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Medicine with a "Transgender Bias"

A new lawsuit raises the question of whether "gender-affirming care" constitutes gay conversion therapy and violated the civil rights of a gay man.

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Fenway Community Health Center in Boston, the largest provider of transgender medicine in New England and one of the leading institutions of its kind in the United States, was named a defendant in a lawsuit filed last month. The plaintiff, a gay man who goes by the alias Shape Shifter, argues that by approving him for hormones and surgeries, Fenway Health subjected him to "gay conversion" practices, in violation of his civil rights. *Carlan* v. *Fenway Community Health Center* is the first lawsuit in the United States to argue that "gender-affirming care" can be a form of anti-gay discrimination.

The case underscores an important clinical reality: gender dysphoria has multiple developmental pathways, and many who experience it will turn out to be gay. Even the Endocrine Society concedes that many of the youth who outgrow their dysphoria by adolescence later identify as gay or bisexual. Decades of research confirm as much. Gender clinicians in the U.K. used to have a "dark joke . . . that there would be no gay people left at the rate [the Gender Identity Development Service] was going," former BBC journalist Hannah Barnes reported. Rather than help young gay people to accept their bodies and their sexuality, what if "gender-affirming" clinicians are putting them on a pathway to irreversible harm?

Due partly to Shape's lifelong difficulty in accepting himself as gay, his lawyers are not taking the usual approach to detransition litigation. Rather than state a straightforward claim of medical malpractice or fraud, they allege that Fenway Health has violated Section 1557 of the Affordable Care Act (ACA), which bans discrimination "on the basis of sex" in health care. In 2020, the Supreme Court ruled in *Bostock* v. *Clayton County* that "discrimination because of . . . sex" includes discrimination based on homosexuality. Citing this and other precedents, Shape's lawyers argue that federal law affords distinct protections to gay men and lesbians—upon which clinics that operate with a transgender bias are trampling.

Shape grew up in a Muslim country in Eastern Europe that he describes in an interview as "very traditional" and "homophobic." His parents disapproved of his effeminate demeanor and interests as a child. They wouldn't let him play with dolls, and his mother, he says, made him do stretches so that he would grow taller and appear more masculine.

At 11, Shape had his first of several sexual encounters with older men. "I was definitely groomed," he recounts. Shape proceeded to develop a pattern of risky sexual behavior, according to his legal complaint.

He told his medical team at Fenway Health about his childhood sexual experiences, calling them "consensual." The Fenway providers never challenged him on this interpretation, he alleges. They never suggested that he might have experienced sexual trauma or, say, explored how these events might have shaped his feelings of dissociation. (The irony is that Fenway Health describes its model of care as "trauma-informed.")

As with the social environment they inhabited, Shape's parents were "deeply homophobic," he says. When Shape came out to his parents as gay at 15, they took him to a therapist, hoping that he would be "fixed." But when he graduated high school at that same age, he moved to Bulgaria for college, and in 2007, at 17, he came to the United States for a summer program at the University of North Carolina. He later moved to Massachusetts to pursue an MBA at Clark University and immigrated to the U.S.

Though he had known about cross-dressers and transsexuals as a child (he had taken interest in Dana International, the famous Israeli transsexual who won the Eurovision Song Contest in 1998), it was only at Clark that he was introduced to the idea that some people are transgender. Other students began asking him about his pronouns and telling him about "gender identity." After getting to know a "non-binary" person and a transgender woman, Shape started to make sense of his life retrospectively. As a boy going through puberty, he had developed larger-than-average breasts and was curvier than the other boys. It was hard for him to be accepted in the gay community, he told me, because gay men tend to value masculinity. His discomfort with social expectations about how men are supposed to look and behave, his sexual attraction to other men, his ongoing psychological and emotional distress: these were all signs, he learned from online forums, that he must have been "born in the wrong body."

Shape quickly developed self-hatred and a strong desire to escape his body. When he started cross-dressing and presenting socially as a woman, things changed. It had been hard for him to win acceptance as an effeminate gay man, but he encountered far less hostility presenting as a woman. A subtle but important shift in his thinking took place.

"People wouldn't take me seriously when I was a man who presented socially as a woman," he says. "I had to actually *be* a woman." Shape became immersed in online transgender culture, which told him that sex is a social construct, and that hormones and surgeries can actually turn him into a woman. As a result, Shape developed highly unrealistic expectations about what hormones and surgeries could do for him. An example noted in his legal filing: he stopped using condoms because he wanted to get pregnant.

Julie Thompson, a physician assistant and Medical Director of the Trans Health Program at Fenway Health, made no effort to perform differential diagnosis on Shape, his legal filing alleges. Shape told Thompson about his childhood sexual encounters, his troubled history of risky sexual activity, and his struggles with social and familial rejection on account of his homosexuality. Allegedly, she wrote these difficulties off as byproducts of society not accepting him as a "trans woman"—an approach known as

"transgender minority stress." Shape's ongoing mental-health problems, it was determined, were due to "internalized transphobia."

As Shape's filing puts it, the Fenway clinic operated with a strong "transgender bias." Every problem or counter-indication that came up was explained away as part of the stress that transgender people experience in an unwelcoming society. The clinicians at Fenway Health apparently assumed that sexual orientation and gender identity are two distinct and independent phenomena.

Shape was put on estrogen at age 23. According to his filing, he was not given "any explanation of the numerous potential adverse side effects of estrogen or its potentially unknown effects." As Shape kept taking estrogen, he became even more emotional, depressed, and unstable. Notably, he did not dislike his male genitals—a fact that should have attracted more scrutiny from his clinicians—but seemed more distressed over his high sex drive and desire for intercourse with men. Though he says he frequently told his providers that he hoped "sex reassignment surgery" would reduce his sex drive, this statement did not cause them to reconsider whether estrogen was appropriate.

As the Fenway team allegedly saw it, Shape's deterioration was evidence that he hadn't gone far *enough* in his transition. They recommended that he attend First Event, a Boston-based conference held annually since 1980, where transgender people can meet one another, share ideas, interact with vendors, and find medical providers who will agree to perform procedures on them. Marci Bowers, the genital surgeon who is president of the World Professional Association for Transgender Health, has attended the conference in the past. According to Shape, the point of going to First Event was to find a surgeon who would operate on him.

He did just that, and in 2014, at 24, Shape underwent facial feminization surgery and breast implantation. Less than a year later, a surgeon surgically castrated him and conducted what's euphemistically called "bottom surgery." It didn't work. As a result, Shape had to undergo several additional surgeries, the last one borrowing tissue from his colon. Still, the problems persisted.

It took Shape a few years to realize that he had made a terrible mistake. The problem he had been trying to solve all his life was not "internalized transphobia" but failure to accept himself as an effeminate gay man. His legal filing states that he had what the Diagnostic and Statistical Manual of Mental Disorders called, at the time he made contact with the clinic, "ego-dystonic homosexuality." Because they failed to detect this and other mental-health problems, the Fenway team, argue Shape's lawyers, "outrageously, knowingly, recklessly, and callously" led him to believe that he was really a heterosexual woman whose problems could be solved by de-sexing himself as male.

Shape was promised "gender euphoria." Instead, he told me that he now sees himself as "mutilated." His treatments have left him with "osteoporosis and scoliosis" as well as "mental fog," according to his legal filing. Shape is now "faced with the impossible choice of improving his cognitive state and suffering the

psychological and physical effect of phantom penis, or taking estrogen and suffering mental fog and fatigue, but no phantom penis and low libido." He has also endured fistulas as a complication of his genital surgery and "suffers from sexual dysfunction and is unable to enjoy sexual relations." He experiences dangerous inflammation. And not getting the mental health therapy he needed very likely caused Shape's mental health to deteriorate throughout the several years that he was a patient at Fenway Health.

Shape now wants to have his breast implants removed. But insurance does not cover the procedure because it is not technically "gender affirming." And since he cannot afford the hefty price tag, Shape has no choice but to live with the implants.

Understandably, criticism of gender medicine has focused largely on its use in minors. Its use in adults, however, is not without controversy. In the past, when clinicians spoke of adult transgender medicine, they were referring mainly to adult men who sought to change their bodies in their forties. Many had already spent years in marriage and were fathers of children.

That is no longer the case. Though data are limited, the main patient demographic in adult transgender clinics today appear to be 18-24-year-olds. In Finland, for example, adult referrals rose approximately 750 percent between 2010 and 2018, with 70 percent of referrals being 18-22-year-olds.

Humans reach full cognitive maturity around age 25, which means that there is often little to distinguish a 20-year-old from a 17-year-old in terms of impulse control, emotional self-regulation, and the ability to set long-term goals and prioritize them over present desires. Citing "irrefutable evidence" that being under 25 means having "diminished capacity to comprehend the risk and consequences of [one's] actions," the progressive decarceration and racial-justice advocacy group The Sentencing Project argues that the idea that people are adults once they reach age 18 "is flawed."

Shortly after its founding in 1971, Fenway Community Health Center was repurposed to support the unique needs of gay and lesbian residents of Boston. According to Katie Batza, a historian of the clinic, the hippies and antiwar activists who founded Fenway Health "quickly solidified its reputation as an important gay medical institution." During the 1980s, the clinic helped tackle the AIDS epidemic. That it now maltreats gay men like Shape by converting them into trans women reflects a tectonic shift within the institution's culture.

American medicine has always found itself balancing two competing tendencies: the paternalism of care by experts on one hand, and the relativism of nonjudgmental customer service on the other. What has happened over the course of Fenway Health's five decades of existence is a gradual loss of that equilibrium. Fenway has long defined its mission in terms of responsiveness to the stated needs and desires of community members: the volunteers who ran the clinic and offered its services free of charge,

Batza writes, "focused on providing care and building community among Fenway residents, caring less if a volunteer met outside standards of professional qualification, which were often set by the state or medical profession, that the clinic critiqued."

In the 1990s, the clinic set up a dedicated transgender unit. At first, "things moved slowly," recounts Marcy Gelman, a nurse practitioner who served as Fenway Health's first dedicated provider for transgender patients, in a document published by the institute about the history of its program. She is now its associate director of clinical research. "Patients didn't get hormones right away. We wanted to get to know them, and required them to see a therapist for several months . . . we wanted to be careful." This process felt too restrictive for some patients, and "a few got really angry." Fenway Health says its "commitment to ensure patient safety . . . led to some conflicts with patients and community members."

In the 2000s, Fenway Health adopted a new model of care for its transgender-identified patients, which it called the "informed consent model." This came in response to patients complaining about "needless gatekeeping" and concerns that the clinic's "customer service training specific to transgender patients lagged behind the development of its clinical care." Using funding from the Blue Cross/Blue Shield Foundation, Fenway Health made a number of new hires and expanded its program. It drew inspiration from another community health clinic, the Mazzoni Center in Philadelphia, which was smaller than Fenway but served four times as many patients. "One key to [the Mazzoni Center's] success," the Fenway document explains, "was the elimination of any requirement for counseling before hormones were provided." Ruben Hopwood, a physician who joined the Fenway team in 2005, developed this model for Fenway; soon thereafter, the institution's three-month counseling requirement gave way to "a single hormone readiness assessment visit."

In 2012, the World Professional Association for Transgender Health published the seventh version of its Standards of Care. In the chapter on hormone therapy, WPATH recommended eligibility criteria for estrogen or testosterone, including "persistent, and well-documented gender dysphoria" and having ongoing "medical or mental health concerns . . . reasonably well-controlled." However, WPATH also noted a newly emerging "informed consent model" and cited Fenway Health as one of three clinics that developed and practiced it.

The difference between the models, WPATH explained, was that SOC-7 put "greater emphasis on the important role that mental health professionals can play in alleviating gender dysphoria and facilitating changes in gender role and psychosocial adjustment. This may include a comprehensive mental health assessment and psychotherapy, when indicated." By contrast, Fenway Health's model emphasizes "obtaining informed consent as the threshold for the initiation of hormone therapy in a multidisciplinary, harm-reduction environment. Less emphasis is placed on the provision of mental-health care until the patient requests it, unless significant mental health concerns are identified that would need to be

addressed before hormone prescription." Despite the obvious differences, WPATH insisted the two models were "consistent" with each other.

Currently, Fenway Health offers hormones on the informed-consent model. "Criteria for accessing hormone therapy," it states, "are informed by the WPATH (World Professional Association for Transgender Health) guidelines." In other words, Fenway Health defers to WPATH, which adopted its recommendations from Fenway Health.

Shape and his lawyers deny that Fenway's informed consent process is "a safe and effective replacement for assessment, diagnosis, and treatment provided by an appropriately trained and licensed healthcare professional." Fenway's model, they argue, "relies heavily on patients' self-diagnosis, which may be a result of confusion or a misunderstanding of medically defined terms." It does not take into account a patient's expectations from medical treatment, which, as in Shape's case, can be highly unrealistic. It "does not inform patients about the risk of iatrogenic effects of affirmation." Nor does it take into account a patient's "medical decision-making capacity," which may be impaired in the presence of "significant emotional distress" and "undue influence from persons in position of authority and trust."

A key charge in Shape's lawsuit is that Fenway Health is driven by "market expansion goals and political demands of transgender activists." Approval for hormones and surgery, the clinic's staff wrote in 2015, should be a "routine part of primary care service delivery, not a psychological or psychiatric condition in need of treatment." A leading advocate for the no-gatekeeping model, which rests on the assumption that mismatch between one's actual and perceived sex is a normal human variation and not a pathological condition, argues that adults and adolescents should be free to turn their bodies into "gendered art pieces."

From Shape's story, we can infer that Fenway Health, which could not be reached for comment, has yielded to a barely constrained medical consumerism. In 1997, the institute had *eight* transgender customers. By 2015, it had over 1,700. "The rapid and sustained growth of Fenway Health's transgender health care, research, education, training, and advocacy," the institute's doctors proudly declare, "might be succinctly summarized by the mantra from the movie *Field of Dreams*: If you build it, they will come."

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