

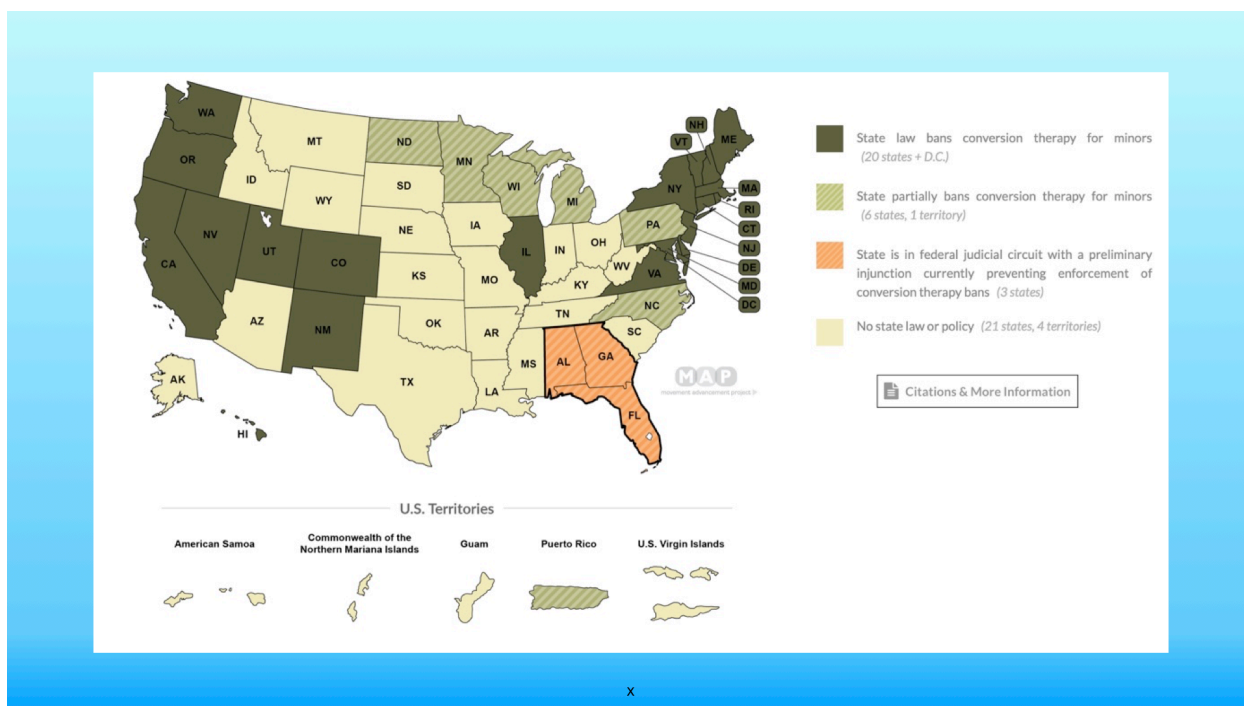


Understanding U.S. Conversion Therapy Bans AN OVERVIEW

This presentation discusses the basics of US Conversion Therapy Laws as they relate to gender exploratory therapy for minors.

Affirmation, support, exploration, differential diagnosis and comprehensive assessments, as well as treatment of co-morbid conditions are all necessary parts of the therapeutic approach **endorsed by the American Medical Establishment**, as well as WPATH when dealing therapeutically with gender related issues in minors.

However, this presentation we will discuss the approach that is uniformly rejected by Medical associations which is referred to as “Conversion Therapy” or “Reparative Therapy,” and specifically the laws which ban it.



There are currently 20 states that ban “Conversion Therapy” and 6 states that have defunded programs that support it.

The following slides and overview will provide a basic understanding of what the laws actually prohibit - what they say and don't say, who and what they are aimed at, what they expressly allow, their background, how they are likely to be interpreted and possible defenses.

PART ONE - BACKGROUND ON CONVERSION THERAPY AND CONVERSION THERAPY BANS

BACKGROUND - To understand Conversion Therapy Ban for gender identity change efforts, it is important to understand how they started and [the history of therapies re: sexual orientation](#). The case law, practice literature and research in this area is much more developed and can help in knowing what the purpose of these laws was in the past and how they will be applied to gender identity in the future.

The push to restrict therapies that attempted to change the sexual orientation of Gay men began in the mid 1970's when homosexuality was removed from the DSM in 1973 and declassified as a mental illness by the American Psychiatric Association. Up until that time, many MH professionals and pastors attempted to retrain, repair and otherwise re-orient same-sex attracted persons using

Aversion Therapies ([e.g., electric shock, deprivation of food and liquids, smelling salts and chemically- induced nausea](#)) and Reparative Therapies (which hold that same-sex attraction is the result of [early childhood trauma](#) that needs to be repaired so that the natural normative development of heterosexual desires can emerge.) These therapies also included religious camps for same0sex attracted kids as well as hypnosis and biofeedback therapies.

The basis for these therapies was the assumption that any non-heterosexual attraction was a mental disorder, and can and should be changed.

Distress at one's sexual orientation remained in the DSM until 2013 when it was removed altogether. At the same time, Gender Identity Disorder was removed and replaced with Gender Dysphoria.

First Conversion Therapy Law for Sexual Orientation for Minors

In 2012, California passed the first law banning Sexual Orientation Change Efforts on the basis that such practices were harmful for minors.

The 9th Circuit upheld the California ban — The court further concluded that, “parents do not have a fundamental right to chose (sic) for children medical or mental health treatments that the state has deemed harmful”.

CAL. BUS. & PROF. CODE § 865(b)(1) - for minors

“Sexual orientation change efforts” means any practices by mental health providers that seek to change an individual’s sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

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And in 2017 the Supreme Court [refused to hear](#) a challenge against one such ban in California, thereby upholding the complete ban on all Sexual Orientation Change Efforts (“SOCEs”) including “reparative therapy” voluntarily sought by minors under 18 years of age

PART TWO - WHAT IS CONVERSION THERAPY FOR GENDER IDENTITY?

The following are two examples of CONVERSION THERAPY LAWS FOR MINORS which include gender identity.

These laws merely state what is prohibited and what is not prohibited ... they do not say how every therapeutic approach or practice will be treated under the law... for that we will need to look more broadly at Medical Practice Guidelines and Policies. But it is important to note that these laws ban - “attempts to change gender identity” but permit “identity exploration”.

OREGON HB 2307 (2015) -

Section 1. (2)(a) -

(A) **“Conversion therapy” means** providing professional services **for the purpose of attempting to change** a person’s sexual orientation or gender identity, including attempting to change behaviors or expressions of self or to reduce sexual or romantic attractions or feelings toward individuals of the same gender.

(B) **“Conversion therapy” does not mean:**

(i) Counseling that assists a client who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition; or

(ii) Counseling that provides a client with acceptance, support and understanding, or **counseling that facilitates a client’s** coping, social support and **identity exploration or development**, including counseling in the form of sexual orientation-neutral or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, **as long as the counseling is not provided for the purpose of attempting to change** the client’s sexual orientation or gender identity.

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I have highlighted the sections that are most pertinent to our discussion. You will notice in these samples that they use similar language.... that is because once language is adopted in one State, party legislators in other States tend to promote the same language and legislative scheme.

New York (2019) - Professional Misconduct... Education Law § 6509-e

b. **"Sexual orientation change efforts"**

(i) means any practice by a mental health professional **that seeks to change** an individual's sexual orientation, including, but not limited to, **efforts to change** behaviors, **gender identity, or gender expressions**, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same sex and

(ii) **shall not include** counseling for a person seeking to transition from one gender to another, or **psychotherapies** that:

(A) provide acceptance, support and understanding of patients **or the facilitation of patients' coping, social support and identity exploration and development**, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and

(B) do not seek to change sexual orientation.

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WHAT DO THE LAWS - FOR ADULTS - SAY?

In general, Conversion Therapy bans do not apply to adults on the basis of 1st Amendment free speech and religious freedom rights. There are efforts, however, to extend the reach of Conversion Therapy Bans under consumer protection laws, fraud and deceptive practice laws and practicing without a license etc. Such as California AB 2943 in 2018 which would have made “claiming to be able to change a person’s sexual orientation or gender identity “a fraudulent business practice” that misleads consumers. Also, there are attempts to expand the bans to adults as in the case of the proposed Oregon HB 2458 bill.

What Do LGBTQ Organizations Claim is Conversion Therapy?

What Organizations Claim is Conversion Therapy?

HRC/GLAAD = “Conversion therapy is any attempt to change a person’s sexual orientation or gender identity. However, because the practice has come under increasing scrutiny, **providers frequently change their terminology to avoid detection. Some of those terms can seem relatively harmless at first glance.** Proponents of conversion therapy often intentionally conflate the attempted altering of sexual orientation, gender identity or gender expression with the treatment of an actual condition such as sexual addiction. **Some claim they are helping clients explore their “sexual fluidity,” or they emphasize that their clients struggle with “unwanted same-sex attractions” or “gender confusion.”**

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Despite what LGBTQ Organizations and activists say....their viewpoint will not be used to interpret the law. However, the guideline and policies of Medical Associations likely will be.

WHAT DO THE MEDICAL ASSOCIATIONS SAY IS CONVERSION THERAPY?

In deciding whether a therapeutic approach or practice constitutes “conversion therapy” licensing boards and/or courts will refer to policy guidelines of relevant Medical Associations - not activist organizations. **The guidelines are just recommendations and do not represent the Standards of Care that will be imposed. However, they are informative.**

You will see that unlike sexual orientation, where gender dysphoria treatments **may** include medical interventions for minors, the Medical Establishment recommends exploratory and developmental therapies prior to medicalization.

Thus, therapists must navigate a much more nuanced non-judgmental approach of supporting the young person and exploring their self perception as the same time. The AACAP, the American Psychological Association and even WPATH each expressly state such.

Below is the American Psychological Association - 2021 RESOLUTION On Gender Identity Change Efforts (Excerpts).

American Psychological Association - Resolution (2021) - Excerpts

“Gender identity change efforts (GICE) refer to a range of techniques used by mental health professionals and non-professionals **with the goal of changing gender identity, gender expression**, or associated components of these to be in alignment with gender role behaviors that are stereotypically associated with sex assigned at birth. In addition to explicit attempts to change individuals’ gender according to **cisnormative pressures**, GICE has also been a component of sexual orientation change efforts.”

EXCERPTS -

WHEREAS affirming therapeutic practices and guidelines recommend that the therapist should remain objective and nonjudgmental to the outcome, focusing on empowering the client to be active in exploring, discovering, and understanding their own identity.

BE IT FURTHER RESOLVED that neither transgender or gender nonbinary identities nor the pursuit of gender-affirming medical care constitutes evidence of a mental disorder.

WPATH's SOC* (2022) guidelines take a similar approach but is more explicit in stating what is not considered "reparative therapy."

WPATH SOC8 (2022) - Conversion Therapy

Statement 6.5 - We recommend against offering reparative and conversion therapy **aimed at trying to change a person's gender and lived gender expression to become more congruent with the sex assigned at birth.**

Some health care providers ... may undertake efforts to thwart an adolescent's expression of gender diversity or assertion of a gender identity other than the expression and behavior that conforms to the sex assigned at birth. Such efforts at blocking reversible social expression or transition may include choosing not to use the youth's identified name and pro-nouns or restricting self-expression in clothing and hairstyles. **These disaffirming behaviors typically aim to reinforce views that a young person's gender identity/expression must match the gender associated with the sex assigned at birth or expectations based on the sex assigned at birth.**

"It is important to note potential factors driving a young person's gender-related experience and report of gender incongruence, when carried out in the context of **supporting an adolescent with self-discovery, is not considered reparative therapy as long as there is no a priori goal to change or promote one particular gender identity or expression.** To ensure these explorations are therapeutic, we recommend employing affirmative consideration and supportive tone in discussing what steps have been tried, considered, and planned for a youth's gender expression. "

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The AACAP's policy likewise includes a similar statement as to what is not "conversion" therapy.

AACAP Policy on "Conversion Therapies" (2018)

The American Academy of Child and Adolescent Psychiatry finds no evidence to support the application of any "therapeutic intervention" **operating under the premise that a specific sexual orientation, gender identity, and/or gender expression is pathological.** Furthermore, based on the scientific evidence, the AACAP asserts that such "conversion therapies" (or other interventions **imposed with the intent of promoting a particular sexual orientation and/or gender as a preferred outcome**) lack scientific credibility and clinical utility. Additionally, there is evidence that such interventions are harmful. As a result, "conversion therapies" should not be part of any behavioral health treatment of children and adolescents. **However, this in no way detracts from the standard of care which requires that clinicians facilitate the developmentally appropriate, open exploration of sexual orientation, gender identity, and/or gender expression, without any pre-determined outcome.**

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We will be discussing exploration of gender identity further, but we can see that both WPATH and AACAP allow for developmentally appropriate “open exploration” where there is no predetermined goal to promote a particular identity.

PART THREE - THE ROLE(S) OF EXPLORATION IN TREATING TGNC ADOLESCENTS

Adolescents who present with a desire to transition pose **unique challenges**, not present when counseling youth with concerns related to sexual orientation. These challenges are recognized by the APA, American Psychiatric Association and WPATH.

PART 3- THE ROLE(S) OF EXPLORATION IN TREATING TGN ADOLESCENTS

American Psychological Association TGNC Guidelines (2015)
Understanding Different Developmental Needs

American Psychiatric Association - Resolution (2018)
Ruling Out Psychiatric Disorders

WPATH SOC8 - Treating Adolescents (2022)
Identity Exploration
Mental Health Concerns

American Psychological Association LGB Guidelines (2012)
American Psychological Association TGNC Guidelines (2015)
American Psychological Association Sexual Minority Guidelines (2021)
Exploration of Sexuality

American Psychological Association Girls and Women Guidelines (2018)
American Psychological Association Boys and Men Guidelines (2018)
Exploration Social/Gender Roles

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Under these guidelines, exploration is essential to understand the client’s different developmental needs, to explore the relationship between their identity and sexuality, social and cultural roles impacting their identities, as well as to ruling out psychiatric disorders and addressing mental health concerns.

American Psychological Association Guidelines for Psychological Practice With Transgender and Gender Nonconforming People (2015) recognizes the intense challenges of working with youth who want to transition but who may not be “ready” for a such a life altering decision.

American Psychological Association Guidelines for Psychological Practice With Transgender and Gender Nonconforming People (2015)

Life Span Development - Guideline 8. Psychologists working with gender-questioning and TGNC youth understand the different developmental needs of children and adolescents, and that not all youth will persist in a TGNC identity into adulthood.

Adolescents presenting with gender identity concerns bring their own set of unique challenges. This may include having a late-onset (i.e., postpubertal) presentation of gender nonconforming identification, with no history of gender role nonconformity or gender questioning in childhood. **Complicating their clinical presentation, many gender-questioning adolescents also present with co-occurring psychological concerns, such as suicidal ideation, self-injurious behaviors, drug and alcohol use, and autism spectrum disorders. Additionally, adolescents can become intensely focused on their immediate desires, resulting in outward displays of frustration and resentment when faced with any delay in receiving the medical treatment from which they feel they would benefit and to which they feel entitled. This intense focus on immediate needs may create challenges in assuring that adolescents are cognitively and emotionally able to make life-altering decisions to change their name or gender marker, begin hormone therapy (which may affect fertility), or pursue surgery.**

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American Psychiatric Association guidelines for Gender Dysphoria Diagnosis, similarly states that the SOC require attending to some co-morbid conditions first.

American Psychiatric Association - A Guide for Working With Transgender and Gender Nonconforming Patients: Gender Dysphoria Diagnosis

Ruling out Psychiatric Disorders:

- There are no studies indicating that psychiatric illness causes gender dysphoria as a consistent condition over time, although delusions or unstable personality characteristics may manifest as intermittent thoughts or feeling of gender incongruity. Additionally, TGNC people can have other psychiatric disorders (e.g., psychotic, bipolar, depressive, substance use disorders) just as anyone else that is not related to their gender variance.
- **Gender dysphoric symptoms may be the primary focus of treatment, but don't overlook the possibility that other psychiatric symptoms may need to be treated first depending on severity.**
- TGNC people can have psychiatric symptoms of psychotic, anxiety, and mood disorders just like any other part of the population.

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The New WPATH SOC 8 Guidelines for treating adolescents recognize that there is great variance in Identity development and exploration in adolescents. And that neutral exploration as part of a comprehensive assessment of adolescents seeking transition is recommended.

WPATH SOC8 (2022) - Treating Adolescents

Guideline 6.2 - We recommend health care professionals working with gender diverse adolescents facilitate the exploration and expression of gender openly and respectfully so that **no one particular identity is favored**.

“Given [the great variation in individual identity development], there is no one particular pace, process, or outcome that can be predicted for an individual adolescent seeking gender-affirming care.

Therefore, Health Care Professionals working with adolescents should promote supportive environments that simultaneously respect an adolescent’s affirmed gender identity and also allows the adolescent to openly explore gender needs, including social, medical, and physical gender-affirming interventions should they change or evolve over time.”

Guideline 6.3 - We recommend health care professionals working with gender diverse adolescents **undertake a comprehensive biopsychosocial assessment of adolescents who present with gender identity-related concerns** and seek medical/surgical transition-related care, and that this be accomplished in a collaborative and supportive manner.

“For example, a process of exploration over time might not result in the young person self-affirming or embodying a different gender in relation to their assigned sex at birth and would not involve the use of medical interventions.”

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Further, the WPATH Guidelines recommend a differential diagnosis of other mental health conditions prior to gender-affirming medical and surgical treatment.

WPATH SOC 8 (2022) Mental Health Concerns

The following requirement must be met prior to gender-affirming medical and surgical treatment:

Guideline 6.12.d - the adolescent’s **mental health concerns** (if any) **that may interfere with diagnostic clarity, capacity to consent**, and gender-affirming medical treatments **have been addressed**.

“A young person’s mental health challenges may impact their conceptualization of their gender development history and gender identity-related needs, the adolescent’s capacity to consent, and the ability of the young person to engage in or receive medical treatment.”

“Mental health difficulties may ... complicate the assessment of gender development and gender identity-related needs. **For example, it is critical to differentiate gender incongruence from specific mental health presentations, such as obsessions and compulsions, special interests in autism, rigid thinking, broader identity problems, parent/child interaction difficulties, severe developmental anxieties (e.g., fear of growing up and pubertal changes unrelated to gender identity), trauma, or psychotic thoughts. Mental health challenges that interfere with the clarity of identity development and gender-related decision-making should be prioritized and addressed.**”

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American Psychological Association Guidelines for working with LGB Youth recommend exploring the relationship between gender non-conformity and sexuality.

APA Guidelines for Psychological Practice W/ Lesbian, Gay and Bisexual Clients (2012)

Guideline 6. Psychologists strive to distinguish issues of sexual orientation from those of gender identity when working with lesbian, gay, and bisexual clients.

“Lesbian, gay, or bisexual clients may present in gender conforming or in gender non-conforming ways. Psychologists may see clients who are struggling with coming out issues and who also express confusion concerning whether their gender conformity or nonconformity is related to their sexual orientation.”

APA Guidelines for Psychological Practice with Sexual Minority Persons (2021)

Guideline 2. - Psychologists distinguish issues of sexual orientation from those of gender identity and expression when working with sexual minority persons.

“Psychologists are in a position to assist individuals of all gender identities and expressions with exploring their sexual orientations.”

The (2012) APA Guidelines further cite internalized misgivings, self stigmatization and homophobia as active dynamics that impact the self-perception and attitudes of person’s who are same-sex attracted. Therapists treating gender variant, gender non-conforming and gender questioning children and youth should be fully versed on how these same dynamics may inform their client’s attitudes and levels of distress concerning their natal sex.

American Psychological Association Guidelines For Psychological Practice With Transgender and Gender Non-Conforming Person (2015)

Guideline 2. Psychologists understand that gender identity and sexual orientation are distinct but interrelated constructs.

“It can be very important to include sexual orientation and gender identity in the process of identity exploration as well as in the associated decisions about which options will work best for any particular person.”

“Because of their roles in assessment, treatment, and prevention, psychologists are in a unique position to help TGNC people better understand and integrate the various aspects of their identities.”

Likewise, the American Psychological Association recognizes that when working with girls and boys it is necessary to explore the social and cultural expectations and roles associated with being male and female. And that such roles and expectations impact how they feel about and view themselves.

American Psychological Association Guidelines For Psychological Practice With Girls and Women (2018)

GUIDELINE 2 - Psychologists strive to be aware that girls and women form their identities in contexts with multiple, contradictory, and changing messages about what it means to be female.

American Psychological Association Guidelines For Psychological Practice With Boys and Men (2018)

GUIDELINE 1 - Psychologists strive to recognize that masculinities are constructed based on social, cultural, and contextual norms.

“Expression of romantic or sexual attraction might present gay, bisexual, transgender, and gender nonconforming individuals with gender role–related conflict that is, in part, born from violations of heteronormative gender role ideals, and **potentially alienate sexual- and gender-minority men from a complete male identity.**”

The **APA Guidelines for Psychological Practice With Girls and Women (2018)** acknowledge that body and gender discomfort at puberty are common place, and that misogyny, media images, sexual violence and objectification, along with internalized stereotypes play a large role in how girls perceive themselves, their self worth and their sense of belonging.

THE MAIN TAKEAWAYS

State Conversion Therapy Bans prohibit efforts and practices that seek to change a gender identity (that is have the purpose of attempting to change a gender identity). Meaning where the “GOAL” of the therapy is a specific predetermined outcome with respect to the client’s gender identity.

In working with adolescents with gender related issues or an incongruent gender identity there are acknowledged UNIQUE challenges that require DEVELOPMENTALLY APPROPRIATE identity exploration which promote identity development.

Such identity exploration is particularly important where there are questions about “clarity of diagnosis” and mental health concerns that should be addressed prior to medicalization.

State Conversion Therapy Bans DO NOT prohibit such exploration.

PART 4 - LIABILITY, DEFENSES and PATIENT PERCEPTION

In The Next Section We Will Review The Kinds of Defenses that are available against claims of Conversion Therapy.

LIABILITY UNDER CONVERSION THERAPY BANS

Unprofessional Conduct/Licensure - Licensing Board
Based upon a complaint by parent/patient or colleague

Civil liability - must show harm - (Malpractice Suit) \$\$\$ Damages
Complaint by patient or parent

Fraudulent Advertising Attorney General (Fines, Cease and Desist)
Consumer complaint

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DEFENSES -

No intent to change “gender identity”
Developmentally appropriate exploration of identity
Due To Age
Due to Autism
Complex co-morbid conditions present
Need to avoid “diagnostic overshadowing”
- not assume that “gender” is cause of co-morbid conditions

Necessary to prioritize mental health services first -
Necessary for comprehensive assessment of origins of **gender dysphoria** prior to medicalization
Necessary to determine consent and/or consent capacity prior to medicalization

Exploration of distress versus identity

Adequate Record keeping to show -

No Intention to change identity - why and how the patient presented
Parental referral, school referral, looking for a referral for hormones.
Co-morbid conditions, medical history etc.

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THE ROLE OF PATIENT PERCEPTION IN FINDING LIABILITY

Patient perception alone is not enough to establish intent or purpose -

What you say to the patient, what you say publicly, to parents and what you do -
will determine whether a Licensing Board can find the necessary intent or effort to
change a gender identity in violation of the law.

Harm is not required for a Licensing Board conviction, but is for civil damages

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The only lawsuits involving charges against therapists for violating Conversion Therapy bans for minors have been where the therapist has “marketed” services to remove or lessen same-sex attraction - such as reparative therapy services.

Failure to refer for medicalization - may be evidence of therapeutic purpose, but it is not de facto evidence that the therapy’s purpose was to attempt to change the client’s identity.

Client’s may bring malpractice case for attempting to change their gender identity in contravention of the state’s “Conversion Therapy Law.” Being found by licensing board to have attempted to conduct Conversion Therapy can be used as evidence of malpractice.

CONCLUSION

No therapeutic approach is completely neutral. All approaches may impact the youths developmental trajectory, including their experience of gender. However, ethical care seeks to to help individuals live a more authentic life with the least amount of medical harm.... any care that does not consider those two factors is unethical.