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Public Accommodation Laws and Gender Panic in Clinical Settings

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Abstract

Public accommodation laws (PALs) are used to address discrimination against minorities. There is broad discussion about using such laws to either protect or prohibit access to sex-segregated spaces for transgender people. Health care facilities are subject to PALs, which affect rooming assignments and access to sex-segregated environments. Around the time that a Massachusetts transgender PAL went into effect in October 2016, the first author (EB) facilitated 18 professional trainings at 5 health care facilities in greater Boston. During these trainings, staff repeatedly brought up 2 areas of moral concern reflecting public conversations about transgender rights: risk posed by the presence of transwomen in sex-segregated spaces and feelings of unpreparedness for dealing with anti-trans bias. This article discusses the role of education in responding to gender panic in inpatient settings.

Public Accommodation Laws and Gender Panic in the Inpatient Setting

Public accommodation laws (PALs) are used to address discrimination against minority groups. Currently, there is broad public discussion about using PALs to either protect or prohibit access to sex-segregated spaces for transgender people.¹⁻³ Transgender people have a gender identity that is different than the one typically associated with their assigned sex at birth, in contrast to cisgender people, whose gender identities are congruent with their assigned sex at birth.

PALs can have significant implications for health care professionals. Since October 2016, Massachusetts has guaranteed transgender people, as a civil right, access to sex-segregated facilities that are consistent with their sincerely held gender identity, regardless of their histories of medical or surgical care.⁴ Health care facilities, including hospitals, nursing homes, and substance abuse treatment facilities, all qualify as public accommodations under this law. Between 2016 and 2018, the first author (EB)

facilitated 18 trainings on [gender-affirming care](#) for health care practitioners and support staff at 5 facilities in greater Boston—2 city hospitals, 2 suburban satellite centers, and 1 urban, inpatient addiction facility. Trainings ranged in size from 5 to over 50 participants. During those trainings, clinical and nonclinical staff repeatedly brought up 2 areas of moral concern about dealing with transgender patients. This paper describes inpatient staff experiences of moral concern based on the first author’s recollection of these conversations, likely antecedents for the development of such concerns, and the importance of addressing such concerns through education.

Staff Experiences of Gender Panic

The primary concern expressed by staff during the aforementioned trainings reflected moral panic⁵ over fear that a heterosexual, cisgender man could present as a transgender woman to prey on women in a sex-segregated space.⁶ Specifically, during several trainings, staff members stated that they thought it was inappropriate to house transgender women with cisgender women, justifying that statement with some variation on the hypothetical question, “How do we know that they [transgender women] are not men pretending to be women in order assault them [cisgender women]?” This concern expresses one kind of gender panic^{7,8} and was brought up in more than half of all trainings, usually by support staff rather than clinical staff.

This kind of gender panic is also cited as the reason for a number of so-called “[bathroom bills](#)” proposed or enacted in the United States. Bathroom bills require people to access facilities concordant with a gender listing on their birth certificate or their sex assigned at birth.¹⁵ In other words, transgender women are expected to use men’s facilities and transgender men, women’s facilities, until and unless they are able to change the sex named on their birth certificate. A few states do not allow birth certificates to be changed in this way.¹⁶ Even where allowed, states may require people to undergo genital-affirmation surgery,¹⁶ which can be financially prohibitive, even for those people who wish to undergo such procedures.^{16,17}

Such bills are often described in ways that indirectly or directly position transgender women as a sexual threat, including referring to transgender women as men and describing them as perverse or unnatural.⁹⁻¹¹ Media have also historically positioned transgender women as dangerous, predatory, or objects of disgust, although such portrayals have become more positive in recent years.¹¹ Lack of broad public discussion about transgender identities as normal variation and not dangerous, combined with the fact that many people do not know anyone who is transgender, enable fear and negative media portrayals to shape transphobic beliefs,¹¹⁻¹⁴ which further nourish gender panic, including in clinic office settings.

Discussions about bathroom bills almost entirely focus on threats perceived to accrue when transgender women, who might still have male genitalia, are allowed to enter

women's-only spaces. Rarely are similar concerns expressed about transgender men.^{15,18} This asymmetry in the perception of transgender women and transgender men is presumably because cisgender women are seen as vulnerable to being taken advantage of in ways that cisgender men typically are not and because transgender men are more likely to "pass" in men's-only spaces.¹⁹ During trainings, pointing out this asymmetry in the perception of transgender men and women seemed to be an effective way to help people begin to question their feelings of gender panic, as it encouraged them to consider how their concerns about transgender women might be a reflection of broader issues of gender in society. Ironically, the way that femininity is associated with sexual vulnerability in American culture means that the very transgender women being framed as threats in gender panic discourse are themselves at high risk of sexual victimization.²⁰

The gender stereotypes that position women as inherently sexually vulnerable and men as inherently sexually threatening have led to widespread acceptance of the notion that, given access and opportunity, men will be sexually aggressive towards women—something often shorthanded by the term *rape culture*.²¹ No evidence known to the authors supports the concern that cisgender men masquerade as transgender women to access women's-only spaces. However, transgender women are at demonstrably elevated risk of sexual assault relative to cisgender women: in a large 2015 national survey, 47% reported having been sexually assaulted during their lifetime,²² a rate more than double that for cisgender women.²³ Transgender women are also at known risk for sexual assault in public restrooms, which can cause health problems due to bathroom avoidance.²⁴ What helped to address the staff's concern about rape culture was linking the elevated risk of assault, stigma, and discrimination faced by transgender women to the lack of evidence of cisgender men pretending to be transgender as a ploy to gain access to women's spaces.

Those who disagree with transgender PALs seem to sincerely believe that such regulations put cisgender women at risk, generally due to multiple misconceptions about gender, sex, and power common in society and reinforced by transphobic narratives.^{7,10,11,15,18} As such, professional education about gender-affirming care must not simply dictate inclusive behavior but should explore reasons why people might be tempted to resist such behavior. The authors' experience suggests that discussion of each of the aforementioned factors—rape culture, disproportionate focus on transgender women, sexual assault risk experienced by transgender women, and health effects of bathroom avoidance—can help ameliorate clinician and support staff concerns.

Staff Concerns About Patient Bias

The second concern that was repeatedly brought up, more often by clinic support staff members than by clinicians, was that they did not know how they would deal with people who expressed transphobic viewpoints or discomfort about transgender patients.

This concern took the form of the hypothetical question, “How am I supposed to deal with it if my patients freak out because their roommate is transgender?” In other words, these staff members were concerned about dealing with others’ gender panic. Whereas staff members’ gender panic was generally defended as being based on rational beliefs, others’ panic—known as secondary panic—was more often construed as an emotional issue. This could be because nurses and other health care practitioners frequently witness, or are victims of, discriminatory behavior. There have been numerous reports of patients refusing or demanding to be cared for by someone of a specific race, religion, or sex.²⁵⁻²⁹ Anecdotal reports of patients protesting their assigned roommate in inpatient settings also tend to include allusions to perceived race, religion, and sexual orientation.

Our experience suggests that secondary gender panic is easier to address with staff members than their own gender panic, due to their experience addressing discriminatory behavior in other contexts. For example, we found that prompting staff members to recognize the similarity of gender identity discrimination to racial or religious discrimination helped them realize that they already had the skills and experience to intervene. We also found it helpful to remind staff that this issue could be more of a theoretical concern than an actual one, as patients are not typically exposed to other patients’ genitals and might have no idea about the gender identity of their roommate.

Gender Panic as a Patient Safety Concern

Conservative dialogue about PALs tends to treat PALs as sources of safety concerns. As public accommodations, health care spaces are locations with potential for controversy about transgender issues.^{30,31} For example, during training, some health care practitioners and staff members were observed to question repeatedly whether PALs, particularly those that allow transgender women to access women’s-only spaces, put cisgender women at risk.

To date, there is no known published data suggesting that PALs pose a risk to cisgender patients. However, there is substantial evidence that gender panic and discrimination pose risks to transgender patients. Numerous studies document discrimination against transgender patients in clinical settings.^{30,32-35} Types of discrimination include verbal, physical, and sexual harassment; refusal of care; and even unnecessary forced treatment.³⁶ These experiences pose direct risks to the health of transgender patients and serve as barriers to their seeking health care in future.^{33,34,37}

PALs have potential to significantly improve the lives of transgender people. However, education for clinicians and support staff is needed to address gender panic that can lead to hostility and other concerns described here. Research has shown that explicit [education on transgender issues](#) increases staff members’ comfort and decreases bias in patient care.³⁸⁻⁴¹ As such, understanding and addressing fears that lead to gender panic has potential to improve clinician satisfaction, patients’ experiences, and patients’ health.

References

1. Schuster MA, Reisner SL, Onorato SE. Beyond bathrooms—meeting the health needs of transgender people. *N Engl J Med*. 2016;375(2):101-103.
2. Scout N. Transgender health and well-being: gains and opportunities in policy and law. *Am J Orthopsychiatry*. 2016;86(4):378-383.
3. Zaidi D. Transgender health in an age of bathroom bills. *Acad Med*. 2018;93(1):9.
4. Mass Gen Laws Ch 272, §98 (2016).
5. Klocke BV, Muschert GW. A hybrid model of moral panics: synthesizing the theory and practice of moral panic research. *Sociol Compass*. 2010;4(5):295-309.
6. Gordon G. Transgender legal advocacy: what do feminist legal theories have to offer? *Calif Law Rev*. 2009;97(6):1719-1762.
7. Mathers LAB. Bathrooms, boundaries, and emotional burdens: cisgendering interactions through the interpretation of transgender experience. *Symbolic Interact*. 2017;40(3):295-316.
8. Lorber J. Why do bathrooms matter? *Contemp Sociol*. 2012;41(5):598-602.
9. Maza C. This is what conservative media think a transgender woman looks like. *Equality Matters Blog*. August 19, 2013. <http://equalitymatters.org/blog/201308190001>. Accessed April 30, 2018.
10. Moffitt RE. Keeping the john open to Jane: how California's bathroom bill brings transgender rights out of the water closet notes. *Georgetown J Gend Law*. 2015;16(2):475-504.
11. Solomon HE, Kurtz-Costes B. Media's influence on perceptions of trans women. *Sex Res Soc Policy*. 2018;15(1):34-47.
12. Rodenborg NA, Boisen LA. Aversive racism and intergroup contact theories: cultural competence in a segregated world. *J Soc Work Educ*. 2013;49(4):564-579.
13. Gillig TK, Rosenthal EL, Murphy ST, Folb KL. More than a media moment: the influence of televised storylines on viewers' attitudes toward transgender people and policies. *Sex Roles*. 2018;78(7-8):515-527.
14. Flores AR. Attitudes toward transgender rights: perceived knowledge and secondary interpersonal contact. *Polit Groups Identities*. 2015;3(3):1-19.
15. Platt LF, Milam SRB. Public discomfort with gender appearance-inconsistent bathroom use: the oppressive bind of bathroom laws for transgender individuals. *Gend Issues*. 2018;35(3):181-201.
16. Ross J. How easy is it to change the sex on your birth certificate? *Washington Post*. May 18, 2016. https://www.washingtonpost.com/news/the-fix/wp/2016/05/18/the-next-frontier-in-the-bathroom-law-debate-changing-birth-certificates/?utm_term=.8a5468eac6b7. Accessed May 10, 2018.
17. Lee EJ, Gurr D, Van Wye G. An evaluation of New York City's 2015 birth certificate gender marker regulation. *LGBT Health*. 2017;4(5):320-327.
18. Westbrook L, Schilt K. Doing gender, determining gender: transgender people, gender panics, and the maintenance of the sex/gender/sexuality system. *Gend Soc*. 2014;28(1):32-57.

19. Nuttbrock L, Hwahng S, Bockting W, et al. Psychiatric impact of gender-related abuse across the life course of male-to-female transgender persons. *J Sex Res.* 2010;47(1):12-23.
20. Yavorsky JE, Sayer L. "Doing fear": the influence of hetero-femininity on (trans)women's fears of victimization. *Sociol Q.* 2013;54(4):511-533.
21. Herman D. The rape culture. *Cult.* 1988;1(10):45-53.
22. James SE, Herman JL, Rankin S, Keisling M, Mottet L, Anafi M. *The Report of the 2015 US Transgender Survey.* Washington, DC: National Center for Gender Equality; 2016.
<https://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>. Accessed September 14, 2018.
23. Breiding MJ, Smith SG, Basile KC, Walters ML, Chen J, Merrick MT. Prevalence and characteristics of sexual violence, stalking, and intimate partner violence victimization— National Intimate Partner and Sexual Violence Survey, United States 2011. *MMWR Surveill Summ.* 2014;63(8):1–18.
24. Herman JL. Gendered restrooms and minority stress: the public regulation of gender and its impact on transgender people's lives. *J Public Manage Soc Policy.* 2013;19(1):65-80.
25. Deacon M. How should nurses deal with patients' personal racism? Learning from practice. *J Psychiatr Ment Health Nurs.* 2011;18(6):493-500.
26. Popper-Giveon A, Keshet Y. The secret drama at the patient's bedside-refusal of treatment because of the practitioner's ethnic identity: the medical staff's point of view. *Qual Health Res.* 2018;28(5):711-720.
27. Estacio EV, Saidy-Khan S. Experiences of racial microaggression among migrant nurses in the United Kingdom. *Glob Qual Nurs Res.* 2014;1:2333393614532618. doi:10.1177/2333393614532618. Accessed May 10, 2018.
28. Singh K, Sivasubramaniam P, Ghuman S, Mir HR. The dilemma of the racist patient. *Am J Orthop (Belle Mead NJ).* 2015;44(12):e477-e479.
<https://www.amjorthopedics.com/article/dilemma-racist-patient>. Accessed September 20, 2018.
29. Padela AI, Schneider SM, He H, Ali Z, Richardson TM. Patient choice of provider type in the emergency department: perceptions and factors relating to accommodation of requests for care providers. *Emerg Med J.* 2010;27(6):465-469.
30. Rodriguez A, Agardh A, Asamoah BO. Self-reported discrimination in health-care settings based on recognizability as transgender: a cross-sectional study among transgender US citizens. *Arch Sex Behav.* 2018;47(4):973-985.
31. White Hughto JM, Reisner SL, Pachankis JE. Transgender stigma and health: a critical review of stigma determinants, mechanisms, and interventions. *Soc Sci Med.* 2015;147:222-231.

32. Jaffee KD, Shires DA, Stroumsa D. Discrimination and delayed health care among transgender women and men: implications for improving medical education and health care delivery. *Med Care*. 2016;54(11):1010-1016.
33. Seelman KL, Colón-Díaz MJP, LeCroix RH, Xavier-Brier M, Kattari L. Transgender noninclusive healthcare and delaying care because of fear: connections to general health and mental health among transgender adults. *Transgend Health*. 2017;2(1):17-28.
34. Macapagal K, Bhatia R, Greene GJ. Differences in healthcare access, use, and experiences within a community sample of racially diverse lesbian, gay, bisexual, transgender, and questioning emerging adults. *LGBT Health*. 2016;3(6):434-442.
35. White Hughto JM, Murchison GR, Clark K, Pachankis JE, Reisner SL. Geographic and individual differences in healthcare access for US transgender adults: a multilevel analysis. *LGBT Health*. 2016;3(6):424-433.
36. Lambda Legal. When health care isn't caring: Lambda Legal's survey of discrimination against LGBT people and people with HIV. https://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf. Published 2010. Accessed May 10, 2018.
37. Cruz TM. Assessing access to care for transgender and gender nonconforming people: a consideration of diversity in combating discrimination. *Soc Sci Med*. 2014;110:65-73.
38. Sekoni A, Gale N, Manga-Atangana B, Bhadhuri A, Jolly K. The effects of educational curricula and training on LGBT-specific health issues for healthcare students and professionals: a mixed-method systematic review. *J Int Aids Soc*. 2017;20(1):1-13.
39. Lelutiu-Weinberger C, Pollard-Thomas P, Pagano W, et al. Implementation and evaluation of a pilot training to improve transgender competency among medical staff in an urban clinic. *Transgend Health*. 2016;1(1):45-53.
40. Park JA, Safer JD. Clinical exposure to transgender medicine improves students' preparedness above levels seen with didactic teaching alone: a key addition to the Boston University model for teaching transgender healthcare. *Transgend Health*. 2018;3(1):10-16.
41. Jaffer M, Ayad J, Tungol JG, MacDonald R, Dickey N, Venters H. Improving transgender healthcare in the New York City correctional system. *LGBT Health*. 2016;3(2):116-121.

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