



September 9, 2015

Honourable Victor Boudreau  
Minister of Health  
Province of New Brunswick  
HSBC Place, Floor: 5  
P. O. Box 5100  
Fredericton, NB E3B 5G8

Via Email (Victor.Boudreau@gnb.ca),  
Via Fax (1 (506) 453-5442)

Dear Minister Boudreau,

**Re: New Brunswick Medicare Coverage for Gender Related Medical Care, Explicit Human Rights Inclusion and Sex Designation Change on Identification Documents**

I am writing on behalf of the Board of Directors of the Canadian Professional Association for Transgender Health (CPATH). The purpose of this correspondence is to support the efforts of community groups in New Brunswick advocating for:

- Medicare coverage for medically necessary gender/transition related surgical care;
- Modernization of the legal and policy framework with respect to sex designation on provincial identification documents; and,
- Amendments to add gender identity and gender expression as explicit grounds of prohibited discrimination and harassment in the New Brunswick Human Rights Act.

**About the Canadian Professional Association for Transgender Health (CPATH)**

CPATH is the only national, multidisciplinary, professional organization working to support the health, wellbeing, and dignity of trans and gender diverse people. We work towards our vision of a Canada without barriers to the health, wellbeing and self-actualization of trans and gender diverse people.

Our membership consists of the majority of Canadian medical and psychological professionals who focus their practice on trans health, including primary care, surgery, and mental health, as well as other professionals working in areas impacting social determinants of health for trans people, including health policy professionals and lawyers. Also represented are many leading Canadian researchers studying a range of issues relating to the health and wellbeing of trans people.

**Medical Coverage**

As you can see from the attached appendix (which also contains references relevant to the sections that follow), there is a clear consensus amongst the medical, psychological, psychiatric, and other health care professions that transition related medical care is medically necessary, beneficial and effective to address and contribute to the health and wellbeing of trans people. In particular, timely access to transition related surgical procedures, when indicated, have a strong protective effect against suicidality and suicide attempts, and can truly be lifesaving, as well as contributing to the avoidance of health systems costs for emergency department visits,

inpatient days, and rehabilitation costs due to injuries from some suicide attempts. More generally, access to procedures as indicated on an individualized basis can have a profoundly positive impact on an individual's functionality and can alleviate health care and social costs associated with crisis care and treatment.

In light of extensive medical recognition of the importance of trans/gender related care, the Canadian Medical Association passed a suite of four trans health related resolutions at their August 20, 2014, General Council meeting. Of particular relevance is Resolution GC14-37 – “The Canadian Medical Association calls for accessible, comprehensive and high-quality care for transgender patients”.

### **Sex Designation on Identification Documents**

*Charter* and Human Rights litigation across Canada has consistently affirmed that discrimination based on gender identity and expression are prohibited under the ground of sex. The Ontario Human Rights Tribunal, in the case of *X.Y. v. Ontario*, and the Alberta Court of Queen's Bench in the case of *C.F. v. Alberta* found that Ontario and Alberta's legislative surgical requirements for change of sex/gender designation on birth certificates were in violation of the Ontario Human Rights Code and *Charter* respectively. These requirements have subsequently been removed not only in Ontario and Alberta but in several other Canadian jurisdictions. While this may seem like a benign administrative issue, the Trans PULSE Project found that access to identification documents reflecting an individual's gender identity was protective against risk of suicidality for trans persons.

While historically, racial, religious and class (parental occupation) designations were referenced on birth registrations and certificates, these designations have been removed given that they represent prohibited grounds of discrimination. Sex/gender, in and of itself is a prohibited ground of discrimination, and sex/gender designation is of limited, if any, legal effect due to the supremacy of human rights protections for sex, gender, gender identity and gender expression. Consequently, there are reasonable grounds to query whether this designation should be removed from birth certificates and other government issued identification documents. In any event, all individuals have the right to have an existing designation reflect their gender identity without imposition of surgical or other discriminatory requirements.

### **Explicit Human Rights Protection for Gender Identity and Gender Expression**

The move to explicit protections is a growing international trend based on growing awareness of the devastating discrimination and harassment trans individuals and communities are subjected to. The Supreme Court of Canada case of *Vriend v. Alberta* makes it clear that a failure to provide explicit reference in human rights legislation to a ground that is a particular basis for discrimination may deny equal benefit of the law. The North West Territories added explicit protection for gender identity in 2004, and since 2012, Ontario, Manitoba, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and Saskatchewan have all amended their human rights legislation to add explicit protections for gender identity or gender identity and gender expression.

### **Moving Forward**

It is regrettable that New Brunswick is the only Canadian Province that does not provide coverage for gender transition related surgical care, however, while those practicing in the area of trans health have long recognized the importance of these procedures, this has only recently gained mainstream awareness. As Minister of Health, your leadership on Medicare coverage for medically necessary gender transition care will, no doubt, demonstrate New Brunswick's commitment to the objectives of the Canada Health Act, namely the provision of publicly administered, comprehensive, universal, portable, and accessible health care.

It is also imperative that the Province of New Brunswick remove existing barriers that serve to deny an individual access to identification documents that reflect their gender identity and in a real sense, deny and undermine who that person really is. In a similar vein, the addition of explicit reference to gender identity and gender expression in New Brunswick's Human Rights Act would provide trans people with equal benefit of the Act's purpose; promoting respect and dignity for all New Brunswickers and expressing condemnation of discrimination and harassment.

CPATH will be holding its biennial conference in Halifax, Nova Scotia, (<http://www.cpath.ca/conferences/cpath-2015-halifax/>) on October 1<sup>st</sup> to 4<sup>th</sup>, 2015. We would invite members of the Ministry of Health to attend and are certain it will provide a useful venue to gain an understanding and appreciation of the importance of these issues. We would also be very happy to lend our expertise in consultation on the design and implementation of a formal plan for trans health care delivery, sex designation, and any other related issues.

We would also like to applaud the efforts of the New Brunswick Transgender Health Network, TransAction New Brunswick, and others, in bringing the ongoing needs of trans and gender diverse New Brunswickers to the Ministry of Health's attention and trust that they will continue to be an excellent resource on a go forward basis.

Respectfully yours,



N. Nicole Nussbaum, LLB  
Past-President  
Canadian Professional Association for Transgender Health

cc. New Brunswick Transgender Health Network, TransAction New Brunswick

## Appendix

Bauer GR, Scheim AI, Pyne J, Travers R, Hammond R. Intervenable factors associated with suicide risk in transgender persons: a respondent driven sampling study in Ontario, Canada. *BMC Public Health* 2015; 15: 525.

<http://www.biomedcentral.com/1471-2458/15/525/>

Travers R, Bauer G, Pyne J, Bradley K, for the Trans PULSE Project; Gale L, Papadimitriou M. Impacts of Strong Parental Support for Trans Youth: A Report Prepared for Children's Aid Society of Toronto and Delisle Youth Services. 2 October, 2012.

<http://transpulseproject.ca/wp-content/uploads/2012/10/Impacts-of-Strong-Parental-Support-for-Trans-Youth-vFINAL.pdf>

de Vries, ALC, McGuire, JK, Steensma, TD, Wagenaar, ECF, Doreleijers, TAH, Cohen-Kettenis, PT. Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment

<http://pediatrics.aappublications.org/content/early/2014/09/02/peds.2013-2958.abstract>

Bauer GR, Scheim AI, for the Trans PULSE Project Team. *Transgender People in Ontario, Canada: Statistics to Inform Human Rights Policy*. London, ON. 1 June 2015.

<http://transpulseproject.ca/wp-content/uploads/2015/06/Trans-PULSE-Statistics-Relevant-for-Human-Rights-Policy-June-2015.pdf>

### **Canadian Medical Association Resolutions**

August 20, 2014 (<http://policybase.cma.ca/dbtw-wpd/CMAPolicy/PublicB.htm>):

GC14-35 -The Canadian Medical Association will amend the section of its Code of Ethics relating to discrimination in providing medical services to include the issues of gender identity and gender expression

GC14-36 -The Canadian Medical Association supports the position that all adolescent and adult persons have the right to define their own gender identity

GC14-37 -The Canadian Medical Association calls for accessible, comprehensive and high-quality care for transgender patients

GC14-38 -The Canadian Medical Association calls for the integration of sex/gender diversity education into medical school curricula and programs

### **Canadian Psychological Association 2010 Policy Statement**

Gender Identity in Adolescents and Adults

([http://www.cpa.ca/aboutcpa/policystatements/#Gender\\_Identity](http://www.cpa.ca/aboutcpa/policystatements/#Gender_Identity))

The Canadian Psychological Association affirms that all adolescent and adult persons have the right to define their own gender identity regardless of chromosomal sex, genitalia, assigned birth sex, or initial gender role. Moreover, all adolescent and adult persons have the right to free expression of their self-defined gender identity. The Canadian Psychological Association opposes stereotyping, prejudice, and discrimination on the basis of chromosomal sex, genitalia, assigned birth sex, or initial gender role, or on the basis of a self-defined gender identity or the expression thereof in exercising all basic human rights. (October 2010)

**Canadian Psychiatric Association Position Paper on Mental Health Care for People who Identify as Lesbian, Gay, Bisexual, Transgender and (or) Queer**  
(<http://publications.cpa-apc.org/media.php?mid=1782>)

Recommendations:

1. The CPA opposes all public and private discrimination based on sexual orientation, gender identity and gender expression and supports the repeal of discriminatory laws and policies.
2. The CPA supports the passage of laws and policies protecting the rights, legal benefits and privileges of all people regardless of their sexual orientation, gender identity or gender expression.
4. The CPA supports efforts to provide fair and safe environments for people who identify as transgender or who are gender variant or gender nonconforming in institutional settings, such as supportive living environments, long-term care facilities, nursing homes, treatment facilities, shelters and prisons. The CPA also supports access to appropriate treatment in institutional settings for people of all gender identities and expressions, including gender transition therapies.
- 6. The CPA recognizes the efficacy, benefit and medical necessity of gender transition treatments for appropriately evaluated people and calls upon Provincial Health Insurance Plans to cover these medically necessary treatments.**
8. The CPA opposes the use of reparative or conversion therapy, given that such therapy is based on the assumption that LGBTQ identities indicate a mental disorder and (or) the assumption that the person could and should change their sexual orientation and (or) their gender identity and gender expression.

**World Professional Association for Transgender Health**

Medical Necessity Statement

(<http://www.wpath.org/documents/Med%20Nec%20on%202008%20Letterhead.pdf>)

Sex reassignment, properly indicated and performed as provided by the Standards of Care, has proven to be beneficial and effective in the treatment of individuals with transsexualism, gender identity disorder, and/or gender dysphoria. Sex reassignment plays an undisputed role in contributing toward favorable outcomes...

The medical procedures attendant to sex reassignment are not 'cosmetic' or 'elective' or for the mere convenience of the patient. These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition.

**American Medical Association**

Resolution: Removing Financial Barriers to Care for Transgender Patients

(<http://www.ama-assn.org/ama1/pub/upload/mm/471/122.doc>)

An established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for many people diagnosed with GID ... Therefore, be it RESOLVED, that the AMA supports public and private health insurance coverage for treatment of gender identity disorder.

### **American Psychiatric Association**

Position Statement on Access to Care for Transgender and Gender Variant Individuals

([www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2012\\_TransgenderCare.pdf](http://www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2012_TransgenderCare.pdf))

The American Psychiatric Association:

1. Recognizes that appropriately evaluated transgender and gender variant individuals can benefit greatly from medical and surgical gender transition treatments.
2. Advocates for removal of barriers to care and supports both public and private health insurance coverage for gender transition treatment.
3. Opposes categorical exclusions of coverage for such medically necessary treatment when prescribed by a physician.

### **The American Psychological Association**

(<http://www.apa.org/about/governance/council/policy/transgender.aspx>)

APA recognizes the efficacy, benefit and medical necessity of gender transition treatments for appropriately evaluated individuals and calls upon public and private insurers to cover these medically necessary treatments.

### **Cost of Coverage**

Caring for Our Transgender Troops — The Negligible Cost of Transition-Related Care — New England Journal of Medicine

[http://www.nejm.org/doi/full/10.1056/NEJMp1509230?query=featured\\_home&](http://www.nejm.org/doi/full/10.1056/NEJMp1509230?query=featured_home&)

Human Rights Campaign – U.S.A.

<http://www.hrc.org/resources/entry/transgender-inclusive-benefits-for-employees-and-dependents>

[http://s3.amazonaws.com/hrc-assets/files/assets/resources/Transgender\\_Healthcare\\_White\\_Paper\\_4.pdf](http://s3.amazonaws.com/hrc-assets/files/assets/resources/Transgender_Healthcare_White_Paper_4.pdf)

### **Charter and Human Rights Cases**

*Vriend v. Alberta*, [1998] 1 SCR 493, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1607/index.do> (see paragraphs 87, 99-104 in particular)

*XY v. Ontario (Government and Consumer Services)*, 2012 HRTO 726 (CanLII), <http://canlii.ca/t/fqxvb>

*C.F. v. Alberta (Vital Statistics)*, 2014 ABQB 237 (CanLII), <http://canlii.ca/t/q6ll9>