



**STRATHMORE LAW SCHOOL
MASTER OF LAWS (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8003: LEGAL ETHICS**

Date: **Wednesday, 10th July 2024**

Time: 3 Hours

Instructions

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions.

Question 1. (Compulsory: 30 Marks)

Read carefully and thoroughly the article and answer the subsequent sub-questions written at the end of the text:

INSURING RIGHTS FOR “WRONG” BODIES

By Jean C. Lloyd, January 2021.

<https://www.thepublicdiscourse.com/2021/01/73628/>

(...) In general, experimental treatments are not covered because their efficacy and outcomes are unknown. (...) As trans-identification among young people continues to surge globally, concerns over their treatment with medicalised “affirmation” become increasingly urgent. Last month, a landmark case was adjudicated in England’s High Court: a young, de-transitioned woman named Keira Bell had petitioned for a judicial review of her course of treatment at London’s Tavistock clinic, the country’s only clinic serving gender-dysphoric minors. Submitting the facts of transgender medicine to scrutiny resulted in a decisive judgment. The court determined that the puberty blocking treatments being given to youth constitute experimental medicine. The unknowns are many, and negative effects are clearly established (such as bone density loss and compromised fertility). There is neither demonstrated efficacy nor evidence on long-term outcomes, and the risk of serious harm and “irreversible damage” is real. With the sound of the gavel still resounding, numerous voices began decrying the lack of access to “life-saving medications” that are now to be “denied” children supposedly born in the wrong body. At least one mother immediately (and successfully) crowd-funded to raise money for her young son’s puberty blockers. The financial cost of these blockers? An average of more than \$20,000 per year. However, many of these experimental treatment costs are now being covered by insurance. Why is the standard for transgender medicine different from cancer treatment?

Puberty Blockers: No Psychological Benefit or Clear Purpose

One day after the ruling, the long-awaited results from the Tavistock’s preliminary puberty blocker study were finally released. Despite repeated requests for evidence and the data, the study results had been strategically unavailable during the court proceedings. Notably, there was no control group included in the study design, thus there was no way to compare outcomes between

those who received blockers and those who did not. Nonetheless, the conclusions of the study were clear: puberty blockers provided no demonstrable psychological benefit, nor was there any evidence that they reduce body dissatisfaction. Can you imagine a cancer drug being approved for coverage if clinical trials showed no benefit? Every course of medical treatment has a goal. What exactly is the goal of suppressing the puberty of gender in minors? If it was to reduce body dissatisfaction, the clinic's own study shows that it failed in this regard. Concerning the recent ruling, Oxford University Professor Michael Biggs states: "Puberty suppression is an experiment whose aims are ambiguous. The judgment highlights the 'lack of clarity over the purpose of the treatment: in particular, whether it provides a "pause to think" in a "hormone neutral" state or is a treatment to limit the effects of puberty, and thus the need for greater surgical and chemical intervention later.'"

This last point in the court's ruling is critical: linking the use of puberty blockers in the present to the potential outcomes of future drugs and surgeries reveals the presumption of medical "path dependence." Rather than pressing a "pause button" for time to think, 98 percent of the youths on blockers proceeded to cross-sex hormones, thereby triggering irreversible effects, including infertility. (...) In other words, the court decided that in order for minors to be competent to consent to blockers, they would have to adequately understand the effects of future cross-sex hormones as well, because these are essentially two parts of "one clinical pathway." Keira Bell took puberty blockers and cross-sex hormones, and at twenty years old had "top surgery," all of which she now deeply regrets. But this was a predictable progression: one medical intervention tends to lead to more interventions, with no clear end in sight. And in fact, the studies with the largest data sets find no mental health benefits demonstrated either from gender "affirming" hormones or surgeries.

Self-Diagnosis and Self-Definition

In truth, human beings are materially embodied as male or female. While all compassion should be extended to those suffering from gender dysphoria, shouldn't the same standards of medicine be applied to this set of needs as when dealing with other medical issues? As the British plaintiffs, those at the Society for Evidence-Based Gender Medicine, and many others argue, this protects a vulnerable population from unnecessary or harmful medical intervention, even if such treatments are desired by the patient. The analogy has been made before, but can you imagine a woman self-diagnosing breast cancer and referring herself for a mastectomy? What competent physician would accommodate her request without investigation? Moreover, does someone have the right to use health insurance to induce a state of unhealth in the body—with no demonstrated benefit for the mind—especially if that someone is a minor? The World Professional Association for Transgender Health (WPATH) released a statement opposing the High Court's ruling: "We support the provision of healthcare to gender diverse people in a timely manner such that they can live their best lives." In other words, less and less gatekeeping (even for minors), and more promises that drugs and body modification are the answer. Another critic concluded that the ruling was "an erroneous decision that endangers the lives and well-being of sexual minorities, while flattering the sensibilities of those who believe fertility, rather than self-determination, is what makes a woman's body worth preserving." In other words, you have the right to define yourself and a right to the body modifications you desire. Your actual physical health and perhaps your fertility are unnecessary accoutrements to the appearance you prefer and being able to "live your best life"—all to be covered by your HMO.

Insurers Intimidated by Trans agenda?

So why do insurers pay, even after studies on experimental research demonstrate the outcomes are poor? Why would insurance companies, long known to be cost-conscious, underwrite

ineffective treatments? Perhaps they're more "woke" than awake to the medical realities. Or perhaps they're afraid and intimidated by powerful interests. The Human Rights Campaign publishes a list of "Corporate Equality Index Criteria," and providing insurance plans that cover transgender medical procedures earns a company ten points on their scorecard. In just eleven years, the list of businesses earning those points has grown from forty-nine companies to over 1,000. It's a shortsighted gain, however, since medical "treatment" never ends. Calls have been made for Facial Feminization Surgery (FFS) to be covered for males identifying as transwomen. FFS has been ruled cosmetic in the past, but since the face is considered crucial to identity (and to making it believable to others), FFS is now argued to be equal with or even more important to "gender affirmation" than genital surgery. This transforms FFS into being "medically necessary," and thus insurance should cover it. For men who develop the "wrong" (that is, male) facial characteristics, surgeries when totaled can cost over \$70,000. Facial masculinization for women is now available for an average of just over \$50,000. It is some of these later costs and surgeries that puberty blocking is designed to avoid, but that is very far down the pathway and something no 11-year-old can adequately consider. Press children early in order to save money later? Unconscionable.

Scott Newgent, who now works tirelessly to expose the harms of transgender youth "medicine," posted that he had saved up \$65,000 for his phalloplasty—complications from which almost cost him his life. Upon working with his insurance company, however, his surgeon's office got the procedure approved for coverage. Scott's insurance was billed \$247,000—almost four times the price he had been quoted for self-pay. Currently, there are over 37,000 GoFundMe campaigns actively seeking resources for "top surgery." I've tracked them for the last month, and 1,000 new appeals were added in just two weeks' time. The vast majority of these are young women seeking double mastectomies to appear as transmen or non-binary (a few transwomen seeking breast augmentation are sprinkled in). At a minimum cost of \$10,000 per surgery, that means in the past several years, tens of thousands of young women have collectively sought to raise \$370 million dollars to amputate their healthy breasts. Many of the appeals seek costs for co-pays, travel, and other expenses because their surgeries are covered by insurance.

The recent High Court ruling actually makes England the third country, along with Finland and Sweden, to recommend more caution and investigation into the "affirmation" treatment protocols being offered to gender dysphoric and/or diverse minors, as well as encouraging more non-medicalized therapeutic options. And the United States? In response, both the Endocrine Society and Pediatric Endocrine Society Transgender Special Interest Group leaders have doubled down on the affirmation model. On the penultimate day of 2020, the Insurance Commissioner of California declared that insurance companies must cover "male chest reconstruction surgery" (that is, double mastectomy for biological females) and that age cannot be a reason for excluding coverage. The commissioner wanted to ensure that trans-identified minors could receive "gender-affirming care in order to be their true selves" and stated that surgeries could be covered "depending on an adolescent's specific clinical situation and goals for gender identity expression." Since age requirements are not used with respect to mastectomies for cancer, it would be discriminatory to forbid this surgery to girls under eighteen. My good friend had a radical mastectomy this past year, not to "live her best life" but to save it. Her cancer was caught early enough that she underwent no other treatment than the surgery, but she has yet to recover full use of her arms and could not return to teaching due to pain. I wonder if these young girls are informed that up to 30 percent of women end up experiencing Post-Mastectomy Pain Syndrome, which can be chronic and debilitating, after what in any other circumstance is considered a "traumatic amputation." From the GoFundMe group alone, perhaps 11,000 young women will get more than the ability to pose topless as transmen on Instagram, more than a temporary "gender euphoria." We are sacrificing young healthy bodies on the altar of the autonomous self. Is there a billable code for that? No matter who is paying, the price is too high.

- a) Give an ethical assessment of a decision to suppress the puberty of gender in minors and subject them to cross-sex hormones (10 marks)
- b) From the understanding of rationality, discuss whether the choice of a university career and the choice of gender transition by parents/guardians for their children are the same. (10 marks)
- c)
 - i) Briefly explain the presumption mentioned in the following extract: “Linking the use of puberty blockers in the present to the potential outcomes of future drugs and surgeries reveals the presumption of medical “path dependence.” (3 marks)
 - ii) What is the ruling of the Court suggesting in these words? : “The court decided that in order for minors to be competent to consent to blockers, they would have to adequately understand the effects of future cross-sex hormones as well, because these are essentially two parts of “one clinical pathway”. (3 marks)
 - iii) Establish who should be responsible and why, for the protection alluded to in the following extract: “This protects a vulnerable population from unnecessary or harmful medical intervention, even if such treatments are desired by the patient”. (4 marks)

Question 2

Define Ethics, describe its place within the general classification of philosophical knowledge, as well as its relevance for the legal field. (15 marks)

Question 3

In not more than half a page, write a commentary on the following text, based upon your knowledge of principles of Ethics. (15 marks)

“If all of us got our act together collectively and stopped making things worse, because that is another thing people do all the time, not only do they not do what they should to make things better, they actively attempt to make things worse because they are spiteful, vengeful, arrogant, deceitful, homicidal, genocidal or all of these things bundled together in an absolutely pathological package. If people stopped to really really try to make things worse, we have no idea how much better they could get. There is this weird dynamic, which is part of the existential system of ideas, between human vulnerabilities and social judgement both of which are major causes of suffering and the failure of individuals to adopt the responsibilities that they know they should adopt. There is also the idea that people have a conscience...what would happen if you abided by your conscience for five years or ten years? What sort of position would you be in? Which family would you have? Which sort of relationship would you form? The relationship forged based on who you are will be stronger than the ones forged on who you are not.”

Jordan Peterson’s Life Advice.

Question 4

Read the following extract and answer the sub-questions below it. (15 marks)

“The alleged conflict between freedom and nature also has repercussions on the interpretation of certain specific aspects of the natural law, especially its universality and immutability. Where then are these rules written? In the truth of nature. Precisely because of this "truth" the natural law involves universality. Inasmuch as it is inscribed in the rational nature of the person, it makes itself felt to all beings endowed with reason and living in history. In order to perfect himself in his specific order, the person must do good and avoid evil, be concerned for the transmission and preservation of life, refine and develop the riches of the material world, cultivate social life, seek truth, practise good and contemplate beauty. The separation which some have posited between the freedom of individuals and the nature which all have in common, as it emerges from certain philosophical theories which are highly influential in present-day culture, obscures the perception of the universality of the moral law on the part of reason. But inasmuch as the natural law expresses the dignity of the human person and lays the foundation for his fundamental rights and duties, it is universal in its precepts and its authority extends to all mankind. This universality does not ignore the individuality of human beings, nor is it opposed to the absolute uniqueness of each person. On the contrary, it embraces at its root each of the person's free acts, which are meant to bear witness to the universality of the true good. By submitting to the common law, our acts build up the true communion of persons. When on the contrary they disregard the law, or even are merely ignorant of it, whether culpably or not, our acts damage the communion of persons, to the detriment of each”.

Wojtila K, The Splendour of the Truth.

- i) Why is it so common to deny the universality of Moral Law? (7 marks)
- ii) Discuss the criteria that should be applied to assess whether a right is to be considered human right or not. (8 marks)

Question 5

Define the following terms (15 marks):

- i) Practical reason (3 marks)
- ii) Conscience (3 marks)
- iii) Happiness (3marks)
- iv) Virtue (3 marks)
- v) Friendship (3 marks)