HEALTH LAW PROJECT

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The transcript is not included because Ms. Aspen followed her outline very closely and because she prepared a post conference, final report, complete with all citations and information. The report follows.

There was disagreement over a few points; therefore, a minority report is also included.

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REPORT OF THE HEALTH LAW COMMITTEE

Summary

The current status of transgender health law is based on the view that persons of one sex who want to adopt any of the anatomical characteristics of the other sex, or too many of the role-playing behaviors associated by society with the other sex, especially appearance, are potentially medically ill and thus deserving of medical treatment in accordance with medical standards. The relevant medical category of illness is psychology, but the medical category of treatment is (a) endocrinology and possibly surgery for the desire to have other-sex anatomical characteristics, or (b) psychology only if the desire is limited to other-sex role-playing behaviors and if such desires interfere with one's ability to function in society.

An emerging paradigm of transgender law is to recognize the desire to have other-sex anatomical characteristics or role-playing behaviors as a lifestyle choice, protected by the "right of privacy" and "freedom of expression." The emerging paradigm would also include transgenderal behaviors as part of a "sexual orientation and gender identification suspect class" consisting of gay, lesbian and transgenderal behaviors. As a "suspect class" under the constitional doctrine of "equal protection", individuals choosing a transgenderal lifestyle receive legal protection against state discrimination based upon their lifestyle. Indeed, state, public or quasi-public categorizations which identify for any reasons

persons based on their sexual preferences are, by virtue of the classification itself, potentially discriminatory and of suspect constitutionality.

In essence the current status of health law treats transgendered behavior as a medical problem, and invokes the minimum amount of law to ensure that the appropriate medical treatment, when needed, is not proscribed as a result of inaccurate information about people who desire the characteristics of the other sex. In contrast, the emerging paradigm de-medicalizes transgendered behavior, treating it instead as a lifestyle choice that does not cause any harm to others. This paradigm invokes a maximum amount of law to ensure that discrimination is not inflicted upon transgendered persons as a result of their uniqueness.

A third possible legal regime is that transgendered behaviors which quest for the anatomical characteristics of the other sex will remain a medical condition covered by current health law, while transgendered behaviors which quest for the role-playing characteristics of the other sex will fall within the emerging health law paradigm of lifestyle choice. Since a quest for the anatomical characteristics of the other sex is also a quest for the role-playing characteristics of the other sex, this middle ground means that all transgendered behavior can be protected by law from discrimination and that, in addition, endocrinological therapy or sex anatomy surgery is the medically standard treatment regime for persons that desire and would psychologically benefit from the same.

Model regulations are proposed which protect against discrimination for all transgendered behaviors on the basis of the right to privacy, freedom of expression and suspect class status under equal protection doctrine. At the same time the model regulations also recognize that endocrinological therapy or sex anatomy surgery are in many instances appropriate medical treatment for certain transgendered persons, and hence the state and broad coverage medical insurers have an obligation to provide such treatment to those persons dependant upon them. The foundation of the model regulations is to add a sexual orientation and gender indentification ("SOGI") category to those laws which prohibit discrimination based on race, ethnicity or sex, and, in the longer term, to redefine sex itself as a continuum of lifestyle behaviors and not as a diatonic category.

I. CURRENT STATE OF THE LAW

The current status of transgender health law is based on the recognition of persistent transsexualism as a condition of mental illness best treated by adjusting the apparent sex of the body to match the sex associated with one's gender role of preference. Hence transgender health law provides for hormone therapy and sex reassignment surgery to be provided to medically diagnosed transsexuals, even at state expense. However, transgender health law does not recognize transsexualism as a medical disability for the purposes of protection against discrimination on the basis of disability. Also, transgender health law does not provide any level of legal protection to transgendered behavior less persistent than that defined as transsexualism (e.g. general gender dysphoria, transvestism or simply transgendered lifestyle). Finally, transgender health law does not authorize sex discrimination statutes to be used to shield transgendered people from discrimination. The reason for this is that sex is defined as male or female, not as the process of transitioning from male to female.

1. Definition of Sex and Gender

The precise legal definition of male and female varies depending on the purpose of the definition, however in no event is there a legally recognized definition for a third sex of persons that have significant hybrid male and female characteristics. Persons transitioning from one sex to the other, or from one set of gender roles to the other, are legally considered to be doing so as a matter of sexual orientation. Ulane v. Eastern Airlines, Inc., 742 F. 2d 1081 (7th Cir. 1984), cert. denied, 105 S. Ct. 2023 (1985) (transsexual is not a sex, like male or female, but is instead a sexual orientation, like homosexual or transvestual, and is thus without protection from employment discrimination under Title VII of the Civil Rights Act of 1964). Health law provides no legal protection for sexual orientation. Holloway v. Arthur Andersen & Co., 566 F. 2d 659 (9th Cir. 1977) (Title VII of the Civil Rights Act of 1964 does not protect transsexuals from employment discrimination because transsexualism is a sexual orientation not a sexual class, and the Act proscribes discrimination on the basis of sexual class, meaning men or women).

Gender is a spectrum of behavioral or "role-playing" characteristics, with those classified by any particular society as "feminine" and

"masculine" occupying the polar extremes. Societies generally expect feminine role behavior from its members that have female anatomical characteristics, and masculine role behavior from its members that have male anatomical characteristics. As with any spectrum, however, there is a vague middle ground where behaviors may be feminine or masculine. This middle ground varies in different cultures. In American society, for example, the middle ground appears to be expanding and now includes "unisex" hair styles, certain apparel, and many socio-economic behaviors. As stated by Harry Benjamin, the definer of modern transgender therapy programs:

> "For the simple man in the street, there are only two sexes. A person is either male or female, Adam or Eve. The more sophisticated realize that every Adam contains elements of Eve and every Eve harbors traces of Adam, physically as well as psychologically." H. BENJAMIN, THE TRANSSEXUAL PHENOMENOM 4 (1966).

The courts appear to have little sympathy with Dr. Benjamin's astute observation. In the first lengthy discussion of what constitutes sex as a class of person, it was held that:

> "It has been suggested that there is some middle ground between the sexes, a 'no-man's land' for those individuals who are neither truly 'male' nor truly 'female.' Yet the standard is much too fixed for such far-out theories. Rather the application of a simple formula could and should be the test of gender, and that formula is as follows: Where there is disharmony between the psychological sex and the anatomical sex, the social sex or gender of the individual will be determined by the anatomical sex. Where, however, with or without medical intervention, the psychological sex and the anatomical sex are harmonized, then the social sex or gender of the individual should be made to conform to the harmonized status of the individual. . . ." In the Matter of Anonymous, 57 Misc. 2d 813, 815, 293 N.Y.S. 2d 834, 836 (1968).

Hence in Sommers v. Budget Marketing, 667 F. 2d 748, 749 (8th Cir. 1982), the Court held that it "does not believe that Congress intended by its laws prohibiting sex discrimination to require the courts to ignore anatomical classification and determine a person's sex according to the psychological makeup of that individual." In effect, anatomical sex

appears to be dispositive in determining the sex of a person, and that sex must be either male or female.

a. Anatomical Sex Usually Dispositive

The dispositive nature of anatomical sex (genitals; breasts; facial structure and hair) was clearly put to a rigorous test in Richards v. United States Tennis Association, 93 Misc. 2d 713, 400 N.Y.S. 2d 267 (1977). In the earlier In Re Anonymous decision, supra, the Court expressed disdain for an alternative test of male or femaleness based on chromosonal tests, arguing "should the question of a person's identity be limited by the results of mere histological section or biochemical analysis, with a complete disregard for the human brain, the organ responsible for most functions and reactions, many so exquisite in nature, including sex orientation? I think not." Supra at 816.

The United States Tennis Association argued to the contrary, demanding that Renee Richards not be allowed to compete in women's tennis tournaments because chromosonally she was XY (male) rather than XX (female), even though as a result of sex reassignment surgery she was considered by all others as a woman. The New York Supreme Court disagreed, but did not proscribe use of chromosonal tests as *partial* evidence of sexual classification: "This court is not striking down the Barr body [chromosonal] test, as it appears to be a recognized and acceptable tool for determining sex. However, it is not and should not be the sole criterion, where as here, the circumstances [clear anatomical and psychological evidence of femaleness] warrant consideration of other factors." Ibid at 721. Renee Richards was allowed to play tennis as a woman because the record contained ample evidence that anatomically she was indistinguishable from an historectomized and ovariectomized woman.

It is clear from the foregoing cases that, under current health law, sex must be either male or female, and that sex is defined digitally: male if the anatomy is what society defines as male and female otherwise. A person may, by surgery, change from male to female, but at all times the person is one sex or the other, and this is predominantly determined by anatomy. In cases of ambiguity, further reference may be made to psychological gender identity and to chromosonal tests, but for allegedly transgendered persons, anatomical status is almost invariably

determinative.

This status quo does not, in fact, depart much or at all from that established by Sir Edward Coke in the sixteenth century. An hermaphrodite "shall be heir, either as male or female, according to that kind of the sexe which doth prevail." 1 E. COKE, INSTITUTES 8.a. (1st Am. ed. 1812) (16th European ed. 1812). We don't know exactly what Coke meant by "prevail", and hermaphrodites (persons born with both male and female anatomy) are at most but a subset of transsexuals, but "prevail" implies "apparent" and this would not be chromosones discoverable only through sophisticated scientific techniques. Instead, it would appear that for centuries sex has been ascribed based on prevalent anatomy and self-carriage, the latter especially for all cases that cannot demand the sacrifice of privacy that an actual anatomy check entails.

From a health law definitional perspective, transsexualism is an orientation, albeit involuntary, for assuming the anatomy of the other sex. Until the transsexual does, he or she is in the eyes of today's law of the sex of the existing anatomy. As bluntly stated in Kirkpatrick v. Seligman & Latz, Inc., 636 F. 2d 1047, 1048 (5th Cir. 1981):

> "The Court expressly alleged that the proposed 'sex reassginment process' was 'from male to female.' It was thus incontestible that, as the trial court found, Kirkpatrick was a 'male' at the time he or she started wearing female garb. The court thus properly concluded that the employer's refusal to permit this course of conduct [firing Kirkpatrick for wearing women's clothes to work] did not discriminate against Kirkpatrick as a woman."

After the sex change surgery, he or she is of the sex of the new anatomy. Ambiguous cases such as hermaphrodism invariably gravitate toward whether the person *wants* sex anatomy surgery, and if so, to what end. It is at that end that sex will be defined for that person.

In the final analysis, under current health law, sex is generally defined as either male or female social status, with the determination to be based upon predominant anatomical characteristics, and with the understanding that the determination can be changed. As a caveat it should be noted that these definitions were developed for employment, birth record change and medicinal benefits purposes. Definitions of sex

for other purposes may well be made on different bases, both with regard to whether sex must be male or female, and with regard to whether psychology, anatomy, or chromosone make-up factors should direct what sex the person is. The Olympics, for example, reject anatomical women who fail chromosone tests due to having non-XX status, a rare but regularly occuring situation. "Tests on Athletes Can't Always Find Line Between Males and Females," Washington Post, Jan. 6, 1992, A3.

It should also be pointed out that health law in Australia and the United Kingdom differs from the U.S. situation outlined above. In Corbett v. Corbett, 2 All E.R. 33 (P. 1970), it was held that (XY) chromosonal make-up was determinative of the definition of male sex, despite obvious anatomical (via surgery) and gender identity to the contrary. Anatomical and psychological evidence of maleness was rejected in an Australian hermaphrodite case because of an XX chromosone pattern. The court basically held that the person, as presently constituted was neither male nor female and so could not marry. Apparently, sex anatomy surgery to remove male genitals would net for this individual a judicial determination of femaleness. In re Marriage of C. and D., 35 F.L.R. 340 (Austl. 1979). Both of these cases occured in the context of marriage nullity proceedings, and hence may reflect a deep reluctance to permit same sex marriages, at least when the marital partner was not aware of the transgendered situation. Cf. Leber, 8 Recueil De Jugements Du Tribunal Cantonal De La Republique Et Canton De Neuchatel 536 (1945) (Swiss court's determination that a post-op transsexual has officially changed sex, and that sex is determined in roughly equal measures by a person's psyche and physical makeup).

b. Gender is Role-Playing or "Social Sex"

Lastly, gender is frequently used synonomously with sex, and hence court decisions using these terms must be read with caution. Following our definition of sex, gender in today's society is generally defined as either masculine or feminine role-playing, with the determination to be based upon predominant role-playing characteristics, and with the understanding that the role-playing may be covert, social and ambiguous. Role-playing is simply psychology's word for the sum of our behaviors, attitudes and values.

Exactly what constitutes masculine or feminine role-playing is

much more nebulous than what constitutes male or female anatomy. Gender roles vary by community, time and age. Nevertheless, it may be said categorically that a person who is accepted in everyday society as of a particular sex, is at least of the gender associated with that sex even if anatomically they are wholly or partially of the other sex. In common parlance, this means "passing" as a woman or a man is evidence of strong ability to play a feminine or masculine gender role, and hence being of that particular gender, divorced from the issue of anatomy.

Summarizing our definitions of sex and gender, the former is a classification of life into males and females based predominantly on anatomy. Gender is a classification of life into masculine and feminine based predominantly on role-playing behavior. Society develops a certain consensus on what anatomy is male or female, and what behaviors are masculine or feminine. Society then attempts to fit people into these categories. Transsexual and other transgendered people confound society's stereotypes by claiming a sexual status based on gender rather than based on anatomy, or based on anatomy rather than based on chromosones. They also adopt intermediate modes of anatomy and gender roles. Transgendered people make apparent the continual rather than diatonic nature of both sex and gender. Finally, sex and gender may be defined as dimensions along which life expresses its anatomical and behavioral characteristics, respectively.

TABLE 1: SEXUAL AND GENDERAL DEFINITION FACTORS

CONDITION	PSYCH/ GENDER	ANATOMY PHENOTYPE	CHROM.	STAT. OCCUR.+	EXAMPLE OR CASE*
Post-Op M to F TS	F	F	M	1/30,000	Considered Woman in US, not UK
Post-Op F to M TS	M	M	F	1/100,000	Considered Man in US, not UK
Pre-Op M to F TS/TG	F	M	M	1/1,600	Not Usually Considered Woman, but Estrog. OK
Pre-Op F to M TS/TG	M	F	F	1/1,600	Not Usually Considered Man, but Androg. OK
Androgen Insensitivity	F	F	M	1/1,000	Not Allow in Olympic Sports as Woman
Klinefelter's Syndrome	M	M	XXY	1/1,000	Will Fail Chrom. Test As a Man
Turner's Syndrome	F	F	XO	1/1,000	Will Fail As Woman

+ Amer. Psy. Ass'n, Int'l Foundation for Gender Educ., Wash. Post, 1992
* "Considered" means for some specific legal purpose being litigated.

2. Definition of Transsexual and Transgenderal

*Trans*gender behavior represents a deliberate effort on the part of members of one sex to adopt the role behaviors society associates with the other sex. A subset of transgender behavior is trans*sexual* behavior, in which persons try to adopt not only the role behaviors of the other sex, but also the anatomical characteristics of that other sex. As noted in Doe v. Department of Public Welfare, 257 N.W. 2d 816, 818 (Minn. 1977):

> "In discussing transsexualism, medical experts have found it useful to distinguish between the terms 'sex' and 'gender.' Sex connotes the anatomical qualities that determine whether one is male or female, while gender relates to behavior, feelings, and thoughts and does not always correlate with one's physiological status."

The reasons for transgender and transsexual behavior appear to simply be a quest for peace of mind. A certain percentage of society is unhappy being forced into an unwanted gender role or sex status. Existing health law considers the reasons for this unhappiness to be irrelevant, but frequently references the medical community's consensus that random prenatal hormonal fluctuations are responsible. Had the hormonal fluctuations not dictated a psychological gender orientation different from one's anatomical sex, then the person would be able to live a fulfilling life without resort to transgendered behavior.

On the other hand, an emerging health law paradigm believes the reasons for transgendered persons' unhappiness lies in the strictness with which society requires alignment of psychological and anatomical gender orientation. For the emerging health law paradigm, the problem is society's laws, much like the unhappiness of civil rights fighters for the past two centuries was not their randomly bestowed psychological constitution that insisted on fairness, but instead the matrix of repressive laws they faced. Had society openly accepted freedom of speech, irrelevance of skin tone, and liberty of sexual orientation, then the fighters for these civil rights would have had nothing to agitate against. In the emerging health law paradigm, blaming transgendered discrimination on the transgendered person's hormonal set-up is directly analogous to blaming anti-Semitism on a Jewish person's origination from a Middle East gene pool. One proponent of a new paradigm for transgender law makes the following observation:

> "I suggest, roughly, that transsexuals are no more unnatural than, say, converts or immigrants, and that sex-reassignment surgery is no more unnatural than celibacy or the practice of ritual circumcision." R. Garet, "Self-Transformability," S. Cal. L. Rev. 121, 126 (1991).

In a similar vein, homosexuality was removed in 1973 from the American Psychiatric Association's reference list of mental illnesses because of the eventual recognition that society's prejudices were the "problem", not the homosexuals, since the latter were found to have "no impairment in judgment, stability, reliability or general social or vocational capabilities." AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL 261-83 (3d ed. 1980). Earlier the pyschiatric fraternity noted that homosexuals were "ill primarily in terms of society and of conformity with prevailing cultural milieu." Ibid., DSM-1, 38 (1952).

It appears to the new health law paradigm now emerging from academia that society's prejudice is the root of transgenderal legal problems. The transgendered person is simply acting pursuant to his or her will, and is as productive and healthy as any other citizen. Transgendered behavior should be de-medicalized for the same reasons that homosexuality was de-medicalized, and should be protected against arbitrary discrimination for the same reasons that national origin and religion are not permissible bases for discrimination.

a. Health Law Focuses on Transsexualism

The quest for gender/sex of choice is much more vital for the transsexual than other transgendered persons, because the former group believe that they actually are of the other sex, just "trapped" in an anatomically wrong body. Other transgendered persons accept their anatomical sex, but feel constrained and anxious unless they are free to express other gender behaviors (such as with clothing) associated with the other sex. Finally, there are quasi-transsexuals that desire all of the genderal role behaviors and some, but not all, of the anatomical features of the other sex.

Health law today focuses on transsexualism, not the broader

category of transgenderism. Transsexualism is formally called gender dysphoria, a mental disorder for which hormone therapy and sex reassignment surgery are appropriate remedies. Davidson v. Aetna Life & Casualty, 101 Misc. 2d 1, 420 N.Y.S. 2d 450 (1979) (private health insurance must cover costs of hormone therapy and sex reassignment therapy as medically necessary treatments for gender dysphoria); Rush v. Parham, 440 F. Supp. 383, 391 n. 14 ("the State Plan may not deny Medicaid benefits for [medically necessary] abortions or sex reassignment surgery, but may only deny coverage of nontherapeutic abortions or unnecessary, cosmetic sex reassignment surgery.")

Health law has adopted the medical community's definition of transsexualism, which is contained in a psychiatric manual known as DSM-III. The manual provides that the essential feature of transsexualism is a "persistent sense of discomfort and inappropriateness about one's anatomic sex and a persistent wish to be rid of one's genitals and to live as a member of the other sex." AMERICAN PSYCHIATRIC ASSOCIATION, DSM-III DIAGNOSITIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 261 (1980). In lay terms, a "transsexual is an individual anatomically of one sex who firmly believes he belongs to the other sex. This belief is so strong that the transsexual is obsessed with the desire to have his body, appearance and social status altered to conform to that of his 'rightful' gender." Richards v. United States Tennis Association, 93 Misc. 2d 713, 718, 400 N.Y.S. 2d 267, 270 (1977).

b. Transgendered Behavior is a Continuum

Transgendered behavior other than transsexualism has not received much judicial review. One expert in the field notes that "It is possible to shift one's identity into the head and away from the genitals and if this accomplished, surgery is superfluous because it does nothing for the individual except to enable her to sleep with a male." V. Prince, Transsexuals and Pseudotranssexuals, 7 ARCHIVES SEXUAL BEHAV. 263, 268-69 (1978). It appears that this person meets the general criteria of transsexualism, but has addressed the problem of anatomy psychologically rather than surgically.

Transgendered may be defined as the belief that one really is of the other gender (people displaying feminine or masculine artifactual characteristics), and who takes as a major goal the aim of being in the

other gender. From an empirical standpoint, a transgendered person is one who takes on the clothes, mannerisms or other features of the gender not associated with one's anatomical sex. It is then clear that transsexuals are a subset of transgendered people, namely that subset which also wants the sexual anatomy associated with the other gender.

Lastly is should be noted from a definitional sense that it appears likely that general transgendered behavior can evolve into specifically transsexual behavior. Medically, the phrase "primary transsexual" refers to a person desiring to be of the other sex and gender since earliest childhood, while "secondary transsexual" means a person who quests for the anatomy of the other sex only after a prolonged period of simply desiring the gender behaviors associated with the other sex, and has not yet lived for a long period of time in the role of the other sex. This latter person is also referred to as having Gender Identity Disorder of Adolescence or Adulthood, Non-transsexual Type (GIDAANT). AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 76 (3d ed. 1987); Marty Phillips v. Michigan Department of Corrections, 731 F. Supp. 792, 796 (W.D. Mich. 1990) (court ordered estrogen therapy to be provided to prisoner diagnosed with GIDAANT due to its close similarity with primary transsexualism). A person with GIDAANT might also desire some of the anatomy of the other sex (such as breasts or lack of breasts) in addition to its gender behaviors, but not the genitals of the other sex.

To summarize our definitions of transgendered and transsexual, they are as much creatures of a continuum as are their cognates gender and sex. Transgendered means to have moved along the gender continuum from where one started to another point in the polar direction. Transsexual means to have moved along the sexual continuum from where one started to another point in the polar direction. Transgenderal and transsexual behavior is thousands of years old and found in communities throughout the world. See, e.g., L. HODGKINSON, BODYSHOCK: THE TRUTH ABOUT CHANGING SEX 17-22 (1987) (discusses transsexualism in Greek mythology, Roman times and the Renaissance).

In modern parlance, transgenderal behavior is more logically called a lifestyle choice. The lifestyles of gender and sexual status may more properly be considered as an infinite number of points along dimensions of human expression. Transsexual and transgendered people are those who

decide to move along these dimensions from their current lifestyle to a new one.

II. STRATEGIES FOR PROGRESSIVE CHANGES

Two strategies for progressive change are proposed. First, it is urged that health law consider transgendered behavior to be a gender identification lifestyle, entitled to protection from discrimination along with sexual orientation gay and lesbian lifestyles. This strategy de-medicalizes transgendered behavior. Second, it is urged that health law define sex as a continuum of characteristics, and not a basis for categorization of people, their rights, or obligations. This strategy broadens all existing sex-specific law to include gay, lesbian and transgendered persons.

1. Equal Protection for Transgendered People: Sexual Orientation And Gender Identification As a Suspect Class

The goal for progressive changes in transgender law is to remove classifications of people based on sex or gender. Such a goal may not be realistically attainable in the near-term, because of the deeply ingrained nature of sexual differentiation in the human species.

Ironically, the first step toward removing pernicious classification in our society is to legally consider the people being discriminated against as a "suspect class" for constitutional equal protection analysis. Race, ethnicity and illegitimacy are all deemed suspect classes, and hence discrimination based on those characteristics is especially liable to be deemed unconstitutional for failure to provide "equal protection" to all Americans, as required by the 14th Amendment to the U.S. Constitution (no state shall "deny to any person within its jurisdiction the equal protection of the laws"). Consequently those demographic distinctions, once of paramount importance to society, are being rendered ever more irrelevant.

Transgendered people fit all the requirements of being a suspect class, but have not yet been so held. Kirkpatrick v. Seligman & Latz, Inc., 475 F. Supp. 145 (MD Fla. 1979) (transsexuals are not a suspect class for purposes of equal protection analysis and clearly there was a rational basis for employer's requiring its employees who dealt with the public to

dress and act as persons of their biological sex since allowing employees to do otherwise would disturb customers and cause them to take their business elsewhere). A clearly progressive step for health law is to achieve judicial precedent that transgendered people are a suspect class. A major, albeit halting, step in this direction was taken by the 9th Circuit in Watkins v. United States Army, 937 F. 2d 1428, 1349 reh'g granted, en banc, 847 F. 2d 1362 (9th Cir. 1988):

> "In sum, our analysis of the relevant factors in determining whether a given group should be considered a suspect class for the purposes of equal protection doctrine ineluctably leads us to the conclusion that homosexuals constitute such a suspect class. We find not only that our analysis of each of the relevant factors supports our conclusion, but also that the principles underlying equal protection doctrine --the principles that gave rise to these factors in the first place -- compel us to conclude that homosexuals constitute a suspect class. Having concluded that homosexuals constitute a suspect class, we must subject the Army's regulations facially discriminating against homosexuals to strict scrutiny. Consequently, we may uphold the regulations only if 'necessary to promote a compelling governmental interest'."

The factors for suspect class determination mentioned in Watkins can be applied with equal force to transgendered people, as well as all sexually preferenced people (i.e., gays, lesbians, transsexuals). A list of those factors, and their applicability to transgendered people is provided below:

Suspect Class Factor	Transgendered Examples
Suffered a history of purposeful discrimination	Considered to be homosexual, and thus targets of homosexual violence
Burdened with prejudices unrelated to performance	Numerous cases of transsexuals fired, and merits considered irrelevant
Immutable	Transgendered people born, not made
Lack political power	Transgendered and gay people have no political power, per lack of proportional representation

a. Grouping Gays, Lesbians and Transgendered as Part of a Single Equal Protection Class

If transsexuals are to be considered a suspect class, then the best strategy for progressive change is to group three gender-oriented communities together into a single "sexual orientation and gender identification" suspect class. These three groups are gays, lesbians and transgendered persons. The reason for this strategy is that the size and prevalence of the gay and lesbian groups will be critically necessary to help the nearly invisible transgender community gain recognition as a suspect class. Inclusion of gender, on the other hand, helps the gay and lesbian community move beyond the puritantical and misogynistic sexual-based categorizations inherited from a patriarchal past. In short, women should be free to act as women, men or anything inbetween, whether or not and however they are sexually active. The same should go for all people across the sex/gender continuum, as it now does for all races and ethnic groups.

A sexual orientation and/or gender identification ("SOGI") suspect class naturally groups gays, lesbians and transgendered people for the same kinds of reasons that race and ethnicity suspect classes group their constitutient possibilities (e.g. Polish, Latin, Asian). Separate judicial holdings that each *type* of sexual orientation or gender identification is a suspect class makes no more sense than waiting for each "race" or "ethnic group" to be separately deemed a suspect class.

Scientific or semantic experts may take objection at the improper defining of trans*gender* behavior (which may have no sexually active component) as related to a *sexual* orientation (implying sexual activity). However, in normal language usage, there is a tremendous semantic overlap between gender and sex, with few people knowing or recognizing the difference. If defining transgenderism as related to a sexual orientation accelerates legal protection for transgendered people, then semantic purity has been sacrificed for a worthy goal. Both gender and sex have broad penumbral meanings which largely overlap, and which may all be encompassed by the concept of sexual orientation and gender identification. For example, "sexual orientation" encompasses "social sex", which is essentially synonymous with "gender."

b. Consequences of Equal Protection for Sexual Orientation and Gender Identification

A decision that the Equal Protection Clause of the United States Constitution bans discrimination on the basis of sexual orientation and gender identification, barring compelling government interests to the contrary, will inevitably inspire a great number of amendments to other laws designed to protect women from discrimination. The Civil Rights Act of 1964 would be an early candidate for expansion of protected classes to go beyond "sex" to also include "sexual orientation and gender identification," as would state labor and human rights laws. One jurisdiction which has taken an early lead has a Human Rights law that intends "to secure an end in the District of Colombia to discrimination for any reason other than that of individual merit, including, but not limited to, discrimination by reason of ... personal appearance, sexual orientation ...." DIST. COL. CODE ANN. | 1-2501 (1991).

In a slightly different vein, if transgender behavior is a matter of sexual orientation and gender identification, then the condition must be de-medicalized. As a de-medicalized sexual orientation, it may no longer be possible for those dependant upon state or broad coverage medical care to get sex reassignment surgery paid for at someone else's expense. With transgenderism as a sexual orientation, sex reassignment surgery becomes a cosmetic operation.

In the long run, if sexual and genderal classifications are removed because they have become irrelevant (like asking mixed ethnicity people what they are), then at long last the transgenderal bugaboo known as the restroom question will have been answered. Which restroom does a transgendered person use? Any restroom, because "male" and "female" signs will be no more appropriate on restroom doors than are "white" and "colored" signs today. There was a time that white/colored restroom segregation was undoubtedly more important than male/female segregation. Such a change to unisex restrooms might also help redress the longstanding discrimination against women in adequate restroom facilities. In terms of implementation, the simple answer is to do away with urinals, thus providing everyone with reasonable restroom privacy as is done in Japan and other countries.

It should be noted though, that even without adding the category "sexual orientation and gender identification" to proscribed bases of discrimination, there is considerable logic (though not precedent) to including transsexual women within the existing legal protections against discrimination based on sex:

> "courts have extended coverage of the [Equal Rights] Act to prevent discrimination against women with preschool-age children, single pregnant women, married women and black women. In addition, courts have extended coverage of the Act to prevent discrimination against whites as well as men. Transsexual women, like women with preschool-age children, pregnant women, married women and black women, are also a subclass of women. The fact that they are transsexuals in addition to being women should not deprive them of protection enjoyed by women who also happen to be married, pregnant, or black. Note, Ulane v. Eastern Airlines: Title VII and Transsexualism, 80 Nw. U.L. Rev. 1037, 1050 (1986) (footnotes omitted).

Only one court to date has accepted this logic and it was overturned on appeal. Ulane v. Eastern Airlines, Inc., 581 F. Supp. 821 (N.D. Ill. 1983), rev'd, 742 F. 2d 1081 (7th Cir. 1984), cert. denied, 105 S. Ct. 2023 (1985). The reason usually given for refusing to include transsexuals as a subclass of women, and thus protected against discrimination based on sex, is that Congress never considered protecting transsexuals. The vacancy of this argument is evident in that sex was added to the list of proscribed bases for discrimination only two days before passage of the Civil Rights Act, and it was done so by Virginia Representative Howard Smith in an effort to scuttle the Act, whose main purpose was to redress employment discrimination suffered by African-Americans. Representative Smith's effort backfired, and two days later he was among the minority that voted against the Civil Rights Act, which passed 168 to 133 with both race, sex and certain other forms of discrimination prohibited. 110 CONG. REC. 2577, 2804, 2584 (1964).

The redefinition of transgendered behavior as a sexual orientation and gender identification, an optional lifestyle, and then according constitutional protection to such persons as members of a suspect class, is the best tactical move to advance the status of health law. However, law ultimately must reflect reality, for law is but the imperfect

expression of society's consensus. The reality is not only that transgendered behavior is a sex-based orientation, but also that sex itself cannot be simply defined as a dichotomous choice of male or female. Since transgendered people have all manner of unique sexual orientations, transcending both anatomy and psychology, it follows that sex cannot be either a male or female category. Sex must be a continuum.

2. Redefinition of Sex

The second progressive change in health law is to define sex as a continuum of male and female anatomical, behavioral and biological characteristics, and not as a basis for categorization of people, their rights, or obligations. This strategy broadens all existing sex-specific law to include gay, lesbian and transgendered persons, as well as enhancing the human rights of all persons to be free of limits to their liberty imposed by virtue of gender lifestyle choice or chance genetic sexual attributes.

Table 1 above showed some of the numerous different combinations of chromosones, anatomy and psychology that occur in society. The combinations could be multiplied endlessly by considering separately the kinds of thought patterns or anatomical features believed by society, at any point in time, to represent various levels of "feminine" or "masculine" behavior. The point is that many people, and perhaps most or all people in some covert sense, do not fit into rigid male and female categories based on alignment of gender psychology, sex anatomy and XY chromosones. To paraphrase Dr. Benjamin, quoted earlier, every Eve is Adam, and every Adam, Eve.

In addition, the rigid classification of life into male and female sex/gender types works an injustice on all people, regardless of their sexual orientation. The injustice in this case is an *a priori* removal of their freedom to express themselves along one of life's most trenchant dimensions -- the aggressive/passive, acquisitive/nurturing, tearing/sharing gemeinschaft or social worldview encompassed by sex. While the non-conformist will buck society's norm, most people will simply go along, and forego a major component of human expression.

Governmental classification of people into male and female sets down an effective and omnipotent state doctrine that free-form sexual

and gender expression is bad, evil and wrong. Hence millions of people who would otherwise better enjoy their life by simply being free to express themselves along a sex and gender continuum, instead live repressed to this extent out of a natural and well-founded fear of opprobrium.

The inaccurate and unjust definition of sex as either male or female should be changed. Laws basing rights or obligations on sex should contain a definitional section in which sex is defined as a continuum of anatomical, behavioral and biological characteristics from male to female. This change added to the Civil Rights Act of 1964, for example, would clearly provide transgendered people with protection against being fired due to having an anatomy which is different from their biology (e.g. post-operative transsexual) or due to having a feminine behavior while still an anatomical male (e.g. pre-operative transsexual or cross-dresser).

The academic community is gradually accepting "that differences between men and women are social, rather than inherent and natural... ." Sylvia Law, "Homosexuality and the Social Meaning of Gender," 1988 Wisc. L. Rev. 187, 212. This is an important step because the judicial system will want scientific back-up for any definition of sex. Health law professionals should first get a redefinition of sex in the scientific literature, and then import that new continuum-based definition into the legal sphere. Then, finally, courts will have to hold that discrimination against changing sex is discrimination against sex. And discrimination against sex is repression of life. The redefinition will make it clear that sex can be a changing thing, and changing sex can be part of a fulfilling life.

3. Transgender Medical Malpractice

Law and medicine cross paths when transgendered persons decide to commence transsexual medical treatment such as hormone therapy and sex reassignment surgery. In concept, such decisions on the part of transgendered persons are no different from all manner of cosmetic surgery, except that hormone therapy and sex reassignment surgery may actually be prescribed for transgendered persons meeting the medical definition of transsexualism. Because of the general similarity of transgenderal surgery and other cosmetic surgery, the legal liability and medical ethics standards should also be the same.

a. Standard of Care for Transgendered Treatment

It might be argued that a lesser standard of care prevails for transgenderal surgery, because it is cosmetic and hence not medically necessary. In short, there has been an assumption of the risk, or what tort law knows as "comparative liability" (damages are reduced by the percentage of blame assigned to the victim). Under today's health law, sex reassignment surgery is *not* cosmetic but medically necessary. This is so because two psychiatric referrals are necessary before sex reassignment surgery will be performed, although breast augmentations and estrogen therapy is pretty much made available upon patient's representation that they are transsexual. The progressive changes to health law proposed herein would de-medicalize transgenderism of all sorts, and hence make even transsexual surgery recommended by a psychiatrist potentially a "cosmetic" operation.

The standard of care is the same for cosmetic or non-cosmetic surgery -- it is the level of care a reasonably competent surgical team would offer under comparable conditions. Suria v. Shiffman, 486 N.Y.S. 2d 724 (1985) (transsexual with substantial responsibility for own medical problems nevertheless wins judgment against malpracticing physician). Where negligence is evident, a medical malpractice case should prevail even for sex reassignment surgery.

In a similar vein, it is possible to sue in contract for a disappointing chunk of transgender surgery or medical treatment. However, most medical practitioners would be sure to disclaim any particular results in signing any contract for any kind of cosmetic surgery.

b. Possible Regulation of Transgender Medical Treatment and Surgery

One development of interest to transgender law is the creeping regulation of the cosmetic surgery field. Almost everyone is familiar with the govenment decision to sharply circumscribe the availability of silicon breast implants. It is ironic that a first, large damages award to a plaintiff with a leaking silicon breast implant led the Food and Drug Administration initially to pay attention to the long-ignored field, and then later to limit the availability of all types of silicon breast implants.

"Big Award in S.F. Lawsuit Led to Breast Implant Moratorium," San Francisco Chronicle, Jan. 8, 21992 at A4.

Less well known is a movement building in California, the capitol of cosmetic surgery, to regulate the largely unregulated fields of cosmetic and plastic surgery:

> "The [revocation of one California's leading cosmetic surgeon's license to practice medicine] reveals a growing split in the medical commmunity over safety, standards and ethics in the largely unregulated field of cosmetic surgery. [A] past president of the American Society of Cosmetic Surgery (the "cosmetics"), claims he was done in by a rival medical faction -- members of the American Society of Plastic and Reconstructive Surgery (the "plastics") -- in an unseemly battle over what may be modern medicine's largest pot of gold.
>
> . . .
>
> Cosmetic surgery, largely elective and performed in outpatient settings, is strikingly free of regulation either by the government or by the private sector. As a result, virtually any of such surgery may be performed by the holder of an MD license no matter what his or her specialization, making it difficult to establish common standards." "Lack of Regulations Sparks Cosmetic Surgery Turf War," Los Angeles Times, Dec. 23, 1991 at A1.

The gradual regulation of the plastic and cosmetic surgery field may inure to the benefit of transgendered patients by providing them with generally accepted standards, against which negligence can be judged in a malpractice lawsuit. On the other hand, such regulation may also impede the transgendered person's ability to obtain the surgery or treatment desired. The Food and Drug Administration's silicon breast implant decision showed a *prima facie* bias against more or "pure" cosmetic surgery (e.g. voluntary breast augmentation difficult to obtain) as compared to less or "necessary" cosmetic surgery (e.g. breast reconstruction following removal due to breast cancer to be more generally available). Such reasoning carried over to medical practices desired by transgendered people, but not without risks (e.g. estrogen prescriptions, breast augmentation, or genital reassignment), could well lead to the banning of these procedures except for those deemed "medically necessary." This result would be contra-progressive for health

law because it would re-medicalize the transgender field through the back door of administrative law.

The progressive track of transgender health law is to guard against government withdrawal of freedom of choice over one's own body. The government is exercising a role with maximum benefits and minimum costs when it investigates, publishes statistics and issues advisories. But once it steps further and proscribes the availability of personal surgery options, such as a woman's choice for breast augmentation with no significant external costs to society, the government's encroachment on personal liberty outweighs its benefit to public safety.

c. Medical Insurance Implications

A final medical surgery related aspect of the progressive de-medicalization of transgender therapy is that insurance-funded sex reassignment surgery might disappear. The reason for this is that courts have held that sex reassignment surgery is medically necessary, and not even available without psychiatric referral, and hence this surgery cannot fall within the cosmetic surgery exclusions of virtually any health insurance policy. Davidson V. Aetna Life & Casualty, 101 Misc. 2d 1, 420 N.Y.S. 2d 450 (1979). Similarly, while cosmetic surgery is not available to prisoners, medically diagnosed transsexual prisoners have been held entitled to state-provided feminine hormones. Marty Phillips v. Michigan Department of Corrections, 731 F. Supp. 792,798 (W.D. Mich. 1990) (refusal to provide transgendered inmate with 2.5 mg/day of premarin constituted cruel and unusual punishment in violation of the Eighth Amendment because "transsexualism is not voluntarily assumed and is not *merely* a matter of sexual preference") (emphasis supplied).

While any withdrawal of subsidized transgender treatment from those who cannot afford it is wrong, the solution lies in prohibiting medical insurers and penal institutions from not covering this kind of cosmetic surgery or hormone therapy. The solution of continued medicalization of transgender behavior works a greater harm on more people. Continued medicalization of transgenderism sets up a tier of psychologists as the gatekeepers of what we do with our own bodies, unfairly paints the entire transgender community with the brush of mental illness, and maintains the pernicious fiction of separate male and female classes of people with associated separate gender roles, a fiction which

has been especially unfair to women from time immemorial.

In summary, medical malpractice law for transgendered surgery is not different from other surgery. Since the field is largely unregulated, standards are virtually non-existant and hence winning malpractice lawsuits will be difficult. Regulation appears to be coming to plastic and cosmetic surgery. The health law community will have to be vigilant that a right to transsexual surgery or therapy is not lost if the entire transgender field becomes progressively de-medicalized, but then an administrative government agency imposes a much stricter standard of safety than it would for a medically necessary procedure.

4. Transgender Marital Law and Medical Ethics

A unique question arises in the case of hormone therapy or sex reassignment surgery for a spouse because such treatments will interfere with the standard methods of heterosexual intercourse. Also, depending on the definition of male/female that one employs, sex reassignment surgery could result in two women or two men being married, a situation that is still anathema to the civil legal system in the United States. It is proposed, however, that by including sexual orientation and gender identification as a prohibited basis for discrimination in civil or economic rights, it will no longer be possible to prohibit same-sex marriages. Also, there will be, for the first time, positive legal recognition of same-sex or trans-sex forms of sexual intercourse. Consequently, medical ethics problems of performing sex reassignment therapy on a spouse should then disappear.

Currently, the Harry Benjamin Gender Dysphoria Standards serve as a voluntarily ethical guideline for medical practitioners involved with transgendered people. These standards require two psychiatric referrals for transsexual surgery, and only after a year of cross-living, but provide for early access to feminizing hormones if there is a persistent desire to be of a different sex. In general, the Harry Benjamin standards are consistent with the current transgender health law regime, but would be useful only as advice to the transsexual in a new de-medicalized paradigm. A copy of the current version of the standards is appended to this Health Law Committee Report.

a. Ethical Latitude of the Health Practitioner

Health practitioners have no obligation to deal with transgender health issues or patients. While a physician has a general obligation to remain with a patient during the course of an illness, he or she does not have to accept the patient in the first place, and can always withdraw by providing the patient with reasonable notice. Once involved with a transgendered patient, the physician has enormous latitude. For example, the physician is ethically entitled to not prescribe feminizing hormones to a transgendered patient requesting the same for fear of the negative effect such hormones might have on the patient's "holistic health", including relations with spouse, children or society. Even if the spouse consented to a transsexual or essentially lesbian relationship, a physician cannot be ethically estopped from refusing the prescription so long as the couple is married. His reasoning could be as simple as not wanting to contribute to a situation of same-sex marriage when such marriages are not allowed in any jurisdiction in the world. Or, the physician may fear a lawsuit for loss of consortium should the non-transsexual spouse at any point in time disagree with the course of treatment.

For comparison, consider the position of a doctor 25 years ago asked to perform even a modest blood test to enable people of African and European ancestry to marry. He could then have ethically declined, believing it not in their "holistic health" interests to marry, and pointing out that his state and 15 others made such marriages illegal. Loving v. Virgnia, 388 U.S. 1 (1967) (as of World War II, about 40 years ago, 30 states still outlawed interracial marriages as contrary to God's scheme of life, including Arizona, California, Colorado, Idaho, Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Wyoming, and most southern states). The same medical refusal would be preposterous today, in large part because of the Supreme Court's holdings in Loving v. Virginia that racial classification of marriage per se violates the Equal Protection Clause of the Constitution, and that:

> "These [antimiscegination] statutes also deprive the Lovings of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.

> "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes ... is surely to deprive all the State's citizens of liberty without due process of law. ... Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State." Ibid. at 12.

Based on the holding in Loving v. Virginia, state laws which limit marriages to persons declared to be of opposite sex would seem to be equally violative of the Due Process Clause. It cannot be denied that a substantial percentage of the citizenry is gay, lesbian or transgendered, and hence all those millions of persons are being deprived of their "basic civil rights" by not being permitted to marry in accordance with their SOGI. The only possible logical basis for the denial is that such couples cannot perform the fundamental purpose of marriage by producing children. But such an argument is clearly empty in at least three different ways: (1) many heterosexual married couples are infertile, (2) same-sex oriented married couples could have children through the participation of a sperm or egg donor, and perhaps a surrogate mother, and (3) same-sex oriented couples have been found to be as fitting as adoptive parents as any other group.

A more fundamental approach to "same-sex" marriages is to redefine "sex" as a "continuum of anatomical, behavioral, and biological characteristics from masculine to feminine." Marital limitations to "opposite sexes" would no longer have meaning. Medical practitioners would have no logical basis for refusing a person's request for assistance in a matter of personal gender or sexual development, subject to reasonable controls for purposes of health. Even the Harry Benjamin Standards may become obsolete as society starts to recognize that sex roles are in its societal mind, not in the objective reality -- requirements to "cross-live" in the "other" sex will start to lose meaning.

b. Utilitarian Analysis Leads to Freedom of Sex/Gender

In the final analysis, juridico-medical ethics must be grounded in a clear understanding of individual and societal rights and obligations. Using marketplace/utilitarian philosophical reasoning, one of the leading

designers of the ascendant transgender health law paradigm writes:

> "If the market can produce [sexual/gender] surgery at a price that the consumer or his or her insurer is willing to pay, then the liberty and welfare values underlying the institution of the market and the principle of mutual gain through trade would validate (prima facie) the surgical transaction. This prima facie conclusion might be withdrawn if the consumer's preference for surgery were formed coercively, or if the market price for surgery for any reason did not require the parties to the transaction to internalize its social costs." R. Garet, "Self-Transformability," 65 S. Cal. L. Rev. 121, 165 (1991).

Since there do not appear to be any social costs to transgendered behavior or transsexualism -- these people appear to be as productive as anyone else in society, and perhaps serve a vital enzymatic role in unifying society -- there are no logical bases for impeding transgendered peoples' requests for feminizing hormones or surgery under the utilitarian philosophy of relationships between citizens and their state. This conclusion would be made even more manifest if transgendered behavior was included as a proscribed basis for discrimination absent compelling reasons to the contrary. Such a progressive change would provide an "official blessing" of the outcome of the market (albeit one kept small by gatekeepers) that transgendered therapy and surgery is in demand.

In the long run, sex must be viewed as a continuum. Just as tribal, village, religious, national origin, and now racial classifications have come to be seen as fluid and a non-meritocratic, non-productive means of decision-making, the same watershed will inevitably come to classification by sex. The ridiculous efforts of states to define what percentage of "non-white" blood a person could have and still be "white" bears a marked resemblance to today's efforts to define maleness and femaleness based on chromosone counts or amount of anatomy constructed. When sex can be defined as a matter of personal lifestyle, then society will have surmounted one of its most fundamental barriers to freedom of expression. Hence the most progressive direction for health law is toward a de-classification of sex and a de-medicalization of transgenderism. This is tantamount to a celebration and protection of sexual and gender diversity in human life.

MODEL LAW AND REGULATIONS

1. Amend Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a)(1) to provide in pertinent part:

"(a) It shall be an unlawful employment practice for an employer --

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, sexual orientation and gender indentification, or national origin or . . ." [amendment underlined]

Note: Sexual orientation and gender identification may logically be in the same category as religion, which is, or at least may be, simply a matter of philosophical orientation. The intention is to provide protection against employment discrimination to gays, lesbians, bi-sexuals, and transgendered persons, including transsexuals. It is not intended to provide protection to persons engaged sexual behaviors which cause harm to others. Similarly, the intention of the original Title VII language was to provide protection against employment discrimination to individuals of all different religious persuasions. But it was not intended to provide protection to persons engaged in activities which cause harm to others.

ALTERNATIVE

2. Change or create "Definitions" sections of legislation creating rights or obligations based on "sex" to the following:

" 'Sex' is defined as a continuum of anatomical, behavioral and biological characteristics from masculine to feminine. A person's sex is a person's gender lifestyle orientation, and should not be used as a basis for the categorization of people, their rights, obligations or benefits."

Note: This redefinition of sex is an alternative model regulation to the inclusion of "sexual orientation and gender identification" as an additional category in legislation dealing with sex-based rights or obligations.

3. Add a provision to state insurance law as follows:

"Notwithstanding any provisions to the contrary contained in insurance

policies covering persons in this State, no insurance policy that pays for medically necessary surgery shall fail to pay for sex reassignment surgery on the basis of a cosmetic surgery exclusion, so long as such sex reassignment surgery is deemed medically necessary by two qualified health science practitioners."

Note: The purpose of this provision is to still enable insurance payment for sex reassignment surgery deemed medically necessary, while avoiding medicalization of the general transgender condition, or requiring any person desiring sex reassignment surgery for lifestyle purposes to obtain medical clearance for such surgery if he or she does not want an insurancepolicy to pay for it.

LEGAL INTERVENTION

4. Implement pursuant to, or in support of, progressive transgender oriented legislation the following activities:

a. A non-partisan lobbying group for transgendered legal rights;
b. Accurate statistics on the incidence of transgenderism;
c. A Transgender Medical Advisory Board for better, more innovative and more standardized health care;
d. A transgendered persons peer-level nationwide support network;
e. College-level training for health practitioners in the gender community.