

CLINICAL WEBINARS

FOR HEALTH SERVICE PSYCHOLOGISTS

TRANSLATING RESEARCH TO PRACTICE

Ethical and Legal Considerations for Professionals Caring for Transgender Youth

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Katie Spencer, PhD, LP, CST

Katie Spencer, PhD is an assistant professor, licensed psychologist, and AASECT Certified Sex Therapist. She is an author on the Sexual Health chapter of the WPATH Standards of Care v8. Her primary clinical practice is working with gender diverse adolescents, and adults, women's sexuality and sexual health, and LGBTQ sexuality and well-being. Dr. Spencer has written, presented and published scholarship on gender diverse sexual pleasure, queer femininities, and gender affirmative approaches to gender healthcare. She provides training and education of therapists and medical providers in sexual and gender health care competency. Dr. Spencer has been active in legislative advocacy and international policy around gender and sexual health rights.



Phil Duran, JD (U.Minn. 2000)



Phil Duran is a lawyer admitted to practice in Minnesota since 2000. His work at Rainbow Health, and previously OutFront Minnesota, has frequently focused on legal issues facing transgender/nonbinary individuals. In recent years, he has emphasized expanding access to gender-affirming care in both public and private health plans, and in public-policy advocacy affecting both. He has been directly involved in several critical legal actions in Minnesota to expand access to care, particularly for young people.

Disclosures/Conflicts of Interest

- Katie Spencer, PhD, has no conflicts of interest to disclose
- Phil Duran, JD, has no conflicts of interest to disclose

Learning Objectives

1. Identify two critical changes in the Standards of Care (8th version) that affect youths' access to gender-affirming care.
2. Explain the role of mental-health professionals both in caring for transgender and gender diverse youth and in ethically facilitating care.
3. Describe three existing or emerging legal concerns relating to the provision of gender-affirming care.

Gender Affirming Care for Gender Diverse Youth

- Transgender healthcare for adults has increasingly become available and mainstreamed within healthcare settings since about 2014
- Gender Affirming healthcare for youth has grown exponentially over past 5-10 years
- The World Professional Association for Transgender Health (WPATH) is the governing organization for gender care professionals
- They publish the WPATH Standards of Care (SOC) – latest version 8 – 2022, previous version 7 - 2011

Gender Affirming Care for Gender Diverse Youth

- Gender Affirming Healthcare for youth can include;
 - Psychotherapy
 - Support for social transition
 - When appropriate – puberty suppression and medical transition
 - Masculinizing or feminizing hormones
 - Cessation of menses
 - When appropriate – some surgical interventions for under 18
 - Masculinizing chest surgery
 - Fertility and Reproductive counseling
 - Group and social support
 - Family psychotherapy
 - Gender and sexual health education and counseling

Gender Affirming Care for Gender Diverse Youth

Two conflicting controversies shaping the field

- External challenges to gender youth care from standpoint that youth are too young to know their gender identity and offering gender affirming care in any form is anything from not ethical to child abuse
- Internal struggles from providers who are torn over what is affirming care and what is withholding care – questions of how and when if medical transition interventions should be offered. History of mandating psychotherapy and this seen as potentially harmful, also valued as empirically supported to be beneficial.

Legal and ethical complexities abound!

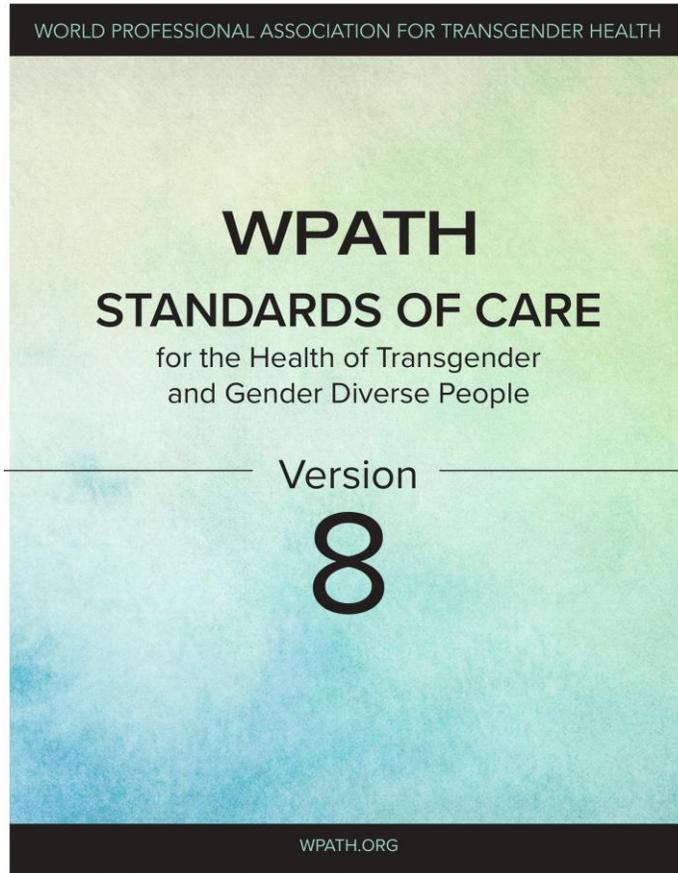


**MANDATED THERAPY &
PROLONGED
ASSESSMENT**

**ASSESSMENT OF
INDIVIDUALIZED NEEDS**

**NO ASSESSMENT of
DECISION MAKING or
MATURITY**

WPATH SOC 8 Adolescent Chapter – Underlying Principles



- Recognizing the unique aspects of adolescent development—is important when discerning gender-related care needs.
- Understanding and appreciating that gender affirming treatments should be individualized decisions and not assumed as desired or necessary automatically in all situations.

WPATH SOC 8 Adolescent Chapter – Summary Statements

6.12 Criteria/Indicators for Gender-Affirming Medical/Surgical Treatments

A	Diagnostic Criteria Met when used in a country
B	Sustained identity experience over time
C	Maturity sufficient to provide informed consent
D	Mental Health Concerns are addressed and prioritized
E	Reproductive Health & Fertility Options discussed
F	Tanner 2 minimum prior to Pubertal Suppression

Ethical Care As Psychologists Working With Gender Diverse Youth

- Transparency about your role, the system, the state of legal and systemic impacts
- Documentation!
 - Be mindful of documentation and who has access and also be informing to patients about how documentation will/can be used
 - Document your steps clearly
- Advocacy—ethical to work for social change for your patient’s wellbeing
- Keep up to date about your state legal status
- Advocate in your healthcare system to protect patients and providers

APA Ethical Principles

- **Principle D: Justice**

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices.

- **Principle E: Respect for People's Rights and Dignity**

Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making. Psychologists are aware of and respect cultural, individual, and role differences, including those based on age, gender, **gender identity**, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status, and consider these factors when working with members of such groups. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices.

Caregiver/Parental Consent

- **Aim 1:** Contextualize that in **most, if not all countries, adolescents are not able to consent for their own medical treatments**, and so therefore involving parents/caregivers is very typically necessary.
- **Aim 2:** Emphasize the importance of **engaging parents/caregivers in the care of the young person as a means of promoting long-term healthy outcomes**.
- **Aim 3:** Highlight that outliers—**particularly when caregiver involvement may be harmful or unnecessary**—do exist and should be accounted for.

Existing Legal Concerns: Consent

- In your state/jurisdiction, to what types of care may a minor consent on their own?
 - Consult your facility's legal department, if there is one
- What if parents/guardians don't agree regarding care?
 - Married couple: consent of one is sufficient
 - Divorced couple: any parent with *legal* custody must consent
 - Unmarried couple: what, if any, legal proceedings have occurred, particularly regarding paternity?
 - Living with guardians, e.g., grandparents?
 - *Check the law in your state/jurisdiction*

Existing Legal Concerns: Consent

- All of that said, what is the best practice?
 - How long might it take?
 - Effective denial of care?

Emerging Threats To Minors' Access To Gender-Affirming Care

- State-law prohibitions on providing care to minors, particularly hormone/puberty blockers/suppressants and surgery
 - Generally, not counseling/therapy services
- State-law efforts to criminalize doctors who provide such care
 - Florida developing professional rules
- State-law (esp. Texas) child-abuse investigations into families providing such care

Emerging Threats To Minors' Access To Gender-Affirming Care

- Not faring well in courts (see, e.g., *Brandt v Rutledge* [8th Cir. 2022])
 - Social Security Act – limited impact on Medicaid programs
 - Affordable Care Act – same, plus discrimination angle
 - ERISA/Title VII of Civil Rights Act of 1964 – limited impact on employer health plans
- Constitutional analyses
 - 14th Amendment
 - Fundamental rights

Emerging Threats To Minors' Access To Gender-Affirming Care

- In the meantime:
 - Therapists/counselors not in the crosshairs?
 - What is ethical obligation to one's patient, even so?
 - What is impact on youths' mental health of efforts such as these?
 - Advocating in one's professional capacity
 - Opportunities for testimony?
 - Litigation?
 - Consider safety

Existing Legal Concerns: Insurance

- Expanding insurance coverage for gender-affirming care
- To be covered, a service must be considered “medically necessary”
- “Medical necessity” usually based on professional standards, e.g., World Professional Association for Transgender Health (WPATH) Standards of Care (SOC)
 - Version 7 (2012) vs Version 8 (2022) – letters of support
- Some plans – mainly those of larger employers – simply exclude it altogether
 - When to refer to attorney or similar advocate?

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Q&A



- Dr. Elchert will read select questions that were submitted via the Q&A feature throughout the presentation.
- Due to time constraints, we will not be able to address every question asked.