

# An Ethics & Professionalism Consideration: Cultural Competency Training Re LGBTQ Clients & Colleagues<sup>1</sup>

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While the idea of “Cultural Competency” has been around for decades, LGBTQ-specific initiatives are fairly recent. The programs saw their earliest traction in the medical field within just the last ten years, as health care professionals realized health disparities among the LGBTQ patient population and knew they needed to begin caring for these patients a different way.

Just as members of the Institute of Medicine “recognized that not only are lesbians, gay men, bisexual men and women, and transgender people all separate groups, [and] each of these groups encompasses subpopulations with their own unique health needs,”<sup>3</sup> so too must the legal community recognize the distinct identities of LGBTQ persons and their unique legal service needs.

Medical research suggests that LGBTQ individuals’ health disparities are linked to social stigma, discrimination, oppression, denial of civil and human rights, and misunderstandings of the unique health needs that they face.<sup>4</sup>

It only makes sense that LGBTQ individuals’ legal service disparities – in addition to discrimination and oppression in the laws themselves – are linked to the same causes.

It is thus imperative that we as legal professionals practice ethically and with cultural competence, to respect and properly serve all LGBTQ persons: clients and colleagues alike.

## What is “LGBTQ Cultural Competence” and How Does it Relate to Legal Ethics?

Cultural competence generally “is more than embracing diversity and promoting inclusion.” It instead requires “the ability to adapt, work and manage successfully in new and unfamiliar cultural settings...where assumptions, values and traditions differ from those to which [the person is] accustomed.”<sup>5</sup>

Regarding our duty as legal professionals, the Rules of Professional Conduct mandate that we shall provide competent representation to clients and shall not engage in harassing or discriminatory conduct.

When we are not competent regarding our clients’ cultures and needs, we risk being unconsciously oppressive and discriminatory. This undermines not only our clients’ confidence in us as individuals, but also their confidence in the legal profession and the legal system as a whole.

LGBTQ cultural competence is thus a necessary component of providing ethical and professional legal services.

### How to Develop Cultural Competency

Cultural competency is an ongoing process (not an endpoint!) that begins with developing an awareness that we lack knowledge of a particular culture.

Thus, to fully understand the importance of cultural competency and to properly develop the necessary skills, we must overhaul our current cultural perspectives.

#### ABA Model Rules of Professional Conduct, Rule 1.1: Competence

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

#### ABA Model Rules of Professional Conduct, Rule 8.4: Misconduct

“It is professional misconduct for a lawyer to: ... (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”

##### *Official Comment:*

¶ 3 “Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others.”

¶ 4 “Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.”

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<sup>3</sup> Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* ix (2011).

<sup>4</sup> HealthyPeople.gov, *Lesbian, Gay, Bisexual, & Transgender Health: Overview* (2016), <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>

<sup>5</sup> Sylvia Stevens, *Cultural Competency: Is There an Ethical Duty* (2009), <https://www.osbar.org/publications/bulletin/09jan/barcounsel.html>

Legal professionals can adapt the health care field's *Purnell Model of Cultural Competence* to better understand how to (1) become aware of our cultural assumptions and lack of knowledge, (2) learn information about cultures that are not our own, (3) appropriately and skillfully use that knowledge in specific interventions and interactions, and (4) develop a level of comfort with the knowledge and skills such that we unconsciously and automatically provide culturally competent and congruent legal services to clients of diverse cultures.<sup>6</sup>

**CAUTION must be taken, however, as unconscious competence can be dangerous! Because individual differences exist within cultural groups and cultures are ever-changing, knowledge-acquisition is an ongoing process.**

Successful cultural competency requires (1) Awareness, (2) Desire, (3) Knowledge, (4) Encounters, and (5) Skills.<sup>7</sup>

**AWARENESS:** self-examination of our own biases, feelings, assumptions, and stereotypes. Cultural awareness usually results in our realization that preconceived opinions either help or hinder our abilities to effectively (and competently) coordinate with others and provide legal services.<sup>8</sup>

"Implicit bias" is a term familiar to many legal professionals. Confronting our implicit biases challenges us to self-assess unconscious assumptions about people based on their varying attributes. Our biases (both conscious and unconscious) can lead to oppression, discrimination, and unethical and unprofessional treatment of our clients and colleagues.

*Project Implicit*, an implicit association project through Harvard University, offers many tests to measure "the strengths of associations between concepts (e.g., black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy). The main idea is that making a response is easier when closely related items share the same response key."<sup>9</sup>

Discussions of implicit bias have largely appeared in regards to racial and ethnic biases, as has the term "microaggressions."

Psychologists define "racial microaggressions" as "brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color."<sup>10</sup>

Microaggressions as regarding sexual orientation and gender identity also exist. Cultural competency helps combat both implicit bias and microaggressions!

Cultural awareness usually leads to cultural desire...

**DESIRE:** making the effort to recognize that we lack knowledge about a particular culturally different population is usually paired with an aspiration and desire to become culturally competent.<sup>8</sup>

Having cultural knowledge is irrelevant if we do not care enough about our colleagues and clients to actually put it to use. If we are not motivated to learn and change – if we do not have cultural awareness and desire – then we are not culturally competent, any knowledge we do acquire is useless, and we will not be able to ethically and professionally serve our clients.

**KNOWLEDGE:** acquisition of cultural information is not a one-time endeavor -- it must be ongoing.<sup>8</sup> Particularly with the LGBTQ population, considerations, needs, and terminology are constantly changing and our awareness of our clients' needs must change with it.

**ENCOUNTER:** each and every client and colleague interaction is an "encounter" and an opportunity to connect, collaborate, and change existing beliefs and values about cultures different from our own.<sup>8</sup>

Culturally competent encounters enhance cultural awareness, desire, and knowledge and provide for the counteraction of biases (implicit and otherwise), stereotypes, oppression, discrimination, and microaggressions.<sup>8</sup>

In order to have successful cultural encounters, we must have the skills to conduct a cultural assessment.

**SKILLS:** for our purposes, cultural skill is the ability to provide legal services without bias and prejudice, taking care to not inadvertently discriminate and oppress LGBTQ individuals.

To effectuate this, we must not only seek out and stay familiar with sexual orientation and gender identity terminology and unique needs, but we must also learn and utilize techniques to make space for LGBTQ persons.

### **LGBTQ Culturally Competent Awareness & Knowledge**

Important distinctions must be made between what knowledge and information constitutes LGBTQ cultural competency in the health care field (as referenced in resources cited here) versus what details are needed to interact respectfully with clients and colleagues and provide competent legal services based on case specifics.

<sup>6</sup> Larry Purnell, *The Purnell Model for Cultural Competence* 11:2 *Journal of Multicultural Nursing & Health* 9 (2005).

<sup>7</sup> Josepha Campinha-Bacote, *The Process of Cultural Competence in the Delivery of Healthcare Services* (2015), <http://transculturalcare.net/the-process-of-cultural-competence-in-the-delivery-of-healthcare-services/>.

<sup>8</sup> *Id.*; Chikita Brown Mann, *Cultural Competence and the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Patient* Feb./March 2017 *CareManagement* 31-32.

<sup>9</sup> Project Implicit, *About Us and Take a Test* (2011), <https://implicit.harvard.edu/implicit/takeatest.html>.

<sup>10</sup> Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice* 62:4 *American Psychologist* 271 (2007).

There are many implicit biases and microaggressions regarding sexual orientation and gender identity that result in oppression and discrimination in the health care field, legal profession, and all other arenas.<sup>11</sup> Most of these are rooted in the way society views gender, sex, and intimate relationships.

To become LGBTQ culturally competent, then, we must examine our assumptions about gender, sex, and intimate relationships, and how those assumptions effect our interactions – our “cultural encounters” – with colleagues and clients.

Using appropriate language is a large part of culturally competent knowledge and skill.

For example, the acronym “LGBTQ” (standing for “lesbian, gay, bisexual, transgender, and queer/questioning”) has particular connotations meant to signal diversity, inclusivity, and acceptance. At the same time, it is also a generalized grouping of sexual orientations and gender identities that must be regarded separately and discretely in order to provide adequate (and competent) legal services to all individual members of the “LGBTQ” community.

### **LGBTQ terminology and definitions constantly change!**

It is our responsibility as culturally competent legal professionals to stay familiar with the LGBTQ culture and set aside space for *all* persons to self-identify their sexual orientations and gender identities.

Because of the ever-changing nature of LGBTQ culture (and the variances in definitions across sources), this article will not address the use and meaning of specific terminology.<sup>12</sup>

## **LGBTQ Culturally Competent Encounters & Skills**

As legal professionals, our goal is to interact with our colleagues and clients in culturally competent encounters wherein we permit others to identify and express themselves without placing upon them our own assumptions and biases.

Common scenarios in which we let our implicit biases reign include assuming a person is a man or a woman based on how the person dresses, or assuming a female client wearing a wedding ring has a husband.

Misgendering our clients and our clients’ significant others are examples of harmful microaggressions and failures in cultural competency.

Furthermore, identifying people and referring to them using our implicit biases and assumptions of sexual orientation and gender identity hinders our ability to provide competent representation to our clients.

To that end, this article concludes with a list of concrete ways we can practice LGBTQ cultural competency every single day, as well as resources for further reading.

### **Use (and ask for) personal pronouns.**

Personal pronouns include she/her/hers, he/him/his, and the gender-neutral they/them/their.

We should not rely on our own implicit biases and assumptions based on how a person looks, dresses, or acts (their “gender presentation”) by assigning them personal pronouns before they tell us which ones they use.

Instead, design intake and registration forms that allow people to designate their own personal pronouns. Forms can also permit selection of preferred greetings (like Ms., Mr., and the gender-neutral Mx.).

To normalize informed use of correct personal pronouns, we should include our own pronouns in email signatures, name badges, and other materials.

### **Use gender-neutral language for people.**

Pronouns are not the only “gendered” language frequently used during personal interactions and the rendering of legal services.

Words like “husband/wife,” “sister/brother,” “gal/guy,” and “mom/dad” all reiterate gender identities and heteronormative relationships that may alienate and oppress our colleagues, clients, and clients’ loved ones.

To avoid these microaggressions, rather than asking a client who uses she/her/hers pronouns what her “husband’s” name is, ask the name and pronouns of her “spouse or partner.”

Similarly, we can use gender-neutral terms like “sibling” & “parent” when discussing family relationships, or broadly ask how a person is related to a particular client.

Gender-neutral terms should also be utilized when referring to groups of people in order to avoid placing our own implicit biases onto others.

For example, rather than beginning a meeting with “Ladies and Gentleman,” greet the crowd as “Distinguished Guests.” Similarly, an opening statement might address the jury box as “Distinguished Jurors.”

### **FURTHER READING:**

Debra Chopp, *Addressing Cultural Bias in the Legal Profession* 41:3 NYU Rev. of L. and Soc. Change 367-406 (2017), <https://repository.law.umich.edu/articles/1874>.

AC Dumlao, *100 Ways to Make the World Better for Non-Binary People: Respecting People’s Pronouns, and 99 Other Easy Things* (2018), [https://www.vice.com/en\\_us/article/evkwm4/how-to-be-ally-to-non-binary-gender-non-conforming-people-support?utm\\_campaign=sharebutton](https://www.vice.com/en_us/article/evkwm4/how-to-be-ally-to-non-binary-gender-non-conforming-people-support?utm_campaign=sharebutton).

Bachul Koul, *An Inclusive Customer Experience for Non-Binary People is Necessary* (2019), <https://www.retaildive.com/news/an-inclusive-customer-experience-for-non-binary-people-is-necessary/558190/>.

<sup>11</sup> Information regarding overt hatred and discrimination and discriminatory rules of law is outside the scope of this article.

<sup>12</sup> Equally important to note is that the acronym used throughout this article does not even include specific terms for every sexual orientation and gender identity. Instead, “LGBTQ” is treated here as an umbrella term that encompasses all persons who identify in a way that is not “heterosexual/straight,” “cisgender,” or within the “gender binary.”