

**MODULE EIGHT | LEGAL AND ETHICAL CONSIDERATIONS**

Course content is presented for informational purposes only and shall not be considered legal advice or counsel.

ARE YOU QUALIFIED?

- A common error cis/het mental provider make is believing they are culturally aware and competent to treat gender expansive patients.
- The completion of courses like TransKit or academic reading does not qualify you to sit across from a gender expansive patient without the additional work of meeting with members of the community and listening to their stories first hand.
- Even when a mental health provider has a reputation as gender affirming specialist, transgender patients will keep an identity hidden until they have the opportunity to assess the safety of the setting and provider. Skepticism amongst gender expansive people comes from a place of real personal safety concerns and most-likely, past negative therapeutic interventions.

COMPETENCE STANDARDS

- APA 2.01 (a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience. (d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation, or study.

COMPETENCE STANDARDS

- APA 3.06 Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists.
- AAMFT 3.6 + 3.10 While developing new skills in specialty areas, marriage and family therapists take steps to ensure the competence of their work and to protect patients from possible harm. Marriage and family therapists' practice in specialty areas new to them only after appropriate education, training, and/or supervised experience. Marriage and family therapists do not diagnose, treat, or advise on problems outside the recognized boundaries of their competencies.

COMPETENCE STANDARDS

- NASW 1.04 Competence: (a) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

NON-DISCRIMINATION

- APA 3.01: In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.
- AAMFT: 1.1 Marriage and family therapists provide professional assistance to persons without discrimination on the basis of race, age, ethnicity, socioeconomic status, disability, gender, health status, religion, national origin, sexual orientation, gender identity or relationship status.

NON-DISCRIMINATION

- NASW: 4.02 Discrimination Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability.

PUTTING POLICY INTO PRACTICE

- A consideration for care includes not only developing an understanding of the various ethical policies of mental health organizations, but the real-life applicability to transgender patients.
- The search for a truly-affirming provider should not be an arduous task. Many providers on popular mental health directories claim to have experience or expertise working with transgender populations. Many of these providers have conflated experience or ideals to justify this experience.
- Being upfront about a lack of experience working with transgender can go a long way to helping our community. Most likely, you'll even find a patient who will still want to work with you despite this experience, and you have set a good basis from which the therapeutic relationship can build.

QUESTION | WHAT IF SOMEBODY WANTED TO CHANGE THEIR GENDER IDENTITY?

- Depending on the region of the country and the demographics/psychographics of the patient, mental health providers will meet with patients determined to develop a cisgender gender identity.
- How would you as a provider respond in this situation, to a sincere request for help to rid oneself of gender incongruence?

QUESTION | WHAT IF A PARENT WANTS YOU TO CHANGE THEIR CHILDS IDENTITY?

- Regardless of the area of the country, requests from parents to help their child overcome what is commonly referred to as “gender issues” or “confusion” are common. Typically, these are from parents who desire the best possible life experience for their child.
- If you do not provide treatment congruent with their outcome desires, parents will most certainly ready to find a provider who will. Will you report it?

QUESTION | WHAT IF A TEEN VISITS YOU FOR TRANSITION RELATED CARE WITHOUT THEIR PARENTS?

Youth as young as 11-12 have taken it upon themselves to seek out transition related care, aware of the negative effects of puberty, and feeling an urgent need for immediate help. These youth already know from either implicit or explicit messages at home that parental support is not likely, and parental awareness may result in homelessness.

GET TO KNOW YOUR STATE LAWS

- Laws governing treatment that would affect transgender patients vary from state to state (and municipality to municipality).
- Develop a solidified understanding of age-of-consent for treatment laws for your region. Gender-diversity and treatment is heavily skewed towards youth as they are most vulnerable to rejection by friends, family, and faith communities.
- Understand confidentiality and the integration of other potentially supportive systems outside of the family/parent/custodian. Coordination with schools, child protective services, foster programs and group homes typically happens while treating youth with or without parent buy-in to affirmation.

A DEEPER UNDERSTANDING OF ABUSE

- As mental health providers we know that abuse extends far beyond physical/sexual acts of aggression; understanding that neglect is most-often the culprit for trauma and life-long conflict.
- Laws and guidelines recognize that emotional abuse and neglect are severe and merit mandated reporting.
- Many states have established legal precedent that denying a transgender child to openly express their gender identity constitutes emotional harm and neglect rising to the level of mandated reporting.

A WORD ON MILITARY TREATMENT

- It is estimated that there are roughly 15,000 transgender active-duty in the military at any given moment.
- Protections which allowed the open existence and treatment of transgender forces have now been undone, resulting in thousands of dishonorable discharges, and removal of access to care.
- If you treat members of the US armed forces, consider the severity of consequences in diagnosis and treatment plan. The reality is a reemergence of Don't Ask, Don't Tell; policy which has been directly connected to extensive mental health harm and increases in suicide rates.

THE LEGALITIES OF GENDER

- The bar for legal changes to name, gender markers, and birth certificates is constantly in-flux. Even in progressive states, systems used to segregate sex are often administered by people with various personal, religious and political beliefs.
- The most-effective protection against harm in updating one's legal status and documentation is knowledge. Educate yourself on the exact process to make these changes.
- Sharing specific direction on making these changes could potentially cross the line into legal advice. Be sure and consult with an attorney, or state agency to better understand the extent of assistance you can provide.

GATEKEEPING & GENDER CARE

- Making changes to official documentations of gender will often require assessment and consent of one or more mental health providers.
- Access to medical treatments, including hormone administration, and surgical procedures carry the barrier of multiple gender assessments.
- Some mental health providers will provide these letters after one-meeting, while others will require multiple sessions of treatment and assessment before providing this documentation. Both approaches have issues.
- Permanent alterations to a body are something that should be heavily weighed and considered, while not imposing unreasonable access barriers.

A WORD ON WPATH

- The largest association advocating for standards of care is World Professional Association for Transgender Health (WPATH).
- Due to the international recognition of size, and the lack of other resources or accrediting groups many managed health organizations have adopted the WPATH standards of care for transgender care, including restrictive barriers, and their pathologizing of gender-diversity.
- While deference can and should be provided for the work done by this organization, reliance on the dated views and policies of WPATH results in continued marginalization of the transgender experience.

WPATH & REAL-LIFE EXPERIENCE

- One of the most dangerous policies advocated for and included in WPATH standards of care is the Real-Life Experience to establish the veracity and commitment to one's gender-identity as ones real and lasting gender. Historically this was a mandated one-year period living as the patients desired gender to essentially "prove" they can handle transition and be allowed access to hormone treatment, legal changes, and transition services.
- Asking somebody to live as the opposite gender without providing these interventions would often result in exposure to trauma, social ostracisms and increased mental health issues.
- While WPATH appears to have removed the one-year requirement to achieve their standard of "real" gender incongruence, current standards still rely on a required real-life experience.

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ASSESSING COMPETENCE TO TRANSITION

- If you find yourself looking for validity in the claim of gender incongruence by one of your patients, you're engaged in the type of marginalizing doubt your patient gets in nearly every setting.
- The experience of past trauma is highly correlated with members of the transgender community. The type and severity of trauma can logically be connected to gender incongruence. Even if a reasonable explanation for gender incongruence can be reached, that should not limit or condition the validity of the patients claim and desires to align their sex to their gender.

ASSESSING COMPETENCE TO TRANSITION

- What you're really assessing is the mental competence to self-determine and live autonomously. Transition related treatment, though severe, is rarely attributed to negative physical health or harm. To the contrary, physical health and mental health have both been established to improve with affirming medical transition related treatment.
- Standardized measures of gender assessment are suspect, placing emphases on socialized norms of gender expression. Who do these really serve?

ADDITIONAL CONSIDERATIONS

FOR CONSIDERATION IN TREATMENT

TREATMENT CONSIDERATIONS

- If you cannot accept a patient's stated gender as their true self and gender, regardless of appearance or expression, you do not belong in the same room as that patient as a provider.
- Know your limitations and state them up front. We don't want to waste our time with instructors, therapists, or other mental-health related people who will almost certainly allow their biases to negatively affect our emotional health and survival. Upfront honesty, even if you state a lack of competence or desire to work with gender-diverse patients, goes a long way amongst most transgender people.

TREATMENT CONSIDERATIONS

- Know your laws regarding age-of-consent. Consider now what options a 14-year-old, self-consenting patient has... and how far you're willing to go to get them the often life-saving transition related care they need.
- You will be placed in the role of the gatekeeper to gender affirming care. Identify the least-restrictive methods of providing professional consent to transition care, while minimizing professional risk. The balance can be often achieved through transparency with the patient.

TREATMENT CONSIDERATIONS

- Exercise caution and healthy suspicion of measures for gender assessment. Only your patient knows the validity or severity of their gender experience. You're looking for signs that their decision-making ability is compromised.
- Successful gender assessments typically involve planning steps to care, considering potential outcomes and how these may positively or negatively affect the patient. Instead of identifying barriers, you're now collaboratively involved in the patients planning towards progress and living a sex/gender congruent life.

CLOSING THOUGHTS

LET'S WRAP THIS UP

COURSE WRAP

- Thank you for completing this course. As members of the transgender community, we hope that you will share this experience with other providers you know. We are always looking for safe providers, and the more who become aware and competent, the greater the likelihood that a patient who doesn't know how to screen providers for affirming experience or queer-humility will be to finding quality care.
- The completion of this course does not qualify you to advertise yourself as an affirming provider. This is a first-step in developing your professional competence. Additional courses, including a series leading to a professional certification are expected through TransKit in 2020.

COURSE WRAP

- We highly recommend meeting directly with members of the transgender community to increase your exposure and comfort to treating our fellow family.
- Team members at TransKit are available for phone consultation, webinar training and in-person workshops. Please contact us using the methods provided on transkit.org.

THANK YOU

THIS MODULE IS COMPLETE