

PSY BAR®

Disability and Fitness for Duty in Transgender Employees

Brian Hurley, M.D., M.B.A., DFASAM
 Addiction Psychiatrist and Assistant Professor of Addiction
 Medicine
 UCLA Department of Family Medicine
 Medical Director of Co-Occurring Disorder Services
 Los Angeles County Department of Mental Health







Brian Hurley, M.D., M.B.A., DFASAM

No disclosures

Pronouns: He/Him/His

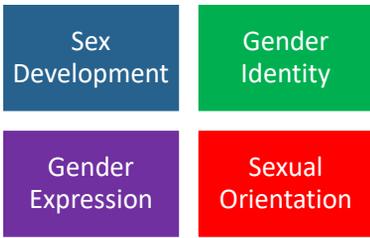


Agenda

- Definitions and Concepts
- Gender Transition and Occupational / Sociocultural Stressors
- Implications for IMEs
- Emerging Case Law for Employers
- Implication for Workplace Policies



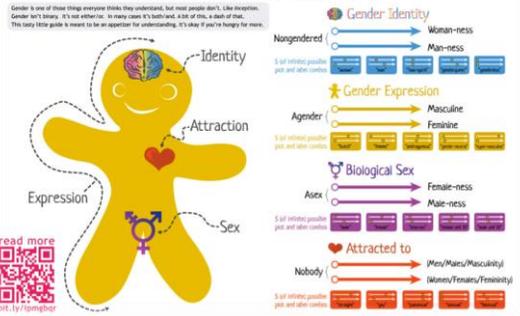
Components of Human Experience



Each operates orthogonally to the others



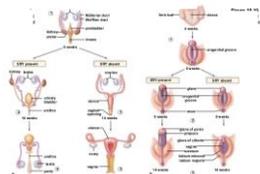
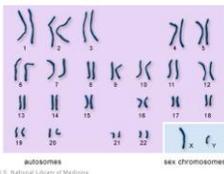
The Genderbread Person v2.0 by its pronounced **ME**TR^osexual



Biological Sex

- Assignment typically offered at birth, except in cases of atypical genitalia development

Development of the sex organs





Gender Identity

- The experience of one's own gender.
- Gender can correlate with assigned sex at birth
 - Usually called *cisgender*
- Or can differ from it
 - Can be called *transgender*
- There are culturally established gender categories that can serve as the basis of the formation of a person's social identity in relation to other members of society



Gender Identity

- Not determined by appearance or observed gender expression



Pronouns

| 1 | 2 | 3 | 4 | 5 |
|--------|--------|--------|---------|------------|
| (f)ae | (f)aer | (f)aer | (f)aers | (f)aerself |
| e/ey | em | eir | eirs | eirself |
| he | him | his | his | himself |
| per | per | pers | pers | perself |
| she | her | her | hers | herself |
| they | them | their | theirs | themself |
| ve | ver | vis | vis | verself |
| xe | xem | xyr | xyrs | xemself |
| ze/zie | hir | hir | hirs | hirself |

#pushforpronouns

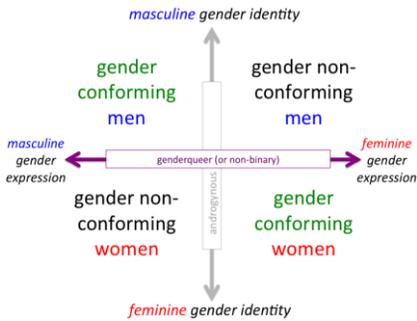


Gender Expression

- Gender Non-Conforming
 - Adjective
 - Umbrella term to describe individuals whose gender expression, gender identity, or gender role differs from gender norms associated with their assigned birth sex.



Gender Expression



Gender Expression



Other Terms

- **Sexual orientation** – structured around to whom one is sexually and/or romantically attracted.
 - Lesbian, gay, heterosexual, bisexual, queer, pansexual, and/or asexual
- **Intersex** – aka difference of sex development – atypical physical sex characteristics
- **Ally** – Cisgender and/or heterosexual person who affirms sexual and gender diversity
- **Umbrella terms:**
 - LGBT
 - LGBTTIQQ2SA
 - Lesbian, Gay, Bisexual, Transsexual, Transgender, Intersex, Queer, Questioning, 2-Spirited and Allies



Transgender People in the US

- Approximately 0.6% of adults in the United States, or 1.4 million individuals, identify as transgender.

Flores, A.R., Herman, J.L., Gates, G.J., & Brown, T.N.T. (2016). How Many Adults Identify as Transgender in the United States? Los Angeles, CA: The Williams Institute. <https://williamsinstitute.law.ucla.edu/research/how-many-adults-identify-as-transgender-in-the-united-states/>



Gender Nonconforming



Wilson BDM, Choi SK, Herman JL, Becker T, Conron KJ. 2017. Characteristics and Mental Health of Gender Nonconforming Adolescents in California: Findings from the 2015-2016 California Health Interview Survey. Los Angeles, CA: The Williams Institute and UCLA Center for Health Policy Research. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/CHIS-Transgender-Teens-FINAL.pdf>



Being Transgender in the US

- Transgender individuals have frequent experiences of trauma, often related to societal prejudice, hatred, or intolerance, because of their gender identity.

Mizock, L., & Lewis, T. K. (2008). Trauma in transgender populations: Risk, resilience, and clinical care. *Journal of Emotional Abuse*, 8(3), 335-354.



Being Transgender in the US

- Widespread mistreatment at work: 90% of those surveyed reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it.
- Double the rate of unemployment. Rates for people of color up to four times the national unemployment rate.

Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.



Human Resiliency

- Transgender individuals do not differ from cisgender individuals with respect to prevalence of chronic diseases, cancers, or depressive disorders or in terms of health behaviors such as smoking, binge drinking, and always wearing a seatbelt.

Meyer, I. H., Brown, T. N., Herman, J. L., Reisner, S. L., & Bockting, W. O. (2017). Demographic characteristics and health status of transgender adults in select US regions: Behavioral Risk Factor Surveillance System, 2014. *American Journal of Public Health*, 107(4), 582-589.



Gender Dysphoria

- Transgender and gender nonconforming individuals are not inherently disordered.
- The distress of gender dysphoria, when present, might be diagnosable and there are various treatment options available.
- The existence of a diagnosis for such dysphoria often facilitates access to health care and can guide further research into effective treatments.

 World Professional Association of Transgender Health (WPATH) Standards of Care V.7 - <http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>

DSM-5: Gender Dysphoria

- A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
 - A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
 - A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
 - A strong desire for the primary and/or secondary sex characteristics of the other gender.
 - A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
 - A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
 - A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

 American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders (DSM-5)*. American Psychiatric Pub.

Workplace Indicators of Occupational Impairments

- Attendance
- Performance
- Behavior



Further Implications for the Employer

- tardiness on the job
- poor decision making
- loss of efficiency
- lower morale and physical well-being of worker and co-workers
- trouble with co-workers/supervisors
- disciplinary procedures
- medical/rehabilitation/employee assistance programs

In the case of questions not resolvable by working with the employee and their clinicians / EAP, can consider referring for a behavioral health fitness for duty evaluation.



Clinicians Working With Transgender Populations

- Good clinicians should:
 - Be reasonably free of homophobia, transphobia, and heterosexism, cis-normativity
 - Have positive regard for the patient
 - Welcome and promote openness about gender identity and expression in the therapeutic setting
 - Be familiar with many of the issues commonly faced by transgender people
- The ideal clinician adheres to the current edition of the World Professional Association for Transgender Health Standards of Care.

Lee, S. J. (2015). Addiction and Lesbian, Gay, Bisexual and Transgender (LGBT) Issues. In *Textbook of Addiction Treatment: International Perspectives* (pp. 2139-2164). Springer Milan.



Implications for IMEs

- In an IME, best that the clinician attests to familiarity with, and affirms to adhere to, the current edition of the World Professional Association for Transgender Health Standards of Care:
- <http://www.wpath.org>
- WPATH offers certification



Implications for IMEs

- The American Psychological Association Guidelines for Psychological Practice With Transgender and Gender Nonconforming People:
 - <https://www.apa.org/practice/guidelines/transgender.pdf>



Implications for IMEs

- Markers of a good IME:
 - Uses preferred pronouns
 - Collect gender history including gender transition history (if present)
 - Discusses presence (or absence) of gender dysphoria and exacerbating / mitigating factors
 - Uses a complete psychological / psychiatric assessment to distinguish gender dysphoria from other co-occurring psychiatric disorders



Distinguishing Co-Occurring Mental Illness

- Lifetime Risk in the general population:
 - 30.3% Alcohol Use Disorder
 - 29.9% Major Depressive Disorder
 - 18.4% Specific Phobia
 - 13.0% Social Phobia
 - 10.3% Other Substance Use Disorder
 - 10.1% Post-traumatic Stress Disorder
 - 9.0% Generalized Anxiety Disorder
 - 8.7% Separation Anxiety Disorder
 - 6.8% Panic Disorder
 - 4.1% Bipolar Disorder
 - 3.7% Agoraphobia
 - 2.7% Obsessive-Compulsive Disorder

Kessler, R. C., Berglund, P., Demler, O., Jin, R., Merikangas, K. R., & Walters, E. E. (2005). Lifetime prevalence and age-of-onset distributions of DSM-IV disorders in the National Comorbidity Survey Replication. *Archives of General Psychiatry*, 62(6), 593-602.

Merikangas, K. R., & McClair, V. L. (2012). Epidemiology of substance use disorders. *Human Genetics*, 131(6), 779-789.



Methods of Distinguishing Co-Occurring Disorders from Dysphoria

- Temporal relationship between symptoms and the experience of incongruence between one's experienced/expressed gender and assigned gender.
- Relationship to any gender transition and transition related stressors.



Implications for IMEs

- Gender dysphoria manifests depressive and anxiety symptoms.
- Most cases of gender dysphoria do not result in impairments.
- In severe cases, can impact an individual's performance of tasks:
 - Interpersonal interactions, sustaining a complete workday, and distractibility from sustained tasks are possible examples



Implications for IMEs

- Most common restrictions associated with gender dysphoria are associated with any procedural treatments: brief (days to weeks) needed to aid recovery from specific procedures
- Behavioral health restrictions may be possible if there are specific occupational stressors that re-enforce mis-gendering a person.



Example IME Case:

- 37 year old transgender man, previously employed in a sedentary position.
- Left work in October 2014 due to the reported symptoms of depression and anxiety secondary to gender dysphoria.



Example IME Case:



Stock Photo, Not An Actual Examinee or Client



Example IME Case:

- Examinee underwent a hysterectomy in April 2015, a phalloplasty in June 2015, and a phalloplasty revision in September 2015.



Example IME Case:

- Medical evidence supported diagnosis of gender dysphoria
 - Claimant's strong desire to be rid of his female sex characteristics because of the incongruence of these characteristics with his expressed gender as a man
 - A strong desire for male sex characteristics
 - Association with clinically significant mood and anxiety features associated with these desires.



Example IME Case:

- Impairment due to gender dysphoria supported: October 2014 through March 2015
 - Experienced episodes where he would lie on the floor of his office for extended periods of time in October 2014, which would have prevented him from interacting effectively with others, managing correspondence, or reviewing documents.
 - Supported by observed mental status examinations and the examinee's report to his clinicians.



Example IME Case:

- Impairment due to gender dysphoria not supported after March 2015
- Sufficiently organized, interactive, and functional to participate in a series of gender affirming surgeries beginning in April 2015.
- No documentation that psychiatric symptoms resulted in an inability to perform tasks. On the contrary, the claimant was regularly participating in medical appointments following his hysterectomy and phalloplasties without mental status documentation supportive of functional impairment.
- Interviewing with the media, volunteering, participating in social media, meet up with friends, was able to participate in boot-camp style fitness programming, and was able to regularly manage household responsibilities.
- Was applying for work and planned to be working again by October 2015.
- Had some postsurgical restrictions which were not psychiatric in nature.



Emerging Case Law



EEOC v. Harris Funeral Home

- Aimee Stephens fired from Harris Funeral Home when she stated that she would be undergoing a gender transition.
- Ruling found that transgender individuals are protected by Title VII, and that religious belief does protect employers from discriminating against transgender individuals.

2:14-cv-13710 (6th Cir. 3/7/2018)



Blatt v. Cabela's Retail Inc.

- Kate Lynn Blatt worked as a Seasonal Stocker at Cabela's Retail in from 2006-2007.
- According to court documents:
 - Took steps to live in accordance with her female gender identity, including changing her name, growing her hair long and wearing female clothing.
 - Legally changed her identity documents

5:14-cv-04822 (Pennsylvania District Court 5/18/2017)



Blatt v. Cabela's Retail Inc.

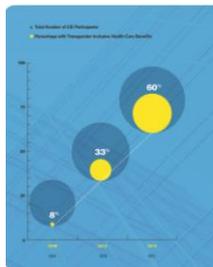
- 5/18/2017 ruling from a federal district court in Pennsylvania:
- Transgender people can seek relief from discrimination under the Americans with Disability Act

5:14-cv-04822 (Pennsylvania District Court 5/18/2017)



Implications for Workplace Policies

- >80% of Corporate Equality Index-rated businesses offer robust diversity and inclusion programs that specifically include training on gender identity



<https://www.hrc.org/resources/transgender-inclusion-in-the-workplace-recommended-policies-and-practices>



Implications for Workplace Policies

- The momentum for building transgender-inclusive workplaces
 - A trend toward transgender workplace protections as documented in the Human Rights Campaign Foundation's *Corporate Equality Index*
 - The fast changing legal and legislative landscape
 - The increasing cultural visibility and awareness of transgender people.

<https://www.hrc.org/resources/transgender-inclusion-in-the-workplace-recommended-policies-and-practices>



Implications for Workplace Policies

- Gender Identity and Gender Expression Workplace Review Form



<https://www.hrc.org/resources/transgender-inclusion-in-the-workplace-recommended-policies-and-practices>

Implications for Workplace Policies

- Transgender Inclusive Health Care Coverage
- Addressing Culture: Training & Education
- Creating Opportunities to Ask for (or Offer) Pronouns

<https://www.hrc.org/resources/transgender-inclusion-in-the-workplace-recommended-policies-and-practices>

<http://www.hrc.org/resources/talking-about-pronouns-in-the-workplace>



Inclusion in Gendered Spaces

- **Administrative & Record Keeping:** Allow for preferred name and gender where possible. Smoothly facilitate legal name and gender marker changes.
- **Facilities:** Allow employees to access gender-segregated facilities such as locker rooms and bathrooms corresponding to the gender with which they identify.
- **Self-Identification:** Where appropriate, expand options for self-identifying gender identity on internal forms and in surveys.
- **Gender-Neutral Dress Codes:** If an employer has a dress code, it should avoid gender stereotypes and be enforced consistently. If an employer has a gender-specific dress code, then transgender employees should be allowed to dress in accordance with their gender identity.
- **Maintain Confidentiality:** Keep the employee's health status private and confidential, limited to the fewest people necessary and, to the extent possible, limited to Human Resources professionals. Even in these parameters, discussions about specific medical treatments or care should be limited to need-to-know information.



<https://www.hrc.org/resources/transgender-inclusion-in-the-workplace-recommended-policies-and-practices>

Additional Resources

- Transgender Law Center Model Transgender Employment Policy <https://transgenderlawcenter.org/wp-content/uploads/2013/12/model-workplace-employment-policy-Updated.pdf>
- Human Rights Campaign Transgender Inclusion in the Workplace <https://www.hrc.org/resources/transgender-inclusion-in-the-workplace-recommended-policies-and-practices>
- WPATH <http://www.wpath.org>
- National Center for Transgender Equality <https://transequality.org>
- GLMA: Health Professionals Advancing LGBT Equality <http://www.glma.org>
- National LGBT Health Education Center <https://www.lgbthealtheducation.org>
- UCSF Center for Excellence in Transgender Health <http://transhealth.ucsf.edu>
- Association of American Medical College's Sexual and Gender Diversity Initiatives <http://aamc.org/lgbtdsd>



Questions?

- bhurley@ucla.edu

Becky Reed, CPDM, CLMS
 Customer Engagement Director
 Phone: (952) 285-9000 x 36 BeckyR@PsyBar.com