

Medicolegal Aspects of Sex Reassignment Surgery in Tennessee

By Judith J. Regan, MD, MBA; Gwen Hamer, MA; and Arvis Wright, BS

OVERVIEW

The fourth edition of the Diagnostic and Statistical Manual of Mental Disorders defines gender identity disorder as having two components: evidence of a “strong and persistent cross-gender identification” and evidence of “persistent discomfort about one’s assigned sex or a sense of inappropriateness in the gender role of that sex.”¹

Gender identity is a psychological state that reflects the person’s sense of being male or female. Gender identity is based on culturally determined sets of attitudes, behavior patterns, and other attributes usually associated with masculinity or femininity. Gender role, however, is the external behavior pattern that reflects a person’s sense of gender identity.²

Under ordinary circumstances, a person’s gender identity and gender role are consistent. A woman who has a sense of herself as a woman conveys her view to the rest of the world by acting as a woman; a man who views himself as a man acts like a man. Gender role consists of all the factors that people say and do to indicate to others or to themselves the degree to which they are male or female. Gender identity and gender role can be different from biological sex that is strictly limited to the anatomical and physiological characters that indicate whether a person is male or female.²

A percentage of patients with gender identity disorders elect to have sex reassignment surgery. Careful standards preceding the surgery have been developed over the years. Among these standards is a trial of cross-gender living for at least three months. These patients

must receive hormone treatments and many stop at this point. About 50% of these individuals who meet these criteria go on to have the sex-reassignment surgery. Although outcome studies are highly variable in terms of how success is defined and measured, from a legal standpoint there has been little acceptance of this as true “gender change.”²

STATE STATUTES

In most states, legal records are not alterable once the physician notes the gender of the newborn. Despite the cost, time and psychological counseling required to have the surgical reassignment, the State of Tennessee does not allow the birth records to note there has been a change. When there are requests for physicians to alter and/or amend birth record, there are certain state statutes that clarify the restrictions and limitations placed upon physicians. Physicians should be aware that in the State of Tennessee, under TCA §68-3-203, Amendment of records, (d) “The sex of an individual will not be changed on the original certificate of birth as a result of sex change surgery.”³

In regards to marital relations the TCA §36-3-113 states:

- (a) To that end, it is further the public policy of this state that the historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state in order to provide the unique and exclusive rights and privileges to marriage.
- (b) The legal union in matrimony of only one man and one woman shall be the only recognized marriage in this state.

(c) Any policy, law or judicial interpretation that purports to define marriage as anything other than the historical institution and legal contract between one man and one woman is contrary to the public policy of Tennessee.

(d) If another state or foreign jurisdiction issues a license for persons to marry which marriages are prohibited in this state, any such marriage shall be void and unenforceable in this state.⁴

Unlike the clear guidelines noted in the State of Tennessee statutes, the Tennessee Code Annotated, the guidelines within the statutes in such states as Oregon and Nebraska note that the birth records can be replaced (amended), without notation that an alteration has occurred, regarding the gender of the newborn. As such, marriages entered into by individuals with amended gender related birth records from these states would be held void and unenforceable under Tennessee law, with a resulting denial of all spousal benefits.

CASE LAW

Although there has been no Tennessee case law in this area, other states have contended with this. In a 1999 Texas case, *Littleton v. Prange*, Christine Littleton, a postsurgical male to female transsexual lost her case against the doctor who she contended negligently allowed her husband to die. The doctor’s defense lawyers argued that she was not validly married to her late husband since her Texas birth certificate, though now amended to read female, originally indicated that she was a male at birth and thus could not be the widow as the law does not allow “same sex marriage.” The decision was affirmed on appeal.⁵

In the case of *Frances B v. Mark B*, the female petitioner brought a claim for annulment of her marriage to a female to male sex reassignment individual because he was “a member of the female gender of the human species,” and fraudulently represented that he was a male. He had previously undergone a mastectomy and hysterectomy and had undergone androgenic hormone treatment, but had not had the surgical procedure to transform his external genitalia.⁶ The court ruled that no valid marriage was entered into and stated:

“assuming, as urged, that the defendant was a male entrapped in the body of a female, the record does not show that the entrapped male successfully escaped to enable defendant to perform male functions in a marriage. While it is possible that the defendant may function as a male in other situations and in other relationships, defendant cannot function as a husband by assuming male duties and

obligations inherent in the marital relationship. Apparently hormone treatments and surgery have not succeeded in supplying the necessary apparatus to enable defendant to function as a man for purposes of procreation.”⁷

CONCLUSION

In conclusion, gender identity disordered individuals are not a recent phenomenon. Dissatisfaction with one’s biological sex has been documented throughout history. However, despite the best efforts of modern sex reassignment surgery and endocrinology in changing the external sex characteristics, the legal system has been reticent to accept such changes as evidence of alteration of biological sex. Physicians caring for these individuals should be aware of the lack of legal acceptance of the sex reassignment surgery in order to improve decision-making and the counseling received by these individuals.

References

1. Diagnostic and Statistical Manual of Mental Disorders, ed 4. Washington DC, American Psychiatric Association, 1994.
2. Kaplan HI, Sadock BJ: Synopsis of Psychiatry: Behavioral Sciences, Clinical Psychiatry, ed 8, New York, Williams and Wilkins, 1998.
3. TCA §68-3-203 (2003).
4. TCA §68-3-203 (2003).
5. Littleton v Prange, 9 S.W.2d 223 (Tex Ct App 1999).
6. Tedeschi DS: The predicament of the transsexual prisoner. Temple Political and Civil Rights Law Review, Fall 1995.
7. Frances B. v. Mark B., 355 NYS.2d 712 (NY Sup Ct 1974).

From the Tennessee Department of Mental Health and Developmental Disabilities, Nashville.