



Diversity and Inclusion: Opportunities, Successes, and Legal Guardrails

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Agenda

- Legal Landscape
- NCCPA Case Study
- Take-Aways, Lessons, and Cautions



Legal Landscape, Terminology

What do we mean by Diversity and Inclusion?

- *Diversity*: representation of difference in a setting
- *Inclusion*: valuing differences and ensuring equitable and welcoming treatment



Legal Landscape, Related Terminology

- *Equity* = beyond equal opportunity to account for disadvantage and support equal participation and benefits
- *Belonging* = the sense of safety and inclusion



Legal Landscape, Related Terminology

- *Accessibility* = focused on supporting inclusion of those with disabilities
- *Justice* = Dismantling barriers to resources and opportunities



Legal Landscape: D&I in the Law

Three federal laws require actions to support D&I:

- *Americans with Disabilities Act*
(obligation to remove barriers and provide accommodations)
- *Government contractor affirmative action regulations*
(analyze personnel actions and conduct outreach)
- *Title IX*
(gender equity in college sports: participation, \$, other benefits)

Everything else:
“Do Not Discriminate”



Legal Landscape: Federal Anti-Discrimination Laws

- **14th Amendment:**
Equal Protection of the law (*public institutions*)
 - **42 U.S.C. § 1981** (no race discrimination in making or enforcing contracts)
 - **ADA** (disability: *employment and public accommodations; courses and examinations*)
- Don't ignore state laws!*



Legal Landscape: Federal Anti-Discrimination Laws

- **Title VII**

(race, color, religion, sex*, national origin: *employment*)

- **ADEA:**

(age: *employment*)

**Bostock* (2020): sexual orientation & gender identity bias = sex bias

- **Title VI**

(race, color, national origin: *federal funded programs*)

- **Title IX**

(sex: *federal funded educational programs*)



Students for Fair Admissions v. Harvard

- June 2023 Supreme Court decision
- Challenged race-based “plus” factors in college admission decisions
- Against UNC: based on 14th Amendment
- Against Harvard: based on Title VI



Students for Fair Admissions v. Harvard

- 14th Amendment: governmental racial classification prohibited unless “necessary” to “further compelling governmental interests”
- *Grutter* (2003): UMich Law School’s interest in diverse student body “compelling” – holistic affirmative action OK



Students for Fair Admissions v. Harvard

- *SFFA* (2023): Twenty years is long enough:
 - “race may never be used as a ‘negative’”
 - race “may not operate as a stereotype”



Lessons from SFFA v. Harvard

- **No direct impact** on employment, licensure, or certification practices
 - *Grutter* exception to anti-discrimination rules never applied!



Lessons from SFFA v. Harvard

- Indirect impact: has prompted legal challenges to other diversity-focused initiatives
- *SFFA* majority opinion: applicants “must be treated based on [their] experiences as an individual—not on the basis of race”



Aftermath: Pending Challenges to D&I

American Alliance for Equal Rights lawsuits under Section 1981:

- August 2023 – sued Fearless Fund Management, LLC over grants limited to Black female applicants
- August 2023 – sued two law firms over minority-targeted fellowships



Legally Permissible D&I in Employment

- Must avoid ***selection decisions*** that are race-based (or gender/age/etc.)
- Anti-discrimination ≠ race-blindness
- **No federal law prohibits non-exclusionary diversity measures or inclusivity efforts**



Legally Permissible D&I in Employment

Emulate government contractor sector:

- Look at demographic data to **identify impediments to EEO**
- Look at demographic data to **target outreach and recruiting efforts**
- **Identify problem areas and try new approaches**



Legally Permissible D&I in Employment

- Take broad view of diversity – more than Census categories
- Focus on *inclusion*, rather than *exclusion*
- Inclusion gives diversity gains staying power



Legally Permissible D&I in Other Contexts

Predicate question :

Which law (if any) applies to consideration of race or gender for purposes of building diversity, for this context and this action?



Legally Permissible D&I in Other Contexts

Many contexts and activities not within scope of federal anti-discrimination laws:

- Non-governmental orgs with no federal funding:
 - Volunteer roles – Board members, committees
 - Attention to design of certification materials and processes



Diversity Initiatives Matter

- D&I efforts uncover and reduce discrimination
- Studies show diversity improves organizations
 - 2016 *HBR* article: “nonhomogenous teams are simply smarter: **diverse teams ... outperform homogenous ones** in decision making because they process information more carefully”
 - More innovation, above-average financial returns





Incorporating DEI Initiatives Throughout an Organization

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- National certifying organization for PAs



- Over 168,000 PAs are currently board certified.
- All state licensing boards require NCCCPA certification (PANACE) for initial PA license.
- PAs log CME every 2 years and pass a recertification exam every 10 years to maintain certification.
- Voluntary Certificates of Added Qualifications are available in 11 specialty areas.



Diversity Initiatives Matter

A commitment to DEI is more than a statement on your website. *Intention is required.*

Examples of how DEI may be incorporated throughout an organization.

Internal

- Board
- Staff
- Exam Program

External

- Certified Profession
- Community
- Policy Makers



Diversity Initiatives Matter - Board

- Consider the perspectives and expertise needed to make strategic decisions and identify any existing gaps.
- Be intentional when recruiting for Board positions.



Diversity Initiatives Matter - Board

- Create a culture of inclusion (i.e., *Board Norms*)
- Develop welcoming announcement materials.
- Provide Board development opportunities.
- Choose service projects that help increase awareness and benefit the community.



Diversity Initiatives Matter - Staff

- Review recruitment practices and expand where you post positions.
- Provide formal professional development opportunities.
- Promote a culture of inclusivity.
- Identify ways to engage staff and listen to them.
- Solicit feedback.
- Acknowledge mistakes.



Diversity Initiatives Matter - Staff

IDEA Council (Inclusion, Diversity, Equality & Accessibility)

- The IDEA Council seeks to promote understanding within the organization by facilitating dialogue, providing information, and fostering respect for all NCCPA employees. Its mission is to continuously work toward the achievement of equity by further improving inclusion, diversity, equality, and accessibility efforts at NCCPA. Equity is achieved when all members of NCCPA's diverse population of employees have equal opportunities and support to succeed and grow. The visible benefits of equity creates better employee engagement, higher retention rates and better business outcomes for all.
- Staff led and Leadership funded
- Members elected from each department, rotating VP serves as leadership support
- Wide range of activities planned throughout the year (virtual and in-person)



NCCPA, YOU'RE INVITED TO...

Understanding Juneteenth

THURSDAY, JUNE 15TH AT 1:00 PM EDT



Join us on Zoom!

Meeting ID: 889 6271 7462
Password: juneteenth

2022 ATLANTA

PRIDE RUN 5K

STRONGER TOGETHER

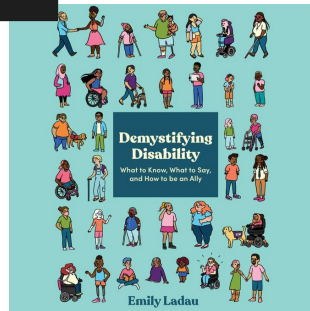
NCCPA JOIN US FOR A...

VIRTUAL DESKERCISE CLASS!

MONDAY, AUGUST 8TH | 11:30 AM EDT

Get your desk chair and meet us on zoom!

NCCPA



2023 CLEAR ANNUAL EDUCATIONAL CONFERENCE



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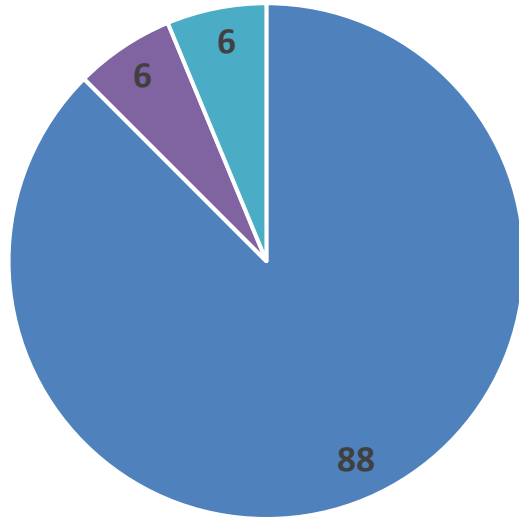
Diversity Initiatives Matter – Exams

- Provide cultural sensitivity training to item writers/reviewers.
- Incorporate sensitivity reviews into the exam development process.
- Recruit diverse panels of SMEs.



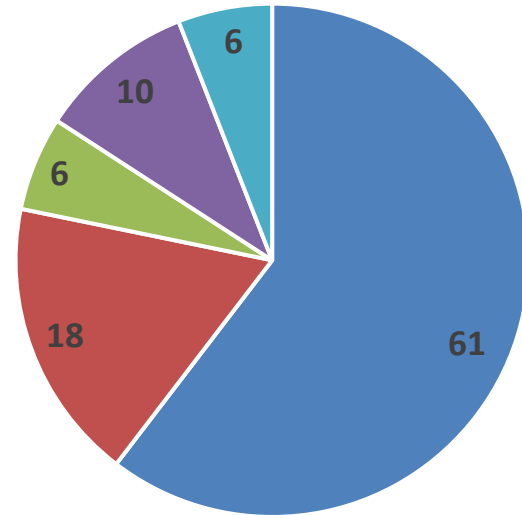
Diversity Initiatives Matter – Exams

Race by Percent of PAs Involved in Item Development for Certifying and Recertifying Exams in 2012 and 2022



2012

- White
- Black/African American
- Asian
- Other
- Prefer Not to Answer

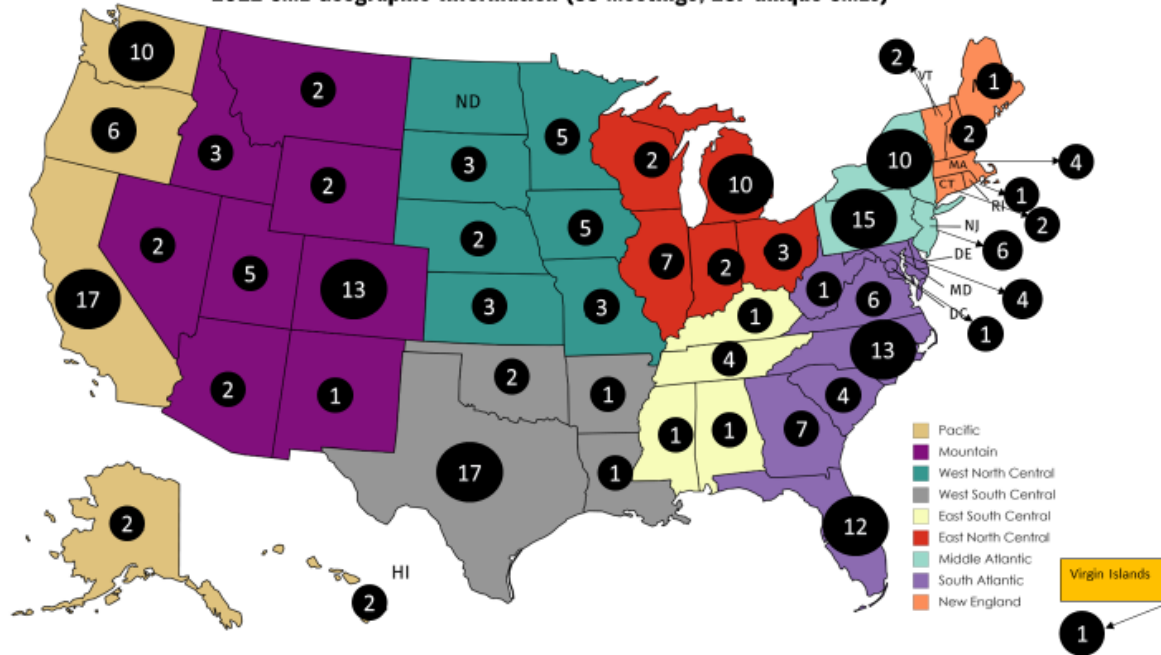


2022



Diversity Initiatives Matter - Exams

2022 SME Geographic Information (39 Meetings; 237 unique SMEs)



Diversity Initiatives Matter – Profession

- Undergoing extensive review of policies and outward facing content (web, routine emails, etc.) and updating, as needed, to be more inclusive in content.
- Translation of web site content into Spanish



Diversity Initiatives Matter – Profession and Community

Certified PAs Do That!

- Website created by NCCPA to help inform the public about the PA profession
- Includes information on becoming a PA, and stories and health tips from PAs
- Also provides another avenue for DEI initiatives
- www.pasdothat.net

*Certified
PAs Do That!*



Why I Volunteer with NCCPA – April Gentry, PA-C



Mother-Daughter Certified PA Duo
Committed to Improving Health Care
for Alaska Native/American Indians



NCCPA's 2022 Inaugural REPRESENT! Summit

“When They See Us”

- 1.5 day meeting held at the National Center for Civil and Human Rights in Atlanta
- Purpose: discuss strategies to develop and sustain DEI efforts in the PA profession, diversity the PA workforce, and promote inclusivity within PA educational and workplace settings
- Participants: clinically practicing PAs, PA educators, PA students, and leaders of the PA organizations
- Keynote speaker: Dr. Uche Blackstock



Leaders of the 4 major national PA organizations signed a pledge to take an active stance in addressing racial and ethnic inequalities in the profession and elevate DEI as an ongoing priority for each organization.

Diversity Initiatives Matter – Profession and Community

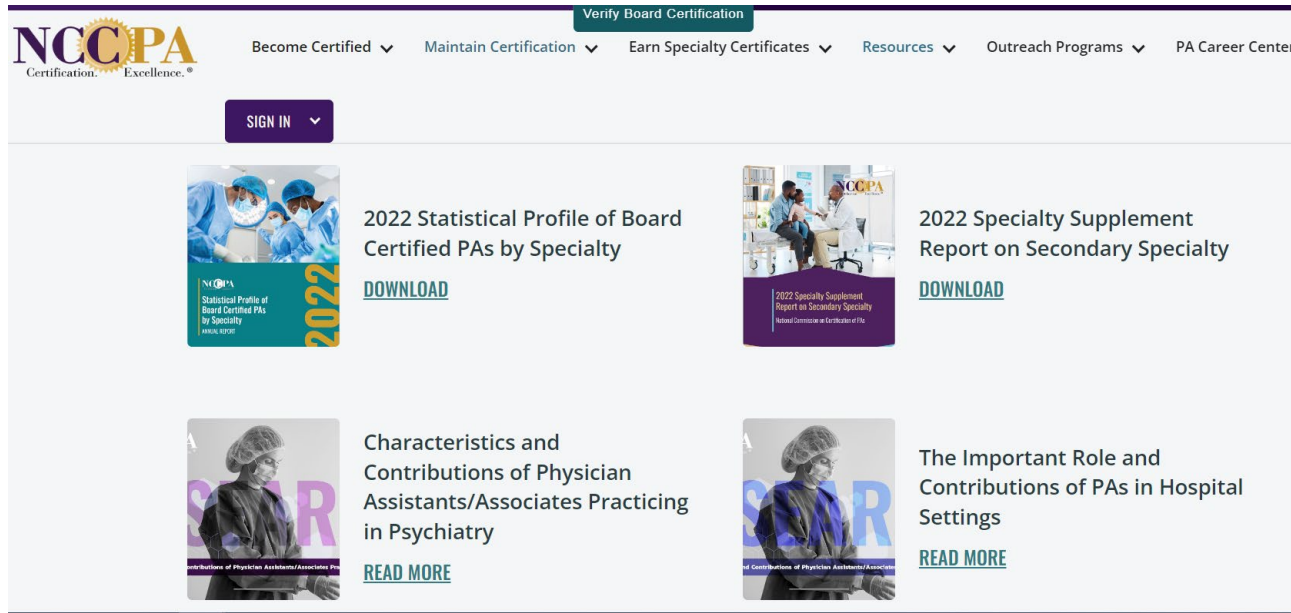
NCCPA's Back 2 School Program

- Program to encourage PAs to speak to elementary, middle, high school, and pre-PA students about the PA profession as a potential career path
- Introducing the PA profession to students in racial and ethnic minority groups is one way to help make an impact on the profession's diversity.
- Resources available:
 - Presentations
 - Infographics
 - Activity books (English and Spanish)
 - Board games



Diversity Initiatives Matter – Policy Makers

- Publish 4 workforce reports each year
- Conduct research and publish findings on a variety of time sensitive and relevant workforce issues



The screenshot shows the NCCPA website homepage. At the top, there is a navigation bar with the NCCPA logo (Certification... Excellence.®) and a 'Verify Board Certification' button. The navigation menu includes: Become Certified, Maintain Certification, Earn Specialty Certificates, Resources, Outreach Programs, and PA Career Center. Below the navigation is a 'SIGN IN' button. The main content area features four report cards:

- 2022 Statistical Profile of Board Certified PAs by Specialty**: Includes a 'DOWNLOAD' link.
- 2022 Specialty Supplement Report on Secondary Specialty**: Includes a 'DOWNLOAD' link.
- Characteristics and Contributions of Physician Assistants/Associates Practicing in Psychiatry**: Includes a 'READ MORE' link.
- The Important Role and Contributions of PAs in Hospital Settings**: Includes a 'READ MORE' link.



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Thank You

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