

## **Prisons and Access to Medical Services for Transgender/Transitioning Individuals**

1. *De'Lonta v. Angelone*, 330 F.3d 634 (4th Cir. 2003). Prisoner diagnosed with gender identity disorder (GID) alleged "facts sufficient to establish that the denial of treatment for her compulsion to mutilate herself constitutes deliberate indifference to her medical needs." The court identified four allegations relevant to its decision:

- Prison officials were aware that De'Lonta had GID;
- The prisoner had been receiving treatment until 1995, when it was abruptly terminated for no legitimate reason;
- The termination of the treatment she had been receiving resulted in compulsive, repeated self-mutilation of her genitals;
- After prison officials terminated her hormone treatment, they also failed to provide any treatment to address her self-mutilation, leaving her at continued risk for serious injuries

The court found that the district court had erred in dismissing De'Lonta's claims; the evidence showed that the decision to discontinue De'Lonta's hormone therapy was based on policy rather than on a legitimate medical judgment concerning her specific circumstances.

2. *South v. Gomez*, 129 F.3d 127 (9th Cir. 1997). The Court of Appeals affirmed the grant of a preliminary injunction against the Director of the California Department of Corrections and other officials to compel them to provide the plaintiff prisoner with the hormone therapy she had been receiving previously at another prison for 18 months. The Ninth Circuit affirmed defendants' "abruptly and peremptorily terminating [plaintiff's] cycle of female hormone therapy" amounted to deliberate indifference to her serious medical needs, in violation of the 8<sup>th</sup> Amendment.

3. *Phillips v. Michigan Department of Corrections*, 731 F. Supp. 792, 800 (W.D. Mich. 1990), aff'd 932 F. 2d 969 (6th Cir. 1991). In Phillips, plaintiff had taken hormones before incarceration and was initially given hormone treatment after incarceration. However, her hormones were withdrawn by a prison doctor after she was transferred to another facility. The court, applying the "deliberate indifference" test, ordered prison officials to continue providing hormone treatment to plaintiff, observing that "taking measures which actually reverse the effects of years of healing medical treatment" is measurably worse [than not providing treatment in the first instance], making the cruel and unusual

determination much easier." *Id.* at 801.

4. *Wolfe v. Horn*, 130 F. Supp. 2d 648 (E.D. Pa. 2001), In *Wolfe*, the court found that that "abrupt termination of prescribed hormonal treatments by a prison official with no understanding of [plaintiff's] condition, and failure to treat her severe withdrawal symptoms or after-effects, could constitute 'deliberate indifference'." 130 F. Supp. 2d at 654 (E.D. Pa. 2001), citing *Farmer v. Brennan*, 511 U.S. 825, 842 (1994) ("deliberate indifference" is fact question which may be demonstrated through circumstantial evidence that risks were obvious). The fact that plaintiff was receiving some medical attention (e.g. plaintiff was prescribed Prozac for her depression) did not satisfy the question of whether plaintiff "received any treatment for transsexualism." *Id.* at 653. The court adds in a footnote that "although the defendants argue that they acted through informed medical judgment, a jury could consider the medically-based justification to be "merely a pretext." *Id.*, citing *Durmer v. O' Carroll*, 991 F.2d 64, 68 (3rd Cir. 1993).

5. *Kolisek v. Maloney*, 221 F. Supp 2d 156 (D. Mass. 2002) In *Kolisek*, a federal district court held that the plaintiff's gender identity disorder constituted a serious medical need and that prison officials had not provided her with adequate medical care where the decisions concerning plaintiff's treatment for GID were not made by medical professionals, but rather by the Commissioner of the Massachusetts Department of Corrections who attempted to establish a general policy. 221 F. Supp 2d at 184-86 (D. Mass. 2002) With regard to the issue of deference the courts are required to give to the judgment of medical professionals under the deliberate indifference standard, the court emphasized that "his discretion is not unbounded:"

**Although this court has hesitated to find deliberate indifference to a serious need where the dispute concerns not the absence of help, but the choice of a certain course of treatment, deliberate indifference may be found where the attention received is so clearly inadequate as to amount to a refusal to provide essential care.**

*Id.* at 181. Moreover, the court discussed that a failure to evaluate a prisoner's "unique circumstances" or a treatment decision motivated by "non-medical reasons not rooted in a legitimate penological purpose" could constitute deliberate indifference. *Id.* at 183. However, the court concluded that in the case of the defendant, the failure to provide plaintiff with adequate medical care was not a result of deliberate indifference because the defendant "had not actually inferred that there would be a substantial risk of serious harm to [plaintiff] as a result of the policy he adopted." *Id.* at 190.