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PERSPECTIVE

Death of Black mother at Cedars-Sinai matches national trend

By K. Chike Odiwe

The federal government has launched a civil rights investigation into how Cedars-Sinai Medical Center in Los Angeles treats Black women who give birth at the hospital. Civil Rights attorneys, activists, and researchers have long been concerned with national disparities as it relates to racism and implicit bias in Black maternal health.

A report from the Centers for Disease Control and Prevention shows that 861 women died of maternal causes in the United States in 2020, compared to 754 in 2019. According to the CDC, more than 80% of those deaths were preventable and the data shows significant racial disparities, where “American Indian, Alaska Native, and Black women are two to three times more likely to die of pregnancy-related causes than White women.” *Hoyert DL. Maternal mortality rates in the United States, 2020. NCHS Health E-Stats. 2022. DOI: <https://dx.doi.org/10.15620/cdc:113967>.*

Black women die from childbirth at a disproportionately higher rate than women of other races. However, despite knowing about this issue for years, medical professionals cannot attribute this disparity to a physical condition. Numerous studies have shown that physicians’ implicit biases lead to poor patient care.

Overall, Black women consistently report feeling silenced by their treating physicians – a feeling that has persisted since slavery. Stereotypes about Black women cloud physicians’ ability to provide adequate care. Using the historical



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perspective, implicit biases of physicians about Black women can be traced back to the treatment of Black women in the past. The Black woman’s body was mutilated and experimented on because they were considered less than human, a belief evidenced by the popular opinion of the time that Black people did not feel pain. *“Jurisprudential Thought,” MyEducator, <https://app.myeducator.com/reader/web/831/dl5dt/v6353/> [<https://perma.cc/8SDM-QQU7>].* Their bodies, even while pregnant, were not respected. Today, we have the Family Medical Leave Act and Pregnancy Discrimination Act to protect pregnant women. *“What to Expect When You’re Expecting (and After the Birth of*

Your Child) ... at Work,” Off. Assistant Sec’y for Admin. & Mgmt., <https://www.dol.gov/agencies/oasam/civil-rights-center/internal/policies/pregnancy-discrimination> [<https://perma.cc/35SY-GLGT>]. No such protection existed at that time. To the contrary, enslaved Black women were exploited for their manual labor while pregnant. *Id.*

However, unfortunately for Black women and their families, creating a successful medical malpractice or wrongful death claim is nearly impossible. This is because Black women cannot overcome *the reasonable person standard* set by the medical profession. Thus, to ensure Black women are afforded

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the same right as other women to a healthy birthing experience, a new remedy is necessary.

Title VI of the Civil Rights Act of 1964 prohibits federally-funded programs from discriminating based on race. 42 U.S.C. § 2000(d) (2020). Even without evidence of overt invidious discrimination, a plaintiff can plead a disparate impact theory of discrimination under Title VI. See *Guardians Ass'n v. Civ. Serv. Comm'n*, 463 U.S. 582, 593 (1983). The Supreme Court of the United States held that Title VI reaches “unintentional, disparate-impact discrimination.” *Id.* Disparate impact is a legal theory that facially neutral practices nevertheless cause discriminatory effects against a protected class. See generally *Am- itabh Chandra et al., “Challenges to Reducing Discrimination and Health Inequity Through Existing Rights Laws,”* 36 Health Affs., no. 6, 2017, at 1041, 1042.

Physicians are not included in the scope of the Title VI Civil

Rights Act. *Chandra et al.*, supra note 20, at 1043. Thus, patients must sue the hospitals instead of their treating physicians. *Chandra et al.*, supra note 20, at 1043. Showing that an entity, such as a hospital, is discriminatory is hard. In order to do so the claimant would have to show that there is a pattern of discrimination. This pattern would be displayed by Black women coming forward who can attribute their discrimination to the hospital and not to their individual physician.

The federal probe into Cedars-Sinai’s treatment of Black mothers comes over seven years after the April 2016 death of Kira Dixon Johnson, who died after she suffered internal bleeding following a cesarean section procedure. Her baby survived. The death of Kira Dixon Johnson reignited a national conversation about the racial disparities in Black maternal care.

In 2022, the family of Kira Dixon Johnson brought a civil rights case against Cedars-Sinai. Kira’s hus-

band is also seeking an injunction that would require the hospital to make changes to protect mothers and women of color. However, as mentioned above, proving a civil rights violation in health care is difficult because most laws require showing that the discrimination was *intentional*. This is a difficult challenge because a lot of the kind of unequal treatment that we see in healthcare today does not seem to be explicit. It appears to stem from implicit bias.

Despite the advancement of medicine, Black mothers and their infants are still dying at a higher rate than white women. *Morgan Brinlee, “Racism Is Literally Killing Pregnant Black Women & These Numbers Prove It,”* *Bustle* (Nov. 7, 2017), <https://www.bustle.com/p/race-maternal-mortality-are-linked-black-mothers-are-paying-the-price-3017625>, [<https://perma.cc/Y2VX-LVJ8>]. The problem affects Black women from every economic background and with varying levels

of education. Nina Martin & Renee Montagne, “*Black Mothers Keep Dying After Giving Birth. Shalon Irving’s Story Explains Why*,” NPR (Dec. 7, 2017, 7:51 PM), <https://www.npr.org/2017/12/07/568948782/black-mothers-keep-dying-after-giving-birth-shalon-irvings-story-explains-why> [<http://perma.cc/3SMM-X7YX>]. Racism and physicians’ personal biases kill Black women and their children. Medical professionals do not want to admit that implicit biases affect their patient care. However, the objective data renders their opinion irrelevant.

If we would listen to the voices, experiences, traditions, leadership, and ingenuity of black women to produce solutions and strategies, we would begin to successfully address this issue. For society to move forward and give pregnant Black women the reproductive healthcare they deserve, medical professionals must finally listen to Black women.

