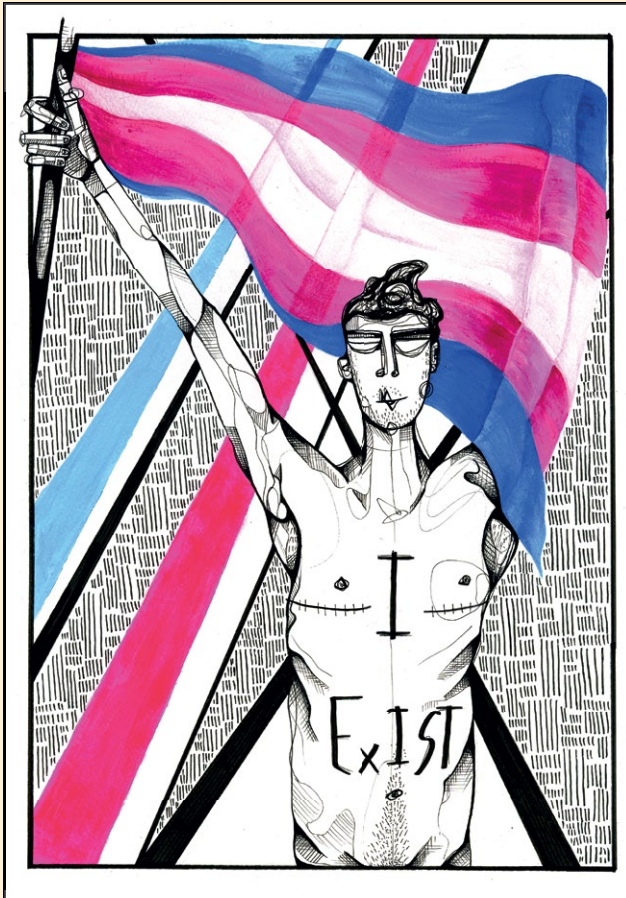


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C O N T E N T S

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Symposium Articles

**Transgender
Health Equity
and the Law**

Guest Edited by
Heather Walter-
McCabe and
Alexander Chen

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*Letter from
the Editor*

Cover image ©Samo White

Samo is a Portsmouth based trans artist, public speaker, and activist who focuses on intersectional gender identity and community. Highlights include painting at World Pride 2019 in NEW YORK for stonewall, producing I EXIST (a trans bodies art book), founding an LGBTQ+ safe space scheme, and having his artwork works collected by people across the world.

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Admiral Rachel L. Levine

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*Heather Walter-McCabe
and Alexander Chen*

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**Transcending the Gender Binary
under International Law: Advancing
Health-Related Human Rights for
Trans* Populations**

*Aoife M. O'Connor, Maximillian Seunik,
Blas Radi, Liberty Matthyse,
Lance Gable, Hanna E. Huffstetler, and
Benjamin Mason Meier*

Despite a recent wave in global recognition of the rights of transgender and gender-diverse populations, referred to in this text by the umbrella label of trans*, international law continues to presume a cisgender binary definition of gender — dismissing the lived realities of trans* individuals throughout the world. This gap in international legal recognition and protection has fundamental implications for health, where trans* persons have been and continue to be subjected to widespread discrimination in health care, longstanding neglect of health needs, and significant violations of bodily autonomy.

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**Transporting the Burden of
Justification: The Unethicality of
Transgender Conversion Practices**

Florence Ashley

Transgender conversion practices involve attempts to alter, discourage, or suppress a person's gender identity and/or desired gender presentation, including by delaying or preventing gender transition. Proponents of the practices have argued that they should be allowed until proven to be harmful. Drawing on the notion of expressive equality, I argue that conversion practices are prima facie unethical because they do not fulfill a legitimate clinical purpose and conflict with the self-understanding of trans communities. Accordingly, conversion practitioners bear the bur-

den of justification — not those who oppose the degrading practices. This burden is not discharged based on the available evidence, which suggests, and arguably proves, that trans conversion practices are harmful. The paper also discusses the argument's legal implications as well as potential application to other clinical practices targeting sexual orientation, asexuality and aromanticism, intersex traits, autism, and disabilities.

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**Intersectional Structural Stigma,
Community Priorities, and
Opportunities for Transgender Health
Equity: Findings from TRANSforming
the Carolinas**

Tonia Poteat and Ames Simmons

In this manuscript, "Intersectional Structural Stigma, Community Priorities, and Opportunities for Transgender Health Equity," Poteat and Simmons outline the legal and policy barriers that impede efforts to end the HIV epidemic among transgender people in the South. They present qualitative and quantitative data from a community engaged research study conducted with transgender adults and other key stakeholders as well as finding from an analysis of policies impacting transgender people in both states. Violence prevention and decriminalization are highlighted as key policy initiatives that would advance health equity for transgender people.

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**Utilization and Costs of Gender-
Affirming Care in a Commercially
Insured Transgender Population**

Kellan Baker and Arjee Restar

Many transgender people need specific medical services to affirm their gender. Gender-affirming health care services may include mental health support, hormone therapy, and reconstructive surgeries. Scant information is available about the utilization or costs of these services among transgender people, which hinders the ability of insurance regulators, health plans, and other health care organizations to plan and budget for the health care needs of this population and to ensure that transgender people can access medically necessary gender-affirming care. This study used almost three decades of commercial insurance claims from a proprietary database containing data on more than 200 million people to identify temporal trends in the provision of gender-affirming hormone therapy and surgeries and to quantify the costs of these services. We also described trends over time and by provider specialty in the use of transgender-specific diagnostic codes

in insurance claims. We found that a wide variety of provider specialties used these codes and that the appearance of these codes in the claims database has risen exponentially over the past decade in tandem with rapid increases in the frequencies of gender-affirming hormone therapy and surgeries. These changes coincide with national and state-level reforms that have eliminated many insurance provisions that excluded coverage for these services. Even as the number of claims for gender-affirming hormone therapy and surgeries has increased, the budget impact of these services remains low. These data can help insurance carriers ensure the adequacy of their coverage and provider networks for these services and can assist hospitals and other health service organizations in understanding trends in patient care needs. They may also aid federal and state insurance regulators in establishing baseline estimates of service availability and utilization, which can be used to monitor market conduct and identify potential concerns related to inadequacy of benefit designs or inappropriate use of utilization management tools.

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Reconceiving Reproductive Health Systems: Caring for Trans, Nonbinary, and Gender-Expansive People During Pregnancy and Childbirth

Elizabeth Kukura

This article examines the barriers to quality health care for transgender, nonbinary, and gender-expansive people (TGE) who become pregnant and give birth, identifying three central themes that emerge from the literature. First, research reveals wide diversity in the childbearing experiences of TGE people, highlighting the need for individualized care. Second, TGE people experience a high degree of both institutional and individual erasure. Third, entrenched gender norms surrounding pregnancy and childbirth harm TGE people, increasing the burdens they confront when managing their fertility, sustaining healthy pregnancies, and accessing care during labor and delivery. Ultimately, these insights suggest that significant reform will be necessary to ensure access to safe, appropriate, gender-affirming care for childbearing TGE people. After illustrating the need for systemic changes that untether rigid gender norms from the provision of perinatal care, the article proposes that the Midwives Model of Care offers a set of values and clinical practices that are well-suited to meet the needs of many TGE patients during pregnancy and childbirth and which should be incorporated into the healthcare system more broadly.

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Improving “Life Chances”: Surveying the Anti-Transgender Backlash, and Offering a Transgender Equity Impact Assessment Tool for Policy Analysis

M. Killian Kinney, Taylor E. Pearson, and Julie Ralston Aoki

Transgender inclusion within policy is critical yet often missing. We propose a policy tool to assesses human rights, access to resources and opportunities, language, and implications for transgender and nonbinary individuals. Acknowledging trans communities as standard policy practice can serve as an essential practice to shift dialogue and norms.

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Unbending the Light: Changing Laws and Policies to Make Transgender Health Visible; Reflections of an Advocate

Jamison Green

This essay describes an instrumental advocate's development, engagement, and accomplishments in transgender health at the intersection of law and medicine. Reflecting on the evolution of insurance policy reforms in conjunction with the need to increase the availability of clinicians who can understand and respectfully treat transgender patients, the author demonstrates how visibility, tenacity, and ingenuity can create far-reaching change.

Independent Articles

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The Woman Who Cried Pain: Do Sex-Based Disparities Still Exist in the Experience and Treatment of Pain?

*Diane E. Hoffmann, Roger B. Fillingim,
and Christin Veasley*

Over twenty years have passed since *JLME* published “The Girl Who Cried Pain: A Bias Against Women in the Treatment of Pain.” This article revisits the conclusions drawn in that piece and explores what we have learned in the last two decades regarding the experience of men and women who have chronic pain and whether women continue to be treated less aggressively for their pain than men.

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Food Marketing to — and Research on — Children: New Directions for Regulation in the United States

*Jennifer L. Pomeranz
and Dariush Mozaffarian*

As countries around the world work to restrict unhealthy food and beverage marketing to children, the U.S. remains reliant on industry-self regulation. The First Amendment’s protection for commercial speech and previous gutting of the Federal Trade Commission’s authority pose barriers to restricting food marketing to children. However, false, unfair, and deceptive acts and practices remain subject to regulation and provide an avenue to address marketing to young children, modern practices that have evaded regulation, and gaps in the food and beverage industry’s self-regulatory approach. Moreover, food companies’ ability to conduct marketing research on children without the oversight required in other areas of privacy protection, such as academic research, is striking and especially problematic in light of targeted marketing to racial and ethnic minorities. This article reviews legal barriers and opportunities to regulate food marketing to children in the United States, provides new thinking on food companies’ ability to conduct marketing research on children, and concludes with recommendations for government and suggestions for future research.

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The Flaw in Formalist Accounts of Circumvention Tourism

Joshua Shaw

Circumvention tourism is a form of medical tourism that occurs when individuals travel abroad to receive treatments that are a prohibited in their home county but permitted in a destination country. This paper explores this question: *Should individuals be punished by their home countries for engaging in circumvention tourism?* Guido Pennings, Richard Huxtable, and I. Glenn Cohen have all argued for what I call “formalist accounts” of circumvention tourism. That is, they try to show that certain types of circumvention tourism should or should not be punished *in principle*. Against them, I show that questions about circumvention tourism’s punishability cannot be answered in the abstract. Whether individuals

should be punished depends too much on the *prima facie* morality of the treatments being performed and the prohibitions being circumvented.

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State Laws for Autonomous Vehicle Safety, Equity, and Insurance

*Johnathon P. Ehsani, Andrew Hellinger,
Daniel K. Stephens, Mi Ran Shin,
Jeffrey Michael, Alexander McCourt, and
Jon Vernick*

This article reviews existing state laws related to autonomous vehicle (AV) safety, equity, and automobile insurance. Thirty states were identified with relevant legislation. Of these, most states had one or two relevant laws in place. Many of these laws were related to safety and insurance requirements. Data are needed to evaluate the effectiveness of these laws in order to guide further policy development.

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The Use and Ethics of Digital Twins in Medicine

*Jeffrey David Iqbal, Michael Krauthammer,
and Nikola Biller-Andorno*

Digital Health Technologies (DHTs) are currently the subject of much debate both in terms of their technological frontiers as well as their ethical, legal and societal implications (ELSI). Regulation of such technologies as medical devices currently lags behind their level of adoption. Digital Twins are the next evolution step of such DHTs and provide an opportunity to anticipate and act on ELSI before adoption again leaps before the necessary review. This paper introduces the concept and use cases of digital twins in medicine, then frames the debate through the lens of related technologies, machine learning and personalized medicine, and maps ethical challenges stemming from those. Finally, we lay out how digital twins may change and challenge the future practice of medicine.

Symposium articles are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

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Health Justice: Engaging Critical Perspectives in Health Law and Policy

A Symposium Guest Edited by Lindsay F. Wiley, Ruqaiijah Yearby, Brietta R. Clark, and Seema Mohapatra

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Mitochondrial Replacement Therapy: In Whose Interests?

Forough Noohi, Vardit Ravitsky, Bartha Maria Knoppers, and Yann Joly

Mitochondrial replacement therapy (MRT), also called nuclear genome transfer and mitochondrial donation, is a new technique that can be used to prevent the transmission of mitochondrial DNA diseases. Apart from the United Kingdom, the first country to approve MRT in 2015, Australia became the second country with a clear regulatory path for the clinical applications of this technique. The rapidly evolving clinical landscape of MRT makes the elaboration and evaluation of the responsible use of this technology a pressing matter. As jurisdictions with less strict or non-existent reproductive laws are continuing to use MRT in the clinical context, the need to address the underlying ethical issues surrounding MRT's clinical translation is fundamental. Among objections to researching and developing MRT are that: (1) prospective parents have other reproductive options, so their interest in having and raising genetically related children free of mitochondrial disease does not establish any rights to this technology, and (2) MRT does not "cure" or "treat" existing individuals, but rather creates individuals who would not otherwise exist. This paper offers a reflection on the strengths and weaknesses of these arguments with the aim of advancing and nuancing this important debate for researchers and clinicians in the field.

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