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Training Recruiters and Examiners to Evaluate Transgender Applicants Is Not Complicated or Time-Consuming

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EXECUTIVE SUMMARY

1) Trump administration officials claim that to begin processing transgender applicants for military service, the Defense Department must train approximately 23,000 personnel. As a result, they argue, a federal court's order to allow accession of transgender individuals on January 1, 2018 "will impose extraordinary burdens on the Department and the military services."

2) Administration officials argue that "[n]o other accession standard has been implemented that presents such a multifaceted review of an applicant's medical history;" and the military will have to "ensure that the 'tens of thousands' of service members 'dispersed across the United States' responsible for implementing accession policies 'have a working knowledge or in-depth medical understanding of the standards.'"

3) Former military leaders have cast doubt on the administration's claims by confirming that most training required to begin processing transgender applicants was completed by the time of the presidential transition in January 2017.

4) Beyond former leaders' confirmation that DOD completed most preparatory work by the time of the transition, the administration's claims are suspicious because training recruiters and medical evaluators to process applications from transgender candidates is neither complicated nor time-consuming.

5) Recruiters do not need additional training to process applications from transgender candidates because their only relevant responsibility is to help applicants prepare a package of medical information, a simple and straightforward task. According to one of the nation's top experts in accession policies and practices, sending a one-page instruction to all recruiting stations would suffice if it has not already been done.

6) Medical evaluators do not require in-depth training because they are already well versed in DOD's method for deriving objective and relatively simple assessments of medical fitness, and because potential comorbidities of gender dysphoria and its treatment are not unique to transgender people and are routinely assessed in non-transgender people during the accession process. Medical evaluators are not asked to make judgments that are different from the ones they already make.

7) Teaching medical evaluators to process applications from transgender candidates requires less than one day of training.

8) Even if DOD had not completed most preparation for the lifting of the accession ban almost one year ago, training personnel to process transgender applicants would not be difficult or time-consuming.

Trump administration officials have claimed that in order to begin processing transgender applicants for military service, the Defense Department (DOD) must train approximately 23,000 personnel, including 20,367 recruiters, 2,785 employees of Military Entrance Processing Stations (MEPS), 32 Service Medical Waiver Authorities, and personnel at military entrance training locations and the medical facilities that support them.[1] According to the administration, training will be difficult and complex, because "[n]o other accession standard has been implemented that presents such a multifaceted review of an applicant's medical history" and because the military will have to "ensure that the 'tens of thousands' of service members 'dispersed across the United States' responsible for implementing accession policies 'have a working knowledge or in-depth medical understanding of the standards.'"[2] As a result, the administration argues, a federal court's order requiring DOD to allow accession of transgender individuals into military service on January 1, 2018 "will impose extraordinary burdens on the Department and the military services."[3]

Former military leaders have cast doubt on the administration's claims by confirming that most of the training required to begin processing transgender applicants was completed by the time of the presidential transition in January 2017. According to former Navy Secretary Ray Mabus, "The Services had already completed almost all of the necessary preparation for the lifting of the enlistment ban when we left office almost a year ago."[4] Former Air Force Secretary Deborah Lee James confirmed that, "It took less than a year for the Services to successfully prepare for DADT repeal, and they have now had 18 months to get ready for transgender enlistment. When I left office in January, we had already done most of the work to prepare for this policy change."[5]

Beyond former leaders' confirmation that DOD had already completed most training and other preparatory work in anticipation of the lifting of the accession ban by the time that President Trump took office, the administration's claims are suspicious because training recruiters and medical evaluators to process applications from transgender candidates is neither complicated nor time-consuming. "Tens of thousands" of recruiters and examiners do not require "a working knowledge or in-depth medical understanding of the standards." The accession standard for gender dysphoria is no different from the standard that evaluators use to assess all other medical conditions. And medical evaluators are not being asked to make judgments that are different from the ones they are already making. No one, in other words, requires in-depth training, and even if DOD had not completed most preparation for the lifting of the accession ban almost one year ago, training personnel to process transgender applicants would not be difficult or time-consuming.

1) Recruiters require no additional training to process applications from transgender candidates

Of the 23,000 personnel who DOD claims must be trained to process transgender applicants, 20,367 (89 percent) are recruiters. Recruiters, however, do not need additional training to process applications from transgender candidates. All service members who are now recruiters have received training along with the rest of the force, beginning in

June 2016, in inclusive retention policy for transgender personnel, so they understand the basic outlines of policy and the basic facts of gender identity.

The Trump administration claims that military recruiters are responsible for 1) "resolving any gender identity conflict between an applicant's government identification documents and the gender in which they present themselves"; and 2) "assisting the applicant complete the Accession Medical Prescreen Report (DD Form 2807-2), including providing substantiating and supporting medical documents." The first claim is incorrect, as established by the military's own procedures and forms that are part of the recruiting process. The second claim about recruiter responsibility is correct, but the task requires no additional training because transgender applicants would be handled in exactly the same manner as other applicants, a task which recruiters are already competent to perform.

First, there is no gender identity conflict for recruiters to resolve. Transgender applicants will be processed and enlisted in the gender established by the government identification they are required to provide to confirm identity. There is no other option, and nothing to resolve. It is irrelevant what gender they "present" in, as it is not the recruiter's job to decide whether the applicant acts or looks sufficiently like a man or a woman, and it is not the recruiter's job to verify that the applicant has an appropriate gender presentation. These judgments are irrelevant to the accession process.

Recruiters record the applicant's legal gender by checking a box on DD Form 1966, *Record of Military Processing*, "the principle document to report military processing and enlistment data elements."[6] They verify the applicant's gender in the same way they verify all identifying information, such as age and citizenship status, for all applicants: by reference to government identification such as a birth certificate or passport.[7] Government documents determine the gender of enlistment, not the judgment of the recruiter as to "the gender in which they present themselves." This is consistent with military policy on transgender service that has been in effect since June 2016. Under that policy, the military recognizes a service member's gender by the member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), which cannot be changed without a corresponding change in the member's government identification.[8] Verification of gender is far less complicated than verification of citizenship status and requires no new skills or procedures.

Second, recruiters do not need to understand transgender medicine or transgender accession standards any more than they need to understand cardiology or cardiology accession standards. Recruiters help candidates fill out medical disclosure forms and determine whether medical records are needed and what documentation may be necessary. But they do not diagnose gender dysphoria.

Recruiters' only relevant responsibility is to help applicants prepare a required package of medical information, a simple and straightforward task. DD Form 2807-2, *Accessions Medical Prescreen Report* (7 pages) contains clear, simple instructions to the recruiter and the applicant about what is required for the medical packet that goes to MEPS. "This

form must be completed by the applicant with the assistance of the recruiter, parent(s), or guardian, as needed… If an applicant has been seen by any Health Care Provider (HCP) and/or has been hospitalized for any reason, medical records/documentation must be obtained and submitted along with a medical release to USMEPCOM." The requirement to prepare a medical package does not change based on the nature of an applicant's medical history. If the applicant has a medical history of any kind, the applicant must provide relevant medical records. The process will not change for transgender applicants.

According to one U.S. Army Recruiter, "Last year, recruiters were briefed on transgender persons serving in the military, and my entire recruiting battalion received training. As recruiters, we only process and help build the packets for those meeting basic qualifications, so processing applications from transgender candidates is actually quite simple for us. At this point, DoD just has to make changes to some forms. Everything with processing applicants is self-explanatory."[9]

Recruiters require no training to process transgender applicants, because the only points recruiters need to understand are that qualified transgender people are permitted to serve, and that recruiters should process their paperwork the same way they process paperwork for everyone else. According to one of the nation's top experts in accession policies and practices, sending a one-page instruction to all recruiting stations would suffice if it has not already been done.[10]

2) Medical evaluators do not require in-depth training to process applications from transgender candidates

Medical evaluators do not require in-depth training because (a) they are already well versed in DOD's method for deriving objective and relatively simple assessments of medical fitness; (b) potential comorbidities of gender dysphoria and its treatment are not unique to transgender people and are routinely assessed in non-transgender people during the accession process; and (c) learning to process applications from transgender candidates requires less than one day of training.

George R. Brown, MD, is a VA psychiatrist and former Air Force officer who has studied transgender health in military populations for more than 30 years, and who personally trained several hundred MEPS employees in anticipation of the lifting of the accession ban on transgender applicants. According to Dr. Brown, in-depth training is not necessary.

> The accessions criteria for transgender people are straightforward and do not require extensive or detailed knowledge. To the contrary, it simply requires MEP personnel to identify applicants who have a diagnosis of gender dysphoria, a diagnosis with which medical professionals should already be familiar. It also involves review of the individual's substantiating and supporting medical documentation to confirm that the period of stability (18 months) has been met. This process does not

> involve any unique complexities or burdens and is well within the capacity of military personnel involved in the enlistment review process.[11]

The transgender accession standard, discussed below, was constructed to track the way that all other medical histories are evaluated, so medical evaluators are not asked to make judgments that are different from the ones they already make. According to former Army Secretary Eric Fanning,

> … [M]uch of the new process for transgender accessions mirrored an existing process. These changes to policy for transgender accession…were consistent with standards already in place authorizing individuals with a range of medical conditions to accede to military service. As a result, the training program was designed to focus on helping military professionals understand the terminology and range of possible documentation unique to transgender individuals to assist them in applying to preexisting, well-understood procedures, rather than carving out any new process specifically designed for accessions of these individuals.[12]

Gender dysphoria itself is not new to the military (putting aside the outdated terminology in the current accession regulation), as DOD has been identifying and excluding people at accession based on gender dysphoria and transgender identity for decades. Gender dysphoria and its treatment are not new to medicine and research, as shown by the fact that the WPATH Standards of Care[13] for transgender medicine was first published in 1979 and is now in its seventh edition. Even those MEPS employees who are unfamiliar with medical treatment for gender dysphoria, however, do not require in-depth training.

a) Medical evaluators are already well versed in the DOD accession regulation's method for deriving objective and relatively simple assessments of medical fitness

The DOD accession regulation—DODI 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*—frequently uses conditional factors to guide medical evaluators in qualifying candidates with a particular medical condition, and to channel MEPS evaluations toward objective and relatively simple assessments that are within the competence of examiners. These conditional factors are phrased in terms of words like UNLESS, IF, WHEN, or DOES (sometimes capitalized, sometimes not). All fit the same purpose of determining when a particular condition is minor, stable, and/or corrected, and therefore unlikely to interfere with successful military service or cause undue burden. For example, a history of Attention Deficit Hyperactivity Disorder is disqualifying UNLESS a candidate can demonstrate, among other things, that "During periods off of medication after the age of 14, the applicant has been able to maintain at least a 2.0 grade point average without accommodations."[14]

DODI 6130.03 provides a variety of tools to examiners in service of medical evaluation:*

> • MEPS can require records of civilian medical care and disqualify applicants if they do not produce them (¶¶ 4c3b SMPG (LASIK), 14a (abnormal menstruation), 14n SMPG (PAP smear)).
>
> • MEPS can in some cases rely on the medical judgment of the applicant's primary care or specialist providers, and can require applicants to submit outside evaluation and testing (¶¶ 4c3e SMPG (LASIK), 12p SMPG (tachycardia), 21b SMPG (hypertension), 25b4 SMPG (renal glycosuria), 25f SMPG (thyroid disorders)).
>
> • Accession standards often cite and summarize research or practice standards from civilian medicine as an aid to examiners in understanding a particular medical condition (¶¶ 11h SMPG (chest wall malformation), 12a1 (heart murmur), 14a SMPG (abnormal menstruation), 14h SMPG (PCOS), 25b SMPG (diabetes)).
>
> • Accession standards sometimes rely on simple passage of time (e.g., 6 months after breast/chest surgery, ¶ 11p) or ability to perform simple functional tasks (e.g., ability to drink from a straw after surgical repair of cleft lip or palate defects, ¶ 8a) as indicators of fitness and absence of persistent complications.
>
> • MEPS can refer unusual or outlier cases for review by outside specialists (¶¶ 4c3e SMPG (LASIK), 4h4 SMPG (ocular hypertension), 12a1 SMPG (heart murmur)).

Armed with these tools, MEPS examiners determine candidates' fitness for duty, regardless of the complexity of any particular applicant's medical history.

b) Potential comorbidities of gender dysphoria are not new to medical evaluators

The new accession standard for transgender applicants, established in June 2016 but not yet placed in service, designates a history of gender dysphoria, or a history of medical treatment associated with gender transition, as disqualifying UNLESS the candidate can document 18 months of medical, social, occupational and/or psychological stability.[15] MEPS examiners can easily determine transgender candidates' fitness for duty, because comorbidities of gender dysphoria and its treatment are not unique to transgender people and are routinely assessed in non-transgender people during the accession process.

* Paragraph numbers in citations refer to the accession medical standards in Enclosure 4 of DODI 6130.03. "SMPG" (if noted) indicates that USMEPCOM has issued Supplemental Guidance to DODI 6130.03 as an aid in interpreting the regulation.

Assuming the most challenging scenario that would apply in a small minority of cases, gender dysphoria and its treatment present three potential areas that are familiar to medical evaluators: mental health, endocrine/hormones, and surgical recovery.

I. Mental health: DODI 6130.03 already directs examiners to use conditional UNLESS factors in evaluating the severity and stability of certain mental health histories. Every diagnosis in DSM-5 involves a finding of "clinically significant distress or impairment in social, occupational, or other important areas of functioning," and so the task for accession examiners in these cases is to apply UNLESS factors to identify applicants whose mental health history is unlikely to interfere with successful military service. In general, the UNLESS factors explore whether impairment still exists or will be recurrent, probing circumstances such as success in school or work, prior need for hospitalization, encounters with law enforcement, and need for psychiatric medication (¶¶ 29a (ADHD), 29b (learning disorder), 29g (depression), 29h (adjustment disorder), 29i (behavior disorder); 29p (anxiety disorder)).

Examiners have the authority to require applicants to submit Individualized Education Plans, other school records, counseling records, and medication records for the purpose of evaluating UNLESS factors (¶¶ 29a SMPG (ADHD), 29b SMPG (learning disorder)).

The UNLESS factors used in ¶ 29 to evaluate impairment are no more difficult to apply for transgender applicants than they are for non-transgender applicants. The factors rely in large part on success in life activities that are common to all applicants regardless of gender identity.

II. Endocrine/Hormones: In several instances in DODI 6130.03, standards for women appear to assume (without specifying) that applicants are being medically treated with hormones, because the standards apply to conditions that are typically treated with hormones. Use of hormones for these conditions is not disqualifying and is not directly evaluated during the accession process. The task for the MEPS examiner is only to confirm that the condition is responsive to treatment and unlikely to interfere with routine activities (¶¶ 14a (abnormal menstruation), 14d (dysmenorrhea), 14e (endometriosis), 14h (PCOS)). In addition, amenorrhea secondary to hormonal contraceptives like Depo-Provera is expressly not disqualifying (¶ 14c SMPG).

DODI 6130.03 requires examiners to assess several other maintenance medications and determine whether the course of treatment is stable (e.g., no side effects for 6 months from cholesterol drugs, ¶ 25i; asymptomatic while taking GERD medication, ¶ 13a SMPG). With a small amount of training on medical standards of care for transgender individuals, combined with references to clinical research that are commonly included in DODI 6130.03, examiners are competent to determine whether hormone treatment is stable and effective. Examiners also have the authority to require applicants to submit pertinent records, testing, evaluation, and opinion from civilian providers if needed.

III. Surgical recovery: Many surgical procedures are not permanent disqualifications under DODI 6130.03. When UNLESS factors are used, they typically rely on one or both

of two indicators that rule out functional limitations or persistent complications. One possible factor is the passage of time (e.g., 6 months after abdominal surgery, open or laparoscopic, ¶ 13f); the other enumerates the limitations or complications that the examiner should look for in assessing fitness.

Some surgeries are common to transgender and non-transgender applicants. For example, chest wall surgery (including breast) is not disqualifying if more than six months have passed and no functional limitations persist (¶ 11p). The reason for surgery would differ between transgender and non-transgender applicants, but the surgery itself would be evaluated in the same way under existing standards. No new medical knowledge or standard would be required for assessment of chest or breast surgery in transgender applicants.

Genital surgeries may in some cases raise issues that are not common to transgender and non-transgender applicants, but only a small percentage of transgender persons will have genital surgery at any time in their lives (approximately 25% for MTF, and less than 5% for more complicated FTM surgeries).[16] The expected number who would present at accession having had genital surgery would be even lower, given the typical age range for enlistment.

While the surgical procedures differ, the limitations or complications that can result from surgical procedures are similar for transgender and non-transgender persons. DODI 6130.03 relies on UNLESS factors to evaluate fitness in comparable post-surgical circumstances. For example, penile hypospadias reconstruction is not disqualifying unless accompanied by evidence of urinary tract infection, urethral stricture, or voiding dysfunction (¶ 15e). The point is not that hypospadias reconstruction is comparable to genital surgery for purposes of gender transition, but that existing UNLESS standards require examiners to evaluate similar consequences or complications of surgery. Complications related to infection, urethral stricture, or voiding dysfunction are not unique to men or to women, and they are not unique to transgender or to non-transgender people. Similarly, DODI 6130.03 requires examiners to assess whether applicants have "current or recurrent urethral or ureteral stricture or fistula involving the urinary tract" (¶ 16g). If these conditions can be evaluated in some applicants, they can be evaluated in other applicants.

Finally, earlier versions of DODI 6130.03 suggested that genital surgery for the purpose of "change of sex" was disqualifying only if complications persisted. Of course, whether surgical complications persisted was not relevant under policy that otherwise automatically excluded all applicants with a gender identity different from gender assigned at birth. However, the inclusion of a conditional UNLESS-style factor suggests that accession examiners were once considered competent to assess complications resulting from such genital surgeries. The following is a quote from the 2004 version of DODI 6130.03 (then DODI 6130.4), ¶¶ E1.12.13, E1.13.10:

> Major Abnormalities and Defects of the Genitalia, Such as a Change of Sex. A history thereof, or dysfunctional residuals from surgical correction of these conditions.

The prior Army medical enlistment standard that applied to all enlistees prior to the establishment of a common DOD standard in 1986 (AR 40-501, ¶ 2-14s, first issued in 1961) was even more detailed in the description of potential complications:

> *Major abnormalities and defects of the genitalia* such as a change of sex, a history thereof, or complications (adhesions, disfiguring scars, etc.) residual to surgical correction of these conditions.

Lifting the accession ban requires medical evaluators to apply existing standards and tools to people who were previously disqualified automatically. This is not a matter of new medical knowledge or new practices, but rather the same medical knowledge applied to more people. Exclusionary policy artificially prevented medical examiners from seeing the commonalities in medical issues between transgender and non-transgender applicants.

c) Training medical examiners to evaluate transgender candidates requires less than one day

Very little training is needed to teach medical examiners how to evaluate transgender applicants because the accession standard was constructed to track the way that all other medical histories are evaluated; examiners are already well versed in DOD's method for deriving objective and relatively simple assessments of medical fitness; and potential comorbidities of gender dysphoria are not new to medical examiners or unique to transgender applicants. For all of these reasons, the training that MEPS medical personnel undergo to learn how to evaluate transgender candidates is only four hours long.[17] The training includes a slide show; discussions of accession regulations, definition and diagnosis of gender dysphoria, and effects of medical treatments; and a period for questions and answers. Even if DOD had not completed most preparation for the lifting of the accession ban almost one year ago, training personnel to process transgender applicants would not be difficult or time-consuming.

[1] Declaration of Lernes J. Hebert, Acting Deputy Assistant Secretary of Defense, Military Personnel Policy, Office of the Under Secretary of Defense for Personnel and Readiness, filed in Doe v. Trump, U.S. District Court, District of Columbia, Dec. 6, 2017, 4-5.
[2] Department of Justice, Appellants' Emergency Motion for Administrative Stay and Partial Stay Pending Appeal, filed in the District of Columbia Circuit Court of Appeals, Dec. 11, 2017, 14 (quoting Hebert Declaration).
[3] Hebert Declaration, 3-4.
[4] Alan Bishop et al., DoD Is Ready to Accept Transgender Applicants (Palm Center, December 2017), 2-3, http://www.palmcenter.org/wp-content/uploads/2017/12/DOD-Is-Ready-to-Accept-Transgender-Applicants-2.pdf.
[5] *Id*.
[6] DOD Instruction 1304.02, Accession Processing Data Collection Forms (Sept. 9, 2011), 16.
[7] See, for example, Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program (Aug. 31, 2016), 5-8.
[8] DOD Instruction 1300.28, In-Service Transition for Transgender Service Members (Oct. 1, 2016), 3, 10-11.
[9] U.S. Army Recruiter, personal communication with the authors.
[10] Professor Mark Eitelberg (Emeritus), Naval Postgraduate School, personal communication with the authors.
[11] Declaration of George Richard Brown, MD, DFAPA, filed in Doe v. Trump, U.S. District Court, District of Columbia, Dec. 8, 2017, 3.
[12] Declaration of Eric K. Fanning, Former Secretary of the Army, filed in Doe v. Trump, District of Columbia Circuit Court of Appeals, Dec. 15, 2017, 2.
[13] Eli Coleman et al. (2011). Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7, *International Journal of Transgenderism*, 13: 165-232.
[14] DOD Instruction 6130.03, Medical Standards for Appointment, Enlistment, or Induction in the Military Services (Apr. 28, 2010, incorporating Change 1, Sept. 13, 2011), 46-47.
[15] Secretary of Defense, DTM 16-005, Military Service of Transgender Service Members (June 30, 2016), 1-2.
[16] Jaime M. Grant, Lisa A. Mottet and Justin Tanis (2011). Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 79.
[17] Dr. George R. Brown, personal communication with the authors.