

TRANSGENDER JEWS AND HALAKHAH¹

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This teshuvah was adopted by the CJLS on June 7, 2017, by a vote of 11 in favor, 8 abstaining. Members voting in favor: Rabbis Aaron Alexander, Pamela Barmash, Elliot Dorff, Susan Grossman, Reuven Hammer, Jan Kaufman, Gail Labovitz, Amy Levin, Daniel Nevins, Avram Reisner, and Iscah Waldman. Members abstaining: Rabbis Noah Bickart, Baruch Frydman-Kohl, Joshua Heller, David Hoffman, Jeremy Kalmanofsky, Jonathan Lubliner, Micah Peltz, and Paul Plotkin.

שאלות

1. What are the appropriate rituals for conversion to Judaism of transgender individuals?
2. What are the appropriate rituals for solemnizing a marriage in which one or both parties are transgender?
3. How is the marriage of a transgender person (which was entered into before transition) to be dissolved (after transition).
4. Are there any requirements for continuing a marriage entered into before transition after one of the partners transitions?
5. Are hormonal therapy and gender confirming surgery permissible for people with gender dysphoria?
6. Are trans men permitted to become pregnant?
7. How must healthcare professionals interact with transgender people?
8. Who should prepare the body of a transgender person for burial?
9. Are preoperative² trans men obligated for *tohorat ha-mishpahah*?
10. Are preoperative trans women obligated for *brit milah*?
11. At what point in the process of transition is the person recognized as the new gender?
12. Is a ritual necessary to effect the transition of a trans person?

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

¹ I am deeply indebted to Rabbi Jill Borodin, Professor Aaron Devor, Doctor Ronald Hellman, Rabbah Rona Matlow, Doctor Dana Beyer, and Doctor Fran Walfish who read and commented on the manuscript and offered me invaluable insights out of their professional and personal experience. I thank them most humbly and sincerely. I am especially grateful to Professor Joy Ladin who has given of her time and expertise almost from the inception of this project. Her patience, warmth, generosity and integrity have been of immeasurable importance to me in bringing this project to fruition. I also owe a special thanks to Rabbi Micah Buck-Yael whose recommendations and shared insights have helped me tremendously in formulating the ideas in this *teshuvah*. The positions I have taken and language I have used are my own and I alone am responsible for any criticism they generate.

² I am using the term preoperative to refer to those transgender people who have not undergone gender confirming genital surgery often referred to as bottom surgery (to be explained below). It does not indicate that they plan to or ever will undergo such surgery.

Introduction

Elizabeth Reis, in her book *Bodies in Doubt: An American History of Intersex*, makes the claim that “To be human is to be physically sexed and culturally gendered.”³ She goes on: “In the United States and most other places, humans are either men or women; they may not be either or both. Yet not all bodies are clearly male or female.”⁴ We might add: not all people are clearly male or female! The halakhic concerns related to transgender Jews was first addressed by the CJLS in 2003 in a *teshuvah*, “Status of Transsexuals,” by Rabbi Mayer Rabinowitz⁵. In the fourteen years since the approval of that *teshuvah*, there has been a sea change in our understanding as a society at large, and no less so in the Jewish community, of the meaning of gender and gender identity. This has in large part been the result of more and more transgender people being open about themselves in their daily lives as well as in books and as part of online discussion and advocacy groups. The presence of transgender people in popular culture⁶ has gone a long way to demystify the experience for many. In the Jewish world, the ordination of transgender rabbis and the lived experience of transgender Jews, their parents, their spouses, their children, have also helped both to give a human face to those living out this life experience and to identify areas which the Jewish community has not addressed adequately and often not at all.⁷

Within the Jewish community and the larger culture, too often transgender people have been excluded, marginalized, harassed, or worse. The Jewish community and the Conservative movement must be committed to the proposition that all people be treated with dignity and respect and that our institutions, culture, and practices be welcoming and accommodating to the needs of transgender Jews as well as trans people who wish to become Jewish, and to doing so in an authentically Jewish way.

The Language Challenge

Among the challenges we face in accomplishing this goal is that we often do not have adequate language to discuss it.⁸ Even the seemingly simple question of personal pronouns, becomes fraught with difficulty, especially for individuals who do not fit the gender binary. Language poses an even greater problem in Hebrew and other gendered languages such as French or Spanish in

³ Reis, Elizabeth, *Bodies in Doubt: An American History of Intersex*, Johns Hopkins University Press, Baltimore, 2009, p. ix

⁴ Ibid.

⁵ Rabinowitz, ME, Status of Transsexuals, Responsa of the Committee on Jewish Law and Standards of the Conservative Movement, YD 336:2003.

⁶ Theater pieces such as *I Am My Own Wife* (Doug Wright, 2002); films such as *Dallas Buyers Club* (Jean-Marc Valee, director, 2013), *Boys Don't Cry* (Kimberly Peirce, director, 1999), *The Crying Game* (Neil Jordan, director, 1992), *The Danish Girl* (Tom Hooper, director, 2015); television series such as *Orange is the New Black* (Netflix, 2013-) and *Transparent* (Amazon 2014-); reality television series such as *Becoming US* (ABC Family, 2015-), and *I am Cait* (E!, 2015-); and memoirs such as *Through the Door of Life: A Jewish Journey between Genders* (Joy Ladin, see fn3).

⁷ See *The Rights of Transgender and Gender Non-Conforming Individuals*, Submitted to the Central Conference of American Rabbis by the Rabbinic Members of the Commission on Social Action of Reform Judaism, March 16, 2015 <https://ccarnet.org/rabbis-speak/resolutions/all/rights-transgender-and-gender-non-conforming-indiv/>

⁸ The question of whether to refer to trans men/trans women (the approach that will be adopted in this paper) or transmen/transwomen or to omit the term trans altogether is still not settled within the trans community.

which even inanimate objects are linguistically gendered. Everywhere these languages are spoken communities will have to develop ways of writing and speaking with, to, and about trans people that are appropriate within their own vernacular. Hebrew poses a special problem because it is Judaism's universal language. It is the language of ritual and prayer. It is the language we turn to at times of our greatest joy and our greatest sorrow, our greatest satisfaction and our greatest fear and it therefore demands a heightened sensitivity to use the language in ways that are respectful and inclusive.

A second problem we face from a language standpoint, is a result of the way we have tended to use the word "change." We have talked about "sex change surgery," or "a man changing to a woman," or vice versa. This is more than a language problem, however, because our conceptual understanding has been molded by the language. We are beginning to understand that a transgender man, for example, has very likely had a male gender identity, certainly from a very early age and very likely from birth—even though he may not have been aware of it, or had the vocabulary to speak about it, or have acted on it until much later. In many instances, the person's identity has not and is not changed—not by surgery, not by hormonal therapy, not by psychotherapy. It is possible to change the body's internal hormonal milieu pharmacologically, and the body's anatomic appearance surgically to conform to the individual's identity but identity appears to be constant. Attempts to change gender identity by so-called "conversion therapy" have been discredited as ineffective, dangerous and cruel.

Halakhah is Binary

In addressing the questions that arise regarding transgender people in Jewish life, we must keep in mind that although *halakhah* deals with categories, rabbis and halakhists deal with people, and that the transgender community is a large and diverse group of people. Joy Ladin, in her book *Through the Door of Life: A Jewish Journey between Genders*⁹, writes movingly about the pain she suffered in transitioning and the impossibility of not doing so. It is unlikely that anyone who has not lived that experience can fully comprehend it.

Gender exists at the place where the inner life meets the embodied life. It is neither purely personal and internal, nor is it purely biological. Each of us carries a distinct internal sense of our self as a gendered being. Each of us is also assigned an "official" gender by the culture in which we live at the time of our birth...

Many people seem to find that, taken as a whole, cultural gender expectations do not perfectly describe or define them as individuals. They may prefer some activities, styles of communication, styles of dress, or ways of being that are not associated with the gender assigned to them at birth. They may hold an inner sense of gender identity that largely correlates with the assigned gender, but defy the cultural expectations of that gender...

Distinct from this, there are also many people whose internal sense of gender is fundamentally at odds with the gender assigned to them at birth. This often has little

⁹ Ladin, Joy, *Through the Door of Life: A Jewish Journey between Genders*, University of Wisconsin Press, 2012.

to do with the characteristics or expectations outlined above - gender is much more than how one dresses or which stereotyped behaviors one enjoys. Gender describes the internal map of the self, and the framework through which the self meets the embodied world.¹⁰

In order to apply those halakhic categories in ways that are sensitive and compassionate, and at the same time maintain halakhic integrity, we must acknowledge that our understanding of human sex, sexuality, and gender, limited though it may be, is advanced far beyond anything our ancestors could have imagined.

The challenge we face is that although *halakhah* is binary in terms of gender,¹¹ people are not. The Rabbis understood this. They recognized several types of people who did not fit the male/female binary. The two most often mentioned are the *tumtum* and the *androgynos*¹², but the Rabbis also refer to the *saris hammah* and the *aylonit*.¹³

The exact conditions to which the Rabbis were referring by these terms and the specific halakhic rulings they applied are not relevant to this *teshuvah* since none of the people they mentioned are what we would recognize today as transgender. What is relevant, is (1) that they recognized that there were people who did not fit the halakhic binary, and (2) that halakhic gender categories were not applied to them in a consistent, “across the board” manner. That is, for a given individual some laws and restrictions were applied as they would be for a man and some laws and restrictions as they would be for a woman. Thus Chapter 4 of *Mishnah Bikkurim* enumerates the ways in which an *Androgynos* is treated for some halakhic purposes like a man, for some like a woman, for others like both men and women, and for still others like neither men nor women but rather like a unique being *sui generis*.

According to Rabbi Rabinowitz’s *teshuvah*, and to much of the corpus of rabbinic writing about transgender issues, we find the principle that once a transgender person has transitioned (which for most *poskim* requires hormonal therapy and surgery), they are then treated as the new gender “for *all* halakhic purposes,” maintaining the halakhic gender binary. That may be appropriate for some or even most of the transsexual individuals who are the subject of Rabbi Rabinowitz’s *teshuvah* but it is problematic for individuals who do not identify as either male or female—gender

¹⁰ Buck-Yael, Micah, Unpublished Essay

¹¹ There are laws or *mitzvot* that apply only to men (*brit milah*) or only to women (*niddah*) or differently to men and women (marriage, divorce, serving as witness).

¹² We can only speculate as to the conditions they were referring to by these terms. *Androgynos*, described as a person whose body neither typically male nor typically female but had anatomic features of both, was likely what we would today refer to as a person with ambiguous genitalia or an intersex person. The meaning of *Tumtum*, a person who is either male or female but whose gender is unknown because the organs are hidden by some type of membrane or cover is completely obscure.

¹³ *Saris*, or *saris hammah*, a man congenitally sterile might have referred to someone with undescended testes, or someone sterile as the result of a febrile illness. *Aylonit*, as Hillel Gray (*Not Judging by Appearances: The Role of Genotype in Jewish Law on Intersex Conditions*, *Shofar: An Interdisciplinary Journal of Jewish Studies*; Summer 2012, Vol. 30 Issue 4, p126) has suggested, may be what is today referred to as “female sex reversal”, XY/fg (a person with male genetic makeup and typical female genitalia) caused by Partial Androgen Insensitivity Syndrome. Those specifics are not as important as that for the Rabbis they were neither clearly male nor clearly female for purposes of *halakhah*.

non-conforming, genderqueer, non-binary, etc., as well as for those who do not undergo hormonal or surgical treatment. What is important for this *teshuvah* is the willingness of the Rabbis to apply halakhic paradigms in a non-rigidly binary fashion. It is that approach which should guide our analysis and decisions.

Judaism is an Embodied Religion

A third challenge is that Judaism pays attention to the body as well as the spirit. This is noted by Rabbi Pamela Barmash in her *teshuvah*, *Women and Mitzvot*:¹⁴

It must be stated clearly that while we rule that men and women are equally responsible for the *mitzvot* because women are no longer subordinate to men, there are anatomical differences between men and women. Gender differences are socially constituted, but the sexual organs of human beings do determine certain behavior. The *mitzvah* of *brit milah* (circumcision) applies only to males. The *mitzvah* of *niddah* (menstrual separation) is primarily observed by women, although it does affect their sexual partners. The *mitzvah* of procreation applies to men and not to women because of the health risks of pregnancy and labor to women. Requiring women to become pregnant would subject them to dangers to their health. Even today, when the risks have decreased substantially, the risks inherent in pregnancy and labor for women still remain far greater than the risks of intercourse for procreation for men.

One further note: This *teshuvah* is written from the perspective of Conservative Judaism, and specifically those in the Movement who accept gender egalitarianism. Except in the specific issues identified in this paper, it is assumed that there is no halakhic difference between male and female. Therefore, I will not address issues such as which side of a *mehitzah* one should sit on, whether one may lead any and all parts of a service as *shaliah tzibbur*, whether one may or must don *tefillin*, serve on a *beit din* or be a witness, etc. For communities in which such gender related questions are relevant, it is my hope that the general approach I have taken may be of some help.

DEFINITION OF TERMS¹⁵

Cisgender: A term used to describe a person whose gender identity aligns with those typically associated with the sex assigned to them at birth.

¹⁴ Barmash, P, *Women and Mitzvot*, Responsa of the Committee on Jewish Law and Standards of the Conservative Movement, Y.D. 246:6, 2014.

¹⁵ The first 9 definitions in this list are to be found on the website of Human Rights Campaign <http://www.hrc.org/resources/glossary-of-terms> (May 10, 2016); definitions may also be found at the Gender Equity Resource Center, http://geneq.berkeley.edu/lgbt_resources_definiton_of_terms, and the National Center for Transgender Equality, <http://www.transequality.org/issues/resources/transgender-terminology>.

Gender dysphoria: Clinically significant distress caused when a person's assigned birth gender is not the same as the one with which they identify. According to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-V)¹⁶, the term - which replaces Gender Identity Disorder - "is intended to better characterize the experiences of affected children, adolescents, and adults."

Gender expression: External appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.¹⁷

Gender identity: One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

Gender non-conforming: A broad term referring to people who do not behave in a way that conforms to the traditional expectations of their gender, or whose gender expression does not fit neatly into a category.

Genderqueer: Genderqueer people typically reject notions of static categories of gender and embrace a fluidity of gender identity and often, though not always, sexual orientation. People who identify as "genderqueer" may see themselves as being both male and female, neither male nor female or as falling completely outside these categories.

Gender transition: The process by which some people strive to more closely align their internal knowledge of gender with its outward appearance. Some people socially transition, whereby they might begin dressing, using names and pronouns and/or be socially recognized as another gender. Others undergo physical transitions in which they modify their bodies through medical interventions such as hormonal therapy or surgery.

Sexual orientation: An inherent or immutable enduring emotional, romantic or sexual attraction to other people.¹⁸

Transgender: An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.¹⁹

Transsexual: Transsexual refers to a person who experiences a mismatch of the sex they were born as and the sex they identify as. A transsexual²⁰ sometimes undergoes medical treatment to change his/her physical sex to match his/her sex identity through hormone treatments and/or surgically. Not all transsexuals can have or desire surgery.

¹⁶ Published May 18, 2013 and is available online at <http://dx.doi.org/10.1176/appi.books.9780890425596>

¹⁷ It is important in this regard to note that there is wide variation in gender expression and cultural expectation and not get caught up in clichéd stereotypes. There are cis men whose behavior or appearance may be feminine and cis women whose behavior and appearance may be masculine. They do not, however, identify as the opposite gender and are not considered transgender.

¹⁸ Some transgender people do change sexual orientation as part of their transition. See Auer, MK, Fuss, J, Hohne, N, Stalla, GK, Sievers, C, (2014) *Transgender Transitioning and Change of Self-reported Sexual Orientation*, PLoS ONE 9(10):e110016. Doi:10.1371/journal.pone.0110016.

¹⁹ In the transgender context, some use the terms androphilic=attracted to men, gynephilic=attracted to women, bisexual=attracted to both men and women, and analloerotic=not attracted to other people, rather than homosexual or heterosexual.

²⁰ It is now thought to be more appropriate to use the term transgender or transsexual as adjectives rather than nouns. It is preferable to refer to transsexual persons rather than transsexuals. I am indebted to Aaron Devor for this insight. I have, however, quoted the definitions as found in the sources cited and apologize for any offense or discomfort that causes.

Transvestite: Individuals who regularly or occasionally wear the clothing socially assigned to a gender not their own, but are usually comfortable with their anatomy and do not wish to change it (i.e. they are not transsexuals). **Cross-dresser** is the preferred term for men who enjoy or prefer women's clothing and social roles. Contrary to popular belief, the overwhelming majority of male cross-dressers identify as straight and often are married. Very few women call themselves cross-dressers.²¹

Sex Reassignment Surgery: Surgical procedures that change one's body to better reflect a person's gender identity. This may include different procedures, including those sometimes referred to as "top surgery" (e.g. breast augmentation or mastectomy and chest reconstruction, shaving down of Adam's apple, facial recontouring) or "bottom surgery" (altering genitals). Contrary to popular belief, there is not one surgery; in fact there are many different surgeries. These surgeries are medically necessary for some people, however not all people want, need, or can have surgery as part of their transition. "Sex change surgery" is considered a derogatory term by many.²² [N.B. These procedures are increasingly referred to as **Gender Confirming Surgery** (also Gender Confirmation Surgery and Gender Affirming Surgery)]²³

Intersex: Intersex refers to a group of conditions in which there is a discrepancy between the external genital anatomy and the internal genital organs (the testes and ovaries). The older term for this condition, hermaphroditism, has been replaced by most medical experts as well as patients and families, because it is misleading, confusing, and insensitive. Increasingly this group of conditions is being called disorders of sex development (DSDs).²⁴ According to Elizabeth Reis: Intersex generally refers to variation in genital anatomy, but not all intersex conditions involve ambiguous genitalia. Some people with intersex have typical external genitals of one sex but internal anatomy of the other sex. Some have internal and external organs of one sex but the genetic makeup of the other. Sometimes the condition is apparent at birth and sometimes they do not discover their condition until the teenage years when their bodies do not go through puberty in the usual manner. There are several dozen conditions, including (but not limited to) hypospadias, Turner Syndrome, congenital adrenal hyperplasia, androgen sensitivity syndrome, 5alpha-reductase deficiency, and sex chromosome mosaicism, that fall under the rubric of intersex.²⁵

STRATEGIES FOR GENDER ASSIGNMENT

As I stated above, *a la* Reiss, gender is a binary social construct related to but not identical with various dimensions of human sexual biology which exist along multiple non-congruent axes. In modern times, there is an ongoing debate as to which of these dimensions or axes is the best determinant of gender.

²¹ This and the preceding definition are found at

http://geneq.berkeley.edu/lgbt_resources_definiton_of_terms#transsexual.

²² <http://www.transequality.org/issues/resources/transgender-terminology>

²³ Some use the term SRS to refer specifically to genital or "bottom" surgery. Others use the term more broadly and refer to genital reassignment surgery or genital reconstructive surgery (GRS).

²⁴ <http://www.nlm.nih.gov/medlineplus/ency/article/001669.htm>

²⁵ Reis, op cit., p. xi.

Anatomy

For most of human history, genital anatomy was considered to be the best and most reliable determinant of gender. This is the strategy adopted by Rabbi Rabinowitz in his 2003 teshuvah. He wrote that a person whose gender identity differed from that assigned at birth, nearly always on the basis of genital anatomy, could be accepted as the other gender provided that genital anatomy was surgically altered to conform, to the extent medically possible, to the new gender. . This is the situation Rabbi Waldenberg dealt with in a *teshuvah* regarding a genetic male infant born with ambiguous genitalia.²⁶ Waldenberg, however, stated that it is only actual genital organs, not surgically created approximations, which are determinative:

ולכן ברור שרק האברים הממשיים החיצוניים המשונים בין זכר לנקבה המה הקובעים בזה למעשה

It is therefore clear that only actual external organs which are different in the male and the female that are determinative in practice.

His approach as I understand this *teshuvah*, is not precisely that sexual anatomy determines gender. Rather, reduced to its most fundamental, he is saying gender depends entirely on the presence or absence of a “normal” penis: for halakhic purposes, if you have one, you are fully a man, if you don’t, you are not (fully), although you may not be woman either, but since in most cases you will be assigned and treated as female, you might as well have surgery that makes you look more female.

As the determinant of gender, however, sexual anatomy is not binary, as evidenced by those born with intersex conditions manifested by ambiguous genitalia, but exists as a continuum. What we recognize today as forms of intersex, our sages recognized as *tumtum*, *androgynos*, *aylonit*, *saris*, etc. Their solution was to assign gender on the basis of anatomy to those who fit the binary (i.e. typically female or typically male) and to treat the others as special cases, typically applying *halakhah* in the most restrictive and stringent ways, an approach that today would be considered punitive.

And yet, even those *poskim*²⁷ who rule that a man whose genitalia have been removed may not contract a marriage or that his marriage contracted previously is consequently dissolved, would still not say he has become a woman.

Despite the difficulties with assigning gender on the basis of anatomy, it remains an exceedingly important parameter as evidenced by the desire of many transgender people to undergo surgery to alter their genitalia even though, in most situations of daily life, whether or not they have had surgery is unknown to anyone but themselves and their intimate partners.

Genetics

²⁶ *Ziz Eliezer* Part 11 Section 78

²⁷ *Minhat Hinukh* quoted in Rabinowitz, *op cit*.

In modern times, it is possible to assign gender on the basis of a person's genetic make-up. Although genetic testing is usually done in cases of doubt, according to Rosner and Tendler (arguing against Waldenberg) when it is done, it is absolutely determinative:

“The sex determination of an infant or child with ambiguous genitalia must be based on cytological and genetic (i.e., medical) evidence, not on psychological considerations. The presence of a testis is to be considered an absolute sign of maleness. A genetically male infant must not be surgically modified to permit rearing him as a female.”²⁸

Genetic makeup as a determinant of gender has the advantage of being scientifically objective, of being present at conception, and of being unchangeable. However, it also is not binary. Though most people are born with an XX or XY chromosomal makeup, some people are born XXY or XYY or XX/XY hybrids or other variations. Furthermore, there are XX individuals born with typical male anatomy, and there are XY individuals born with typical female anatomy.²⁹ Genetic sex does not have a one-to-one relationship with any other dimension of sex or gender.

Hormones

Some have proposed that a person's hormonal makeup should be considered in assigning gender. This approach arises mainly in the context of elite competitive athletics, e.g. whether a woman who produces excessive amounts of male hormones should be permitted to compete as a woman. For halakhic purposes, however, this strategy is decidedly not helpful. We all produce both male and female hormones and differ only in the relative amounts of each. Moreover the amounts we produce change with age and health conditions. Hormonal status is neither binary, nor permanent, nor immutable.

Gender Identity

Gender identity seems, for the most part, to be lifelong and unchangeable; gender expression may change but not gender identity. A recent review article³⁰ suggests that there is a biologic basis for gender identity, but at the time of this writing the nature of the biologic basis of gender identity is unclear and some believe that there may be instances where gender identity may change.³¹ This dimension too is not binary. There are individuals who consider themselves to be non-gendered or gender non-conforming or to have a gender identity that is fluid. Nevertheless as a criterion for gender assignment for halakhic purposes, it has the advantage of being self-defined rather than externally imposed, and it is generally stable. Importantly it is less likely than other criteria to

²⁸ Rosner, F, and Tendler, M, “Procreation and Sexuality,” Practical Medical Halacha, Jason Aronson, Northvale, 1997, p. 41.

²⁹ All of these are part of a wide variety of chromosomal or hormonal disorders most of which are rare. See definition of Intersex above.

³⁰ Saraswat, A, Weinand, J, and Safer, J, Evidence Supporting the Biologic Nature of Gender Identity, *Endocrine Practice*, Vol 21 No. 2 February 2015

³¹ Devor, Aaron, personal communication.

produce psychological distress in individuals whose identity is not congruent with the other dimensions of sex. Rabbi Buck-Yael describes this as follows:³²

Gender describes the internal map of the self, and the framework through which the self meets the embodied world. The term transgender refers to a wide range of people who experience this dissonance in many different ways. Some people know themselves to be men or women, even though the determination made at birth lists them legally and culturally as the other. Some find that neither of the legally sanctioned categories describes their gender, and know themselves to be neither men nor women, and seek to find and make language and cultural recognition for who they are. Some find that their internally held sense of gender - and often their internally held maps of their physical bodies - differ from the bodies which they inhabit, while others feel quite at home in their bodies, but struggle with the assumptions that are made about their gender because of their physical appearance. All of these and more are true experiences of being transgender, and people with all of these experiences are (sometimes) united by living at the margins of gender in our culture.

Strategies in classic and contemporary halakhic discourse

Classic and contemporary halakhic sources are not particularly helpful on the question of changing gender. Those that do discuss the issue raise it regarding the question of divorce and usually formulate the question as follows:³³

והוא בראובן שנשא אשה א' בתולה כאחת בנות ישראל והיה עמה כדרך איש ואשה, ואחר כמה שנים רבות קרה לה מקרה דנשתנית מנקבה לזכר בכל מכל כל,

It is the case of Reuven who married woman A, a virgin, as one marries a Jewish woman, and lived with her as husband and wife, and after some many years, an incident occurred in which she was changed from female to male in all ways and in every particular...

The description suggests a situation in which for no apparent reason, as if by magic, a woman becomes a man in all respects. There is no mention of her role in affecting this transformation or even her desiring it. It is simply an incident that occurs. Whatever this description is meant to denote, it is simply not what we find in the experience of the transgender person. Drawing analogies from the above formulation trivializes the real life experience and the obstacles faced by those who make that transition. In the real world, there are not people who one day are magically transformed to the other side of the binary in all respects. Rather there are people in whom there is an incongruity between their most deeply held sense of themselves as gendered individuals and the gender assigned to them at birth, people who demand and deserve to live fully and authentically in a Jewish context.

³² Buck-Yael, *op cit.*

³³ Ziz Eliezer Part 22 Section 2 quoting *Yosef et Elhav*

Summary

None of the dimensions of sex/gender mentioned above is strictly binary, nor is there necessarily a correlation between the various dimensions. There are incongruities and “mismatches.” This is consistent with the rabbinic understanding that even though halakhic gender categories are binary, people are not. For that reason, when gender related halakhic questions arise, we should approach the people affected as individuals, recognizing that there will be inconsistencies, incongruities, and contradictions. For the vast majority of such questions, gender identity will serve as the best and most appropriate criterion. It is most closely aligned with that person’s sense of self, their soul essence, and most consistent with principles of respect, honor, and dignity. In infants it is appropriate to assign gender on the basis of anatomy, knowing that in the majority of cases it will match gender identity, but recognizing that in a significant number of people it will not. Once a person, child, adolescent, or adult, has the understanding and vocabulary to assert a gender identity, it is that which should be honored. Adopting this strategy is not about acceding to “whatever people want.” Transgender people do not “choose” or “want” their gender identity any more than cisgender people choose or want theirs. Rather it is a core element of a person’s being and does not seem to be subject to deliberate attempts to change.

HALAKHIC APPROACH

Framing the Question

Most of the modern era responsa on the subject of transgender issues, from across the spectrum of Jewish thought, frame the question they address as follows: “What is the halakhic status of a person who has undergone sex reassignment surgery?”³⁴ (I should note that the term sex reassignment surgery has generally been replaced by “gender confirming” or “gender affirming” surgery) The answers vary, some *poskim* (halakhic decisors) saying that the surgery does effect a change in gender for halakhic purposes and others saying it has no effect. Some rabbis also address the question of whether the surgery itself is permitted in the first place, even while they recognize the need to answer the question about the effect of the surgery after the fact.

Pre-modern rabbinic authorities, to the extent they address the issue of change in gender at all, pose the question differently. What are the consequences, they ask, when a man or a woman, as a result of an apparently spontaneous and natural event, becomes the opposite sex in all ways and in every particular, especially in relation to marital status?³⁵ If the individual was married, what is the status of that marriage? Is a *get* necessary to dissolve the marriage?

³⁴ See for example Rabinowitz op cit.; CCAR Responsa, *Conversion and Marriage after Transsexual Surgery* 5750.8 accessed 6/8/2017 at <https://ccarnet.org/responsa/tfn-no-5750-8-191-196/>; *Ziz Eliezer*, 10:25, Chapter 26, Sec. 6. See also Bleich, JD, *Contemporary Halakhic Problems*, Volume 1, Ktav Publishing House, New York and Hoboken, 1977, pp. 100-105.

³⁵ See for example *Yosef et Ehav* 3:5

It goes without saying that all of these discussions take place in a cis-binary-hetero-normative universe of discourse. They do not account for the majority of trans men and significant number of trans women, who for a variety of reasons do not undergo GCS, specifically genital reconstruction; nor do they account for individuals with non-binary gender identities.

I have chosen to frame the questions differently: I have chosen to examine the specific halakhic questions that actually do arise (and they are arising with increasing frequency) in relation to trans people based on their gender identity rather than their operative status.

The questions that come up fall into two broad groupings: specific halakhic issues requiring *p'sak halakhah* and issues relating to communal norms, institutional accommodations, pastoral care, and the like which need halakhic guidance but allow for considerable variability and leeway in implementation. I propose to analyze them according to the following schema:

A. Personal Status Issues

1. Conversion
2. Marriage
3. Divorce

B. Bio-Medical Questions

1. Gender Confirming Surgery
2. Hormonal Therapy
3. Pregnancy in trans man
4. General medical care

C. Other

1. Preparation for burial
2. *Tohorat Ha-Mishpahah/Niddah*
3. *Brit Milah*

Endpoint of the Transition Process

Issues in Practical Rabbinics

1. Ritual to mark completion of transition
2. Change of name
3. Synagogue rituals and customs
4. Service, social and support groups
5. Transgender Children
6. Public accommodation

HALAKHIC ISSUES

A. Personal Status Issues

(1) CONVERSION

An often raised question relates to the appropriate conversion ritual for transgender men and women (already a binary shorthand for the variety of transgender people) who seek to convert to Judaism. In the case of cisgender people, all converts require immersion in a *mikveh*. In addition, the vast majority of cis men require either ritual circumcision or, if they have previously been circumcised, *hatafat dam brit* (HDB). *Hatafat dam brit* involves drawing a drop of blood from the site of the circumcision scar. Uncircumcised men who are unable to undergo circumcision for health reasons cannot be converted.³⁶ HDB is not a substitute for circumcision, it is only done on men who have previously been circumcised.

There are two relevant exceptions to the foregoing. Cis men who have suffered the loss of their penis, for example from trauma or cancer surgery, can convert to Judaism through immersion alone.

גר שנכנס לקהל ישראל, חייב מילה תחילה. ואם מל כשהיה עובד כוכבים צריך להטיף ממנו דם ברית ואין מברכין עליו. ואם נכרת הגיד, אין מילתו מעכבת מלהתגייר וסגי ליה בטבילה.

A non-Jew who converts to Judaism must be circumcised first. If he was circumcised previously, a drop of blood must be drawn (*hatafat dam brit*) and no *berakhah* is recited. If his penis has been amputated, [the impossibility of] his circumcision is not a barrier to conversion and immersion suffices.³⁷

There is another group referred to as *nolad mahul*, born circumcised, that is an exception to the general rule. This situation was discussed at length by Rabbi David Novak in a 1982 teshuvah for the CJLS of the Rabbinical Assembly.³⁸ Rabbi Novak was discussing a man born Jewish but his reasoning would apply equally to a convert. He cites a dispute between the Schools of Hillel and Shammai as to whether one born circumcised requires HDB. There is a disagreement among commentators as to whether this dispute is about the need for HDB altogether or only about whether it overrides *Shabbat*. Significantly, according to all the sources Novak brings, all those who require HDB do so on the grounds of *shema orlah kevushah*, perhaps it is a suppressed foreskin. What these rabbis were concerned about was someone who appeared circumcised but nevertheless had a foreskin which was somehow shrunken or hidden and would manifest itself at some time in the future and the man would be seen to be uncircumcised. For the Rabbis, in any man who appeared circumcised and did not have a documented history of having undergone circumcision, there was a suspicion that he might have a suppressed foreskin and be an *arel*

³⁶ Mandl, Herbert J, Conversion to Judaism Without Circumcision Due to Medical Complications, Responsa of the Committee on Jewish Law and Standards of the Conservative Movement YD 268:1.1994.

³⁷ *Shulhan Arukh* YD 268:1

³⁸ דוד הזרחי נובק: עיון בשילת הטפת דם ברית בהלכה Proceedings of the Committee on Jewish Law and Standards 1980-1985, pp. 59-67.

(uncircumcised). Because of that suspicion, some rabbis demanded HDB for all men who had not undergone circumcision, even if they appeared to be circumcised.

The questions we face with respect to transgender conversion candidates, especially trans men who have undergone some form of genital surgery and trans women who have not, are often emotionally fraught and require the utmost sensitivity and compassion. There are often issues of shame and embarrassment that we must pay attention to and we must recognize that these discussions may make us as rabbis as uncomfortable as they make the potential convert. Some rabbis have even questioned whether it is appropriate even to ask questions of a trans woman conversion candidate that they would never ask of a cis woman.

In proposing rituals for transgender converts, I would make an analogy to the medical setting. If a physician is to examine a trans woman, she should be treated like any woman patient: She should be addressed as a woman, a chaperone should be present during the examination, she should be draped modestly, etc. But if she has a prostate, the physician would be remiss not to examine it or do a PSA test if indicated. Similarly, a trans man should be treated like all male patients, but if he needs a pap smear, the physician must do it.

With this in mind, I believe we must consider four situations: 1. Trans men who have not undergone genital surgery; 2. Trans men who have undergone genital surgery; 3. Trans women who have undergone genital surgery; 4. Trans women who have not undergone genital surgery.

1. Trans men who have not undergone genital surgery will obviously never have undergone circumcision nor will they have a foreskin, so neither circumcision nor HDB are required.
2. Trans men who have undergone genital surgery will usually have been treated by either metoidioplasty or phalloplasty.³⁹ Neither technique creates a foreskin or anything resembling or analogous to it. Therefore they are like someone *nolad mahul*, born circumcised, except that there would be no doubt whatsoever of a suppressed or hidden foreskin. Like group 1, these men will never have undergone circumcision nor will they have a foreskin, so neither circumcision nor HDB are required.⁴⁰
3. Trans women who have undergone genital surgery will have neither a foreskin to be removed nor a site (i.e. circumcision scar) at which to perform HDB, thus neither is required. They would convert with immersion alone.
4. Trans women who have not undergone genital surgery are perhaps the most difficult group of all in terms of sensitivity and shame issues. They still have a penis, which may or may not have been circumcised. In addition to questioning the appropriateness of a conversation about their genitalia, some rabbis have asked whether the *mitzvah* of

³⁹ In phalloplasty, a neo-phallus approximating the appearance and function of typical male genitalia is created from tissue elsewhere on the body, typically the skin of the forearm or the skin of the lower abdomen, and transferred to the pubic area. In metoidioplasty, a neo-phallus is not created. Rather, the individual's own genital tissue (the clitoris) is altered to achieve a more masculine appearance.

⁴⁰ In March, 2015, a surgical team in South Africa performed the world's first successful penile transplant on a man who had suffered amputation of the penis. In the unlikely event that this procedure was performed on a trans man, he would require circumcision if the transplanted penis were uncircumcised or HDB if it had previously been circumcised.

circumcision, which applies to *kol zakhar*, every male, even applies to trans women. It seems to me that it does as I will explain more fully in the section on *brit milah* further on. That being the case, they require either circumcision or HDB as part of their conversion ritual.⁴¹ There are a variety of ways it can be accomplished, e.g. the candidate may do it to herself, or it may be done in a medical setting with appropriate witnesses.⁴²

In the case of non-binary or gender non-confirming individuals, the schema above has the advantage of being based solely on anatomy. A person who has a penis, whatever their gender identity, requires circumcision or HDB; a person who does not have a penis, does not.

Some trans men may desire HDB as a spiritual component of their conversion even though there is no halakhic requirement for this procedure. There is also the possibility that some trans men who are born Jewish may desire HDB and/or immersion as part of their transition process. There is no *berakhah* associated with HDB, neither for a cis man nor for a trans man, or whether it is done for the purpose of conversion or for someone born Jewish whose circumcision was not a *brit milah*. Nevertheless, some rabbis/*mohalim* will offer a blessing without *shem u-malkhut*, without mention of God's name or sovereignty, to add a spiritual dimension to the ritual.

Just as it is permissible for a convert to perform HDB on himself, usually using the type of spring-loaded lancet that diabetics use to test their blood sugar levels, a trans man who desires to perform HDB on himself as part of conversion or gender transition as a spiritual or covenantal act may do so. No *berakhah* is required nor is the presence of witnesses, but all may be permitted as part of the person's spiritual journey

The wound created by HDB is minor and there is no concern regarding the prohibition of self-wounding, *hovel b'atzmo*.

Though not a halakhic issue *per se*, a frequently asked question is who should witness the immersion of the convert. Typically, immersions are witnessed by either members of the *Beit Din* of the same sex as the convert or in the case of female converts by the female *mikveh* attendant. This, practice developed out of a sense of *K'vod Ha-Briyot*, dignity, and *Tz'niyut*, modesty, to make the convert (and the rabbis) feel comfortable with the ritual. The same values should be applied in the case of transgender men and women, whose immersions should be witnessed by someone who can assure that the immersions are performed correctly, of whatever gender the candidate is most comfortable with, usually a person of the same gender identity.

Alternatively, the standard method for conversion in the Israeli rabbinate is for female converts to wear a black, loose fitting robe into the *mikveh* so that the *dayanim* can observe the *tevilah*.⁴³ Any clothing should be permissible as long as the water gets through it.

⁴¹ See CCAR Responsum 5769.6, 2009 <https://ccarnet.org/responsa/nyp-no-5769-6/>

⁴² Although halakhah requires 2 or 3 witnesses for HDB, it has been my experience performing HDB for many conversions that the vast majority of rabbis choose not to witness the actual procedure themselves and rely on the report of the person performing the HDB. The decision regarding witnesses is left to the members of the *beit din* overseeing the conversion.

⁴³ Personal communication Rabbi Hillel Hayyim Lavery-Yisraeli. I have also been told by Rabbah Rona Matlow that the Seattle *mikveh* provides women with sheets for this purpose.

נדה שטבלה בבגדיה מותרת לבעלה.

A *Niddah* who immersed with her clothes on is permitted to her husband.⁴⁴

בבגדיה כו' - נראה דוקא באותן הבגדים שהן רפויין עליה אבל לא באותן שהן מהודקים

WITH HER CLOTHING: It seems that this is specifically clothing that is loose fitting and not that which fits tightly.⁴⁵

Adopting this practice for the conversion of transgender people, and indeed for anyone who is uncomfortable about being observed unclothed, can go a long way to relieve anxieties on the part of both the candidate and the witnesses. This practice may make conversion candidates who are not transgender feel more comfortable as well.

(2) MARRIAGE

Rabbis who officiate at Jewish weddings in most western countries are simultaneously acting as agents of the state. Until recently, there was no uniformity in the United States as to whether states recognized same sex marriage. With the Supreme Court decision in *Obergefell v. Hodges*, same sex marriage became recognized throughout the United States, as is the case in Canada and many European countries. Unfortunately, there is still no uniformity to legal gender status or gender identity documents for transgender individuals.⁴⁶ It is therefore incumbent upon the rabbi solemnizing a Jewish marriage to be aware of the laws that may apply in the particular jurisdiction in which the ceremony is taking place.

The above notwithstanding, questions still arise with respect to solemnizing the marriage of transgender Jews. In 2012, Rabbis Dorff, Nevins, and Reisner,⁴⁷ in an appendix to their 2006 *Teshuvah, Homosexuality, Human Dignity, and Halakhah*, described a halakhic paradigm and associated rituals for same-sex marriages. They suggest a model of *brit*, covenant, or *shutafut*, partnership, as the most appropriate way to solemnize a same-sex union. However, they state explicitly that “even though the halakhic mechanism for binding the couple together is distinct from the traditional model of *Kiddushin*, the result is still a Jewish marriage (emphasis added).⁴⁸ Still questions arise: What is the appropriate ceremony for the union of a trans woman and cis woman, or a trans man and a cis man? Does it depend on whether or not the trans woman had genital surgery? What about the case of a trans woman and a cis man? Or two trans men? Or any of the many other possible permutations and combinations? What is the appropriate ceremony

⁴⁴ *Shulhan Arukh YD* 198:46

⁴⁵ *Shakh to Shulhan Arukh YD* 198:46

⁴⁶ In the United States at the time of this writing, three states and D.C. issue new birth certificates and do not require GRS; twenty-five states issue new birth certificates and require proof of GRS; sixteen states amend existing birth certificates and require proof of GRS; and three states do not issue new birth certificates or amend existing ones.

⁴⁷ Dorff, Elliot, Nevins, Daniel and Reisner, Avram, *Rituals and Documents of Marriage and Divorce for Same-Sex Couples* (an appendix to "Homosexuality, Human Dignity and Halakhah"), *Responsa of the Committee on Jewish Law and Standards of the Conservative Movement*, EH 24.2012a

⁴⁸ *Ibid.*, p. 3

when one or both of the people getting married are gender non-conforming, or genderqueer, or otherwise outside the gender binary?

At the time of this writing the position of the CJLS is that opposite sex couples may be married only by *kiddushin*, and only opposite sex couples may be married by *kiddushin*. There may come a time when there is greater flexibility for couples to choose the type of ceremony they prefer, but that is not currently the case. Therefore a marriage between a male-identified person and a female-identified person is to be sanctified by *kiddushin*. All other unions are to be sanctified by a ceremony of *shutafut/brit ahuvim* as described by Rabbis Dorff, Nevins, and Reisner, or as in a concurring opinion by Rabbi Aaron Alexander.⁴⁹ Some couples may desire a non-gendered ceremony,⁵⁰ or a ceremony with non-gendered language. The desires should be accommodated to the extent possible within the framework of the Conservative Movement's position on marriage.

For marriages entered into prior to transition, in which the couple desires to remain married after the transition of one of the partners, the marriage remains valid and there is no requirement for any ritual. Often what has changed is gender expression to conform to a gender identity that was present from the beginning of the marriage. In some situations a change in gender identity occurs during the marriage. Nevertheless, they are still the same two people who married and notwithstanding the change that has taken place, the marriage remains a valid Jewish marriage. Although no ritual is required, some couples may wish to create one which recognizes and sanctifies or affirms the change that has taken place within that valid marriage. This would be similar type of ritual celebrated by couples who desire to "renew" their marriage vows to commemorate a milestone such as a 50th anniversary.

(3) DIVORCE

Like marriage, divorce in the Jewish tradition, is an asymmetrical enterprise. A man may divorce his wife, but a woman may not divorce her husband.⁵¹ The difficulties created when a man refuses to grant his wife a *get*, even when they are divorced according to civil law, are well known.⁵² She becomes an *agunah*, a chained woman, still married according to Jewish law and unable to remarry. The Conservative movement and many in the Orthodox world have created strategies for dealing with the plight of *agunot*, women who though civilly divorced are prohibited from remarrying in a Jewish ceremony.⁵³

⁴⁹ Alexander, Aaron, Rituals and Documents of Marriage and Divorce for Same-sex Couples, Responsa of the Committee on Jewish Law and Standards of the Conservative Movement, EH 24.2012b

⁵⁰ I am indebted to Rabbi Micah Buck-Yael for this insight.

⁵¹ I deliberately use the words "man" and "woman" here without qualifiers because the Jewish tradition in relation to divorce did not concern itself with attributes such as cis, trans, homo, hetero, etc. if it even recognized their existence.

⁵² Dorff, Nevins, and Reisner, op. cit. pp. 18-20, provide in the case of same sex marriages that either partner may present a writ of divorce to the other, and when there is mutual agreement to dissolve the marriage, both may present the writ of divorce to the other.

⁵³ See for example Za'akat Dalot: Halakhic Solutions for the Agunot of Our Time, *Contemporary Issues in Jewish Law*, Volume 6, Issue No. 5, January 2006

Rabbi Rabinowitz in his teshuvah, *Status of Transsexuals*,⁵⁴ deals with the situation of a marriage in which the husband transitions, which according to Rabbi Rabinowitz must include genital surgery. He cites sources that say that since the woman was married to a man, and that man is now a woman, the wife is no longer *eshet ish*, a man's wife, and therefore does not require a *get* in order to remarry, the original marriage having been automatically annulled. By this reasoning, since the marriage no longer exists following transition by the husband, a *get* is not only not required but cannot be given. There is a tacit assumption underlying this reasoning that must be challenged, namely that all couples in which one of the partners transitions want their marriage dissolved. That is certainly true of many couples, but there are also couples who choose to remain in a loving, committed, familial relationship despite the transition. The notion that a marriage is automatically dissolved when one partner transitions does a disservice both to those couples who wish to remain together and to those who decide to dissolve their marriage and desire closure in a Jewish context.

Ideally, if the couple is certain they want to divorce, they should be encouraged to do so before the transition process is complete. In this situation, the usual laws and procedures of *gittin* will apply. Even if the transgender partner has completed the transition process, the couple should be allowed to dissolve the marriage in the halakhic manner appropriate to the way it was entered into. That is, a marriage entered into as a same sex marriage should be dissolved according to the Conservative Movement's guidelines for dissolving a same sex marriage, and a marriage that was entered into as an opposite sex marriage should be dissolved by the traditional *get* procedure. This may entail a *get* being given by a person whose gender expression is now female or being received by a person whose gender expression is now male. In many, perhaps most, instances, the person's gender identity has not changed, only its expression, and if that person entered the marriage as a man (or woman) that person ought to be able to release or be released from the marriage as a man (or woman).

A major concern with this approach, which requires formal dissolution of the marriage, is that we certainly do not want to create yet another class of *agunot*. That is, if a trans woman refuses to give a *get* to the woman she had been married to prior to transitioning, it is imperative to release that woman from her status of being married. The Joint Bet Din of the Conservative Movement has the authority to annul the marriage (*hafka'at kiddushin*) and should use it in this situation. It is more correct and more honest to annul the marriage on the grounds that the "husband" is recalcitrant or even that the marriage was fraudulent, i.e. she thought she was marrying a man, than to fall back on the analogy proposed by *Terumat Ha-Deshen*⁵⁵ that she is like the wife of Elijah the prophet or Rabbi Yehoshua ben Levi who became angels and were no longer men. After all, especially if there are children, there are family relationships that will be ongoing and the two will still have to maintain some kind of contact.

B. Bio-Medical Questions

⁵⁴ Rabinowitz op cit.

⁵⁵ *Terumat HaDeshen* Part 2:102 cited by Rabbi Rabinowitz op cit.

(1) INTERSEX

People with intersex conditions are not (necessarily) transgender, but the medical management and gender socialization of these individuals have much in common with that of trans people and a brief review of that history will be helpful in the current deliberation. The medical world, and segments of the halakhic world as well, in the second half of the 20th century were influenced by the now discredited theories of Dr. John Money, a highly regarded psychologist, an authority on gender, and a professor at Johns Hopkins University⁵⁶. Money “held that a person’s sense of gender identity was malleable until about eighteen months of age. He therefore concluded that those born with ambiguous genitalia (intersex) could have their sex surgically assigned as infants and later hormonally regulated without negative consequences. Though it had some critics at the time it was proposed, Money’s theory enjoyed almost unprecedented acceptance and adherence for decades.”⁵⁷ His recommendation in cases of ambiguity, of whatever cause, was that the genitals should be altered to resemble as closely as possible the genitalia of one sex or the other.

“Once their bodies were surgically formed to approximate male or female bodies (usually female because it was easier for the surgeons to create female appearing external genitalia from ambiguous ones), the children would develop personalities matched to their assigned gender, provided the assignments were supported by proper rearing via parental commitment to the chosen gender.”⁵⁸ Though it has long since been discredited, it was the leading theory at the time many of the *teshuvot* regarding sex or gender ambiguity were written. Interestingly, Money believed that once gender identity was established, as in the case of transsexual adults, it was fixed, and he supported sex reassignment surgery to conform to the individual’s professed gender identity.

In an often quoted *teshuvah*, Rabbi Eliezer Yehudah Waldenberg was asked about a case of intersex at Tel HaShomer Hospital.⁵⁹ A baby thought to be female at birth was noted to have a lump in one of her labia. It was biopsied and found to be a rudimentary testis. Subsequent genetic testing showed the baby to be male (XY) with no internal female organs. Waldenberg ruled that the testicular mass should be removed from the other labium as well, the genitalia altered to be more female in appearance, and the child reared as a girl. Clearly he and the medical staff were acting in accord with the now discredited theories of Dr. Money. There is no information as to the child’s gender identity in later years. In recent years, research studies are underway as to the best treatment for children with intersex conditions, but general principles include informed and open discussions between healthcare professionals, parents, and the patients themselves, that gender assignment be made on the basis of the best available information, with an openness to idea that the child may develop a gender identity different from that originally assigned, and especially that no surgery be performed until the patient is old enough to understand and agree.

⁵⁶ See Diamond, M, and Sigmundson, HK, *Sex Reassignment at Birth: A Long Term Review and Clinical Implications*, Arch Pediatr Adolesc Med, 1997 Mar; 151(3):298-304. Also the very existence of transgender people refutes Money’s theory of the malleability of gender identity in infancy.

⁵⁷ Reis, op cit. p. xiv.

⁵⁸ Ibid. p.136.

⁵⁹ Ziz Eliezer Part 11 Section 78

(2) PERMISSIBILITY OF SURGERY

The questions raised by surgery for gender dysphoria fall into two distinct categories. The first set of questions relate to all the many types of surgery transgender people may choose to undergo⁶⁰ and are similar to those raised by cosmetic surgery: Is the surgery medically necessary? Does it violate the prohibition against self-wounding *hovel b'atzmo*? Does it violate the prohibition against placing oneself in a dangerous situation *l'hakhnis atzmo bim'kom sakkanah*? Does it interfere with God's image, *tzelem Elohim*? Is it unnatural, and consequently prohibited?

The second set of questions relates specifically to genital surgery and asks whether this is a violation of the biblical prohibition against castration (*And that which is mauled or crushed or torn or cut you shall not offer unto the Lord; nor should you do this in your land.*⁶¹) in the case of trans women and the corresponding rabbinic prohibition in the case of trans men.

When the first set of questions has been raised in relation to cosmetic surgery, most *poskim* have been permissive.⁶² If the surgery is done to alleviate pain, and with the consent of the patient, then the wounding does not violate the prohibition of self-wounding (*hovel b'atzmo*). Furthermore, Rabbi Breisch (in the source cited above) went on to assert that relief of psychological pain or embarrassment was as valid a justification for surgery as relief of physical pain. Similarly with the issue of risk, no human activity is risk free, and as long as the risk is mitigated by using expert surgeons and properly equipped hospitals, then the risk is allowable and justified by the anticipated relief of pain or distress.

Extrapolating from conditions that produce psychological pain or distress even in the absence of a recognized psychological diagnosis, in which surgery is permitted, to gender dysphoria, which is not only a recognized, diagnosable condition, but one that can cause distress severe enough to lead to suicide, GCS should be permitted. Certainly פיקוח נפש, saving a life, would override any halakhic objection to the surgery. But even absent threat to life, symptoms of pain and distress, to the extent they can be relieved by surgery, are certainly enough to overcome objections based on the prohibitions of self-wounding and endangerment.

As to whether genital surgery violates the specific prohibition against castration, one need only look at conditions like testicular or ovarian cancer. If the best hope for survival is removal of the testicles or ovaries, surely no one would argue for avoiding this treatment because of the biblical or rabbinic prohibition of castration. Even women who do not have cancer but because they carry the BRCA gene mutation are at increased risk of breast or ovarian cancer, may choose to undergo prophylactic removal of their ovaries. Since in the case of GCS, the removal of the gonads is being

⁶⁰ This would include surgery related to secondary sex characteristics (e.g. facial feminization surgery, breast augmentation, mastectomy and male chest reconstruction, as well as genital reconstructive surgery (GRS), also called gender confirming surgery or bottom surgery, which involves removing the internal and external genitalia and reconstruction to conform more closely to the person's gender identity.

⁶¹ Leviticus 22:24. While this prohibition refers specifically to animals, the Rabbis extended the prohibition to humans as well. See *B Shabbat* 110b, *Mishneh Torah Hil' Issurei Biyah* 16:10, *Shulhan Arukh EH* 5:11.

⁶² See for example Breisch, *Helkat Yaakov* 3:11, Feinstein, *Iggerot Moshe HM* 2:66, Yosef, *Yabi'a Omer* v.8:12

done to treat a medical condition, and may in some cases be lifesaving, it should be permitted as well. This permission is in agreement with Rabbi Rabinowitz who wrote:

It would seem that the people undergoing the long process of SRS as stated in the Standards of Care, are doing so because they are suffering from gender dysphoria, and SRS is treating the patient with gender dysphoria. Their pain and anguish is great and there is no doubt that they are suffering. This has led them to undergo the long and difficult procedures outlined in the standards of care. For them SRS is being done לטובת החולה, for the patient's betterment and health, and therefore would be permissible, just as it would be permissible to help treat a physical ailment. We have permitted other procedures for mental ailments and have said that the mental illness is to be treated in the same way as a physical one. Therefore SRS may be permissible and the prohibition against castration can be overridden in this case.⁶³

(3) PERMISSIBILITY OF HORMONAL THERAPY

Many of the issues discussed in relation to surgery, apply to hormonal therapy as well. As in the case of surgery, if the risk is relatively small and goal of treatment is to alleviate symptoms of psychological distress, there are no grounds to prohibit its use. Nor should there be any suspicion of a violation of the biblical prohibition against a man wearing women's clothing or *vice versa*.⁶⁴ First, since we are faced with someone whose identity is male or female, the hormones are congruent with that identity; and second because even though the codes⁶⁵ expanded the biblical prohibition to include men using makeup, hair dye, and even engaging in "feminine" activities such as looking in the mirror, those are all external appurtenances and are in no way comparable to medication. This position too is in agreement with that of Rabbi Rabinowitz:

Hormonal treatment would also be permitted and would not transgress the prohibition of wearing the garments of the other sex or changing that which was created, since it is a case of לטובתו, for the good of the patient, and בכל מתרפאים, there are no restrictions on what type of medicine may be used to heal a person.⁶⁶

(4) PREGNANCY IN A TRANS MAN

There have been a number of reported cases of trans men becoming pregnant.⁶⁷ Typically he is taken off male hormones if he has been taking them, and pregnancy is initiated either naturally or through assisted reproductive technologies. Sometimes the pregnancies are intentional and sometimes not.

⁶³ Rabinowitz op. cit.

⁶⁴ Deuteronomy 22:5

⁶⁵ *Shulhan Arukh YD* 182:1-6

⁶⁶ Rabinowitz op. cit.

⁶⁷ See *Transgender men who experienced pregnancy after female-to-male gender transitioning*, *Obstet Gynecol.* 2014 Dec, 124(6):1120-7, and abstract at <http://www.ncbi.nlm.nih.gov/pubmed/25415163>.

To date there have been no reports of untoward results for either parent or child. We should remember, however, that between 1938 and 1971, many women were given DES (a synthetic estrogen) to prevent miscarriages. After a long delay, this resulted in an increased incidence of breast cancer in the women who took it, and more importantly, their daughters were found to have an increased incidence of certain vaginal and cervical cancers, breast cancers, anomalies of the reproductive organs⁶⁸, problems becoming pregnant, and problems during pregnancy. These untoward effects of hormonal manipulation around pregnancy took a generation or more to become evident, and affected more people than the women being treated. No one knows the long term effects of trans men who have a history of taking male hormones becoming pregnant and having babies or of trans women who have a history of taking female hormones impregnating their partners, on the individuals or on their offspring. It is incumbent, therefore, on the medical profession to advise patients about possible risks, and on the individuals deciding to become pregnant to avail themselves of the very best and most current medical information in order to make informed decisions.

(5) GENERAL MEDICAL CARE

In addition to the specific medical questions discussed above, transgender people face other issues related to their healthcare. Many of these are discussed in an article by Schuster, Reisner, and Onorato.⁶⁹ At the time of writing this teshuvah, several states in the United States have passed laws requiring transgender people to use public restrooms according to the gender assigned on their birth certificates. The authors point out that these laws raise not only civil rights issues but health issues as well. They note that when transgender people are barred from using bathrooms where they feel safe, they may end up suppressing bodily needs resulting in health problems such as urinary tract or kidney infections, stool impactions, hemorrhoids, and the like. When they are physically assaulted in public restrooms they may suffer bruises, fracture, or worse. Fear of violence or actual violence or harassment may lead to mental health problems.

Though one might expect healthcare professionals to care for transgender patients in a positive, caring and non-judgmental manner, the 2008-2009 U.S. National Transgender Discrimination Survey⁷⁰ showed that 28% of transgender adults experienced harassment in medical settings, 19% reported being refused care, and 28% postponed care because of discrimination.

Judaism teaches that physicians have a duty to heal under the rubric of *v'rapo yerape*, He shall surely heal him.⁷¹ When caring for transgender patients, physicians and other healthcare professionals should be mindful of the sentiment expressed in Maimonides' prayer:

Inspire me with love for my art and for Thy creatures. Do not allow thirst for profit, ambition for renown and admiration, to interfere with my profession, for these are

⁶⁸ Congenital abnormalities of the reproductive organs have been found in sons of DES mothers as well.

⁶⁹ Schuster, Mark A, Reisner, Sari L, and Onorato, Sarah E, *Beyond Bathrooms—Meeting the Health Needs of transgender People*, New England Journal of Medicine, <http://dx.doi.org/10.1056/NEJMp1605912>

⁷⁰ Cited in Schuster et al.

⁷¹ Exodus 21:19

the enemies of truth and of love for mankind and they can lead astray in the great task of attending to the welfare of Thy creatures. Preserve the strength of my body and of my soul that they ever be ready to cheerfully help and support rich and poor, good and bad, enemy as well as friend. **In the sufferer let me see only the human being** (emphasis added).⁷²

C. Other

(1) PREPARATION FOR BURIAL

When a transgender Jew dies, a not infrequently raised question is which members of the *hevra kaddisha* (burial society) should take on the task of preparing the body for burial. Should it be members of the same sexual identity or of the sex assigned at birth? Does it matter whether or not the deceased has undergone GCS? A related question, one not often asked, is whom transgender members of a *hevra kaddisha* may prepare for burial. Finally, we must ask: once we have answered the halakhic question, how do we deal with ethical values such as *tz'niyut* (modesty)?

The halakhic question derives from a *Mishnah* in *Massekhet Semahot*:

האיש מכרך ומקשר את האיש, אבל לא את האשה, האשה מכרכת ומקשרת את האיש ואת האשה מעיים. האיש משמש את האיש בחולי מעיים, אבל לא את האשה, האשה משמשת את האיש ואת האשה בחולי מעיים.

A man may prepare the body of another man for burial, but not that of a woman. A woman may prepare either a man or a woman for burial. A man may care for a man with an internal illness, but not a woman [with an internal illness]; a woman may care for a man or a woman with an internal illness.⁷³

This idea is subsequently codified in the *Tur*⁷⁴ and the *Shulhan Arukh*:

האיש אינו כורך ומקשר האשה, אבל האשה כורכת ומקשרת האיש.

A man may not prepare [the body of] a woman [for burial], but a woman may prepare [the body of] a man.⁷⁵

Commentators suggest two reasons for this prohibition:

⁷²Accessed at <http://guides.library.jhu.edu/c.php?g=202502&p=1335755>. The “Daily Prayer of a Physician” is attributed to Maimonides, but was probably written by Marcus Herz, a German Physician, pupil of Immanuel Kant, and physician to Moses Mendelssohn. It first appeared in print in about 1793.

⁷³ *Semahot* 12:10

⁷⁴ *Tur YD* 352

⁷⁵ *Shulhan Arukh YD* 352:2

ולכן נראה לי דטעמא משום גנאי ופריצות שיותר יש פריצות וגנאי כשאיש משמש לנקבה בקינוח ודברים כאלו מנקבה המשמשת לאיש כי יצרו של איש גדול משל אשה וטעם זה מוכח לקמן סימן שנ"ב:

[commenting on why a man may take care of a man who is ill but not a woman, but a woman may take care of a man or woman who is ill]...therefore it seems to me that the reason is because of degradation and lewdness which are greater when a man takes care of a woman with regard to cleaning her up and the like, than when a woman takes care of a man, because a man's lust is greater than that of a woman as we see further on *Siman* 352.⁷⁶

האיש אינו כורך – משום הרהור אבל באשה ליכא הרהור כל כך: ש"ך יורה דעה סימן שנב

A man may not prepare [a woman for burial]—because of lascivious thoughts, but in the case of a woman we are not so much concerned about lascivious thoughts.⁷⁷

We must note first that the objection to men performing *taharah* on the bodies of deceased women, has nothing to do with concern about or respect for the deceased. Rather it is concern that a man preparing a woman for burial is considered degrading [to the man] and lewd, and in addition there is concern he will become aroused and experience lascivious thoughts. We must categorically reject these underlying premises just as we have rejected the notion that it is degrading for a man to care for a woman who is ill or that men will become inappropriately aroused by hearing a woman's voice (*kol ishah*). There is no evidence that men who are not otherwise psychologically impaired experience these types of thoughts from seeing or washing and dressing a female corpse. How much more is this true in the case of members of the *Hevra Kaddisha*, people of high moral character, acting out of the highest degree of *hesed*!

We conclude that there is no valid halakhic prohibition for either men or women, cis or trans; gay or straight; or non-binary; helping to prepare the body of any Jew for burial. That notwithstanding, the decision as to which *Hevra Kaddisha* members should perform the *taharah* of any body must take into account values such as *K'vod Ha-Met* (honoring the deceased), *K'vod Ha-Briyot* (personal dignity) and *Tz'niyut* (modesty) as they relate to both the deceased and the members of the *Hevra Kaddisha*. We should therefore adhere to the traditional practice that the body of a transgender person should be prepared by members of the *Hevra Kaddisha* of the same gender identity as the deceased.

(2) TOHORAT HA-MISHPAHAH/NIDDAH

Most trans men will have either had surgery, eliminating the issue altogether, or be taking male hormones, which will cause them to stop having menses. There will be instances, however, where the person will stop taking the hormones, typically for medical reasons (e.g. preoperative, in

⁷⁶ *Darkhei Moshe* YD 335

⁷⁷ *Shakh* YD 352:2

preparation for pregnancy, intolerance to the medications) and resume menses. In the case of trans men or non-binary persons who menstruate, the laws of *niddah* apply.

We would then be faced with the problem that the “women’s area” of many *mikvaot* is individual and private while the “men’s area” is more communal and public. This situation could become awkward for both trans and cis men using the “men’s area” of the *mikveh*, and although private immersion can be arranged in unusual circumstances, it may be worthwhile for planners of community *mikvaot* to design them with greater degrees of privacy for everyone. A greater degree of privacy might enhance and encourage use of the *mikveh* for many people, regardless of their gender identity or expression.

(3) BRIT MILAH

Is *brit milah* required of transgender women? *Brit milah* is typically performed at 8 days of age, unless there is a medical reason to delay, such as a systemic medical condition or a genital abnormality such as hypospadias or ambiguous genitalia (intersex). In a sense, we are begging the question in the case of neonatal circumcision. The gender assignment of a newborn with typical male genitalia will be male, and he should be entered into the covenant via the ritual of *brit milah*. In doing so, we recognize that in the majority of cases, the assigned gender will conform to the infant’s gender identity as he grows. However, suppose there is an infant whose circumcision must be delayed because of a medical condition? Suppose further that by age 18, the medical condition has been corrected and circumcision can be performed safely, but by that age the person has come out as a female identified transgender person and has begun the process of transition. Is *brit milah* required for such a person?

Unlike the conversion situation discussed above, this person’s status as Jewish is not in doubt. The question boils down to this: To whom does the *mitzvah* of *milah* apply? The Torah says:

זאת בריתי אשר תשמרו ביני וביניכם ובין זרעך אחרריך המול לכם כל-זכר: בראשית יז י:
This is my covenant between me and your descendants after you which you must preserve, circumcise every *zakhar*.⁷⁸

What is meant by *zakhar*, usually translated as “male,” and does the category include someone who is female identified? The various dimensions of human sex and gender discussed above were unknown to our ancestors. For them, gender assignment was exclusively on the basis of genital anatomy. They understood the word *zakhar* to refer to someone with male genitalia. Excluding conditions such as *nolad mahul* or congenital anomalies of the genitalia, that is who is obligated for the *mitzvah* of *milah*. In short, the *mitzvah* of *brit milah* is based on anatomy rather than gender and applies to any person with a penis.

⁷⁸ Genesis 17:10

Having asserted that obligation, it is appropriate to ask what the practical implications are. When offering a cis man an *aliyah*, or officiating at his bar mitzvah or wedding, or admitting him to rabbinical school we do not inquire about whether or not he has been circumcised. It would be both inappropriate and rude. How much more so would be that question addressed to someone whose gender identity and expression were female.

In short, we may teach publicly about the requirement of *brit milah* for anyone with male genitalia, and if specifically asked by a trans woman if she were obligated for *brit milah*, answer in the affirmative. **BUT** it is not an issue we should ever raise with her, just as we should not ask whether she had undergone genital reconstructive surgery, and just as we would not ask cis men whether they had undergone *brit milah* or if they are circumcised, in keeping with standards of *k'vod ha-briyot*, *tz'niyut*, and *boshet* (shame). It should be emphasized that the foregoing discussion applies to someone born Jewish not to someone converting to Judaism.⁷⁹

END POINT OF THE TRANSITION PROCESS

A frequently asked question is when transition is considered complete, or when the transgender person is considered to be the new gender. In the *teshuvah* of Rabbi Rabinowitz, the answer was straightforward: once a person was living full time as the new gender, and had gone through psychological counseling, hormonal therapy, and sex reassignment surgery, that person was to be considered the new gender. The thesis of this *teshuvah* is that gender identity is an intrinsic part of a person's being, no less than that person's genetic makeup or anatomy. As I stated in the introduction, hormonal treatment does not change that identity, psychotherapy does not change that identity, surgery does not change that identity; and that identity should be determinative for interpersonal relationships as well as matters of *halakhah*.

That said, once a transgender person makes the decision to transition, the process takes some time. There is a process, in the words of Rabbi Micah Buck-Yael, of becoming:

Gender transition is the process of beginning to publicly inhabit a gender that more closely matches one's internally-known gender. It is an ongoing process, unique to each individual, and does not always have a clearly defined beginning or ending point. For some transgender people, the act of publicly claiming their gender identity and becoming known to friends and family in a more honest and authentic way is sufficient. This might include re-naming oneself and asking others to use a new set of gendered pronouns and language. Outward gender expression might shift: a person might begin to wear gendered clothing, style their hair in a new way, begin (or cease) to wear makeup, jewelry, or other things that have strongly gendered meaning in their culture. Others might seek to make temporary or permanent physical changes to their bodies, seeking to help other perceive their gender correctly and/or to bring their body more closely into alignment with their

⁷⁹ See discussion of *brit milah* as it related to conversion in Section A (1).

3. *Synagogue Rituals and Customs*

The traditional practice for calling someone for an *aliyah* is to ask that person to rise, יעמד (masculine) or תעמד (feminine) and to refer to them by patronymic/matronymic, i.e. בן or בת the name of one or both parents. Some transgender people will want only to change the terms from one gender to the other. Others will prefer to be called with gender neutral language. Some suggestions have included using מבית or לבית (of the house/family of) instead of בן or בת, and phrases like גא לעמד, *please rise*, instead of יעמד or תעמד, or אקרא לתורה, *I call to the Torah*. This last phrase has the advantage of also being appropriate for calling people who may be unable to stand (e.g. those who are wheelchair bound).

Often at the time of an *Aliyah*, we offer a prayer, *mi-shebeirakh*, for healing (also at healing services or when visiting the sick) or to celebrate a life-cycle event. For some this may be a matter of choosing the liturgical formula with the appropriately gendered grammatical forms. For others, a greater degree of creativity may be required to create liturgical formulas for these very personal prayers that are truly appropriate to their gender identity. In doing so, we should resist the often used stratagem of retaining the gendered language in Hebrew and translating into gender neutral English.

In most, if not all, Conservative synagogues, men receiving an *Aliyah* are required to cover their head and don a *tallit*. In some the requirement is the same for women, in others women are required only to cover their head, in others only to don a *tallit*, and in still others, neither. Although it would be easier to have the same requirements for everybody, there are valid reasons why synagogues may opt not to do so. Synagogues will need to find ways to both affirm their practices and to be welcoming to guests and new members.

4. *Service, Social, and Support Groups*

Even in an egalitarian movement, there are gender specific groups such as the Women's League of Conservative Judaism and the Federation of Jewish Men's Clubs, as well as support groups and service organizations such as Hadassah which will need to address the needs of transgender people and find ways to accommodate them.

5. *Transgender Children*

As more children come out as trans at younger and younger ages, it is incumbent on rabbis, teachers, camp counselors, youth leaders, school and camp administrators, and all who work with these children and their families to be aware of the challenges they face and to create safe and supportive environments for them. Few of these issues pose halakhic problems. Conceivably a question might arise regarding *brit milah*, say if a couple adopted and wanted to convert a 7 or 8 year old trans girl, who would need circumcision or *hatafat dam brit*. In general such situations will need to be handled in a highly individualized manner with input from parents, healthcare professionals, clergy, and when possible the child.

Naming and language issues will arise around the time the child reaches the age of *mitzvot*. Even if we explain that *bar mitzvah* means “subject to” commandment and not “son of” or “daughter of” anything, the *bar mitzvah/bat mitzvah* binary is by now so well established that we will need to find a new vocabulary in order to be inclusive of those for whom neither formulation is appropriate.

6. *Public accommodation*

The most frequent issues brought up in the transgender context regarding public, or perhaps better semi-public, accommodation revolve around gender specific restrooms and communal locker rooms and showers in synagogues, JCCs, camps, schools, and gymnasiums. These concerns must and are being addressed in a variety of ways: some places offer unisex restrooms typically individual rather than communal; some camps and similar institutions are redesigning their shower facilities to offer greater privacy to everyone. Over time as more and more transgender people come out, and there is freer constructive discussion, these issues should be easily manageable.

Organizations that require applications for entry or membership (schools, synagogues, etc.) need to be aware that most application forms, if they inquire about gender, assume a binary division which may not apply, just as they can no longer assume that each child has two parents, or that they are of different genders. These forms ought to be changed to be more inclusive.

קסג

1. All conversion candidates require immersion in a mikveh. Neither circumcision nor *hatafat dam brit* is required for transgender men, whether or not they have undergone gender conforming surgery, though HDB is permissible as a spiritual act. Transgender women who have not undergone genital surgery do require either circumcision or HDB (which they may perform on themselves). Witnesses of the *tevilah* of a transgender convert may be of any gender and the conversion candidate may immerse wearing a loose fitting garment. Values of dignity (*k'vod ha-briyot*) and modesty (*tz'niyut*) should be paramount at all times.
2. Transgender people who marry do so according to their publicly lived gender identities through the rituals established by the CJLS for same sex and opposite sex marriages. Specifically, Kiddushin is the appropriate ceremony for marriage between a male-identified person and female-identified person. All others marry with a *Brit Ahuvim* ceremony. Rabbis officiating at these marriages must be familiar with the various state laws regarding gender assignment and fill out documents knowing that state law may recognize a person as belonging to a different gender than *halakhah* does.
3. The marriage of couples who choose to dissolve their marriage following the transition of one of them should be dissolved in the manner it was contracted, even if that means a *get* being given by someone who currently presents as female or being received by someone who currently presents as male. In cases where there is refusal to give a *get*, the Beit Din

of the Conservative Movement should annul those marriages according to its regular procedures.

4. The marriage of couples who choose to remain married after the transition of one partner, remains valid and no ritual is required. The couple and their rabbi may develop a ritual to signify and sanctify the ongoing nature of their relationship.
5. All medical treatments intended to alleviate the symptoms of people with gender dysphoria by more closely aligning their body with their gender identity, including pharmacological, surgical, and psychological treatments are permissible. This does not include so-called “conversion therapy” aimed at changing the gender identity of the person.
6. Decisions by transgender men to become pregnant are permissible but they should become informed about the current state of medical knowledge and possible implications for their own physical and psychological health as well as that of their offspring.
7. Healthcare professionals who treat transgender patients should do so in a respectful, caring and non-judgmental manner. They should become educated about the general and transition-related healthcare needs of transgender patients.
8. Preparation for burial (*taharah*) should be performed by members of the *hevra kaddisha* of the same gender identity as the deceased. However, in unusual or extenuating circumstances, *taharah* may be performed by people of any gender identity.
9. Laws of *tohorat ha-mishpahah* apply to people of any gender who menstruate, including some transgender men and some non-binary people.
10. Obligation for *Brit Milah* applies to people of any gender who have a penis and a foreskin. This includes some transgender women and some non-binary people. This must be conveyed with care and sensitivity, and does not invalidate or contradict the gender identity of that person.
11. A transgender person is to be recognized as their publicly declared gender and to be addressed by their publicly declared name and pronouns. This change takes place when that person has gone through a process of transition, which may or may not include any medical procedures or treatments, and asserts and publicly declares their gender identity.
12. Rituals and ceremonies should be created to recognize and commemorate a person’s transition, but they do not affect the transition and are not required.