



WHITMAN-WALKER CLINIC®

DC Area Transmasculine Society November 14, 2010

Gender Transitioning and the Law

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WHITMAN-WALKER CLINIC®

- In 2009, Whitman-Walker provided services to the following numbers of unique individuals who identified as transgender:
 - Medical clients: 297 individuals (6% of total)
 - Behavioral health clients: 63 individuals (>10% of total)
 - Legal clients: 101 individuals (4% of total)

Legal Issues To Be Covered

- Discrimination
- Name and gender marker changes in legal records and identity documents
- Health insurance

Which Laws Protect Transgender People from Discrimination?

Local Laws Expressly Prohibiting Transgender Discrimination

- DC Human Rights Act bars discrimination based on “gender identity or expression” (DC Code § 2-1401.02(12A)).
- Montgomery, Maryland, County Code bars discrimination based on “gender identity” (Mont. Co. Code § 27-6).

Is Transgender Discrimination Sex Discrimination?

Traditional view: No

- *E.g., Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984), and many other decisions under Title VII of the federal Civil Rights Act.

***Price Waterhouse v. Hopkins* – the Sex Discrimination Door Opens a Little**

- *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) – plaintiff was a woman denied partnership, who had been told by the partners that she was “too macho,” that partners and clients didn’t like “a lady using profanity,” and that to improve her chances for partnership she should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”
- The Supreme Court held that sex discrimination under Title VII includes discrimination against a woman because she does not conform to gender stereotypes (is regarded as insufficiently “feminine”).

***Price Waterhouse v. Hopkins* – the Sex Discrimination Door Opens a Little**

- Post-*Price Waterhouse*, a number of courts have held that Title VII covers transgender women or men who are discriminated against when there has been evidence that the employer saw them as men who didn't dress and act like men, or women who didn't dress or act like women.
- *E.g.*, *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith v. Salem*, 378 F.3d 566 (6th Cir. 2004).

***Price Waterhouse v. Hopkins* – the Sex Discrimination Door Opens a Little**

- **But What About the Trans Man or Woman Who is Discriminated Against Simply for Being Transgender?**
 - *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007): transgender woman was fired for using women's restrooms while at work, after she started to transition but had not had sex reassignment surgery. The Court said there was no evidence that Etsitty was fired for being a male dressing and presenting as a woman, and that if using restrooms corresponding to her true gender was essential to her transgender identity, Title VII doesn't protect transgender people *per se*.

New Analysis: Discrimination Against Someone for Being Transgender Simply /s Discrimination Based on Sex

- *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008): transgender woman with a background in law enforcement and national security before beginning to transition was rejected by the Library of Congress for a job in her field after coming out as transgender.
- The Court analogized to religious discrimination: an employer who fired a Christian for converting to Judaism would be discriminating because of religion, even if the employer only discriminated against “converts”.

Is Transgender Discrimination Disability or “Handicap” Discrimination?

- Federal disability discrimination laws expressly exclude "transsexualism" and "gender identity disorders not resulting from physical impairments."
 - Americans With Disabilities Act, 42 U.S.C. 12211(b)(1)
 - Rehabilitation Act, 29 U.S.C. 706(8)(F)(i)

Where State and Local Laws do not Expressly Exclude Transgender Discrimination, Some Courts and Human Rights Agencies Have Held That Transgender Plaintiffs Have a Protected Disability or “Handicap”

- *E.g., Enriquez v. West Jersey Health Systems*, 342 N.J. Super. 501; 777 A.2d 365 (App. Div. 2001); *Lie v. Sky Publishing Corp.*, 15 Mass. L. Rep. 412 (Super. Ct. 2002); *Doe v. Yunits*, 15 Mass. L. Rep. 278 (Super. Ct. 2001).

Is Transgender Discrimination Disability or “Handicap” Discrimination?

Addressing transgender discrimination through disability theory relies on a diagnosis of gender dysphoria or GID.

DC Human Rights Act prohibits discrimination because of “personal appearance”

Defined in DC Code § 2-1401.02(22) as:

the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual.

Unresolved Issues in Transgender Discrimination Litigation: Denial of Medical Care

- What if a refusal to provide care is motivated by an honest (even if misinformed) medical judgment – *e.g.*, that the patient is better off with a specialist?
- *Lesley v. Chie*, 250 F.3d 47 (1st Cir. 2001) – not a violation of the ADA for a pregnant woman’s OB-GYN to refuse to keep seeing her, and to refer her to an HIV specialist, when he learned that she was HIV-positive.
- But denial of, *e.g.*, routine dental care to an individual with HIV *is* discrimination, because there is no recognized “specialty” of providing routine dental care for HIV-positive patients. *E.g.*, *United States v. Morvant*, 898 F. Supp. 1157 (E.D. La. 1995).

Unresolved Issues in Transgender Discrimination Litigation: Restroom Use

- *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001): Supreme Court of Minnesota held that it did not violate Minnesota's Human Rights Law for an employer to restrict gender-specific restrooms to persons who were biologically of that gender, and to require a transgender woman to use a single-occupancy restroom.
- *See also Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007): Court held that it was not sex discrimination to fire a transgender woman who had not undergone sex reassignment surgery for using women's restrooms.
- *Compare* DC Office of Human Rights regulations, 4 DCMR Sec. 802.1 & 802.2:
 - All entities covered by the Human Rights Act must permit individuals to use gender-specific restrooms and other gender-specific facilities that are consistent with their gender identity and expression.
 - Single-occupancy restroom facilities must use gender-neutral signage.

Legal Records and Identity Documents: Changing Name and Gender Markers

- Drivers license
- Social Security card and records
- Birth certificate
- Financial institution and creditor records
- Health insurance
- Passport
- Selective Service registration
- Alien and immigration documents

Why is This Important?

- Discrimination, harassment when person is “outed” through ID documents that are different from his/her current appearance, name
- Employment problems – *e.g.*, SSA “no-match” letters
- Access to health care
- Routine business transactions
- Law enforcement and national security issues

Changing Gender Markers in Particular Needs the Cooperation of Your Medical and Mental Health Providers

Conflicting considerations:

- Provide information necessary to get the changes to legal records that you need.
- Protect your privacy – especially in light of federal move towards making identity documents, and records of changes in identity documents, national and widely accessible to federal and law enforcement authorities (e.g., the Real ID Act).

Overview

- First, get a court order.
- Then, change your Social Security records.
- Then, seek to your change driver's license, birth certificate, passport and financial/creditor/insurance records.
- The requirements for driver's licenses and birth certificates are very state-specific; this presentation focuses on requirements in DC, Maryland and Virginia.

Overview (Continued)

- Name changes are relatively easy to obtain. Gender marker changes often require documentation from doctor and/or therapist, and *may* require letter from surgeon.
- Therefore, as a general matter:
 - If you have *completed* your transition, you can seek to change your name and gender marker at the same time.
 - If you have *started* your transition, it may be better to change your name first and then change gender markers later.

Court-Ordered Name Change

- Relying on “common usage” (in DC and Maryland) not recommended.
- With a court order one can change your name in identity documents and other legal records.

Name Changes in DC, Virginia and Maryland

- A legal right so long as not for a fraudulent purpose, to evade the law, or to impinge on the legal rights of others.
- Standard form – DC & Maryland forms ask for a reason; Virginia form does not – no provider's statement or medical evidence required.
- Period of notice to creditors and other interested parties.

Name Change in DC Superior Court

- Submit the “Application for Change of Name” form, <http://www.dccourts.gov/dccourts/docs/civil/dcsc31.pdf>, with \$60 filing fee, and your birth certificate and drivers license or ID card, to:
 - Moultrie Courthouse, 500 Indiana Ave., NW, Room 4220 (Judge-in-Chambers Office).
- The Judge will order you to place a classified ad once a week for three consecutive weeks in a local newspaper with general circulation, and give you a form to send to your creditors – by certified mail return receipt requested – notifying them that you are changing your name.
- Keep a copy of each issue of the newspaper and submit the return receipts from each creditor to the Court.
- The Court may schedule a hearing or just issue the “Order for Change of Name” without a hearing.

Name Change in Virginia Circuit Court

- File an “Application for Change of Name,” <http://www.courts.state.va.us/forms/circuit/cc1411.pdf> , with the Circuit Court in the county or city where you live. Note the instructions for completing the form, at <http://www.courts.state.va.us/forms/circuit/cc1411inst.pdf>.
 - The Application must be signed in the presence of a notary public (available at the courthouse).
 - Follow the local rules of the Circuit Court – call the clerk for instructions. Information on your Circuit Court is at <http://www.courts.state.va.us/directories/circ.pdf>.

Name Change in Maryland Circuit Court

- File Form D-60, “Petition for Change of Name (Adult),” <http://www.courts.state.md.us/family/forms/dr60.pdf>, with the Circuit Court in the county where you live.
- Include proof of your current name with your filing: a certified copy of your birth certificate is preferred, but a passport or valid driver’s license is acceptable.
- There is a \$105 fee, but the Court can waive the fee if you demonstrate sufficient need (the form for fee waiver is at <http://www.courts.state.md.us/family/forms/dr32.pdf>).
- The clerk’s office will sign a notice describing the petition and giving others an opportunity to object to the petition. At least fifteen days before the objection deadline, you must publish the notice in a newspaper of general circulation in your city or county. Ask the clerk whether you must take care of this yourself or whether the clerk will arrange it.

Court Order of Name Change

- When the court issues the name change order, get several *certified* copies of the order from the courthouse to use in changing your other identity documents and legal records.

Court Order of Gender Change

Many states – including Maryland, Virginia and DC – require a court order of gender change before your birth certificate can be changed.

In re Heilig, 372 Md. 692, 816 A.2d 68 (Md. Court of Appeals 2003):

- Maryland courts have equity jurisdiction to enter order of gender change, whether or not the petitioner has a Maryland birth certificate.
- Medical evidence of “irreversible change of gender” is required, probably more than hormone therapy alone.

The DC Superior Court Clerk’s Office has told WWC that the Court will not issue a general order of gender change, only an order changing the gender on a DC birth certificate. This is probably not legally correct; contact WWC Legal Services if you need a DC court order to get your birth certificate changed in another state.

Virginia courts look at petitions for gender change on a case-by-case basis; require a doctor’s certification that you have had a medical procedure that has changed your gender.

There is no standard form for a gender change order; consultation with a lawyer is advised.

Changing Your Name in Your Social Security Records

- Mail or bring the following to your local Social Security office:
 - Application for a Social Security Card (Form SS-5) (<http://www.ssa.gov/online/ss-5.pdf>) that includes your changed name
 - Certified copy of the court order for name change
 - An identity document, such as an unexpired driver's license or state-issued identity card, or an unexpired U.S. Passport (it is OK if this document includes your former name)
 - Proof of U.S. citizenship or legal immigration status, such as a birth certificate or green card
- You can find your local Social Security office at <https://secure.ssa.gov/apps6z/FOLO/fo001.jsp>

Changing Your Gender in Your Social Security Records

- Mail or bring the following to your local Social Security office:
 - **Application for a Social Security Card (Form SS-5)** (<http://www.ssa.gov/online/ss-5.pdf>) that includes the changed gender
 - **An identity document in your *new* legal name, such as a driver's license, other state-issued identification card, or passport**
 - **A letter from your surgeon or attending physician certifying that your gender transition is “complete”. Social Security rules do not require the doctor to discuss any specific procedure, only to certify that your transition has been completed.**
 - **Proof of U.S. citizenship or immigration status, such as a birth certificate or green card. If your document shows your *former* name, you will need to submit a certified copy of a court order changing your name to show that you are the same person.**

Changing Your Name on Your Driver's License or Identification Card: DC

- Bring the following to a District of Columbia DMV office:
 - Your current driver's license or ID card, and *either*:
 - Your Social Security card that reflects your name change, *or* (if you don't yet have your new card) *or*
 - A printout from Social Security reflecting your name change *and* a certified copy of your Court Order for Change of Name.

Changing Your Name on Your Driver's License or Identification Card: Virginia

- If you are applying for a VA driver's license or ID card for the first time and your name has changed from that on your birth certificate, in order to prove your name change you must submit either the original or a certified copy of the court order granting the name change (the DMV may refer to the certified copy as a "teste copy") along with an original or certified copy of your birth certificate.
- If you currently hold a VA driver's license or identification card and wish to change your name, you must submit:
 - Your valid driver's license or ID card, *and*
 - Either the original or a certified copy of the court order granting the name change.

Changing Your Name on Your Driver's License or Identification Card: Maryland

- The Maryland Motor Vehicle Administration will verify your change of name with the Social Security Administration before they will accept a name change, so you must change your name with the SSA prior to changing it with the MVA
- Bring proof of your name change, such as a Court Order for Change of Name, and your current driver's license or identification card to a full-service MVA office.
- The law requires that you notify the MVA within 30 days of your name change old name, your new name, and your license number

Changing Your Gender on Your Driver's License or Identification Card: DC

- Bring your application to a DMV Service Center Manager, along with:
 - Your driver's license or ID card with your prior gender; and
 - A completed Gender Designation Form, http://dmv.dc.gov/pdf/Gender_Change_Policies.pdf. This form only requires a “medical or social service authority” to certify “under penalty of law” the client/patient's gender identity and that this identity “can reasonably be expected to continue as such in the foreseeable future.”
- Not all DMV employees understand this procedure, so submit your application to a Service Center Manager.

Changing Your Gender on Your Driver's License or Identification Card: Virginia

- The Virginia DMV distinguishes between *transitional* vs. *permanent* gender changes, based on the DMV's medical review.
- The gender on your driver's license/ID card can be changed on a *temporary* basis (good for 18 months) upon showing that you are in the process of changing your gender.
- The gender on your driver's license/ID card can be *permanently* changed upon showing that your transition has been completed. Usually the DMV has required SRS, unless contraindicated, but the agency is considering whether to relax this requirement.

Temporary Gender Change on Your Virginia Driver's License or ID Card

- To obtain a *temporary* change of gender, submit the following documentation to the Virginia Department of Motor Vehicles, Attn: Medical Services Department, P.O. Box 27412, Richmond, VA 23269:
 - An application for driver's license
 - A letter indicating your intent to change your gender
 - A DMV Customer Medical Report (<http://www.dmv.state.va.us/webdoc/pdf/med2.pdf>) **or** a letter from your doctor certifying your medical treatment and that you will have surgery or fully transition.
- The DMV will then mail you a letter approving the change on your driver's license. You can take this letter to your local DMV office and have your license updated.

Permanent Gender Change on Your Virginia Driver's License or ID Card

- After your surgery or upon completing your transition, you can obtain a permanent gender change on your driver's license by sending the following to the DMV Medical Services Department:
 - A certified copy of the Court Order granting your change of gender *or* a letter from your physician certifying to your surgery or permanent transition; *and*
 - An original or certified copy of your amended birth certificate. If you are unable to obtain an amended birth certificate because you are from a state that does not amend birth certificates or you were born abroad, the DMV will accept a Court Order acknowledging your gender change instead. You must provide evidence that you are unable to amend your birth certificate, which can be done by submitting an original or certified copy of your birth certificate along with a statement explaining why you are unable to change the document.

Changing Your Gender on Your Driver's License or Identification Card: Maryland

- Like the Virginia DMV, the Maryland Motor Vehicle Administration distinguishes between *transitional* and *permanent* gender changes, by approving a temporary driver's license with the new gender, ordinarily good for one year, when the applicant is undergoing transition but has not yet had SRS.

Temporary Gender Change on Your Maryland Driver's License or ID Card

- Under Maryland Motor Vehicle Administration Policy 26300-001, prior to undergoing SRS you can request a *transitional* change of gender by submitting the following to any full-service MVA office, for review by the MVA's Medical Advisory Board:
 - A letter from the physician administering hormone therapy and assisting with any surgery plans. The letter should include the length of time the patient has been in treatment, evaluation of progress, and prognosis.
 - Letter from a psychotherapist stating the length of time the applicant recognized her or his desire to live in the desired gender; the amount of time the applicant has been in treatment and has been living in the desired gender; evaluation of progress; and prognosis. The therapist's credentials, affiliations and current licenses should be stated clearly.
- The transitional designation is good for up to one year; it is subject to further review after that.

Permanent Gender Change on Your Maryland Driver's License or ID Card

- A *permanent* gender change in a driver's license is granted upon showing that your transition is complete, by submitting to any full-service MVA office an amended birth certificate *or* a court order of gender change.

Maryland's Policy of Permitting Transitional Gender Changes on Driver's Licenses Has an Uncertain Future

In re Heilig, 372 Md. 692; 816 A.2d 68 (2003): the Maryland Court of Appeals noted that for a court order of gender change, medical evidence of an “irreversible change of gender” is required, which is probably more than hormone therapy alone. The Court noted the MVA's transitional gender change policy and expressed concern as to whether it was lawful.

The Maryland Attorney General's Office also has advised the MVA that its current policy is unlawful.

In 2009 the MVA announced an intent to eliminate the transitional step, but backed off after concerns were expressed by advocates.

Changing Your Name and Gender on Your Birth Certificate

This must be done in the state where you were born.

Every state has different requirements; some will issue a new certificate; some will issue an amendment and note the changes that were made; some will not amend birth certificates, at least for gender.

Changing Your Name on Your Birth Certificate: DC, Virginia and Maryland

A certified copy of the court order of name change, with the required fee, should be submitted to:

In DC: Vital Records Division, 825 N. Capitol Street, NE, 1st Floor, Washington, DC 20002

In Virginia: Virginia Department of Health, Division of Vital Records, Attn: Special Services Department, PO Box 1000, Richmond, VA 23218-1000

In Maryland: Division of Vital Records, Department of Health & Mental Hygiene, 6550 Reisterstown Road, Baltimore, MD 21215

Changing Your Gender on Your Birth Certificate: DC

DC Code § 7-217(d): sex on birth certificate will be changed “[u]pon receipt of a certified copy of an order of the Court indicating that the sex of an individual born in the District has changed by surgical procedure.”

Submit an “Application to Amend Certificate of Birth” to the Superior Court (form available in the Judge-in-Chambers office on the 4th floor of the Courthouse, 500 Indiana Ave, NW). Form must be notarized and, to change gender, must be supported by a letter from your surgeon saying that SRS is complete. The Court will issue an “Order to Amend Birth Certificate” to DC Vital Records.

Changing Gender on Birth Certificate: Virginia

Va. Code § 32.1-269(E): “Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual has been changed by medical procedure and upon request of such person, the State Registrar shall amend such person's certificate of birth to show the change of sex and, if a certified copy of a court order changing the person's name is submitted, to show a new name.”

12 Virginia Administrative Code (VAC) 5-550-320: “Upon presentation of acceptable evidence (preoperative diagnosis, postoperative diagnosis and description of procedure), and a notarized affidavit from the physician performing the surgery, a new certificate of birth may be prepared by the State Registrar for a person born in this Commonwealth whose sex has been changed by surgical gender reassignment procedure. A certified copy of the court order changing the name of the registrant as well as designating the sex of the registrant must be in the possession of the State Registrar together with a request that a new certificate be prepared.”

Although the statute speaks of a court order, Virginia officials have indicated that if a notarized letter from the physician performing the surgery is presented, a court order may not be necessary.

Changing Gender on Birth Certificate: Maryland

Md. Code, Health-General, § 4-214(b)(5) and
Code of Maryland Regulations (COMAR)
10.03.01.02(D)(1)(d): a court order of gender
change is required; a letter from the physician is
not enough.

Changing Your Name on Your Passport

- You can change your name on your passport if:
 - you have a court order changing your name; or
 - you have at least three public records showing your date and place of birth that show exclusive use of your assumed name for at least five years.
- If you do not have a court order, then you must submit your request in person at an official Acceptance Agency (see <http://iafdb.travel.state.gov>) rather than by mail.

Changing Your Gender on Your Passport

- Prior to June 2010, the State Department required documentation of SRS to change the gender marker on a passport.
- New policy: SRS no longer required; the applicant must submit a sworn statement from an attending medical physician (internist, endocrinologist, gynecologist, urologist or psychiatrist) “that the applicant has had appropriate clinical treatment for gender transition to the new gender (male or female).”

Changing Your Gender on Your Passport

- Two-year limited validity passport will be issued if the attending physician certifies “that the applicant is in the process of gender transition to the new gender.”
- Full validity passport will be issued if the physician certifies “that the applicant has had appropriate clinical treatment for gender transition to the new gender.”
- Because the Passport Agency may simply apply a stamp over the old gender marker, it is preferable to obtain a new passport.

Changing Your Name and Gender on Your Passport: How to Apply

- If your passport was issued more than one year ago, submit Form DS-82 (http://travel.state.gov/passport/forms/ds82/ds82_843.html) and supporting documents by mail to the National Passport Processing Center, P.O. Box 90155, Philadelphia, PA 19190-0155
- If your passport was issued less than one year ago, submit Form DS-5504 (http://travel.state.gov/passport/forms/ds5504/ds5504_2663.html) and supporting documents by mail to the National Passport Processing Center, P.O. Box 90107, Philadelphia, PA 19190-0107
- If you are applying for your first passport or do not have a court order for name change, submit Form DS-11 (<http://www.state.gov/documents/organization/79955.pdf>) and supporting documents in person to an Acceptance Agency (<http://iafdb.travel.state.gov>)

Selective Service Registration

Men between the ages of 18 and 25 must register. Failure to do so may interfere with the right to certain federal benefits (e.g., student loans).

FTM's younger than 26 must obtain a Status Information Letter from the Selective Service stating that they are not required to register; birth certificate showing gender at time of birth should be provided.

MTF's must still register.

Immigration/Alien Records

There is little official guidance, but in Whitman-Walker Legal Services' experience, USCIS officials will accept

- Court order for name change
- For gender change, court order or notarized doctor's letter stating that sexual reassignment is complete

Changing Records of Financial Institutions and Creditors

Easier if there is a court-ordered name change; some financial institutions take the position that name changes on bank records in the absence of a court order are inconsistent with the Patriot Act.

Summary on Changing Legal Records and Identity Documents

Given the current state of the law, an individual undergoing gender transition who has not yet had surgery:

- Can and should change her or his name
- *May* be able to change *some* gender markers

To protect your privacy, your doctor, therapist or other professional should avoid providing unnecessary detail to courts and government agencies (e.g., details of your surgery), but a certain amount of detail may be necessary to correct your gender in some documents and legal records.

HEALTH INSURANCE ISSUES

Traditionally, no coverage of sex reassignment surgery or other transition-related care because such treatment was viewed as “cosmetic” or “experimental” rather than “medically necessary.”

Most Private Insurance Policies, Medicare, and Many State Medicaid Programs Still Will Not Pay for Sex Reassignment Surgery

- Court challenges have met with mixed success.
- Recent U.S. Tax Court case: GID treatment – including SRS – qualifies as tax-deductible medical costs for federal income tax purposes. *O'Donnabhain v. Commissioner of Internal Revenue*, 134 T.C. No. 4, 2010 U.S. Tax Ct. LEXIS 4 (Feb. 2, 2010).
- AMA resolution in 2008 called for coverage of physician-ordered treatment for GID.

But Judicial Skepticism of the Medical Necessity of Transitioning-Related Care, Especially SRS, Persists

In *Mario v. P&C Food Markets, Inc.*, 313 F.3d 758 (2d Cir. 2002), the Court upheld an employer self-funded health plan's denial of coverage for a transgender man's bilateral mastectomy and hysterectomy as not "medically necessary." The Court declared that there is substantial disagreement in the medical community over whether "the removal of healthy organs" is medically necessary or "cosmetic".

Insurers Frequently Will Cover Some Costs Notwithstanding Plan Provisions Excluding Coverage

Many insurers, and Medicaid, typically pay for transitioning-related psychotherapy, doctors' visits and even hormone treatments if not too expensive (e.g. oral rather than injection).

If Gender-Related Treatment is Not Covered, What About Medical Care *After* Transitioning, if a Procedure is Necessitated by, or Complicated by, the Patient's Transitioning?

- *Beger v. Acting Commissioner, Division of Medical Assistance*, 11 Mass. L. Rep. 745 (Super. Ct. 2000): Massachusetts Medicaid ordered to cover breast reconstruction surgery for a transgender woman who had had SRS 25 years earlier, and needed breast implants removed for cyst – not barred by state Medicaid regulation excluding coverage of SRS.

Other Health Insurance Coverage Issues

Another danger: a transgender patient needs medical care related to their former gender – *e.g.*, a transgender man who has been diagnosed with ovarian cancer or a transgender woman who has been diagnosed with prostate or testicular cancer.

Aside from discriminatory motives, current medical record, health insurance and third-party billing systems pose many technical difficulties for adequate documentation of transgender patient care and cost recovery.

Health Insurance and Transgender Patients: The Moral

**Third party payors need to be challenged
frequently!**



WHITMAN-WALKER CLINIC®

May Be Able to Help!

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