WHEN PARENTS DISAGREE: THE ROLE OF MEDICAL PROVIDERS WHEN CARING FOR TRANSGENDER/GENDER-EXPANSIVE CHILDREN AND THEIR PARENTS INVOLVED IN CUSTODY DISPUTES

Provider Toolkit

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How do you work with transgender and gender-expansive (TGE) children and families when one parent affirms a child's gender identity/expression and another appears unsupportive? This can be a challenging tightrope to walk, while also advocating for your young patients.

Family courts are increasingly turning toward medical and mental health practitioners for guidance and recommendations when parents disagree about a child's gender identity or expression. Pediatricians and primary care physicians, for example, are often called upon by attorneys and custody evaluators to share their professional opinions of their patients in family court cases. It is imperative that providers understand the underlying issues at play that can contribute to the physical and mental health disparities of this particularly vulnerable subset of TGE children. Given that healthcare professionals are often a primary trusted source of evidence-based practices, we suggest that they are uniquely positioned to support families of TGE children engaged in custody disputes.

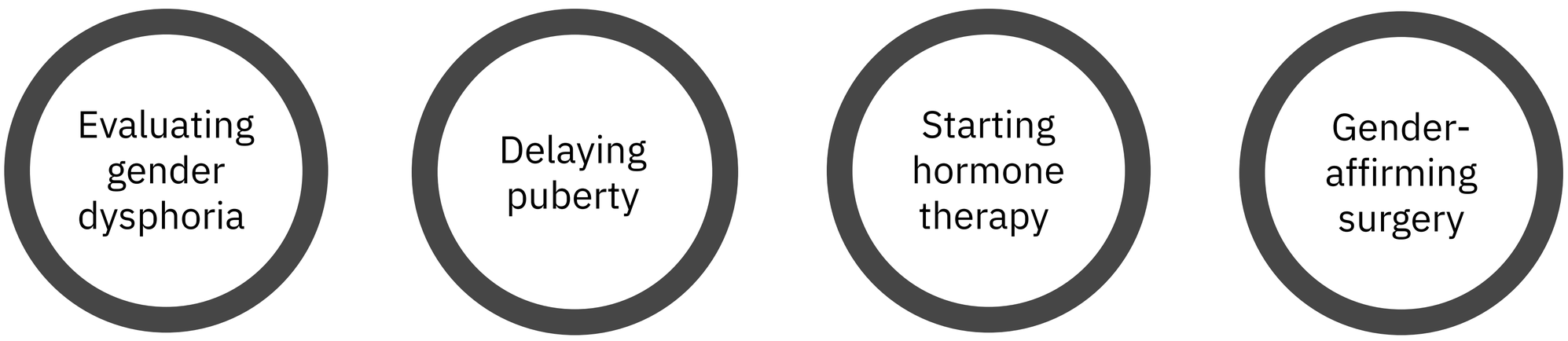
The purpose of this toolkit is to provide a foundation and context for medical and mental health practitioners to feel better prepared and confident to educate family court professionals, and advocate for the best interests of their patients. We also provide best practices to illustrate how providers can appropriately and compassionately navigate care when co-parents disagree regarding medically-necessary interventions.

Toolkit Sections

PART ONE:
CURRENT RESEARCH

Despite the growing body of empirical evidence outlining the critical need for gender-affirming care for transgender and gender-expansive youth (Rafferty, 2018; Fast & Olson, 2018; Sorbara et al., 2020), barriers persist for ensuring that children have access to such care and support. Gender-affirming care can include both medical and non-medical approaches. However, in instances where one parent opposes gender-affirming care, it can be particularly challenging for providers to navigate best practices (Clark et al., 2021; Dubin et al., 2020).

Common medical challenges for affirming parents and providers include:



Current discussion over parent-child disagreement centers around the child's developing autonomy in the decision-making process, the right to a safe healthy environment, and the provider's role and responsibility in advocating for their most minoritized patients. The existing body of research clearly indicates that transgender and gender-expansive children not supported in their identities face adverse social, emotional, and physical health outcomes. Transgender youth who lack supportive families are far more likely to experience gender dysphoria (de Vries et al., 2014; Olson et al., 2016) and are at an elevated risk for depressive symptoms and suicidal ideation (Aitken et al., 2016; Perez-Brumer et al., 2017).

Family acceptance is a critical factor when it comes to the health and well-being of TGE children (McConnell et al., 2016; Pariseau et al., 2019; Ryan et al., 2010; Russell et al., 2018). When children are affirmed in their gender identities and are able to socially transition, they have better mental health outcomes (Russell et al., 2018), including rates of internalizing psychopathology more comparable to their cisgender peers (Gibson et al., 2021; Olson et al., 2016).

Central to this toolkit is the importance of medical providers' guidance and affirming approach to gender-related care. Standards of care, such as the World Professional Association for Transgender Health Standards of Care (2012) and the Endocrine Society Clinical Practice Guidelines (2017) recommend medical interventions such as pubertal suppression and gender-affirming hormone therapy for youth who meet the appropriate criteria. Due to transphobia and subsequent court delays, TGE youth in custody cases find themselves standing by, at the mercy of their parents, providers, and court professionals determining if or when they will have access to gender-affirming interventions, with the puberty clock loudly ticking.

An immediate concern is the mental health of these youth, as it has recently been reported that late pubertal stage and older age are associated with worse mental health than those presenting for gender-affirming medical care that are younger (Sorbara et al., 2020). Court delays due to lack of awareness, implicit bias, and transphobia may have detrimental consequences for transgender youth.

Questions for consideration

When working with families engaged in custody disputes where the child's gender identity is a primary tension, many questions arise, such as:

- Who gets to decide the child's gender identity?
- Is it enough that one parent consents to treatment?
- Why would a "wait and see approach" be harmful?
- How "bad" does the child's gender dysphoria have to get before someone steps in?
- Does the child have a right to understand their body and which stage of puberty they are in?
- Why might it seem like the child changes their gender identity depending on which house they are in?
- How might neutrality cause harm for transgender/gender-expansive youth?
- Can a parent make a child transgender?
- What are the best interests of a transgender/gender-expansive child?
- How are the implicit biases of those involved potentially impacting this patient case?
- How might institutional and interpersonal transphobia be operating here?

While some of these questions may seem rhetorical or contradict current medical recommendations, these are the types of questions and situations that may arise when working with parents who have divergent responses to a child's gender expression or identity. In your position as a child health provider, you may be asked to provide your expert opinion and recommendations on such inquiries to the courts. It is necessary to be aware of the varying degrees of knowledge parents and court professionals have surrounding transgender and gender-expansive children, often fueled by fear, lack of information, and a court system that promotes and privileges traditional gender-related behaviors.

Custody Challenges Experienced by Affirming Parents

More attention is being given to the unique and complex challenges experienced by affirming parents and their transgender/gender-expansive children involved in custody disputes. Due to lack of familiarity within family court regarding transgender children, misinformation and harm have resulted in affirming parents losing physical and/or legal decision-making custody of their TGE children (Kuvalanka et al., 2019). *(For law review articles that analyze court proceedings, please see Margolis, 2016; Perkiss, 2014; Skougard, 2011).*

In nearly every case, affirming parents, generally mothers, are blamed by their ex-partners for causing the children to assert transgender identities. This further invalidates a child's autonomy and perpetuates transphobia in the medical and family court system.

The most common and harmful myth in these cases is that there is an external entity, generally the mother, who is forcing or convincing the child to be transgender. This myth often goes unchecked, or worse, accepted and perpetuated by family court professionals. This is blatant transphobia and must be challenged. There are no published empirical, peer-reviewed studies that point to parenting as a cause of one's transgender identity or gender nonconformity. On the contrary, numerous studies indicate that unaffirming parents are more likely to coerce a child into their assigned gender and exhibit harmful tactics to invalidate their child's true gender (Kuvalanka et al., 2019; Riggs & Bartholomaeus, 2018; Roberts et al., 2012).

These damaging approaches are in direct opposition to best practices recommended by the American Psychological Association (2015), the World Professional Association for Transgender Health (2012), and the American Academy of Pediatrics (2018).

While fathers have been known to be supportive, research and case law most often involve affirming mothers (or those assigned female at birth) when parents are separated or divorced (*Smith v. Smith, 2007; Williams v. Frymire, 2012*; Margolis, 2016). There are also cases where same-gender parents are in disagreement around a child's gender identity, or an affirming parent is transgender or nonbinary themselves, which can pose additional and unique barriers for these families due to the intersection of homophobia and transphobia within the family court system and society at large.

PART TWO:
SOCIAL DETERMINANTS OF HEALTH

According to the Centers for Disease Control, social determinants of health and mental health are the conditions in which people live, work, play, and grow up that can have a significant impact on health outcomes and overall mental health. Figure 1 represents a conceptual model to illustrate the dynamic and complex interplay between the social determinants of physical and mental health, and unique risk factors for TGE children and their parents engaged in custody disputes. This conceptualization highlights the structural forces behind risk factors for adverse physical and mental health for this group of youth. At the root causes level exists two societal factors: **intimate partner violence**, specifically coercive control (Stark, 2007; Prezkop, 2011), and **institutional and interpersonal transphobia**. In addition to these root causes, transgender and gender-expansive children face significant adverse childhood experiences (ACEs) and additional determinants such as income inequality, structural racism, lack of children's rights in the US, and lack of provider competence.

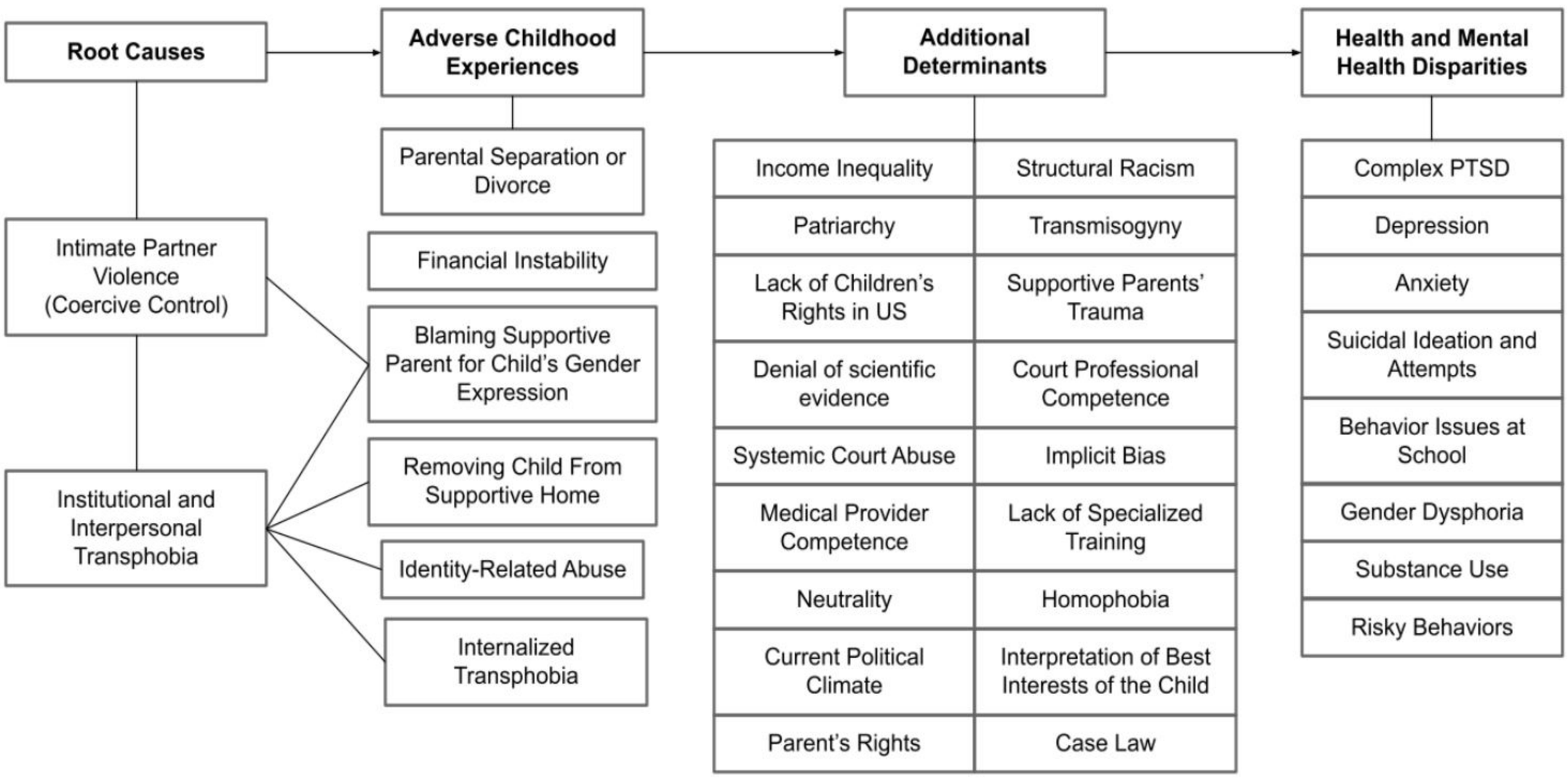


Figure 1. Conceptualizing the social determinants of health/mental health of transgender and gender-expansive children in custody disputes. Confidential, not yet published.

The pervading family court myth of both parents as "high conflict" is quite problematic and fails to take into account the structural determinants impacting affirming parents and their children. Recent findings suggest that adverse childhood experiences (ACEs) occur more frequently compared with cisgender LGB people, and a significant association exists between gender identity and psychiatric impairment (Scharrs et al., 2019). Future research and screening can help elucidate adverse events unique to transgender/gender-expansive children (Kroppman, 2021). This model posits that in addition to the common ACEs one might face, transgender and gender-expansive children with unaffirming parents face additional adversity and identity-related abuse, aside from being involved in the family court system.

While a deep dive into this model is outside the scope of this toolkit, it is imperative that medical and mental health providers familiarize themselves with these determinants and subsequent health disparities so that they are in a better position to advocate for their young patients.

PART THREE:
NAVIGATING CARE

This section provides guidance to medical professionals navigating care when parents disagree. We acknowledge how challenging this can be and hope the following recommendations clarify your role in the clinical setting and offer points to consider as you provide gender-affirming care to your patients.

Clinic/Institution preparedness

How is your clinic prepared to address situations where parents disagree on medical decision-making? To meet the diverse needs of the TGE children, many centers have created comprehensive gender clinics which can include pediatricians, endocrinologists, psychologists, social workers, and patient care navigators. These clinics are typically found in academic or resource-rich areas, and many patients and families in other communities, particularly rural communities, are without access to comprehensive gender clinics. Even in the absence of a comprehensive gender clinic, creating a safe clinical environment is crucial to provide high quality of care and promote the resilience of the TGE child (Torres et al., 2015). For example, an unfortunate encounter with a well-intentioned but ill-prepared and untrained front office receptionist can have a negative impact on the patient and family contributing to avoidance of seeking health services in the future. Clinics should be equipped with gender affirming signage, including posters, brochures, and employ gender neutral bathrooms.

Should a situation arise in which parents disagree on medical decision-making, a safe clinical environment enables all parties to discuss concerns openly and freely. In comprehensive gender clinics, psychologists and social workers are available to assist in the discussions in which conflicts arise between parents. If a physician is providing care to a TGE child without the assistance of a comprehensive clinic, it is essential that the physician have gender-affirming resources, such as counseling services and support groups, available to offer to the family should the need arise. These individuals should be trained on the complex and dynamic issues facing TGE youth and their families engaged in family court.

It is also important to find out what specific policies your clinic/institution has regarding parental consent, and any transgender-specific policies on how to address a TGE patient. For example, policies that indicate that if the patient's family members suggest that the patient is a gender different from that with which the patient self-identifies, the patient's self-identified gender is honored; this would be a recommended clause to include in a policy.

Follow current standards of care

Follow current standards of care that recommend supporting families to provide nurturing and encouraging responses when children explore their gender and/or identify as something other than the sex they were assigned at birth. Parents may find it stressful that their child is ambiguous or fluid in their gender identity. Parents can also feel pressure from their community to force the child to pick “one gender” or to only express the gender that aligns

with the sex assigned at birth. Additionally, some parents want to protect their child from bullying or discrimination and encourage the child to hide their gender exploration. While the parent and community pressure may be strong, it could be harmful to the child to impose a gender and may lead to negative health outcomes including depression, anxiety and suicidality (Ison et al,. 2016). **Supporting, advocating, and accepting a TGE child improves the health and well-being of the child** (Hill et al., 2010, Travers et al,. 2012).

Current medical guidelines do not support any medical intervention prior to puberty (Hembree et al., 2017). Only social affirmations, which are completely reversible, are advocated in the pre-pubertal child. Social affirmations of a gender expansive child include using correct pronouns and affirmed names. Other examples of social affirmations are allowing the child to wear clothes or styling their hair of their expressed gender. Because no medical intervention is indicated in the prepubertal child, social affirmation of gender is especially important to support the TGE child.

When the TGE child is pubertal, current guidelines recommend medical intervention with puberty blockers, which are also completely reversible (Hembree et al., 2017). Puberty blockers have potential benefits including allowing more time to explore gender without the further development of irreversible secondary sexual characteristics, such as breast development, phallic growth, and voice changes (Edwards-Leeper et al., 2012). While research is limited, studies suggest that puberty blockers in the TGE child improve the long-term psychological outcomes (Wallien et al., 2008, de Vries et al., 2014). If a TGE child desires to live in the gender of the sex assigned at birth, puberty blockers can be discontinued and puberty will resume without long-term consequence.

Gender-affirming hormone therapy, the cross gender hormone use of estrogen, progesterone, testosterone, and androgen blockers, can be considered when the child has the capacity to consent, typically 16 years or older (Hembree et al., 2017). Because gender-affirming hormone therapy causes some irreversible physical changes and has potential impact on long term health, such as fertility, the decision to start these hormonal medications should be done in consultation with specialists, including qualified mental health professionals, endocrinologists, and primary care physicians. Using a team approach, the mental health professional can assess the child's capacity to consent, readiness to transition, mental health needs, and support the family and child before, during and after the hormonal transition. In the interdisciplinary setting, the mental health professional in conjunction with the endocrinologist or primary care physician, can more holistically address parental concerns, support families through the transition process and help parents advocate for their child in school, in their community, and at home.

The importance of affirming providers

Provider support is particularly crucial when youth have unsupportive family members, further exacerbating negative health and mental health outcomes. TGE youth are at particularly high risk of psychological comorbidities including depression, anxiety, suicidality and suicide attempt (Olson et al., 2015). Additionally, high risk behaviors, such as illicit drug use, alcohol and cannabis use, can occur more often in this vulnerable population, which is exacerbated by increased rates of homelessness (Olson et al., 2015). Unfortunately, many youth are kicked out of their homes when they come out as transgender (Ray et al., 2007).

Parental support and acceptance are protective factors against these risky behaviors and negative health outcomes. In fact, having the support of one parent decreases the risk of suicide attempt in transgender youth from nearly 60% to 5% (Travers et al., 2012). The importance of providers who are supportive of a child's gender identity cannot be understated. Affirming providers can facilitate access to resources, such as referrals to mental health professionals or support groups to support the child. Affirming providers can also provide education and resources to the parents to assist them in understanding the child's gender development and in comprehending the importance of supporting gender exploration in a safe home environment.

Navigating parental hesitancy

There is a delicate balance of supporting the child's gender identity/expression and not alienating an unaffirming parent. Unfortunately, it is not uncommon for one parent to be more accepting of the child's gender exploration. Children thrive on the love and acceptance of all parents and caregivers. As a provider, it is important to continue to validate and affirm the child's gender identity and expression in a safe clinical environment to improve the resiliency and adaptive ego strengths of the child and promote their self-worth (Bonifacio et al., 2015). **Children will often conform to please a disapproving parent out of their need to be accepted, though this has the potential to worsen health outcomes in the child because this can make them feel their gender identity is wrong, and must be masked.** Parents often express hesitancy in allowing a child to freely explore their gender due to fear of bullying, discrimination, and bias. Additionally, some parents feel the gender exploration is a phase which shouldn't warrant such affirmations. Even if the child's gender exploration and gender expansive traits do not persist, all children benefit from an affirming, loving, and supportive home environment. Though a challenging situation to navigate in a highly charged emotional encounter, creating a space in which parents can express their concerns and feel that their concerns are heard is important. Additionally, providers and mental health professionals can play a key role in these encounters by addressing these concerns with current evidence-based medical knowledge, and psychologists and social workers can help mitigate the disagreement that can arise between parents through counseling. Initiate ongoing dialogue with parents, validate concerns, and acknowledge parent beliefs while encouraging the unaffirming parent to support their child.

Consider a clinical ethics consultation

There are times when the support of both parents is unachievable. An ethics consultation can help sort out what constitutes the best interests of the child in a particular case outside of the courts. When affirming care is decided as being in the best interest of the patient, the opposing parent may have less of a moral standing or resolve to forestall a plan of care.

Support the affirming parent

Encourage the supportive parent to slowly accommodate the child's gender identity and obtain (and document) guidance from qualified experts. While all TGE children are on their own gender journey and their own personal timeline, which may unfold quickly, providers can advise the supportive parent in consciously accommodating their child so as to minimize the risk of litigation. We want to acknowledge that this is an incredibly challenging place to be in as the affirming parent. Court professionals, attorneys, and organizations that work on behalf of these families strongly encourage supportive parents to follow the guidance and recommendations of the experts in the field. Connect families to local LGBTQ+ youth-serving organizations and refer parents to legal resources as appropriate.

Conduct mandatory staff-wide training

Ensure all staff are formally trained on gender-affirming care, including the complex dynamics when parents are in disagreement over medical and mental health care for their TGE child. Training should cover the social determinants of health/mental health and health disparities for this vulnerable group and, work through cases in which custody is being challenged with solutions grounded in best practices. Be attuned to the ways you are communicating about the child's gender identity/expression and work to dismantle institutional and interpersonal transphobia in medicine. Many clinics and mental health providers refuse to take on custody cases due to their complex nature. Educate the clinic or institution on these issues so that you are prepared to handle custody cases. These children need supportive providers and allies in their corner. Take the time to understand the barriers these families face to advance health equity.

For additional resources and online training modules, please visit:

- The Cribsiders Pediatric Medicine Podcast: Gender-Affirming Care
- The eQuality Toolkit: Practical Skills for LGBTQ and DSD-Affected Patient Care
- Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People, University of California San Francisco
- National LGBTQIA+ Health Education Center, Fenway Institute

PART FOUR:
WORKING WITH FAMILY COURTS

Medical and mental health providers are in a crucial position to educate and inform judges and other family court professionals about transgender and gender-expansive youth. Pediatricians and primary care physicians, for example, are often called upon by attorneys and custody evaluators to share their professional opinions of their patients in family court cases.

The following recommendations provide a starting point as you consider how to effectively advocate for your young patients and educate family courts. You will want to review your hospital or clinic's policies and guidelines when called on to testify about your patient, or share your expert opinion on a case.

1: Educate yourself on the barriers these families encounter and current research
Be prepared to speak about the social and structural determinants of health that adversely impact children in these cases, including disparate health outcomes when one is prevented from socially and/or medically transitioning.

2: Explicitly call out institutional and interpersonal transphobia
When family courts blame or insinuate that the supportive parent is forcing the child to be transgender, take the time to strongly refute this harmful claim. There is no evidence that children express a transgender identity or gender-nonconforming behavior to appease a parent, or that a parent can make a child transgender. This common myth invalidates a child's autonomy and contributes to the perpetuation of transphobia in medicine and law.

Transphobia in family courts may look like, but not limited to:

- Forcing the child to undergo multiple gender evaluations
- Insinuating that experts are "biased"
- Court professionals stating the child is "too young" to know their gender
- Court orders forcing supportive parents to remove any items from the home not associated with the child's sex assigned at birth
- Questioning the validity of the child's stated gender identity
- Court orders that force the supportive parent to treat the child as "gender-neutral" when the child is not expressing a gender-neutral identity
- Court professionals interpreting the child's gender expression, which is outside the area of their expertise and based off of stereotypical notions of gender roles
- Taking custody away from the affirming parent based on the incorrect assumption that supporting the child's asserted gender identity is harmful or abusive to the child
- Using Child Protective Services as a weapon to falsely allege child abuse against the affirming parent
- Family court professionals creating and using transphobic phrases like, "the child is in remission" or the supportive parent is engaging in "gender abuse"

3: Question "persistence, insistence, and consistence" when there are two homes

Many of these TGE children behave and identify differently depending on which house they are in. In general, family court professionals are perplexed by what *appears* to be a child "changing their mind" based on their zip code. This may be one of the biggest misunderstandings in these cases. Take the time to educate the courts that a TGE child will express and identify authentically in places and with people they feel most safe and validated. In cases where you have an unaffirming parent (or school), it makes sense that the child would hide their true gender and revert to pretending to be their assigned sex to minimize tension and keep themselves safe.

A Note about Gender Neutrality

There may be youth who do not identify with a binary identity (strictly transmasculine or transfeminine) who, for example, are agender, gender-fluid, or nonbinary. In these cases, adopting a gender-neutral approach would be recommended. Unfortunately, there can be cases where a child is expressing a binary trans identity and the unsupportive parent claims the child is gender-neutral or gender-diverse, and asks courts to enforce gender neutrality. This can cause harm to the child. Understand the layers of complexity in these cases and that fear and transphobia are often times couched in claims of neutrality.

The Need to Shift: From Proving Identity to Listening to the Child

Courts have historically called on medical providers as gender arbiters, and we seek a shift in this perspective. It is not the job of medical providers or court-appointed professionals to determine or prove the gender identity of a child, but rather to assure a safe and supportive environment where the child can thrive as their authentic self. Giving a child room to explore their gender identity in a safe, nonthreatening environment should be the goal. Listen to and center the child, and advocate on their behalf.

Insistence: An Impossible Ask

Generally, children are not raised to correct their parents. When one parent is having a hard time understanding or accepting the child's gender identity, or is explicitly unsupportive, courts can confuse a child not insisting or demanding that a parent support them as wavering or not persistent enough in their gender. This is a false belief and an impossible task to ask from a child. If behaviors are different in one environment from the other, sometimes it is about survival. It does not mean their expressed gender identity isn't real, but that they are adapting to the situation and feel it is easier to not rock the boat.

4: Speak out against gender identity change efforts (or "reparative therapy")
Clearly state that interventions designed to steer a child's gender identity or expression to what is more typically associated with their birth sex are harmful and against medical recommendations (Turban et al., 2020; American Academy of Family Physicians, 2016; Society for Adolescent Health and Medicine, 2013; American Academy of Pediatrics, 2018; American Medical Association, 2019; American Academy of Child and Adolescent Psychiatry, 2019).

5: Adamantly oppose restrictive and harmful court orders
We firmly oppose any court orders or court professionals recommending court orders that seek to limit a child's gender exploration and gender identity development. Court orders taking away toys, clothes, or a child's favorite items that the courts arbitrarily deem "inappropriate" and "not in accordance with the child's sex assigned at birth" are harmful and transphobic. Tactics such as filing motions for contempt against the affirming parent or sanctioning the affirming parent for supporting the child's gender identity are steeped in institutional and interpersonal transphobia and have no place in family courts. In almost all cases where judges sign court orders policing a child's gender expression, the child is assigned male at birth. Take time to educate the courts about this harmful practice and the damage that can be done when courts force supportive parents to stop affirming their gender-expansive children.

6: Recommendations when communicating with court professionals
- Put statements in writing to minimize any misinterpretations.
- If communicating via phone, request a summary of what was said during the phone call so that you can clarify any misperceptions and approve the summary.
- Refrain from commenting on either parents' mental health or mental status. While in some cases the affirming parent is accused of Munchausen Syndrome by Proxy or Histrionic Personality Disorder by the other parent's counsel, you are treating the child and cannot comment on a perceived diagnosis of the parent/s.

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