare Research and Quality, HHH,
National Healthcare Disparities Report, 2004
Kaiser Family Foundation, *National Survey of Physicians*, 2002



Summary of disparities literature

White patients receive more health care services and achieve better outcomes than African-American, Latino, Native American, and Asian-American patients

- Cardiovascular disease: myocardial infarction, heart attack
- Asthma
- Cancer: breast, lung, colorectal
- Mental illness
- HIV/AIDS
- Screening and preventive services

Institute of Medicine, *Unequal Treatment*, 2003



Health Disparities

Examples of racial and ethnic disparities:

- Differences in rates of disease
 - *Prevalence of diabetes*
- Differences in health outcomes
 - *Rates of death from stroke*
- Differences in health care access
 - *Ease of access to prenatal care*
- Differences in treatment
 - *Rates of flu shots*



Why do health disparities exist?



Why do health disparities exist (continued)?

- Actual clinical differences
- Access to health care
 - Lack of insurance
 - Institutional barriers to health care
- Patient-physician interaction
 - Differences in patient-physician communication
 - Linguistic barriers
- Racial bias and discrimination

Adapted from Oddone, 2002



How do physicians
contribute to health
disparities?



Research on provider bias

Schulman study

- Actors portrayed patients with the same clinical characteristics but there were differences in gender and race
- Physicians viewed videotapes and made recommendations for managing chest pain

The study examined:

- Physician recommendations for referrals
- Assessment of personality traits attributed to patients
- Predictions of behavior attributed to patients

Schulman, 1999



Evidence of provider bias

Cardiac catheterization referral rates differed:

- Black patients less likely to be referred than White patients
- Women less likely to be referred than men
- In a combined analysis, Black women fared the worst as compared to White males

Attributed personality traits differed:

- White women were perceived as sadder, more worried
- Black women were perceived as more likely to over-report symptoms
- White men were perceived as more likely to sue
- White women were perceived as more likely to comply with treatment

Schulman, 1999



When does racial bias amount
to a civil rights violation?



Bias and Discrimination

- Beliefs or attitudes alone are not discriminatory.
- If beliefs or attitudes affect the quantity or quality of the health care provided, then treatment may be discriminatory.



Legal Implications of Bias

Impaired trust can result in:

- Suboptimal patient-physician relationship
- Poor communication
- Perception that the physician is not working in the best interest of the patient
- Patient/group perception of systematic bias
- Malpractice litigation

Inequitable treatment leading to disparities may be actionable under the law.

Crossley, 2003



What is the history of Title VI?



U.S. Health Care Prior to Title VI

- Jim Crow laws imposed segregated health care accommodations.
- During the 1940s, African-American physicians were often excluded from white hospitals and as a result developed a separate system that included historically black medical schools and hospitals, as well as professional societies and organizations.



U.S. Health Care Prior to Title VI (continued)

Hill-Burton Act enacted in 1946

- Provided federal matching funds to states for construction of hospitals that did not discriminate on the basis of race, color, or creed
- Included provision for “separate but equal facilities”
- Provision struck down on appeal as unconstitutional in 1963



U.S. Health Care Prior to Title VI (continued)

- President Johnson signed:
 - the Civil Rights Act into law on July 2, 1964, including Title VI; and
 - the Medicare and Medicaid legislation into law on July 30, 1965.
- The bulk of the income received by most hospitals and their physicians flows from the federal government.
 - *Therefore, these hospitals and their physicians must comply with Title VI or risk losing their funding.*





How is Title VI enforced
today?



Title VI of the Civil Rights Act of 1964 (Title VI)

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Who does Title VI protect?

Everyone

Title VI protects people of every race, color or national origin from unlawful discrimination.



What entities are covered by Title VI?

Recipients of Federal financial assistance can include:

- Hospitals, nursing homes, home health agencies, managed care organizations;
- Health research programs;
- Physicians, dentists, hospital social workers; and
- Other providers who receive funding from HHS.



Two Legal Frameworks for Reviewing Title VI Claims

Disparate **Treatment** Discrimination

- Similarly situated persons treated differently based on their race, color, or national origin
- Action was, at least in part, based on race, color, or national origin

Disparate **Impact** Discrimination

- Policy or practice that is neutral on its face, but has a disproportionate adverse impact on persons of a particular protected class



Unlawful Discrimination under Title VI

Recipients of Federal financial assistance may not on the basis of race, color, or national origin:

- Deny or restrict an individual's enjoyment of a service, aid or benefit under the program;
- Provide a benefit which is different or provided in a different manner; or
- Subject an individual to segregation or separate treatment.



Unlawful Discrimination under Title VI (continued)

Recipients of Federal financial assistance may not on the basis of race, color, or national origin:

- Treat an individual differently in determining eligibility;
- Deny an individual an opportunity to participate in the program (including as an employee); or
- Deny an individual an opportunity to participate on a planning or advisory board.



Title VI and Limited English Proficient (LEP) Persons

- An LEP individual is a person whose primary language is not English and who has a limited ability to read, write, speak or understand English.
- Title VI and the implementing regulations prohibit conduct that has a disproportionate adverse impact on the basis of national origin. Failure to provide LEP individuals meaningful access may constitute discrimination.
- Health care providers may be required to provide language access services at no cost if necessary to ensure that persons are not discriminated against on the basis of national origin.



Examples of Language Access Services

- Bilingual staff
- Contract interpreters
- Telephonic interpreters or language lines
- Videoconferencing interpretation
- Translated materials

For more information about Title VI's prohibition against national origin discrimination and health care providers' obligations to provide language access services, visit OCR's webpage at:
<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/index/html>



OCR's Enforcement Responsibilities

The HHS Office for Civil Rights (“OCR”) enforces:

- laws that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and religion by recipients of Federal financial assistance from HHS; and
- the Privacy Rule under the Health Insurance Portability and Accountability Act (“HIPAA”) that protects health information from improper use and disclosure.



OCR's Enforcement Responsibilities (continued)

- OCR's responsibilities include:\
 - investigating complaints from the public;
 - conducting compliance reviews of health care facilities;
 - securing voluntary corrective action; and
 - initiating enforcement proceedings.
- OCR provides technical assistance to health care providers and entities to promote compliance with the law.
- OCR conducts public outreach to educate consumers about their rights.

For more information and to contact OCR visit:
<http://www.hhs.gov/ocr/offie/about/rgn-hqaddresses.html>



Why should physicians be concerned about Title VI?

Physician Roles in Health Care



Physician Roles in Health Care

- Private practice
- Community practice
- Managed Care Organization
- Board of Directors of a hospital, health clinic or community-based organization
- Advocate for patient rights
- Research scientist
- Academic clinical educator



Social Responsibility

Professionalism

- Devotion to medical service
- Public profession of values
- Negotiation of professional values

Promote systems of care

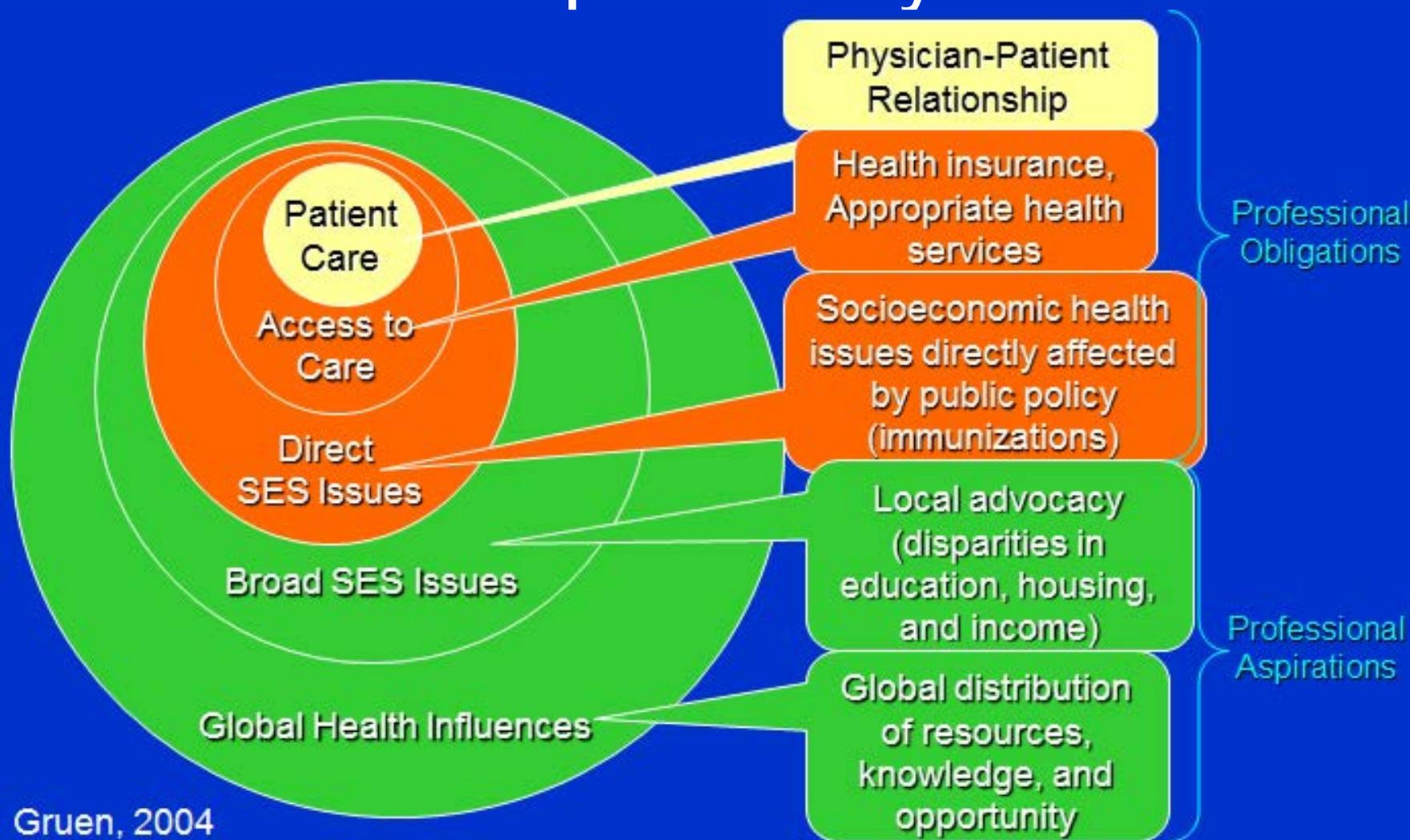
- Ensure patients have access to quality health care
- Address the rising cost of health care

Advocacy

- Involvement in addressing socioeconomic factors associated with poor health outcomes

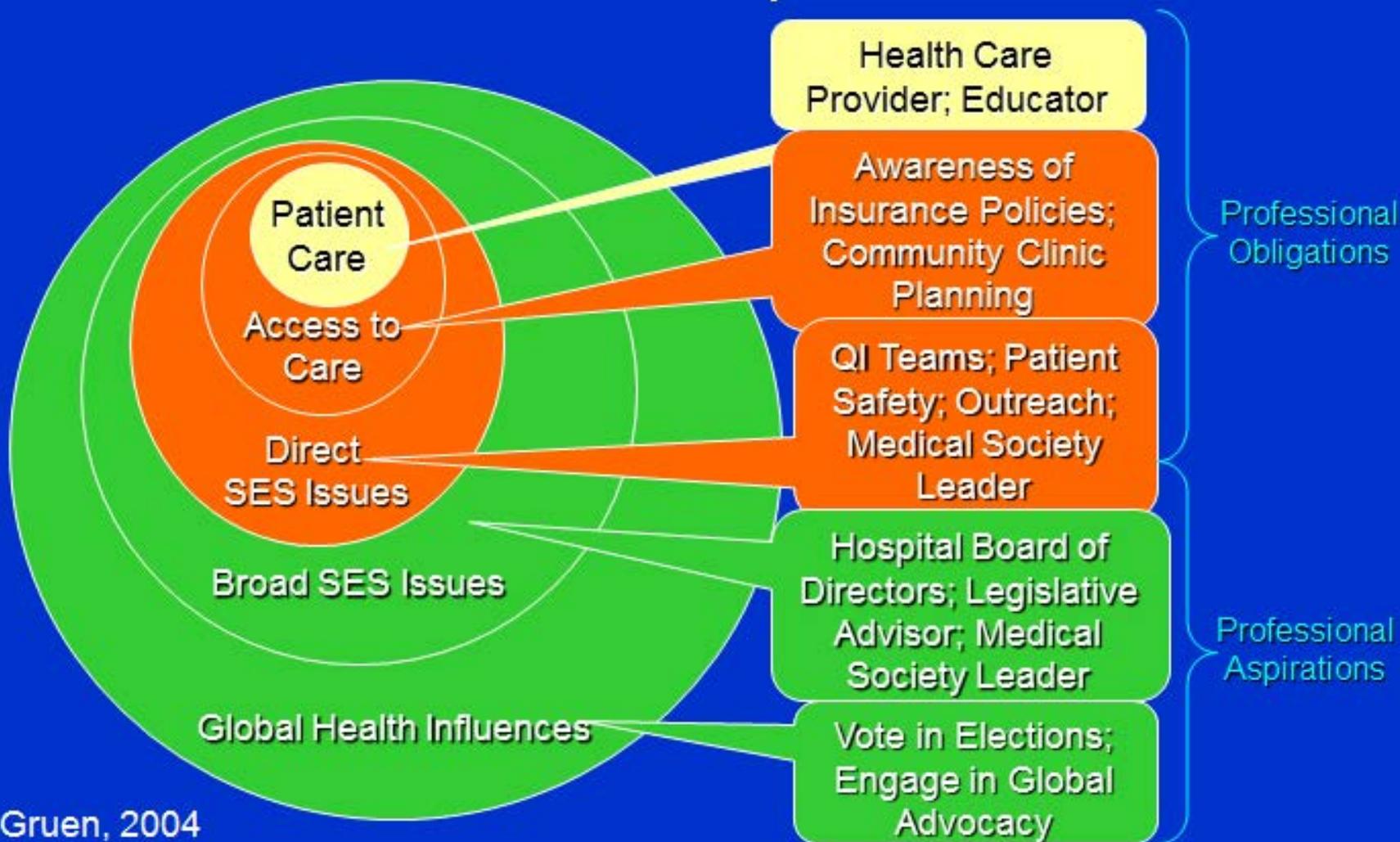
Wynia, 1999; Gruen, 2004, 2006

Domains of Physician Responsibility





Examples of Physician Roles and Responsibilities





Analysis of hypothetical cases to identify health disparities and potential Title VI violations



Questions for Analysis of the Hypothetical

Disparate Treatment

- Was the patient a member of a protected class?
- Did the patient apply for or seek services from a federally assisted health care provider?
- Was the patient eligible to receive the services?
- Was the patient denied services or provided services of a lower quality or quantity?
- Did the federally assisted health care provider grant services of a higher quality or quantity to patients of a different race, color or national origin?

Disparate Impact

- Is the policy or practice neutral on its face?
- Does the policy have a disproportionate adverse impact on the basis of race, color or national origin?
- Is there a legitimate, nondiscriminatory objective for the challenged action?
- Are there any “equally effective alternatives” that would further that objective with less disproportionate adverse impact?



Small Group Discussion

- Each small group will discuss an End Stage Renal Disease (“ESRD”) case to consider:
 - if and when potential discrimination has occurred under Title VI and
 - what actions should be taken.

Large Group Discussion

- Each small group will report on its efforts to identify and address discrimination in the ESRD Hypothetical.



End Stage Renal Disease Hypothetical: Analysis

- Small Group #1 Assignment: Applying Title VI of the Civil Rights Act of 1964, do any of the facts point to disparate **TREATMENT**?
- Small Group #2 Assignment: Applying Title VI of the Civil Rights Act of 1964, do any of the facts point to disparate **IMPACT**?
- Both Groups: Consider actions the providers or health system could take that would **diminish the discriminatory element.**



ESRD Case #1: Disparate Treatment Analysis

- Was Mr. Jackson treated differently by the dialysis center based on race?
- Did the medical staff make assumptions based on race?
- Did such assumptions impact medical staff decisions not to pursue the transplant option further with Mr. Jackson?



ESRD Case #2: Disparate Impact Analysis

Is the policy or practice neutral on its face?

Does the policy have a disproportionate adverse impact on the basis of race, color or national origin?

Has the recipient articulated a legitimate, nondiscriminatory objective for the challenged action?

Are there any “equally effective alternatives” that would further that objective with less disproportionate adverse impact?



ESRD Hypothetical: Increasing Access

Title VI aside, what actions could the Dialysis Center chain take to increase access for minorities to the Centers' services, aids, or benefits?

What other actions could help address health disparities among people with ESRD?



Module Summary

These were our goals:

- Discuss the relevance of Civil Rights law to health care practice
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- Identify and address discrimination under Title VI of the Civil Rights Act of 1964
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Questions to Consider

- Do you feel empowered to address national origin or racial bias?
- What will you do to learn more about health care that reduces health disparities?



Questions to Consider (continued)

Does your organization provide services of a higher quality or quantity to majority patients in comparison to minority patients?

For example:

- Do your facilities in minority areas have comparable specialty clinics, services, and hours of operation, when compared to your facilities in majority areas?
- Does your organization provide comparable services to Medicaid recipients and non-Medicaid recipients?
- Does your organization provide effective language access services to LEP individuals?
- Has your organization developed and implemented initiatives to address health disparities?
- Has your organization developed nondiscrimination policies and complaint procedures and distributed them to the public?
- Does your organization advise patients that they may file a complaint with the HHS Office for Civil Rights?



Resources

- National Consortium for Multicultural Education for Health Professionals: <http://culturalmeded.stanford.edu/>
- HHS Office for Civil Rights: <http://www.hhs.gov/ocr>
- HHS Health Resources and Services Administration, “Unified Health Communication 101: Addressing Health Literacy, Cultural Competency, and Limited English Proficiency (LEP)” (on-line course) <http://www.hrsa.gov/healthliteracy/training.htm>
- HHS Office of Minority Health: <http://www.omhrc.gov/>
“A Physician’s Practical Guide to Culturally Competent Care” (on-line course); “Health Care Language Services Implementation Guide” (web-based interactive planning tool) <http://www.thinkculturalhealth.hhs.gov>
- Cultural Competence Online for Medical Practice (CCOMP), “A Clinician’s Guide to Reduce Cardiovascular Disparities” (on-line course) <http://www.c-comp.org>
- Federal Interagency Working Group on LEP: <http://www.lep.gov/>



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