

Why race, ethnicity can help determine COVID-19 severity risk

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Editor's note: *The Northern District of New York has dismissed the Jacobson v. Bassett complaint based on lack of subject-matter jurisdiction.*

If a patient with COVID-19 is of a nonwhite race or Hispanic or Latino ethnicity, the New York State Department of Health (NYSDOH) in December advised that physicians should consider that background when assessing that patient's chances of developing severe illness and, in turn, whether to prescribe scarce oral antiviral treatments.

The New York City Department of Health and Mental Hygiene (NYC Health) also said that systemic health and social inequities have contributed to an increased risk of severe COVID-19 illness.

Two lawsuits are challenging the NYSDOH guidance and seek preliminary injunctions to stop the policy. One of the lawsuits also challenges NYC Health's stance on the issue.

The Litigation Center of the American Medical Association and State Medical Societies and the Medical Society of the State of New York (MSSNY) joined more than a half dozen other organizations in filing amicus briefs in the two cases supporting the NYSDOH guidance and the reasoning behind it, as well as NYC Health's position.

The briefs explain why considering race and ethnicity is the right thing to do medically and ask the courts to deny the preliminary injunctions requested in *Jacobson v. Bassett*, filed in the U.S. District Court for the Northern District of New York, and *Roberts v. Bassett*, which was filed in the U.S. District Court for the Eastern District of New York. The *Bassett* brief also asks the court to grant the state's request to dismiss the lawsuit.

The briefs, filed in February, tell the courts that patients from historically marginalized racial and ethnic groups will have their assigned risk group accurately reflect their level of risk only if the increased risk of severe illness from COVID-19 that these individuals face is accounted for. Failing to do so would mean that the risk these patients face "would be underappreciated," the briefs tell the courts.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center's case-selection criteria.

Acknowledging systemic inequities

Patients from historically marginalized racial and ethnic groups have disproportionately higher rates and severity of medical conditions that increase the risk of developing severe COVID-19 symptoms, the briefs tell the courts, citing relevant research.

For example, in New York state, Black people comprised 16% of the population but accounted for 22% of COVID-19 deaths, a 2020 study showed. As of March 2021, the COVID-19 hospitalization rate for Asian Americans in New York was 2.5 times that of white New Yorkers. Meanwhile, Black patients saw hospitalization rates 4.2 times higher and Latinx patients saw rates 3.8 times higher. Latinx is a gender-neutral term used to describe people with Latin American heritage.

“Although race is not an inherent genetic or biological trait and therefore does not genetically contribute to a higher risk of medical conditions, there is no serious medical or public health dispute that longstanding systemic health and social factors have led to a disproportionately higher burden of COVID-19,” the briefs say.

The nation's long history of racist policies has led to adverse outcomes for historically marginalized racial and ethnic groups. This includes segregation and persistent inequities in housing, employment, access to health care and other life opportunities.

“Crucially,” the briefs say, “these systemic inequities manifest in an increased risk of developing severe COVID-19 symptoms relative to whites—a risk that is not captured by other immediately observable information such as age, vaccination status and presence of underlying medical conditions,” making it important for the courts to uphold the NYSDOH guidance on the risk factors doctors should consider when treating COVID-19 patients.

In the *Roberts* case, the Eastern District of New York dismissed the plaintiffs' complaint in mid-March, holding that they do not have standing to bring their claims against the city and state.

According to the court, “Plaintiffs have not explained how nonbinding guidance that directs medical practitioners to consider race and ethnicity as one factor in prescribing the treatments impacts them in some concrete and particularized manner.”

The court also held that the plaintiffs failed to allege an injury that was actual or imminent, failed to show their alleged injury was traceable to the defendants, and failed to show that enjoining the guidance would redress their alleged injury.

Although the court didn't need to reach the merits, because it dismissed the complaint on jurisdictional grounds, the opinion recognizes that physicians and health professionals “could be expected to follow” CDC guidance that they consider a patient's race or ethnicity “and other available scientific and medical research about the nature of race and ethnicity as risk factors.”

Learn more with the AMA about the impact of COVID-19 among patients from historically marginalized racial and ethnic groups, and check out other excellent COVID-19 health equity resources.