

①

From: "PEGGY LEE ENDRESS" <pal312@msn.com>
To: <resolutioncomments@health.nyc.gov>
Date: Fri, Oct 27, 2006 2:07 PM
Subject: NYC Birth Certificate for Transgender People

October 27, 2006

Rena Bryant
Secretary to the Board of Health
125 Worth Street, CN-31
NY, NY 10013

Dear Madam:

I am writing to submit comments about current NYC Department of Health policies regarding name and gender changes for people of transgender experience. I am the mother of a trans-identified son who was born on the borough of Staten Island on July 23, 1981. He was assigned female at birth and lived as a girl for 19 years until he decided to physically transition during his undergraduate studies at SUNY New Paltz, where he served as the class valedictorian. I have witnessed his struggles and supported him through this stressful process and am extremely disappointed that the proposed guidelines still present significant barriers for people of transgender experience. While I am happy to know that the thirty year old protocols are being revised, I find the requirements to be overly cautious in that they do not reflect a complete understanding of the needs of transgender individuals. I worry everyday for the health and safety of my child, and I am deeply distressed that he is not afforded the same respect and dignity as other residents of this city. I have fully supported my son's transition, and it scares me to know that even on a very basic level, he is being denied a right to privacy and self-determination. Therefore, I urge the committee to make the following additional amendments to the proposal:

1.. Remove the requirement for a name change order. My son would still be male even if he had decided to keep his birth name. No one would question his gender even if his name was Michelle because he now has a flat chest, a beard, and a deeper voice than most of the men I know. Thus, a name change order should only be required when the individual also wishes to change the name on their birth certificate. Many transgender individuals choose to keep their birth name for various reasons and should maintain the right to do so without jeopardizing their ability to obtain a new birth certificate.

2.. Remove the requirement that providers must have two years of experience working with transgender people. It does not take a doctor to see that my son is male. He should not have to be subjected to additional evaluations. He has a right to privacy and it hurts me to know that in order to obtain a legal document he must continue to have his body and gender scrutinized by others. Notarized letters from several persons involved in an individual's life should be enough to prove that a person is living socially in a gender different than the one that was assigned to them at birth.

3.. Remove the requirement that involves a two year prerequisite of living in one's gender for two years before applying for a new birth certificate. This is an unnecessary obstacle that is not congruent with current medical standards. My child looked completely male long before being on testosterone for two years. After six months of taking testosterone, his voice had changed significantly and he was no longer read socially as female. Thus, he had no choice but to begin to use male restrooms and other gendered facilities. Nevertheless, he had no documentation to use in case of an emergency or legal problem. Decisions about how long a person needs to live in their gender in order to completely transition and indicate an intent to live permanently in that gender should be left to the individual.

4.. Provide a birth certificate that completely deletes the birth name for those transgender persons who receive a name change order who are not engaged in physical transition. Transgender individuals who cannot undergo physical transition are currently excluded from receiving new birth certificates. This limit unfairly harms those who may have chronic medical conditions and are thus unable to utilize hormones or surgery to modify their gender. In addition, I fear that my son will no longer be able to access preventative

or emergency healthcare without proof that he was once female. His current amended birth certificate looks like a forgery, with his birth name crossed out and his new name written in. I wonder about how this supposedly legal document would be viewed if he had to present it to a government official.

In conclusion, I hope that the Department of Health decides to further update its practices in order to more fully address the current healthcare and legal needs of transgender citizens. Thank you for considering my concerns.

Sincerely,

Peggy Lee Endress
227 Buel Avenue Apt 3A
Staten Island, NY 10305



The Association of the Bar of the City of New York
 Committee on Lesbian Gay Bisexual and Transgender Rights

July 25, 2005

LISA R. BADNER
 CO-CHAIR
 40 RECTOR STREET, 14TH FLOOR
 NEW YORK, NY 10006
 (212) 788-8644
 Fax: (212) 788-8652
 lbadner@oopc.nyc.gov

CHRISTOPHER J COLLINS
 CO-CHAIR
 1585 BROADWAY
 NEW YORK, NY 10036-8299
 (212) 969-3961
 Fax: (212) 969-2900
 chricollinsny@yahoo.com

DANIEL R. RENEHAN
 SECRETARY
 120 EAST 4TH STREET, 4C
 NEW YORK, NY 10003
 (212) 777-4379
 Fax: (212) 214-0975
 drcnehan@earthlink.net

Dr. Steven Schwartz, PhD.
 The City of New York Dept. of Health
 125 Worth Street, Room 144
 New York, NY 10013-4090

Dear Dr. Schwartz:

The Association of the Bar of the City of New York writes this letter in full support of the Bureau of Vital Statistics' initiation of a process to improve its policy regarding the requirements for changing one's birth certificate sex, and to urge the Department of Health to adopt a standard that allows for the applicant's medical providers to make the determination of when sex-reassignment care is completed, rather than focusing on specific procedures.

The current policy regarding changing one's sex designation on a birth certificate is outdated and does not conform to current legal and medical standards for recognizing gender transitions. We wish to extend our appreciation for your willingness to take into consideration the concerns of legal and medical professionals concerned with the equitable treatment of transgender people. We understand that you have assembled an expert panel to work on the new policy for birth certificate sex designation change. In addition to this panel, we at the Association of the Bar of the City of New York want to support the suggestion that current legal understandings of a fully transitioned transgender person do not require genital reconstruction; on the contrary, the New York Department of Motor Vehicles and policies in other states support the idea that a gender transition is completed when the individual and his or her medical provider determine it completed.

We urge the Department of Health to adopt a policy that recognizes individually-tailored transition plans, based on a number of different individualized determinations. Specifically, we believe the Bureau of Vital Statistics should allow a change in the sex designation on the birth certificates of transgender individuals when they have completed the necessary treatment for their transition to the corrected gender as verified by their medical providers. This policy would result in

2

a more accurate reflection of transgender people's experiences regardless of their medical decisions about gender reconstructive procedures. It is important to understand that the vast majority of female-to-male transsexuals do not undergo phalloplasty largely due to its prohibitive cost and medical risks. To institute a birth certificate policy that required genital reconstructive surgery would deny the vast majority of transgender men the ability to obtain a birth certificate which matches their corrected gender.

The Association of the Bar of the City of New York has a long-standing commitment to full equality under the law for lesbian, gay, bisexual, and transgender individuals. We urge the Department of Health to adopt a new policy that will provide an important opportunity for transgender people who have completed their transitions to appropriately document their gender. This is essential for the full realization of their legal rights on an equal basis with all other New Yorkers.

Sincerely,

Committee on Lesbian, Gay, Bisexual and Transgender Rights,
The Association of the Bar of the City of New York

Bcc: Aliza Akhtar
Assistant to the General Counsel
Association of the Bar of the City of New York
42 W 44th Street
New York, NY 10036

49

Message Type: Misc. Comments

Topic: Other Health Matters

Contact Info: Yes

M/M: Mr.

First Name: Lee

Last Name: Fletcher

City: Vista

State: CA

Postal Code: 92083

Country: United States

Email Address: leefletcher@cox.net

Message: nytimes.com nov 7,2006

New York Plans to Make Gender Personal Choice

"Surgery versus nonsurgery can be arbitrary," said Dr. Thomas R. Frieden, the city's health commissioner. "Somebody with a beard may have had breast-implant surgery. It's the permanence of the transition that matters most."

Your quoted statement in the article seems flippant and ill-conceived. If "...affidavits from a doctor and a mental health professional..." were given in this case, the credentials of said professional should be called into question.

Or perhaps the 'mental health professionals' within the U.S. have decided that the 'bearded-lady' of old were just transgendered?

When the terms male and female are being intentionally blurred, for some rag-tag groups benefit, society loses.

"...the transgender movement has become politically potent beyond its small numbers ..."

REMOTE_HOST: 12.119.28.206

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; YComp 5.0.0.0; SV1; snprtz|T04068460932023; .NET CLR 1.0.3705; .NET CLR 1.1.4322; .NET CLR 2.0.50727)

Message Type: Misc. Comments

Topic: Other Health Matters

Contact Info: No

M/M: Mrs.

First Name: Diane

Last Name: Logan

State: NY

Country: United States

Email Address: DianePa@yahoo.com

Message: I am befuddled and wonder if the inmates are now running the asylum,(DHMH). How might it be possible for someone with male genitals to now be listed as being female. Is everyone expected to be blind? I can understand if one had a sex change but simply dressing in the clothing of the opposite sex does not qualify a person as that sex. And what happens if I have an emergency and taken to a hospital? Does that mean I might have to share a hospital room with a man? I will sue, you can be sure of that. And what jail would an offender be placed in? Transgender does not mean transsexual in my book.

REMOTE_HOST: 69.72.88.180

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; FunWebProducts)

46

Message Type: Complaint

Topic: Other Health Matters

Contact Info: No

M/M: Dr.

State: NY

Country: United States

Email Address: mypeanutbutter@yahoo.com

Message: Regarding this story from the Times:

<http://www.nytimes.com/2006/11/07/nyregion/07gender.html?ei=5090en=2586a6f49b530f49ex=1320555600adxnli=1partner=rssuserlandemc=rsspagewanted=printadxnli=1162916293-EVmJklqeQ/sYnq0h/F5Sdw>

I just have to ask. ARE YOU PEOPLE OUT OF YOUR MINDS?????

Do you have any idea what this means? You all call yourselves "enlightened" but how enlightened is a person that refuses to accept that there's a biological difference between a man and a woman? If I wish to call myself a dog, I suppose you people would allow that too?

it's insanity and what's most frightening is that you people can't even see it...

REMOTE_HOST: 12.76.246.111

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; .NET CLR 2.0.50727)

45

Message Type: Complaint

Topic: Other Health Matters

Contact Info: Yes

First Name: bernie

Middle Name: mr.

Last Name: marrazzo

State: NY

Country: United States

Email Address: brm@mpny.net

Message: I just read where without a sex change people can change their gender on their birth certificate in NYC. Are you people crazy? Just because I feel like I'm an ape or a dog or cat that doesn't make it a fact! If I have the genitals of a male, guess what? I'm a male. Period. Same for women. So called experts can't change nature even if they want to help people. Some times facts in life are not pleasant but people want to change facts so it doesn't hurt people or it makes them feel better. Absurd! God help us!

REMOTE_HOST: 151.202.96.49

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; SpamBlockerUtility 4.8.0)

44

Message Type: Misc. Comments

Topic: Other Health Matters

Contact Info: No

State: NY

Country: United States

Email Address: action@jenniandkevin.com

Message: I heard today that The New York City Department of Health might decide to allow people to change their sex on their Birth Certificate. I don't have a problem with people who decide to change their gender when they mature, but to alter such a document for any reason, to deny a born identity, whether it's your sex, name, place or date of birth is outright wrong, and may have serious implications for many other aspects of our society.

REMOTE_HOST: 68.173.45.216

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows 98; Win 9x 4.90; .NET CLR 1.1.4322)

43

Message Type: Misc. Comments

Topic: Other Health Matters

Contact Info: Yes

M/M: Dr.

First Name: thomas

Last Name: westover

State: NY

Country: United States

Email Address: twest54973@yahoo.com

Message: I was disappointed to hear that you will be allowing "transgendered" persons to change their birth certificate gender which I believe should be biologically based. Maybe they should be allowed to choose/change their gender on their driver's license similar to the way that people can self select their race on hospital admission forms. Thanks.

REMOTE_HOST: 68.36.98.110

HTTP_USER_AGENT: Mozilla/5.0 (Windows; U; Windows NT 5.1; en-US; rv:1.8.0.7) Gecko/20060909
Firefox/1.5.0.7

42

October 18, 2006

In regards to: Transgendered Birth Certificates

Rena Bryant, Secretary to the Board of Health
125 Worth Street, CN-31
New York, NY 10013

RECEIVED
GOVERNMENTAL OFFICE
RECORDS ACCESS OFFICE
2006 OCT 20 4 11:38

Dear Ms. Bryant:

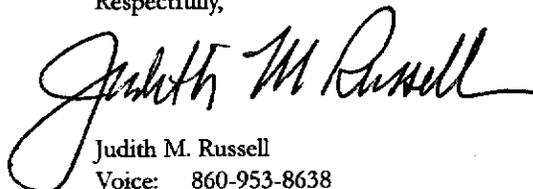
I would like to express my support for the recent changes being considered to the New York City Municipal policies with regard to modifying birth certificates for transgendered persons.

I am a transitioned and post-operative transwoman (born in Queens, in 1961) who has been able to obtain sufficient legal status and identification through my state (driver's license) and the federal government (social security records and a gender congruent passport via the state department). However, I recognize that my level of privilege (being able to obtain reassignment surgery, medically and financially) should not be the differentiator between legal status/legitimacy. Many aspects of modern society (credit, housing, employment, voting rights, the ability to travel) depend upon having identification, and for many transgendered persons, the lack of gender congruent identification means a sentence of marginalization and dependence upon social services. I would like to see all transgendered persons who are living in their target genders be granted equal status as citizens, and be given the tools to be contributing members of society.

I would also like to file my concerns with regard to crafting this process in such a way that individuals such as myself, who were born in New York City, but reside outside of the city, might be able to obtain a new birth certificate with a minimum of costs / inconvenience. I sought to modify my birth certificate in 2004, following my reassignment surgery, and was stymied by the requirements - including more detailed surgical reports, a post-transition psychological evaluation, and a second physical examination. I have jumped through many hoops to be approved for transition-related medical services, and have documented my transition in every other governmental, legal, and commercial realm - so these additional requirements struck me as both redundant and punitive. Of course, there was no assurance that had I attempted to provide this documentation using local medical professionals, that the NYC requirements would have been satisfied; I felt compelled to work with NYC providers, which would have been a significant burden in terms of cost and time. In short, a congruent NYC birth certificate was not worth the hassle, to me.

I understand that the policy presently being considered is progressive and more rational than that of the many other states and the federal government, and I applaud the city for this. I also recognize that in some cases where transition is not easily documented via legal, medical, or personal records, some additional checks and balances might be necessary. However, I feel strongly that the requirements for documentation and "proof of transition" should not exceed those of the federal government (for the purposes of passport or social security records) in any case.

Respectfully,



Judith M. Russell
Voice: 860-953-8638
Email: juderussell@aol.com

41

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

October 13, 2006

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code: Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code")

Rena Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. Birth certificates are needed by most people to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When transgender people show a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, humiliated, or discriminated against. Even in the best of cases they may face embarrassment, confusion and delays. Transgender people need a policy that entitles them to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people.

I am asking that the proposed new regulations be adopted with the following amendments:

1. The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.
 - a. The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times *because they may lack an accurate birth certificate.*
 - b. At the least, if any time period is required, it should only be one year. According to the Standards of Care of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBI/GDA), one year of living in the new gender can be useful in determining whether or not certain surgical interventions are indicated to complete a transition.

Specifically, § 205.05(b)(1) should be amended so that the sentence:
"No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made"
 Instead reads:
"No application shall be approved unless the applicant is over 18 years of age."

2. The proposal should be revised to remove the requirement for a name change order.

- a. A name change order has nothing to do with the completeness of one's gender transition and is unrelated to one's gender or sex status on a birth certificate.
- b. In addition, some transgender people have gender neutral names that they may never change.

Specifically, § 205.05(b)(1) should be amended so that the sentences:
"Upon application, a new birth certificate shall be filed when The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate."

Would now read:
"Upon application, a new birth certificate shall be filed when proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate."

- 3. The proposal should be revised to remove the requirement that providers must have two years of experience working with transgender people.
 - a. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City.
 - b. Some transgender people who were born in New York City may now live in areas where providers with a significant amount of experience in treating transgender people or with access to specialized courses are simply unavailable.
 - c. Treatment providers without access to specialized coursework can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments.

Specifically, § 205.05(b)(1)(i)(A)(b) should be amended so that the sentence:
"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated"

Would now read:
"Information demonstrating at competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated."

In addition, § 205.05(b)(1)(ii)(A)(b) should be amended so that the sentence:
"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated"

Would now read:
"Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated."

I am a peer intern at the Gender Identity Project (GIP) at the Lesbian, Gay, Bisexual and Transgender Community Services Center in New York City. The GIP is the largest transgender social services organization in the city, and works within New York City's trans-communities to offer counseling, support groups, community forums and social events, advocacy and education. I am also an activist within the transgender community and have worked with TransJustice, a working group of the Audre Lorde Project, to organize the first Trans and Gender Non-Conforming People of Color Job and Education Fair, an historical event that gave people of transgender and gender non-conforming experience the opportunity to access approximately twenty one New York businesses and schools that are trans-friendly. I have also played an integral part in the organizing of the recent Trans Day of Action March which brought together transgender people and allies for the purpose of marching in solidarity against the practices of discrimination within the Department of Human Resources toward transgender and gender non-conforming people, police brutality and violent acts committed against the transgender community. I have also worked as a Community Educator providing HIV/AIDS education and workshops geared toward empowering members of the community. I have been a keynote speaker at Mt. Sinai Hospital addressing the issues faced within the transgender community when accessing healthcare services. I am an honorably discharged Air Force veteran and transgender identified male born and raised in New York. My personal history of being a transgender identified person makes me more than qualified to address the need

for individuals of transgender experience to be able to access, without humiliation or embarrassment, legal documents bearing the correct gender that they self identify.

I am willing to provide whatever support I can the Department of Health and Mental Hygiene as you work to address this concern.

If you have any further questions or concerns, please do not hesitate to contact me directly at: (212) 620-7310, ext. 277.

Sincerely yours,

D'Angelo Johnson
Peer Intern, Gender Identity Project

40

From: "Kristen Sharpe" <ksharpe@westernu.edu>
To: <resolutioncomments@health.nyc.gov>
Date: Wed, Oct 25, 2006 11:08 PM
Subject: Transgender Birth Certificate Regulations

To whom it may concern-

I am writing to urge you to adopt the new policy for Transgender Birth Certificate Regulations. I am a second year medical student and I have presented several workshops to help healthcare providers care for transgender patients. I have worked with several transgender communities in California and Massachusetts and have come to understand the complexities that they encounter in society. Once a transgender person transitions and starts living as their true psychological gender, it is imperative that their identification appropriately reflect this gender. Most transgender individuals transition very well and rely on their ability to pass within society without disclosing that they are transgender. Your current policy allows great potential for discrimination within healthcare, employment, housing, etc. The new policy will help prevent discrimination, harassment, and hate crimes. It will allow transgender individuals the privacy and confidentiality that they justly deserve. No person should have their medical or mental health status disclosed on any form of identification. Thank you for your considerations.

Respectfully,
Kristen Sharpe
Medical Student
Western University College of Osteopathic Medicine
Pomona, CA

39

From: "Jennifer H" <jennilady@hotmail.com>
To: <resolutioncomments@health.nyc.gov>
Date: 10/25/2006 12:32 PM
Subject: Support of Proposed NYC Transgender Birth Certificate Regulations

NYC needs a new birth certificate gender change policy because the current policy, requiring every person to prove they've had convertive surgery, (interpreted to mean phalloplasty or vaginoplasty), is based on myths and misunderstandings about trans health care. Trans healthcare is individualized: current best practices recognize that a one size fits all approach is not in the best interests of transgender people. Instead, people get the treatments that make sense for their health needs. Recent data has shown that only 3 % of transgender men have genital surgery. So a policy that requires genital surgery to get a correct birth certificate excludes many people from getting this basic documentation that they need to live and work.

The current policy is now 35 years old, and harms transgender people born in the City. Without a birth certificate accurately reflecting their current gender, trans people face serious obstacles in accessing employment, housing, services, and other identity documents. Having documentation that doesn't match current gender can often trigger bias, harassment, discrimination, or groundless accusations of fraud. Incorrect gender on trans peoples ID also make it more difficult for government or other agencies to identify transgender people effectively.

Every other U.S. birth certificate jurisdiction, except the three (ID, TN, OH) that do not allow any changes of birth certificates to reflect the transition of transgender people, issues a birth certificate showing the gender. New York is the only jurisdiction that omits the gender. This practice is stigmatizing, unnecessary, and does not assist the individual or society with correct identification of transgender people. The proposed regulation would address this problem and bring NYC in line with other birth certificate jurisdictions on this issue.

Three Elements of the DOH Proposal Should Be Corrected:

Requiring providers to have two years experience treating transgender people will unfairly harm people who have limited choices in their healthcare because of insurance limits or limited resources where they live.

The requirement that the applicant live in their new gender for two years is not in line with current medical standards, creates a Catch-22 for many trans people, and should be removed.

The name change order requirement for changing gender on the birth certificate is unfair and unnecessary.

Thank you for your time,
 Jennifer Hudson
 Grand Rapids, MI

Find a local pizza place, music store, museum and more...then map the best route!

38

From: Laura.S.Erickson-Schroth@Dartmouth.EDU
To: <resolutioncomments@health.nyc.gov>
Date: Thu, Oct 26, 2006 7:30 PM
Subject: Transgender Birth Certificate Regulations

Dear Ms. Bryant,

My name is Laura Erickson and I am a medical student at Dartmouth, but originally from Brooklyn. I'm writing in regards to the proposed change in policy for transgender people receiving new birth certificates. First of all, I would like to commend you and your department for moving towards a more open and accepting policy towards transgender individuals. I have friends and patients who are transgendered. They have suffered major discrimination in situations where they have been forced "out" by documents that refer to them by their old name or gender. It is a big step forward to reach out to the many people who have been hurt by discriminating policies. I wanted to bring up a couple of points about the proposed change. I think that it is unrealistic to expect people to live in their new gender for 2 years before applying for the birth certificate. Many people transition much faster than this, and in addition, it is extremely difficult to live a life as someone who has transitioned, but does not yet have the documentation to prove it. Imagine having transitioned to a man, but having to pull out a female drivers license every time you order a drink at a restaurant or try to enter a bar for the next 2 years. It is also unrealistic to expect that physicians and other mental health professionals have at least 2 years experience working with transgender clients before they can submit letters of support. Many transgender people born in New York now live in areas where they do not have access to providers who see many other transgender patients. This is just fact in some places. We would not deny someone's claim that she has post-traumatic stress disorder just because her referring psychiatrist does not have much experience with survivors of abuse. Physicians are trained to do research when they have not seen many cases personally. We are adept and willing to learn as we go. Finally, the requirement of a name change is detrimental to those people who choose to retain their names because they are gender neutral. This is becoming increasingly common as parents are picking newer names.

Again, thank you for working on this issue and good luck.

Laura Erickson
Dartmouth Medical School, Year 3

31

8 East Irving Street
Chevy Chase, MD 20815

October 26, 2006

Ms. Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

Dear Ms. Bryant:

My name is Dana Beyer, M.D. I am writing to you on behalf of the proposed revision of the regulations regarding birth certificates for transgender persons born in the City of New York.

I am a retired physician and surgeon and recent candidate for the Maryland House of Delegates. I have been active since my transition in the civil rights and medical advocacy fields.

I was born in upper Manhattan at Jewish Hospital in 1952, raised in the Bronx and Queens, and am a 1970 graduate of the Bronx High School of Science. I transitioned on January 8th, 2003, and have lived as a woman since that day. I received my revised birth certificate from your office after an eighteen month process following my genital reconstruction in July, 2003.

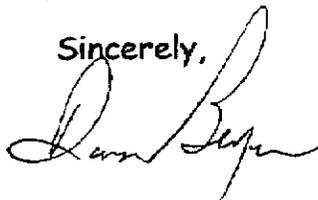
In my particular case as an intersex woman (having been exposed to DES *in utero*) I can appreciate, intellectually, having a blank space for my sex representing my being intersex. Practically speaking, however, having no sex on the primary legal document can only cause problems should I need to use my birth certificate in the future. As a physician I am fully aware that I have made mistakes, and have tried to be humble enough to recognize and correct them. Given that the pediatrician and obstetrician presiding at my birth erred when they listed me as male, I don't see why there should be any difficulty having the certificate corrected to represent my true brain sex, gender identity and expression.

In addition, as a physician I know that not all transgender persons can afford genital reconstruction, are medically cleared for surgery, or have the desire to undergo the procedure, so I would ask that you recognize that the true transition is not physical but is the social experience of living full-time in one's gender.

I support the new regulations with the changes suggested by the Sylvia Rivera Law Project. I do not understand why two years living in one's true gender is necessary; I completed my transition including surgeries in six months. A name change should not be required as some names are sufficiently gender-neutral and names are not necessarily accurate gender markers, subject as they are to the whims of parents. Requiring a report from a mental health provider with transgender experience may be an insurmountable demand for those who no longer live in New York. Finding a physician with two years of experience in transgender health care may also be impossibility. I wish there were many more of us, but there simply aren't. However, many medical and mental health professionals are experienced enough to deal with the requirements to provide the necessary documentation.

I hope this letter has been helpful.

Sincerely,

A handwritten signature in cursive script that reads "Dana Beyer". The signature is written in black ink and is positioned above the printed name.

Dana Beyer, M.D.

36

From: "Dan Schaffer / LeGaL" <le_gal@earthlink.net>
To: <resolutioncomments@health.nyc.gov>
Date: Fri, Oct 27, 2006 9:23 AM
Subject: COMMENTS ON BIRTH CERTIFICATE POLICY FOR OCTOBER 30 HEARING

October 27, 2006

Tara Rice, Esq.

President, LeGaL (Lesbian, Gay, Bisexual and Transgender Law Association of Greater New York)

799 Broadway #340

New York, NY 10003

Rena Bryant

Secretary, Board of Health

125 Worth Street, CN-31

New York, NY 10013

Comments pursuant to notice of intention to amend Article 207 of the NYC Health Code Proposed repeal of paragraph 5 of subdivision a of section 207.5 and amendment of section 207.5 of article 207 of Title 24 of the Official Compilation of the Rules of the NYC Health Code from the Lesbian, Gay, Bisexual and Transgender Law Association of Greater New York (LeGaL).

Dear Rena Bryant,

I am writing on behalf of LeGaL in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the NYC Health Code relating to changing the gender on a birth certificate. A birth certificate with the wrong gender indicated can be an impediment to accessing government services, housing, employment or possibly physical endangerment.

While LeGaL supports the intent of the Department of Health and Mental Hygiene, we request that the Department of Health and Mental Hygiene consider the following amendments to their proposal:

If the Department of Health and Mental Hygiene feels a time requirement is necessary, one year (the period most commonly used by health professionals in the treatment of transgender people) should be the rule, though we would advocate no time requirement.

35
October 24, 2006

Debra I. Schaffer
195 Willoughby Avenue Avenue #1115
Brooklyn, NY 11205

Rena Bryant
Secretary, Board of Health
125 Worth Street, CN-31
New York, NY 10013

Comments pursuant to notice of intention to amend Article 207 of the NYC Health Code
Proposed repeal of paragraph 5 of subdivision a of section 207.5 and amendment of section 207.5
of article 207 of Title 24 of the Official Compilation of the Rules of the NYC Health Code

Dear Rena Bryant,

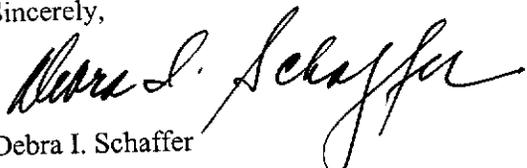
I am writing in support of the Department of Health and Mental Hygiene's efforts to ease the
birth certificate amendment process for transgender people.

Having the incorrect gender on one's birth certificate may block access to government or private
social services. I believe that the following changes to the proposed amendment would make it
more respectful of the transgender community:

- 1) The proposed requirement of having "lived in the acquired gender for at least two years" does
not consider that some people require little, if no, transition period. The time requirement should
be dropped to one year, thus better representing the experiences of many transgender people.
- 2) The proposed requirement to have a court ordered name change is irrelevant and should be
dropped. Further, the proposed requirement does not recognize that some names are considered
gender neutral by many people and, therefore, may not need to be changed.
- 3) The requirement for a letter from a physician and a mental health professional is burdensome.
Some people have chosen not to consult medical providers on an ongoing basis, either because
they do not live in a region where qualified professionals are available, or because they cannot
afford to. Requiring only one letter from either a physician or a mental health professional should
be sufficient.

Thank you for your addressing this issue.

Sincerely,


Debra I. Schaffer

34

From: <DocMattyD@aol.com>
To: <resolutioncomments@health.nyc.gov>
Date: Wed, Oct 25, 2006 10:33 AM
Subject: In support of new gender policy for birth certificates

Hello. I am a male to female transsexual who is also a physician and was born in The Bronx in 1972. I strongly support the proposed changes to your policies regarding updating the gender on birth certificates issued within New York City.

Thank you very much,

Maddie Deutsch, MD
Los Angeles, CA

When I gave birth to a beautiful baby here in New York, I could not have imagined that 20 years later, I'd be speaking out at this hearing as a mother for transgender rights for birth certificate changes.

20 years ago, when our astoundingly miraculous baby and I came home from the hospital, and the birth certificate paper came in the mail, and the birth certificate people had made a slight spelling error within our baby's middle name, I felt no hesitation in asking for the change. And change it they did, right away.

I don't remember even looking at the 2 gender boxes.

I thought of myself as an open-minded person and a feminist. When my baby was born, my realization of the miraculous-ness of life expanded. Joy filled the world. Love was everywhere. Even President Reagan and his inhumane policies (this was the Reagan era) was a baby once, and therefore part of the great river of life, love and diversity.

From my perspective, our baby's gender was an utterly insignificant matter. The birth announcements' headline read "It's a baby!" When kind strangers on the street and in the parks would exclaim "He's so adorable!" or "How old is he?" I wouldn't bother to correct their pronouns. After all, it didn't matter. She was a precious human being.

And he still is. Like everyone is.

My son came out to me as transgender four years ago, when he was 16. Previously, he told me when he was 14, but because of my prejudice and assumptions, I hadn't been able to hear him. Once I finally listened and he started on his process of transitioning, it felt like the whole world opened up wide once again.

Looking back, I saw the dots and how they connected and how they made sense to who he is. I began learning about transgender and intersex histories, medical issues, rights and the lack of rights, transgender safety. I began experiencing through him the myriad ways daily life plays out differently and with relentless difficulties for any gender variant person.

Now and then, when the daily reality of living in our binary culture becomes almost too much to bear, he says privately, "I wish I wasn't transgender. *Everything* would be so much easier."

To be transgender is to be displaced. Displaced from the "normal", binary, dominant social contract. Displaced from the approval of the tribe. Displaced from the forms we all have to fill out in our identity-carded and documented way of modern life.

We habitually and continually place people by gender, class, skin color, hair color, age, any number of aspects important to us, and then we either feel positive, negative, or neutral about where we have placed them. This all happens within fractions of seconds. Often the first placement is gender. When we can't immediately put someone into a F or M box, we stare. And then we either experience positive interest, curiosity, and attraction, or negative interest, curiosity, fear and hostility. Neutral is not usually one of the feelings.

As a mother, as parents, this is our initial concern: the safety and well-being of our smart, wise, insightful, witty, sensitive, capable, enormously talented, quick, open-hearted sons and daughters, who happen to be transgender/intersex.

When I go around in the world, my presenting gender happens to match my biological sex, my skin is white, when I speak, I speak fluent English and in an accent that's heard as educated and solidly placed within the middle class, the "acceptable" class. If I'm in an accident, I don't worry that the emergency medical technicians will be ignorant and derisive about my body, maybe leaving me to die. If I want to travel out of the country, I don't shelve the travel plans because it's highly unlikely I'll be able to update my passport. If I need a loan, if I'm trying to get health insurance, if I'm switching jobs, if in all the daily ways, I, as a "normal" person, assume that my gender will not be a subject, a topic of interest, and discrimination. By this update of the birth certificate policy, we can delete one of the many hurdles our loved ones come up against.

I'll speak to one element of the proposal that should be corrected: *requiring providers to have 2 years experience treating transgender people*. My son is the first transgender client for our family doctor, a very good doctor, who is open, not patronizing (this is extremely important), and who brought herself up to speed very quickly. He helped to educate her, a common occurrence, about transgender health, and she was grateful for that instruction. Health professionals who have experienced 2 years of transgender healthcare are rare, even in major cities, and this is an inconvenient and harmful addition to the regulations that should be taken out.

My baby, now 20, is still the same person. His outside has changed.

Until gender diversity becomes accepted, ordinary, celebrated and included, the opposite of displacement, please continue our progression for transgender rights with this step upward, making it a little easier for our loved ones.

Karen Kowles
October 22, 2006
karen@cohousing.com
413-549-8088

Re: —
I would like to
pre-register to
speak at the hearing
Monday Oct. 30
for NYE transgender
birth certificate regulations
Karen Kowles
413 549 8088

This is a copy of
what I'd like to
say —

32

208 West 13th Street
New York, NY 10011
(212) 620-7310 T
(212) 924-2657 F
www.gaycenter.org



**The Lesbian, Gay,
Bisexual & Transgender
Community Center**

Date: 10-25-06
To: Rena Bryant, Secretary to the Board of Health
Fax number: (212) 788-4315
From: Carrie Davis, Center CARE
Gender Identity Project

Pages, including cover:4

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code

Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code"

Rena Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. I am asking that the proposed new regulations be adopted with the following amendments – see attached letter.

**Yours,
Carrie Davis, MSW**

**Acting Director, Center CARE
Coordinator, Gender Identity Project
www.gaycenter.org
The Lesbian, Gay, Bisexual & Transgender Community Center
208 West 13th Street, New York City 10011
(212) 620-7310 T
(212) 924-2657 F**

Fax Cover Sheet

The Gender
Identity Project

(212) 620-7310

208 West 13th Street
New York, NY 10011
(212) 620-7310 T
(848) 488-9381 F
www.gaycenter.org



**The Lesbian, Gay,
Bisexual & Transgender
Community Center**

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

October 25, 2006

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code
Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code")

Rena Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. Birth certificates are needed by most people to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When transgender people show a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, humiliated, or discriminated against. Even in the best of cases they may face embarrassment, confusion and delays. Transgender people need a policy that entitles them to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people.

I am asking that the proposed new regulations be adopted with the following amendments:

1. The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.
 - a. The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times *because* we lack an accurate birth certificate.
 - b. At the least, if any time period is required, it should only be one year. According to the Standards of Care of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBI/GDA), one year of living in the new gender can be useful in determining whether or not certain surgical interventions are indicated to complete a transition.

208 West 13th Street
New York, NY 10011
(212) 620-7310 T
(646) 486-8381 F
www.gaycenter.org



**The Lesbian, Gay,
Bisexual & Transgender
Community Center**

Specifically, § 205.05(b)(1) should be amended so that the sentence:
"No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made"
Instead reads:
"No application shall be approved unless the applicant is over 18 years of age."

- 2. The proposal should be revised to remove the requirement for a name change order.
 - a. A name change order has nothing to do with the completeness of one's gender transition and is unrelated to one's gender or sex status on a birth certificate.
 - b. In addition, some transgender people have gender neutral names that they may never change.

Specifically, § 205.05(b)(1) should be amended so that the sentences:
"Upon application, a new birth certificate shall be filed when: The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate."
Would now read:
"Upon application, a new birth certificate shall be filed when: Proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate."

- 3. The proposal should be revised to remove the requirement that providers must have two years of experience working with transgender people.
 - a. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City.
 - b. Some transgender people who were born in New York City may now live in areas where providers with a significant amount of experience in treating transgender people or with access to specialized courses are simply unavailable.
 - c. Treatment providers without access to specialized coursework can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments.

Specifically, § 205.05(b)(1)(i)(A)(b) should be amended so that the sentence:
"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated"
Would now read:
"Information demonstrating at competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated."

208 West 13th Street
 New York, NY 10011
 (212) 620-7310 T
 (848) 406-9381 F
 www.gaycenter.org



**The Lesbian, Gay,
 Bisexual & Transgender
 Community Center**

In addition, § 205.05(b)(1)(ii)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated"

Would now read:

"Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated."

I am a social worker and the Acting Director of Center CARE, the adult mental health and social services program at the Lesbian, Gay, Bisexual and Transgender Community Services Center (the Center) in New York City. I am also coordinator of the Center's Gender Identity Project (GIP). The GIP is the largest transgender social services organization in the city, and works within New York City's trans-communities to offer counseling, support groups, community forums and social events, advocacy and education. I am a member of the National Association of Social Workers (NASW), the Alliance for the Advancement of Social Work with Groups (AASWG), the New York State AIDs Advisory Council's Women and HIV/AIDS Workgroup, the Working Group on Gender (WGG), am the Project Director for the Transgender Scholarship and Education Legacy Fund (TSELF), and have served on the board of directors of the Sylvia Rivera Law Project (SRLP), the International Foundation for Gender Education (IFGE), the New York Association for Gender Rights Advocacy (NYAGRA) and the Gender Public Advocacy Coalition (GenderPAC). Through my work, I interact daily with people struggling to survive in a context of severe discrimination in employment, education, housing, and government services. It is through this work, and my personal history as a woman of transgender experience, that I have seen the urgent need for a policy that entitles transgender people to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people. I am delighted to provide whatever support I can the Department of Health and Mental Hygiene as you work to address this concern.

If you have any further questions or concerns, please do not hesitate to contact me directly at: (212) 620-7310, ext. 273.

Sincerely yours,

Carrie Davis, MSW
 Acting Director, Center CARE
 Coordinator, Gender Identity Project

From: "Carrie Davis" <carrie@gaycenter.org>
To: <resolutioncomments@health.nyc.gov>
Date: Wed, Oct 25, 2006 11:18 AM
Subject: See attached letter: Transgender birth certificates - Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code

Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code")

oo

Rena Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. Birth certificates are needed by most people to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When transgender people show a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, humiliated, or discriminated against. Even in the best of cases they may face embarrassment, confusion and delays. Transgender people need a policy that entitles them to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people.

I am asking that the proposed new regulations be adopted with the following amendments:

1. The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.
 - a. The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times because we lack an accurate birth certificate.
 - b. At the least, if any time period is required, it should only be one year. According to the Standards of Care of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBIIGDA), one year of living in the new gender can be useful in determining whether or not certain surgical interventions are indicated to complete a transition.

Specifically, § 205.05(b)(1) should be amended so that the sentence:

"No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made"

Instead reads:

"No application shall be approved unless the applicant is over 18 years of age."

2. The proposal should be revised to remove the requirement for a name change order.

a. A name change order has nothing to do with the completeness of one's gender transition and is unrelated to one's gender or sex status on a birth certificate.

b. In addition, some transgender people have gender neutral names that they may never change.

Specifically, § 205.05(b)(1) should be amended so that the sentences:

"Upon application, a new birth certificate shall be filed when: The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate."

Would now read:

"Upon application, a new birth certificate shall be filed when: Proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate."

3. The proposal should be revised to remove the requirement that providers must have two years of experience working with transgender people.

a. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City.

b. Some transgender people who were born in New York City may now live in areas where providers with a significant amount of experience in treating transgender people or with access to specialized courses are simply unavailable.

c. Treatment providers without access to specialized coursework can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments.

Specifically, § 205.05(b)(1)(i)(A)(b) should be amended so that the sentence:

“Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated”

Would now read:

“Information demonstrating at competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated.”

In addition, § 205.05(b)(1)(ii)(A)(b) should be amended so that the sentence:

“Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated”

Would now read:

“Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated.”

I am a social worker and the Acting Director of Center CARE, the adult mental health and social services program at the Lesbian, Gay, Bisexual and Transgender Community Services Center (the Center) in New York City. I am also coordinator of the Center's Gender Identity Project (GIP). The GIP is the largest transgender social services organization in the city, and works within New York City's trans-communities to offer counseling, support groups, community forums and social events, advocacy and education. I am a member of the National Association of Social Workers (NASW), the Alliance for the Advancement of Social Work with Groups (AASWG), the New York State AIDs Advisory Council's Women and HIV/AIDS Workgroup, the Working Group on Gender (WGG), am the Project Director for the Transgender Scholarship and Education Legacy Fund (TSELF), and have served on the board of directors of the Sylvia Rivera Law Project (SRLP), the International Foundation for Gender Education (IFGE), the New York Association for Gender Rights Advocacy (NYAGRA) and the Gender Public Advocacy Coalition (GenderPAC). Through my work, I interact daily with people struggling to survive in a context of severe discrimination in employment, education, housing, and government services. It is through this work, and my personal history as a woman of transgender experience, that I have seen the urgent need for a policy that

entitles transgender people to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people. I am delighted to provide whatever support I can the Department of Health and Mental Hygiene as you work to address this concern.

If you have any further questions or concerns, please do not hesitate to contact me directly at: (212) 620-7310, ext. 273.

Sincerely yours,

Carrie

--

Carrie Davis, MSW
Acting Director, Center CARE
Coordinator, Center CARE Group Services
Coordinator, Gender Identity Project
The Lesbian, Gay, Bisexual & Transgender Community Center
208 West 13th Street, New York City 10011
W: www.gaycenter.org <BLOCKED::http://www.gaycenter.org>
T: (212) 620-7310
F: (212) 924-2657

The

<BLOCKED::BLOCKED::http://www.gaycenter.org/program_folders/gip/index_html/p
rogram_view> Gender Identity Project (GIP) works to foster the healthy
development of transgender and gender non-conforming people, partners,
family and community. Through the delivery of a range of transgender-driven
supportive services, advocacy, outreach, education and capacity-building,
the GIP creates a safe and productive atmosphere for community-building,
wellness and self-care, and leadership development.



**The Lesbian, Gay,
Bisexual & Transgender
Community Center**

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

October 25, 2006

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code
Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code")

Rena Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. Birth certificates are needed by most people to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When transgender people show a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, humiliated, or discriminated against. Even in the best of cases they may face embarrassment, confusion and delays. Transgender people need a policy that entitles them to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people.

I am asking that the proposed new regulations be adopted with the following amendments:

1. The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.
 - a. The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times *because* we lack an accurate birth certificate.
 - b. At the least, if any time period is required, it should only be one year. According to the Standards of Care of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBI/GDA), one year of living in the new gender can be useful in determining whether or not certain surgical interventions are indicated to complete a transition.

Specifically, § 205.05(b)(1) should be amended so that the sentence:



The Lesbian, Gay,
Bisexual & Transgender
Community Center

208 West 13th Street
New York, NY 10011
(212) 620-7310 T
(646) 486-9381 F
www.gaycenter.org

"No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made"

Instead reads:

"No application shall be approved unless the applicant is over 18 years of age."

2. The proposal should be revised to remove the requirement for a name change order.
 - a. A name change order has nothing to do with the completeness of one's gender transition and is unrelated to one's gender or sex status on a birth certificate.
 - b. In addition, some transgender people have gender neutral names that they may never change.

Specifically, § 205.05(b)(1) should be amended so that the sentences:

"Upon application, a new birth certificate shall be filed when: The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate."

Would now read:

"Upon application, a new birth certificate shall be filed when: Proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate."

3. The proposal should be revised to remove the requirement that providers must have two years of experience working with transgender people.
 - a. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City.
 - b. Some transgender people who were born in New York City may now live in areas where providers with a significant amount of experience in treating transgender people or with access to specialized courses are simply unavailable.
 - c. Treatment providers without access to specialized coursework can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments.

Specifically, § 205.05(b)(1)(i)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated"

Would now read:

"Information demonstrating at competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated."

In addition, § 205.05(b)(1)(ii)(A)(b) should be amended so that the sentence:



The Lesbian, Gay,
Bisexual & Transgender
Community Center

208 West 13th Street
New York, NY 10011
(212) 620-7310 T
(646) 486-9381 F
www.gaycenter.org

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated"

Would now read:

"Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated."

I am a social worker and the Acting Director of Center CARE, the adult mental health and social services program at the Lesbian, Gay, Bisexual and Transgender Community Services Center (the Center) in New York City. I am also coordinator of the Center's Gender Identity Project (GIP). The GIP is the largest transgender social services organization in the city, and works within New York City's trans-communities to offer counseling, support groups, community forums and social events, advocacy and education. I am a member of the National Association of Social Workers (NASW), the Alliance for the Advancement of Social Work with Groups (AASWG), the New York State AIDs Advisory Council's Women and HIV/AIDS Workgroup, the Working Group on Gender (WGG), am the Project Director for the Transgender Scholarship and Education Legacy Fund (TSELF), and have served on the board of directors of the Sylvia Rivera Law Project (SRLP), the International Foundation for Gender Education (IFGE), the New York Association for Gender Rights Advocacy (NYAGRA) and the Gender Public Advocacy Coalition (GenderPAC). Through my work, I interact daily with people struggling to survive in a context of severe discrimination in employment, education, housing, and government services. It is through this work, and my personal history as a woman of transgender experience, that I have seen the urgent need for a policy that entitles transgender people to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people. I am delighted to provide whatever support I can the Department of Health and Mental Hygiene as you work to address this concern.

If you have any further questions or concerns, please do not hesitate to contact me directly at: (212) 620-7310, ext. 273.

Sincerely yours,

Carrie Davis, MSW
Acting Director, Center CARE
Coordinator, Gender Identity Project

Center CARE

(212) 620-7310

(31)

From: Commission LGBTT du NPD-Québec <npdqclgbtt@gmail.com>
To: <resolutioncomments@health.nyc.gov>
Date: Wed, Oct 25, 2006 11:28 AM
Subject: Transgender documents

Thank you for your request for comments regarding a proposal to permit transgender and transsexual people to change the gender recorded on their legal documents.

It may interest you to know that the government of Quebec is engaged in a dialogue with several transgender and transsexual groups with a view to bringing in legislation to permit a similar regime in Quebec. Such a move would be of primary importance in the lives of trans people here, as it would allow trans people to receive the documentation they need in order to survive and be safe in a highly transphobic society. Trans people who are not permitted to change their documents owing to their surgical status are constantly at risk from anyone, particularly a transphobic person in a position of authority, who gains access to their documents and discovers that the listed gender differs from their gender presentation.

However, the proposal should not include time requirements for either cross-living or for the medical practitioner's experience with trans issues; many trans people transition in less than two years, and many trans people born in New York City may be seeing practitioners who have less experience with trans issues, because those with more are simply unavailable in their area. Also, the requirement for a name change can be superfluous, for example in the case of a trans person whose birth name is gender-neutral and who prefers to keep his or her name.

In any case, I look forward to the adoption of this important policy as an example that will encourage the trans rights movements elsewhere in the world and here in Quebec.

Yours very truly,
Matthew McLaughlin
Co-President
New Democratic Party (Quebec Section) LGBTT Commission

#30

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

RECEIVED
SECRETARY'S OFFICE
RECORDS ACCESS OFFICER
2008 NOV -6 P 4:45

October 23, 2006

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code
Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section
207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the
"New York City Health Code")

Rena Bryant,

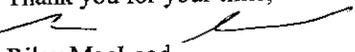
I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. Documents which accurately reflect a transgender person's identity are vital for accessing services and participating in society. While the proposed changes will allow birth certificates to reflect gender (as opposed to the current stigma of having no gender at all) and will provide greater access to the ability to modify documents by removing the necessitation of surgeries, I feel that several of the new criteria create unnecessary hurdles to appropriate documentation.

I am the LGBTQ Caregiver Associate at the Park Slope Geriatric Day Center, an organization which provides services to older people in the borough of Brooklyn, as well as support to caregivers of elders. Through this work, and through my personal experience as a transperson, I have seen the urgent need for transpeople to have documents which accurately indicate their gender and policies which reflect the diversity of transgender experience. Our trans clients may not have lived quantifiably for two years in their current gender or may not have changed or ever change their names, yet require an updated birth certificate in order to access state and federal benefits as they age. Elderly transpeople who cannot travel to or afford a clinician who meets the new guidelines of the policy will be unable to change their documentation despite having a relationship with a clinician who understands their transition process.

I am thrilled that the Department of Health and Mental Hygiene is taking this step to end some of the discrimination faced by transpeople in New York State. I am sure the Department is aware of the complexity of transgender experience and desires a policy which allows the greatest number of people access. For this reason, I ask that the proposed new regulations be adopted with amendments doing away with the two year period, removing the necessity for a court-ordered name change and which change the specific requirements for clinicians (currently listed as specialized course work and transgender specialization) to account for the diverse yet qualified mental health practitioners and medical doctors whom transpeople access as they seek to live comfortably in a gender other than that of their birth.

If you have any further questions or concerns, please do not hesitate to contact me directly at (718) 499-7701 ext. 137.

Thank you for your time,


Riley MacLeod
LGBTQ Caregiver Associate
Park Slope Geriatric Day Center
199 14th Street
Brooklyn NY 11215

29

October 25, 2006

RECEIVED DCH/SECRETARY'S OFFICE RECORDS ACCESS OFFICER 2006 OCT 31 P 3:59

Rena Bryant Secretary to the Board of Health 125 Worth Street CN-31 New York, NY 10013

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code")

Dear Ms Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. Birth certificates are needed by most people to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When transgender people show a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, humiliated, or be subject to discrimination. Even in the best of cases they may face embarrassment, confusion and delays. Transgender people need a policy that entitles them to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people.

I am asking that the proposed new regulations be adopted with the following amendments:

- 1. The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate. a. The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times because we lack an accurate birth certificate. b. At the least, if any time period is required, it should only be one year. According to the Standards of Care of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBIIGDA), one year of living in the new gender can be useful in determining whether or not certain surgical interventions are indicated to complete a transition.

Specifically, § 205.05(b)(1) should be amended so that the sentence: "No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made" Instead reads: "No application shall be approved unless the applicant is over 18 years of age."

- 2. The proposal should be revised to remove the requirement for a name change order. a. A name change order has nothing to do with the completeness of one's gender transition and is unrelated to one's gender or sex status on a birth certificate. b. In addition, some transgender people have gender neutral names that they may never change.

Specifically, § 205.05(b)(1) should be amended so that the sentences: "Upon application, a new birth certificate shall be filed when: The name of the person has been

1748 Market Street, Suite 201, San Francisco, CA 94102-5806

www.lyon-martin.org

Admin: 415-565-7672

Clinic: 415-565-7667

TDD: 415-252-7499

Fax: 415-252-7490

changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate."

Would now read:

"Upon application, a new birth certificate shall be filed when: Proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate."

3. The proposal should be revised to remove the requirement that providers must have two years of experience working with transgender people.
 - a. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City.
 - b. Some transgender people who were born in New York City may now live in areas where providers with a significant amount of experience in treating transgender people or with access to specialized courses are simply unavailable.
 - c. Treatment providers without access to specialized coursework can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments.

Specifically, § 205.05(b)(1)(i)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated"

Would now read:

"Information demonstrating at competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated."

In addition, § 205.05(b)(1)(ii)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated"

Would now read:

"Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated."

I am a physician at the Lyon-Martin Women's Health Services Clinic in San Francisco. Lyon-Martin is a non-profit community model for women's and transgender men's and women's health care. We provide primary care for patients in the bay area who would otherwise be unable to access culturally sensitive and affordable health care. I am a member of the World Professional Association for Transgender Health (WPATH formerly HBGDA), the Gay and Lesbian Medical Association (GLMA), the American Medical Association (AMA), the American College of Emergency Physicians (ACEP). I serve on the Transgender Health Committee for GLMA and on the Board of Advisors for the National Center for Transgender Equality.

Through my work I see the direct results of policy that excludes transgender people from access to identity documentation that reflects their true gender. As a physician who treats transgender patients I see the inequality in access for some of my patients for whom certain treatment options are not appropriate or available. While I make individualized treatment plans for each of my transgender patients, it is with the realization that the care that is right for one patient may entitle her to identity documents that are arbitrarily denied to patients for whom

different care is appropriate. Unfortunately I also see the results in my patients who lack access to identity documentation that reflects their true gender. They are disproportionately vulnerable to violence, unemployment, and discrimination. Moreover the very services that exist to address these problems are also denied them because of dependence on accurate identity documentation.

In addition I understand this problem on a personal level as a transgender man who myself has been denied an amended birth certificate by the state of New York because of failure to meet a similar arbitrary treatment guideline. My professional colleagues, family, friends, patients, and anyone who meets me on the street or in a public restroom recognize me as a man. My medical licenses in New York, Louisiana, and California, my California drivers license, my US passport, and Social Security Card all recognize that I am a man named Ryan Nicholas Gorton. My mother sends birthday cards to her son, Nick. My partner Daniel and I have been subject to anti-gay harassment and our marriage is no longer recognized by some institutions because we are a same-sex couple. However because I have yet to agree to undergo permanent surgical sterilization, the state of NY still states on my birth certificate that I am a woman named Rebecca Gorton.

It is through my experiences as a physician who cares for transgender patients and a transgender individual that I have seen that there is an urgent need for policy that provides transgender patients with birth certificates that accurately reflect their true gender without requiring specific arbitrary treatment or documentation. I am delighted that the NYC Department of Health and Mental Hygiene is working to address this concern and would like to offer any help that I can in your endeavor.

If you have any further questions or concerns, please do not hesitate to contact me directly at: (504) 261-8379.

Sincerely,



R. Nick Gorton, MD, DABEM
nick@lyon-martin.org

October 30, 2006

My name is Melissa Sklarz. I am a transgender female. I am a transsexual female. I have been living in this identity for nearly 18 years. I was born in New York City and I want to thank the Dept. of Health and Mental Hygiene for the opportunity to speak on this historic moment.

As you know, the idea of "gay is good" goes back to the early 1970s. At that time, the gay revolution included all races, all sexes, and all gender identities and expressions. Sadly, over the years, that concept changed as the gay movement split along lines that more accurately reflect our culture at large. As such, people with different gender identities and expressions have been largely left out of the gay civil rights movement.

Many people have worked very hard to change the legal climate for trans identified people in New York. That changed in 2002 when gender identity and expression became protected in law in New York City.

The opportunity to have a revised birth certificate would complete my gender journey. After years of struggle, the support of friends and family made a difficult process easier and, eventually, I began to adjust in my current identity.

My concern today is the two year requirement. It feels excessive to me. No one changes gender lightly. It is a profound transition. There are neither prizes nor rewards. It is heroic only to the individuals involved. I began after years of self destructive actions and doubts about my sanity. However, once started, my doubts evaporated overnight. This was a decision that I have not regretted, only in the time spent agonizing over its meaning. Had I been forced to wait two years for my new documentation, the struggle to find work and stability may have become insurmountable.

I am thrilled today that the work we as a community are doing, and you as the legal framework of our city, will make this process less of an ~~insurmountable~~ *complicated* hurdle.

Today, because of the political and legal work of the LGBT community, no one asked to see reports from a doctor when I was hired at my current job. No one asked to see a doctor's report when I was promoted 6 years ago. No doctor's reports were necessary when I received my first mortgage last year. New York City, New York State, and the IRS happily accept my tax money every paycheck without asking intrusive questions.

But, there are still gaps in my process. I would like the chance to change jobs without embarrassing questions. I would like a passport, and someday, I might like to get married, if I meet the right person.

This amendment today would help create a safe, legal environment for me to continue to live in New York. Although I was born here and spent only the earliest of years here, my family is long dispersed elsewhere. Only I remain to enjoy the freedom and the diversity that makes New York City unique in America.

Please reconsider the two year option. Please reconsider the idea of allowing well-meaning, but ignorant health care providers to hold a potential key to happiness and understanding that all New Yorkers yearn for.

Melissa Sklarz
3069 Hobart St., #4K
Woodside, NY 11377
347-886-7961

27

Ray Carannante, LMSW
Testimony for Transgender/Birth Certificate Hearing
Monday, October 30th, 2006
2pm-4pm

My name is Ray Carannante. I am a clinical social worker at the Gender Identity Project of the Lesbian, Gay, Bisexual & Transgender Community Center of New York City. I have been working with the transgender community in a professional capacity for the past 8 years, providing individual and group therapy services.

I am also a native New Yorker. I was born in Staten Island and have lived in every boro up to this point, except Queens. I assume I'll get there too at some point as soon as I can't afford Manhattan anymore.

In addition to being a mental health professional and a New Yorker, I also happen to be a transsexual man, born female and living as male for the past 9 years. But before I talk to you about that, I need to talk to you about some of my clients also born in New York City. I watch as they begin their gender transitions from female to male or male to female, sometimes losing their jobs, their families, and their livelihood. I watch as they take hormone therapy and begin to live in their new gender in the world. I watch as they try to get a new career, or even a new job, any job, without a birth certificate that matches who they are and how they look. I observe them in a post 911 world where no one wants to take chances on anyone whose documents don't seem to match up, or where something seems amiss. I've watched as my ex lawyer client turned to prostitution as the only viable means to support herself because she couldn't even get a job at McDonalds without the right papers. And I've watched as some of my clients prostitute more and more so that they can get the money for surgery as soon as possible so that they can get their papers changed, only to find that they won't get a birth certificate with a gender on it. And sometimes I even watch as my clients rush into their surgeries before they're medically or mentally prepared because without documents, they'll never work, never have a new career, never escape this vicious cycle that starts and ends with this very, very important piece of paper known as a birth certificate.

You see, a birth certificate is so much more than just a historical document, and people whose gender matches that of their birth sex probably never realize just how important this little piece of paper is. The birth certificate is the key that opens doors to very important places and suddenly our master key no longer fits into any of the locks that open these vital doors. Without this access, transgender people become forced to live on the margins of society, behaving in unlawful ways in order to support themselves and furthering the very stereotypes that continue the discrimination that exists.

And as for me, I'll be fine because I'm one of the lucky ones, who kept my career and my family and my social status. I'll be finethat is, as long as I continue to work at the Lesbian, Gay, Bisexual, Tran gender community center where they don't mind that my birth certificate genders me incorrectly or doesn't gender me at all. I'll be fine unless

someone gets suspicious of me as being fraudulent or just an odd person with a genderless birth certificate. I'll be fine, as soon as I can manage a way to get a correctly gendered passport so that I can travel safely when I have to leave the country for a professional's conference later this year. I'll be fine, though I may never be able to get married or adopt a child. And I'm sure everything will be okay once I can find a way to pay the \$40,000 loan for the surgery I needed just to have my old gender removed from my birth certificate.

You see, even though I've kept my job and my family and my social status, I'm not fine, because all of that gets called into question by anyone who will ever ask to see my birth certificate. I become vulnerable to suspicion, ridicule or discrimination.

Please know, I'm not asking you to tell me my gender; that I know. I'm not even asking anyone's approval or validation for who I am or the choices I've made. I'm simply asking you to allow me and the population I serve to live lawfully, accurately and successfully in a world that demands I have a gender on my documents that matches who I am.

26

MS Nowles

As a mother of a transgender son, I'm extremely happy that you're updating the birth certificate regulations. I am additionally asking for the following changes:

1. Not requiring health service providers to have 2 years experience
2. Not requiring that the applicant live in their new gender for 2 years
3. Not requiring that the applicant change their name first.

When I gave birth to a beautiful baby here 20 years ago, I had thought of myself as an open-minded person and a feminist. From my perspective, our baby's gender was an insignificant. The birth announcements announced "It's a baby!" When everybody everywhere (he was a stunningly gorgeous child) would exclaim "He's so adorable!" or "How old is he?" and 1/2 of them would use "he" and 1/2 would use "she", I wouldn't bother to correct their pronouns. After all, it didn't matter. She was a precious human being. He still is.

My son came out as transgender four years ago, when he was 16. As he started on the process of transitioning, it was simultaneously a celebration - he was getting to be who he is and was - and a morass of filing documents, education of friends and family, finding health care providers.

I began learning the histories of transgender and intersex people, health and medical issues, rights and the lack of rights, safety. I began experiencing through him the myriad ways daily life is experienced with relentless difficulties for any gender variant person.

To be transgender is to be displaced from the "normal", which in our culture is black and white, binary. Displaced from the forms we all have to fill out in our identity-carded and documented way of modern life.

We habitually and continually place people by gender. When we can't immediately put someone into a F or M box, we either experience positive interest, curiosity, and attraction, or negative interest, curiosity, fear and hostility.

As a mother, as parents, this is our initial concern: the safety and well-being of our enormously talented and wonderful children, who happen to be transgender and/or intersex.

When I go out and about, my presenting gender happens to match my biological sex. If I'm in an accident, I don't worry that the emergency medical technicians will be ignorant and derisive about my body. If I want to travel, I don't think twice about updating my passport. If I need a loan, if I'm trying to get health insurance, if I'm switching jobs... in all these daily ways I take for granted that I can get what I need to work and live.

With this update of the birth certificate regulations, we can delete some of the many hurdles our loved ones come up against.

One element of the proposal that needs to be corrected: *requiring providers to have 2 years experience treating transgender people*. My son is the first transgender client for our family doctor, a very good doctor, who is open, not patronizing (this is extremely important), and who brought herself up to speed very quickly. He helped to educate her, a common occurrence, about transgender health, and she was grateful for that instruction. Health professionals who have 2 years experience of transgender healthcare are rare, even in major cities, and this is an inconvenient and harmful addition to the regulations that should be taken out.

patient

The second element of the proposal that needs to be corrected: *requiring applicants to live in their new gender for 2 years*, By assuming that all transgender people must go through all the same transitioning procedures, we do a dis-service. My son already lives as male, and has for at least three years, but all his paperwork and documentation does not match. As the policy stands now, he still could not qualify for a birth certificate change because he has not had so-called "corrective surgery."

Until transgender people become accepted, ordinary, celebrated and included, no longer "displaced", please help to continue - with this step upward - our progression for the legal and civil rights of our transgender allies..

October 30, 2006.

Georgina Quinones
P.O. Box 483
Bronx, New York 10468

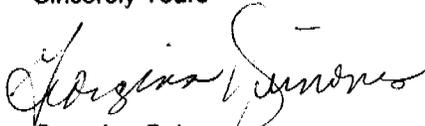
To whom it may concern:

My name is Georgina Quinones. I am a transsexual woman, living as a woman now for 18 years, I had my sex reassignment surgery in November 1998. As a post op transsexual. I am a very happy person living a normal life in society, I don't have problems getting work or being part of any engagement possible to obtain success et. But I do have a problem that I'm sure a lot of post op transsexuals are facing and is the fact that when we need it to present our birth certificate for any reasons, for example: Applying for school, for a new job, when you need to get a pass port, etc... its require for you to present your birth certificate. As we all know the laws of NYC is; ones you have your SRS you only have the option to change your birth certificate but the sex answer stays BLANK. Wish raises lost of questions for people that are ignorant to this situation. And put your self in a dilemma of having to answer "why your birth certificate is different than the normal certificate".

I will like for ones the laws of New York City in terms of changing our birth certificate could change immediately. Hoping that the sex that we chose to change and live with be change as well in our birth certificate. be more considerate of transsexual women and men, hoping that it will change our lives making it easier for us to be part of our society and so we don't have to constantly be obligated to explain to society why we need to be treated like who we are and just make it a choice who we let know about our transsexual experience.

Thank you very much for this opportunity and I hope that things change for the best. I love my city I'm proud of being a New Yorker. I don't think I would have been who I am today if I would have done it in any other place other than New York City.

Sincerely Yours


Georgina Quinones

24



TO
RENA BRYANT
@
212-738-4318

Joann Prinzivalli, Director
300 Martine Avenue #9M
White Plains, New York 10601-3460
Tel.: (914) 428-8447
E-Mail: Joannmp@optonline.net

Prepared text of Testimony of Joann Prinzivalli at New York City Board of Health Public hearing on changes in Section 207.05 of the New York City Health Code, on October 30, 2006 at 2:00 P.M.:

My name is Joann Prinzivalli, I am a transsexual woman, a lawyer, and the state director of the New York Transgender Rights Organization (NYTRO), an unincorporated association with chapters throughout New York State, dedicated to advocacy on behalf of the transgender community in New York State.

For myself personally, and on behalf of NYTRO, I strongly support the proposed changes in Section 207.05 of Article 207 of the New York City Health Code, with the caveat of also supporting the additional four changes as proposed by both Lambda Legal and the Sylvia Rivera Law Project attorneys. In addition, NYTRO supports one of the proposed changes propounded by the Transgender Legal Defense and Education Fund and NYAGRA, that the option remain for those who by virtue of an intersex condition or otherwise, deem themselves to be of no gender or a neutral gender, to have their birth certificates amended to show a blank in the place of any sex assignment.

As a transsexual woman born at Unity Hospital in Brooklyn (which burned down a long time ago), who also suffers from morbid obesity as the result of long term binge eating disorder, and resulting type 2 diabetes which is not well-controlled even with medication, I am unable to obtain a surgery letter for purely health reasons. The proposed changes would have a positive impact for transsexual women and men in similar circumstances and who cannot have surgery or do not require it.

Up until now, I have been one of the lucky ones. Despite losing my job in January 2000 for trans-related issues, I was able to effectuate a common law name change, and my Declaration of Name Change, together with a letter from a psychological professional as to my predominant gender and stating that I was in the process of transition, were sufficient in 2000 for me to change my name and sex designation with the Department of Motor Vehicles and the Social Security Administration. Then came 9/11 and the heightened scrutiny given to the issue of identification. Social Security changed its regulations in October 2002. While the DMV regulations are unchanged, the effect of the federal REAL ID Act on my ability to renew my driver's license in December 2010 will be seriously impacted if I cannot have my birth certificate amended appropriately. Today, because my driver's license and social security records are appropriate to my gender identity, I can get a job. In 2011, without this change, I will be unemployable.

As a lawyer, I do pro bono work in the counties of the lower Hudson Valley north of New York City, preparing judicial name change paperwork for transgendered people. The usual

Prepared text of Testimony of Joann Prinziwalli at New York City Board of Health Public hearing on changes in Section 207.05 of the New York City Health Code, on October 30, 2006 at 2:00 P.M.

Page 2 of 2 pages

documentation I put together includes a letter or affidavit from both a mental health professional and an endocrinologist. I do stress that not everyone needs to have their name changed at all. However, in the event a court ordered name change has been obtained, it might be appropriate to accept the petition with its attachments as well as the name change order itself, as prima facie proof in and of itself for the change of sex assignment on the individual's birth certificate.

Society arbitrarily requires the division of human beings into two sexes, when there is a greater diversity in reality than society recognizes. The sex assignment on an individual's birth certificate is made on the basis of an observation made by the attending physician at birth as to whether the individual's external genitalia exhibit an "outie" or an "innie." In shape. No inquiry can be made as to the individual's gender identity at birth. No genetic testing is run. No examination is even possible of the individual's Basal Stria Terminalis (and this important marker of gender identity does not fully develop until adulthood, and cannot be examined today except in a prepared slide of the region of the brain made in an autopsy).

As long as society requires this arbitrary division, it is essential that those who fall in a gray area be allowed to choose which side of the line they belong on. Those born with a gender identity that does not conform to the expectations society projects onto a person having the genital shape that is the basis of their birth sex assignment, should not be tied to that arbitrary initial designation.

However, the scope of gender theory goes beyond the issues at present before the New York City Board of Health. The proposed changes are most welcome if the four major changes can be made. Even if they are not made, the proposed regulation represents an improvement, though one that can be much better.

Thank you in advance for your consideration.

23

October 22, 2006

Daniel R Schaffer
414 Second Street #4B
Brooklyn, NY 11215

Rena Bryant
Secretary, Board of Health
125 Worth Street, CN-31
New York, NY 10013

RECEIVED
DQA/SECRETARY'S OFFICE
RECORDS ACCESS OFFICER
OCT 27 A 10:45

Comments pursuant to notice of intention to amend Article 207 of the NYC Health Code Proposed repeal of paragraph 5 of subdivision a of section 207.5 and amendment of section 207.5 of article 207 of Title 24 of the Official Compilation of the Rules of the NYC Health Code

Dear Rena Bryant,

I am writing in general support of the Department of Health and Mental Hygiene's proposed amendments to Article 207 of the NYC Health Code relating to changing the gender on a birth certificate. This is a positive step since the wrong gender on a birth certificate can block someone's accessing government or private social services and can possibly endanger one's physical safety. While I support the intent of the Department of Health and Mental Hygiene, I believe that the following changes would improve the proposed amendment and make it more respectful of the transgender community:

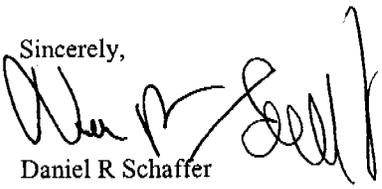
The proposed requirement of having "lived in the acquired gender for at least two years" fails to take into account that some people require little if no transition period. Ideally, there should be no time requirement at all, but if it there is to be one, it should one year at the most.

The proposed requirement to have a court ordered name change should be dropped as it is irrelevant. The proposed requirement also does not recognize that some names are considered gender neutral by most people and may never be changed.

The requirement for a letter from a physician and a mental health professional is burdensome to some people who have either chosen to not consult medical providers on an ongoing basis either because they do not live in a region where qualified professionals are available, or cannot afford it. Additionally, the continuing presumption that being transgender is a disorder is insulting. At minimum only one letter from either a physician or mental health provider should be sufficient.

Last, minors should be allowed to amend their birth certificate with either the permission of their parent or guardian or on their own if they are emancipated.

Thank you for addressing this important issue.

Sincerely,

Daniel R Schaffer

22

From: Sean Endress <seanmendress@yahoo.com>
To: <resolutioncomments@health.nyc.gov>
Date: Fri, Oct 27, 2006 2:19 PM
Subject: Comments for 10/30 Public Hearing

Attached please find my comments regarding the October 30th public hearing on transgender birth certificates. I have also submitted these comments via fax.

Sincerely,

Sean M. Endress

All-new Yahoo! Mail - Fire up a more powerful email and get things done faster.

CC: <gabriel@srlp.org>

Sean M. Endress, MA, LMSW

Gender Identity ♦ Sexuality ♦ Mental Health

Education, Advocacy, Support

199 Main Street, 2nd Floor
New Paltz, NY
718.887.1378
SeanMEndress@yahoo.com

October 26, 2006

Dear Rena Bryant:

I am writing to submit comments about current NYC Department of Health policies regarding name and gender changes for people of transgender experience. Currently, I serve as a Licensed Social Worker with the ClearView Center Clinic in Albany, NY, where I provide comprehensive clinical mental health services to a diverse range of clients with psychiatric disabilities. I also maintain a private practice specializing in Lesbian, Gay, Bisexual, Transgender, and Queer mental health issues. In addition to a Master of Social Work degree from SUNY Albany, I obtained a Master of Sociology from the State University of New York at New Paltz, where my research and writing focused on transgender theorizing and the sociology of mental health. I received my clinical training with the Gender Identity Project and Center CARE in New York City, and was awarded a Transgender Scholarship and Legacy Fund Award for my achievements in the area of transgender health. In addition, I have participated in numerous transgender themed conferences, and have served as a panelist, lecturer, and consultant on several topics of relevance to the transgender community.

Although the proposed changes are less problematic than the original regulations, I still feel that they create unnecessary social barriers for transgender individuals and reinforce myths and stereotypes about an already marginalized population. I am extremely concerned about the impact that the current proposal will have on the large portion of the transgender community who lack access to the resources needed to comply with the revised regulations. It is unclear to me how the current revisions assist the individual or society with correct identification of transgender people. Instead, the requirements continue to pathologize people who are not gender normative through forced medical evaluations, thereby impinging upon the rights of all individuals to self-determination around gender expression. Such protocols are especially damaging to those transpeople who may have limited racial, educational, or socio-economic resources. This creates a dangerous double bind in which an oppressed people continue to face additional structural barriers that severely limit their full participation in public life. Without documentation that accurately reflects one's current gender, transpeople face serious obstacles in accessing employment, housing, marriage licenses, passports, and social services. Having documentation that doesn't match one's current gender can often trigger bias, harassment, discrimination, violence, or groundless accusations of fraud. Therefore, as a social worker, educator, consultant, and person of transgender experience born in New York City, I urge the committee to make the following additional amendments to the proposal:

1. ***Remove the requirement for a name change order.*** A name change order should only be required when the individual also wishes to change the name on their birth certificate. Some transgender people who have names without strong gender connotations never need to change their name as a part of their transition. An individual's name has no relevance to the correct determination of their gender.
2. ***Remove the requirement that providers must have two years of experience working with transgender people.*** Requiring providers to have two years experience treating transgender people will unfairly harm people who have limited choices in their healthcare because they do not have health insurance, live in a rural area, or lack the financial resources to undergo additional assessment.
3. ***Remove the requirement that involves a two year prerequisite of living in one's gender for two years before applying for a new birth certificate.*** This is an unnecessary obstacle that is not congruent with current medical standards. Some people cannot fully transition at their workplace or in other institutions, such as supported housing programs, until they can get corrected documentation that recognizes their new gender. Additionally, many transpeople are able to fully transition in less than two years. Like other aspects of treatment, decisions about how long a person needs to live in their gender in order to completely transition and indicate an intent to live permanently in that gender should be left to the individual.
4. ***Provide birth certificate that completely deletes birth name for those trans persons who receive a name change order who are not engaged in physical transition.*** Transpeople who cannot undergo physical transition are currently excluded from receiving new birth certificates. Instead, they are provided with amended certificates that contain a single cross out through their birth name with a handwritten alteration and DOH stamp. This limit unfairly harms those who may have chronic medical conditions and are thus unable to utilize hormones or surgery to modify their gender. However, many people in this position choose to change their birth name and live socially in their desired gender. In many cultures throughout history prior to medical interventions, people lived productive lives in a gender that was different than that which was assigned to them at birth. If the board maintains that such persons are not eligible to have their lived gender recognized, it is ethically questionable to deny them access to a new birth certificate. In addition, some transpeople may be forced to maintain documentation that proves their birth gender in order to justify healthcare needs such as OB/GYN services or prostate screenings.

Because I experience various forms of privilege as a white, college-educated, middle class person who appears to be a gender normative male despite the fact that I was assigned female at birth, I have been somewhat shielded from the potentially detrimental impact of current documentation policies. Fortunately, I have not yet experienced any negative repercussions as a result of having a birth certificate with a crossed out birth name that does not match my NYS ID or social gender presentation. However, I live with the constant threat of symbolic violence, and the clear message of disrespect and humiliation that I experience knowing that my current birth certificate could be subject to scrutiny and question at any time. In a post 9/11 context, the prospect of being detained against my will is a constant threat. Without a birth certificate that accurately reflects my gender, I also may face significant obstacles in the areas of housing, employment, healthcare, and social services.

I believe that one's medical and psychosocial history and functioning should have absolutely no bearing on the ability to obtain an accurate and legitimately appearing birth certificate. Not only do the proposed requirements violate my privacy, but they severely question my ability to provide informed consent regarding my physical body and the decision I have made to move through the social world as a masculine bodied person. People of transgender experience are stripped of the right to informed consent not because we are a threat to ourselves or others, but because we present a symbolic threat to the continuation of a sex and gender binary upon which many political and economic social inequalities rest.

In conclusion, current proposals continue to have a negative impact on the large portion of the transgender community who may lack access to the resources needed to comply with aforementioned restrictions. We must address the hierarchy of access to all healthcare and legal services for people of transgender experience, questioning the ways in which current policies tend to foster greater gender normative privilege in already dominant populations.

If you have any further questions or concerns, please do not hesitate to contact me directly at (718) 887-1378.

Sincerely,

Sean M. Endress, MA, LMSW

(21)

From: <BJones@lambdalegal.org>
To: <resolutioncomments@health.nyc.gov>
Date: Fri, Oct 27, 2006 12:38 PM
Subject: Comments on Proposed Amendments to Article 207 of the NYC Health Code

To Whom It May Concern,

Please find attached the comments of Lambda Legal on the proposed amendments to Article 207 of the New York City Health Code, regarding change of gender designation on a birth certificate. In addition to submitting these written comments, I have pre-registered to speak at the public hearing on October 30, 2006.

Thank you for your attention to this matter,
Bonnie Scott Jones

Bonnie Scott Jones
Staff Attorney
Lambda Legal
120 Wall Street, Suite 1500
New York, NY 10005
(212) 809-8585, ext. 288
(212) 809-0055 (fax)
bjones@lambdalegal.org
<http://www.lambdalegal.org>

Lambda Legal: Making the Case for Equality

CONFIDENTIALITY NOTICE: This email transmission from Lambda Legal Defense and Education Fund, Inc., and any documents, files or previous email messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply email or by telephone at (212) 809-8585, ext. 288, and destroy the original transmission and its attachments without reading or saving it in any manner.



VIA FACSIMILE AND ELECTRONIC MAIL

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

October 30, 2006

Re: Comments on the New York City Department of Mental Health and Hygiene's Proposed Amendments to Article 207 of the New York City Health Code, Regarding Change of Gender Designation on a Birth Certificate

To Whom It May Concern:

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work. Advancing the rights of transgender people is an integral part of Lambda Legal's work. Over the past calendar year, our Legal Help Desk has received over 300 calls from transgender individuals seeking assistance. A significant percentage of those calls concerned difficulties obtaining identity documents, such as birth certificates, that accurately reflect gender. Our advocacy work is responsive to such concerns; we have assisted transgender people seeking corrected birth certificates in a variety of states. Furthermore, our litigation consistently seeks to advance the legal recognition of gender identity. See *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000) (*amicus*); *Mitchell v. Axcan Scandipharm, Inc.*, 2006 WL 456173 (W.D. Pa. 2006) (*amicus*).

The inability to obtain accurate documents creates serious and persistent impediments in transgender people's lives. It is critically important to the transgender community we serve that identity documents accurately reflect gender without making unreasonable demands or requiring inappropriate treatments. Accordingly, Lambda

Legal submits the following comments to the New York City Department of Health and Mental Hygiene ("Department") in response to the Department's Notice of Intention to Amend Article 207 of the New York City Health Code ("Article 207") and Notice of Public Hearing

Lambda Legal applauds the Department's efforts to reevaluate Article 207 and to bring the City's regulations in line with modern medical knowledge about the individualized nature of transgender healthcare and the import of accurate identity documents to the lives of transgender people. The Department's efforts to seek input from transgender health experts and to address the concerns conveyed by transgender advocates are commendable. While Lambda Legal strongly supports the Department's intention to amend Article 207, we believe that the proposed amendments should be changed in the following four regards to prevent the law from impeding the efforts of transgender people to participate fully and safely in society.

I. Removal of Name Change Requirement

The first sentence of § 207.05(b)(1) should be amended as follows:

(b) Upon application, a new birth certificate shall be filed when:

(1) ~~The name of the person has been changed pursuant to court order and p~~Proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender.

There is no reason for the Department to require an individual to change names in order to change the gender listed on his or her birth certificate. Many names are not strongly associated with a particular gender and can continue to be used while living in the acquired gender. The decision to change one's name is a highly individual and multi-faceted one that should not be tied unnecessarily to the decision to change one's gender.

II. Removal of Two-Year Waiting Period

The third sentence of § 207.05(b)(1) should be amended as follows:

No application shall be approved unless the applicant is over 18 years of age ~~and has lived in the acquired gender for at least two years ending with the date on which the application is made.~~

As written, this provision imposes a waiting period of two years before a transgender person is able to obtain a birth certificate that accurately reflects his or her gender. This waiting period is harmful, medically inappropriate and unnecessary. First, living fully in a person's acquired gender without a birth certificate reflective of that gender can be extremely difficult, and, for some (such as those living in shelters or supported living programs), impossible. Obtaining many government-issued identity documents (including passports and driver's licenses) is increasingly dependent upon presentation of a birth certificate. Incomplete or inaccurate information on birth certificates can thus lead to problems in all circumstances where identification must be presented, such as proceeding through security checkpoints or even writing checks. In addition, birth certificates are sometimes needed for completing government forms, such as the I-9 employment eligibility form, and applying for social services or federal education loans. Trying to live in one gender while relying on a birth certificate listing the other gender thus exposes people to harassment, discrimination, or unfounded accusations of fraud in multiple aspects of life.

Second, a blanket two-year rule is medically inappropriate because it ignores the fact that gender transition is highly individualized and may take considerably less time than two years. Third, to the extent that this requirement aims to ensure that people do not change their birth certificates before they are sure they want to live in the acquired gender, it is unnecessary and ill-suited to the task. The proposed amendments already require detailed proof from both a medical doctor and a mental health professional that the individual has fully transitioned to the acquired gender and intends to remain in that gender. Because the Department will have, in each case, individualized expert evidence regarding the applicant's transition, it need not rely on a simplistic and inappropriately generic time limit to gauge whether a person has fully transitioned or intends to live in the acquired gender.

III. Changes to Qualifications for Physicians and Mental Health Professionals Providing Evidence to Board

Section 207.05(b)(1)(i)(A)(b) should be amended as follows:

- A. The physician's credentials, including: . . .
 - b. Information demonstrating ~~at least two years experience in the last five years related to~~ competence in transgender treatment, including listing any relevant specialized courses taken, training received, professional literature reviewed, and/or experts consulted by the physician, and information about the number of transgender patients the physician has treated.

Section 207.05(b)(1)(ii)(A)(b) of should be amended as follows:

- A. The mental health professional's credentials, including: . . .
 - b. Information demonstrating ~~at least two years experience in the last five years related to~~ competence in transgender treatment, including listing any relevant specialized courses taken, training received, professional literature reviewed, and/or experts consulted by the mental health professional, and information about the number of transgender patients treated.

A requirement that the physician and mental health professional have "at least two years experience in the last five years related to transgender treatment" poses a significant, if not absolute, obstacle for those transgender people who were born in New York City but now live in the many parts of the country where transgender treatment is uncommon. In many areas, the concentration of transgender people is insufficient to allow practitioners to build a significant transgender practice, and there are few specialized classes in transgender treatment anywhere in the country. Nonetheless, providers in any part of the country can become qualified by relevant experience, education, training, review of professional literature, and/or consultation

with experts to diagnose and care for transgender people, and to provide the evidence required by this section to the Department. Accordingly, these provisions should be amended as indicated to ensure that physicians and mental healthcare professionals competent in transgender care are not unnecessarily precluded from providing the affidavits needed by transgender people to obtain the identity documents central to their well-being and safety.

IV. Presumption Regarding Applications Meeting the Enumerated Requirements of Section 207.05

Section 207.05(c) should be amended as follows:

When an application for a new birth certificate is filed pursuant to § 207.05(b)(1), the Department may request the applicant to provide other information or evidence demonstrating the applicant's transition to his or her acquired gender. An application containing all of the information described in § 207.05(b)(1) shall be presumed sufficient, and the Department shall not request additional information from the applicant unless the Department provides the applicant with written notification setting forth with particularity the additional information requested and the Department's reasons for requesting the additional information. An application containing all of the information described in § 207.05(b)(1) shall be granted unless the Department provides the applicant with written notification setting forth with particularity the Department's grounds for concluding that the application lacks satisfactory proof that the applicant has completed the transition to another gender and intends permanently to remain in such acquired gender.

As written, the amendment gives the Department unfettered discretion to request additional information of any kind from an applicant, or to deny an application that meets the requirements of § 207.05. This authority must be bounded, at least in a

Comments of Lambda Legal Regarding Change of Gender Designation on a Birth Certificate

October 30, 2006

Page 6 of 6

modest fashion, to ensure that the regulations comport with basic principles of due process. Accordingly, we recommend the above-described changes, which limit the Department's discretion only to the extent of (a) creating a rebuttable presumption that an application containing the information set forth in § 207.05 is sufficient; and (b) requiring the Department to explain its grounds when it rejects, or requires additional information in support of, an application that contains the information set forth § 207.05.

Thank you for your consideration of these comments. If you have any questions about them, please do not hesitate to contact me at (212) 809-8585, ext. 288.

Sincerely,

A handwritten signature in black ink, appearing to read "Bonnie Scott Jones", with a long, sweeping horizontal line extending to the right.

Bonnie Scott Jones
Staff Attorney

24 May 2006

Dr. Stephen Schwartz
City of New York Dept. of Health
125 Worth Street, Room 144
New York, NY 10013-4090

Dear Sirs:

I recently met Dean Spade from the Sylvia Rivera Law Project at a transgender conference here in Colorado. I was delighted to learn that Dean and the SRLP have been working closely with the New York City Department of Health to modify its birth certificate policy regarding post-operative transsexuals. I would be very pleased to apply for a birth certificate in my new gender rather than settle for one which leaves the sex designation blank. The present policy is very problematic, creating hurdles to being recognized in the gender in which I live.

I am a librarian living in Denver, Colorado. I have been employed at the University of Colorado, Boulder since November 2001. I was born in the Borough of Brooklyn in July 1964. I am a well adjusted, fully transitioned transsexual woman. I was first diagnosed with Gender Identity Disorder by my therapist, Dr. Rachael St. Claire, in February 2000. She recommended me for female hormones, which I began taking under the supervision of my primary care physician, Dr. Ingrid Justin, in late April 2000. I have been living full time as a woman since April 2001 when I changed my name and the sex designation on my Colorado's driver's license. I had irreversible genital surgery performed by Dr. Suporn Watanyusakul in Chonburi, Thailand on 30 September 2003. My decision to have surgery and choice of surgeon are among the best decisions of my life.

Over the course of the last five years, I have completed all the requirements for obtaining a new birth certificate in New York City. I have been diagnosed with GID, began taking feminizing hormones, obtained name and document changes and underwent genital surgery. Shortly after my surgery in September 2003, I also changed my sex designation with the Social Security Administration and obtained a full ten year passport as a woman.

I have not, however, applied for a new birth certificate. It seemed very odd that the City of New York allowed the sex designation to be altered (i.e., left blank) but not to be changed from "M" to "F," or vice versa. To my knowledge, the City of New York is the only jurisdiction to have such a policy. My Colorado driver's license was set to expire in July of this year. Since I am not able to obtain a birth certificate with a female sex designation from the City of New York, I decided to apply for a renewal in July of last year. I was worried that the lack of an "F" on my birth certificate might cause me some trouble with clerks at the DMV office. After all, a blank sex designation would be puzzling and not match with the "F" appearing on my passport and old driver's license. It seems clear the City's policy regarding sex designation changes to birth certificates is

flawed and needs to be rethought. It is unfair to hamper the daily business of transsexual people with an out of date policy, however well intended.

I sincerely hope the New York City Department of Health will reconsider its birth certificate policy and allow transsexuals to change sex designations. Doing so would eliminate unnecessary obstacles in our lives. Thank you for your consideration.

Sincerely,



Angela Palermo

429 E. 14th Ave. Apt.302

Denver, CO 80203

angela.palermo@colorado.edu

cc: Dean Spade

445 N. Sessions Street
Loft # 1204
Marietta, GA. 30060
August 20, 2006

To Whom It May Concern:

Pursuant to the New York City negotiations that are in process to evaluate and hopefully alter the present policy regarding the placing of the corrected gender on birth certificates, I am compelled to draft this letter in hopes that you, the committee, will see and feel the dire need for just such a mandatory policy change.

My name is Marlana-Gabrielle Alvarado. I was born in Brooklyn, New York, specifically the Bay Ridge area. I was honored to be reared side-by-side with my older brother and to two loving, caring, supportive parents. My mother was a homemaker and my father was a blue-collar worker, employed by the Brooklyn Naval Shipyard. My primary education began at a Catholic elementary school, Our Lady of Angels and I progressed over the years to Fort Hamilton High School, the City University of New York and finally, Columbia University.

I hold a Bachelors Degree from the City University of New York, two Masters degrees from Columbia University and a Ph.D. from Michigan University.

As long as I could recollect back to my childhood, I was aware that what my body reflected regarding its gender was a fictitious story. As I peered in the mirror, I appeared male; however, I, indeed, was female. I knew this not merely because I would rather read and color and stay in-doors than be engaged in sporting events with my brother. This was an inner-knowing that I would shed many tears during my youth due my being made to feel "different."

So, while I was in my freshman year of college, I was sixteen as I was in an accelerated program, I began investigating my feelings. I read ravenously on all the materials I could reach regarding the transgender situation. I grew only more perplexed; however, I did come to realize that I was placed in the incorrect body and to be happy, I would have to alter my life in some manner. I actually sought assistance via The New York City Dept. of Social Services. I had to be strong and I really was not; yet, this should show how difficult a situation such as the one with which I was made to speak and communicate with absolute strangers regarding my feelings. . I was viewed as a "freak" and I knew it, but I remained steadfast because I am a child of God and I knew I possessed every right as a US citizen as the next individual, and all I sought was a clear cut resolution that would neither harm myself or others.

In any event, most people had been referring to me as "Miss" at this time. I was always ambiguous and not with the use of surgery or cosmetics. It was what it was---I was a pretty little individual that two genders had been clashing. In any event, the NYC Dept of Social Services has suggested that I speak with one of their designated psychiatrists. This again meant that I had to muster enough courage to speak with another stranger regarding

the gender with which I knew was mine to possess. I had to travel to Coney Island in the depths of the winter. I remember the many times that I would walk in the freezing rain just to speak with this psychiatrist. We agreed that I was intelligent, articulate, and that I was in no way being pressured by others or society to make changes. I then began seeing a doctor, Dr. Benitio Reisch of Central Park West, where I was administered estrogen.

After an almost two-year analysis with the psychiatrist and now dressing completely in "female" attire, I was ready for the necessary operation to complete me and make me the person of which I knew as Marlana. As a result, The New City Dept. of Social Services agreed to finance my necessary surgery.

After my operation, which took place in Queens, New York, I was elated. Life was perfect and my family and friends embraced me. Even those associates that I ran into on the train platforms or some small shop would inevitably state such niceties as "It's about time," or "We always knew it would come and you were always so pretty." This did make my life better---the acceptance; however, with or without acceptance from friends or families, this was a surgery that had to be completed.

Life began, but not as easily as I had envisioned, I had my name legally changed in the NYC courts and I was legally Marlana. This permitted me to have a corrected social security card. However, the birth certificate situation, as wonderful and professional as Ms. Edna Timbers of the NYC Board of Health had conducted herself over the years of my attempting to have my birth certificate amended. One must realize that I had relocated to the state of Georgia and it was impossible to obtain driver's licenses without amended documentation, especially the name and the gender was "uncomfortably" questioned.

I request sincerely that one peer into a road most difficult to travel and I beseech the committee to look deep into their hearts with an open-mind. The actions that have to be taken to be the person you know is necessary are NOT frivolous. Life is difficult enough without having such legal constraints. Today, over twenty-some years, I still hold a birth certificate from Brooklyn, NY that DOES NOT REFLECT THAT I AM FEMALE----A gender that I can verify clearly.

This is laughable. I am an educator and my life-style is such that no one but my family is aware of my past. This is wonderful because as I reflect back, I have always been female; however, every time that I must utilize a document that is questionable in gender still brings forth horrors.

Again, I request that this situation is held with the idea that those that are forced to make a birth correction have a long road of unbearable situations that too often are pain-filled. Help others to alleviate some pain, especially long-term pain. You have the ability to place the correct---not corrected---gender on birth records and make the lives of many to live life with a sigh of relief. Just remember in your decisions that the present policy is harmful, hurtful and does not help US citizens to live productive and safe lives.

I thank you in advance for taking the time and consideration regarding this most sensitive situation and I pray that you make the necessary and morally correct decision.

If I can ever be of assistance to make your decision an easier one, feel free to contact me at marlena1492@comcast.net

Cordially,

Marlena-Gabrielle Alvarado

Marlena-Gabrielle Alvarado

(19)

JEANNE CARNO-ROSENBERG
26 Walnut Street, Apt 3 • Montclair, New Jersey 07042

10/30/2006

I was born in Manhattan at Flower Fifth Avenue hospital in 1965. I am currently a law student, a musician, parent of two children and also a transgendered person. I want to speak in support of the proposed change in policy which would allow transgendered persons to change their birth certificates to reflect their reassigned gender.

The present policy is burdensome to transgendered persons who cannot have their documents changed to reflect their reassigned gender because their birth certificate indicates their former sex or gender. This can cause problems in a transgendered individuals ability to conduct business such as renting a car, showing identification when using a credit card, or entering a bar, when personal identification contradicts the person's appearance.

The policy can most notably affect a transgendered person's ability to find work and support him or herself especially if his or her identification reveals a sex other than what is apparent to the employer. New York City has an interest in maximizing it's potentially employable workforce. The long term net effect of the proposed policy could ultimately mean less reliance among otherwise capable and employable transgendered persons who might otherwise find themselves reliant on city and state programs and agencies due to an inability to find work because of their documentation.

The City also has an interest in persons who reside and work in New York having forms of identification that are congruent. Legitimate concerns over terrorism and identity theft require closer scrutiny of identification and as a result, law abiding transgendered persons can find themselves having to unnecessarily explain the disconnect in their appearance and their identification to law enforcement and security personnel. This can be frustrating and intimidating for transgendered persons, but it is also an unnecessary distraction for the security and law enforcement personnel who need to remain vigilant against genuine threats of crime and terrorism. The new policy could prevent further confusion in instances where persons who live in their chosen, permanent gender have to return to their birth gender in order to interact with city, state, or private entities due an inability to have their name and/or gender designations changed to match their permanent gender.

To the degree that any period of living in one's chosen, permanent gender is necessary to having one's birth certificate changed, lessening the required time from two years to one would better serve all of the previously mentioned interests by lessening the amount of time an individual would be presenting documentation that contradicts his or her appearance and permanent gender.

I thank the board for considering the new proposals and hope a decision is made in favor of the proposed changes.

Sincerely,
Jeanne Carno-Rosenberg

445 N. Sessions Street
Loft # 1204
Marietta, GA. 30060
August 20, 2006

To Whom It May Concern:

Pursuant to the New York City negotiations that are in process to evaluate and hopefully alter the present policy regarding the placing of the corrected gender on birth certificates, I am compelled to draft this letter in hopes that you, the committee, will see and feel the dire need for just such a mandatory policy change.

My name is Marlana-Gabrielle Alvarado. I was born in Brooklyn, New York, specifically the Bay Ridge area. I was honored to be reared side-by-side with my older brother and to two loving, caring, supportive parents. My mother was a homemaker and my father was a blue-collar worker, employed by the Brooklyn Naval Shipyard. My primary education began at a Catholic elementary school, Our Lady of Angels and I progressed over the years to Fort Hamilton High School, the City University of New York and finally, Columbia University.

I hold a Bachelors Degree from the City University of New York, two Masters degrees from Columbia University and a Ph.D. from Michigan University.

As long as I could recollect back to my childhood, I was aware that what my body reflected regarding its gender was a fictitious story. As I peered in the mirror, I appeared male; however, I, indeed, was female. I knew this not merely because I would rather read and color and stay in-doors than be engaged in sporting events with my brother. This was an inner-knowing that I would shed many tears during my youth due my being made to feel "different."

So, while I was in my freshman year of college, I was sixteen as I was in an accelerated program, I began investigating my feelings. I read ravenously on all the materials I could reach regarding the transgender situation. I grew only more perplexed; however, I did come to realize that I was placed in the incorrect body and to be happy, I would have to alter my life in some manner. I actually sought assistance via The New York City Dept. of Social Services. I had to be strong and I really was not; yet, this should show how difficult a situation such as the one with which I was made to speak and communicate with absolute strangers regarding my feelings. . I was viewed as a "freak" and I knew it, but I remained steadfast because I am a child of God and I knew I possessed every right as a US citizen as the next individual, and all I sought was a clear cut resolution that would neither harm myself or others.

In any event, most people had been referring to me as "Miss" at this time. I was always ambiguous and not with the use of surgery or cosmetics. It was what it was---I was a pretty little individual that two genders had been clashing. In any event, the NYC Dept of Social Services has suggested that I speak with one of their designated psychiatrists. This again meant that I had to muster enough courage to speak with another stranger regarding

the gender with which I knew was mine to possess. I had to travel to Coney Island in the depths of the winter. I remember the many times that I would walk in the freezing rain just to speak with this psychiatrist. We agreed that I was intelligent, articulate, and that I was in no way being pressured by others or society to make changes. I then began seeing a doctor, Dr. Benitio Reisch of Central Park West, where I was administered estrogen.

After an almost two-year analysis with the psychiatrist and now dressing completely in "female" attire, I was ready for the necessary operation to complete me and make me the person of which I knew as Marlina. As a result, The New City Dept. of Social Services agreed to finance my necessary surgery.

After my operation, which took place in Queens, New York, I was elated. Life was perfect and my family and friends embraced me. Even those associates that I ran into on the train platforms or some small shop would inevitably state such niceties as "It's about time," or "We always knew it would come and you were always so pretty." This did make my life better---the acceptance; however, with or without acceptance from friends or families, this was a surgery that had to be completed.

Life began, but not as easily as I had envisioned, I had my name legally changed in the NYC courts and I was legally Marlina. This permitted me to have a corrected social security card. However, the birth certificate situation, as wonderful and professional as Ms. Edna Timbers of the NYC Board of Health had conducted herself over the years of my attempting to have my birth certificate amended. One must realize that I had relocated to the state of Georgia and it was impossible to obtain driver's licenses without amended documentation, especially the name and the gender was "uncomfortably" questioned.

I request sincerely that one peer into a road most difficult to travel and I beseech the committee to look deep into their hearts with an open-mind. The actions that have to be taken to be the person you know is necessary are NOT frivolous. Life is difficult enough without having such legal constraints. Today, over twenty-some years, I still hold a birth certificate from Brooklyn, NY that DOES NOT REFLECT THAT I AM FEMALE----A gender that I can verify clearly.

This is laughable. I am an educator and my life-style is such that no one but my family is aware of my past. This is wonderful because as I reflect back, I have always been female; however, every time that I must utilize a document that is questionable in gender still brings forth horrors.

Again, I request that this situation is held with the idea that those that are forced to make a birth correction have a long road of unbearable situations that too often are pain-filled. Help others to alleviate some pain, especially long-term pain. You have the ability to place the correct---not corrected---gender on birth records and make the lives of many to live life with a sigh of relief. Just remember in your decisions that the present policy is harmful, hurtful and does not help US citizens to live productive and safe lives.

I thank you in advance for taking the time and consideration regarding this most sensitive situation and I pray that you make the necessary and morally correct decision.

If I can ever be of assistance to make your decision an easier one, feel free to contact me at marlena1492@comcast.net

Cordially,

Marlena-Gabrielle Alvarado

Marlena-Gabrielle Alvarado

(19)

JEANNE CARNO-ROSENBERG
26 Walnut Street, Apt 3 • Montclair, New Jersey 07042

10/30/2006

I was born in Manhattan at Flower Fifth Avenue hospital in 1965. I am currently a law student, a musician, parent of two children and also a transgendered person. I want to speak in support of the proposed change in policy which would allow transgendered persons to change their birth certificates to reflect their reassigned gender.

The present policy is burdensome to transgendered persons who cannot have their documents changed to reflect their reassigned gender because their birth certificate indicates their former sex or gender. This can cause problems in a transgendered individuals ability to conduct business such as renting a car, showing identification when using a credit card, or entering a bar, when personal identification contradicts the person's appearance.

The policy can most notably affect a transgendered person's ability to find work and support him or herself especially if his or her identification reveals a sex other than what is apparent to the employer. New York City has an interest in maximizing it's potentially employable workforce. The long term net effect of the proposed policy could ultimately mean less reliance among otherwise capable and employable transgendered persons who might otherwise find themselves reliant on city and state programs and agencies due to an inability to find work because of their documentation.

The City also has an interest in persons who reside and work in New York having forms of identification that are congruent. Legitimate concerns over terrorism and identity theft require closer scrutiny of identification and as a result, law abiding transgendered persons can find themselves having to unnecessarily explain the disconnect in their appearance and their identification to law enforcement and security personnel. This can be frustrating and intimidating for transgendered persons, but it is also an unnecessary distraction for the security and law enforcement personnel who need to remain vigilant against genuine threats of crime and terrorism. The new policy could prevent further confusion in instances where persons who live in their chosen, permanent gender have to return to their birth gender in order to interact with city, state, or private entities due an inability to have their name and/or gender designations changed to match their permanent gender.

To the degree that any period of living in one's chosen, permanent gender is necessary to having one's birth certificate changed, lessening the required time from two years to one would better serve all of the previously mentioned interests by lessening the amount of time an individual would be presenting documentation that contradicts his or her appearance and permanent gender.

I thank the board for considering the new proposals and hope a decision is made in favor of the proposed changes.

Sincerely,
Jeanne Carno-Rosenberg

17

From: "Ariel Samach" <asamach@nyclu.org>
To: <resolution_comments@health.nyc.gov>
Date: Mon, Oct 30, 2006 12:20 PM
Subject: transgender name change testimony

Please see attached file.

Thank you,

Ariel Samach

Reproductive Rights Project Assistant

New York Civil Liberties Union

125 Broad Street, 19th Floor

New York, NY 10004

p 212-607-3300, x339

f 212-607-3318

We have moved - please note the new floor, phone and fax.

17



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street, 19th Fl.
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

Reproductive Rights Project

Elisabeth Benjamin MSPH JD, *Director*

Galen Sherwin JD, *Staff Attorney*

Lee Che Leong, *Teen Health Initiative Director*

Ariel Samach, *Project Assistant*

**TESTIMONY OF ELISABETH RYDEN BENJAMIN
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION
BEFORE THE NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
REGARDING PROPOSED BIRTH CERTIFICATE REQUIREMENTS
FOR TRANSGENDER PERSONS**

Monday, October 30, 2006

My name is Elisabeth Benjamin and I am the Director of the Reproductive Rights Project at the New York Civil Liberties Union ("NYCLU").¹ The NYCLU, the state affiliate of the American Civil Liberties Union, has approximately 48,000 members across the state. The NYCLU is devoted to the protection and enhancement of those fundamental rights and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York.

The NYCLU thanks the New York City Board of Health for the opportunity to present testimony today regarding proposed amendments to the New York City Health Code that pertain to the issuance of new birth certificates for transgender persons.² A birth certificate is a vital document needed to obtain identification such as a driver's license or passport, to prove eligibility for employment, and to apply for many types of social services. Transgender persons face serious obstacles in accessing these necessary identity documents without a birth certificate that accurately reflects their current gender. Incorrect gender identification may lead to bias, harassment, or discrimination, and makes it more difficult for government officials or agencies to accurately identify transgender people.

The NYCLU supports the New York City Department of Health and Mental Hygiene's efforts to correct the problems with existing regulations governing the issuance of birth certificates. Our testimony will describe: first, the deficiencies in the

¹ This testimony was drafted with the assistance of Irum Taqi, NYCLU Legislative Counsel, and Sharon McGowan, ACLU Foundation Staff Attorney.

² See New York City Health Code §207.05(a)(5).

current regulations and the Department's proposed changes; and second, how the Department's proposed regulations should be revised to ensure that they are not unduly burdensome on transgender residents in New York City.

I. The Need for New Regulations

The existing Health Code provision governing the issuance of a new birth certificate poses two significant problems for transgender individuals. First, the Health Code applies an antiquated standard of medical care because it requires applicants to provide proof that they underwent "convertive" surgery. Second, even if an applicant receives a new birth certificate from the Department, that certificate is of limited utility because it omits a gender designation.

The proposed amendments to the Health Code would remedy these problems by allowing transgender persons born in New York City who are at least 18 years old to obtain birth certificates indicating their new gender by demonstrating that they have completed their transition and intend to live permanently in their transitioned gender. The new regulations would eliminate the requirement of proof of genital surgery. The NYCLU strongly endorses both of these proposed changes.

A. The Surgery Requirement Is Inconsistent with Modern Standards of Medical Care

The current Health Code requiring transgender persons to provide proof of "convertive" surgery fails to meet modern standards of care in transgender medicine. Moreover, the Department limits the universe of "convertive" surgery to solely include vaginoplasty or phalloplasty surgery. This requirement is based on the misconception that sex reassignment surgery is part of every transgender person's transition. The majority of transgender individuals, however, do not undergo the same course of treatment traditionally prescribed for Gender Identity Disorders; in fact surgery is not a part of the transition process for most people. Under the current law, transgender persons are faced with the choice of undergoing surgical procedures that may not be necessary or appropriate, or possessing documentation that fails to reflect their true identity. The proposed law, which we support, would require that two medical professionals provide detailed documentation attesting to the transition of the applicant's gender, eliminating the surgery requirement.

The study of Gender Identity Disorder, a term used by medical professionals to describe transgender persons, is a relatively new field of medicine. Gender Identity Disorder has two components: first, a person must have a strong and persistent cross-gender identification; and second, there must be a persistent discomfort with one's assigned sex.³ Although the etiology of Gender Identity Disorder is unknown, the

³ See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders at 532-33 (4th Ed. 1994) (hereinafter "DSM-IV").

weight of scientific evidence suggests that the condition has a biological, rather than a purely psychological, basis.⁴ At least one New York court has recognized this evidence.⁵

In 1979, the first widely recognized standards of medical care were developed by the World Professional Association for Transgender Health, Inc. (“WPATH”). These standards of care indicate that, in the 1970s, clinicians tended to focus on sex reassignment surgery. But, as the field matured over the next few decades, medical experts “recognized that some persons with bona fide Gender Identity Disorders neither desired nor were candidates for sex reassignment surgery.”⁶

Although subject to individual patient needs, the modern transgender standards of care recognize three phases of medical treatment (known as “triadic therapy”) after a diagnosis of Gender Identity Disorder has been established: first, a real-life experience in the desired gender; second, the administration of hormones of the desired gender; and third, surgery to change the genitalia and other sex characteristics.⁷ However, “[c]linicians have increasingly become aware that not all persons with gender identity disorders need or want all three elements of triadic therapy.”⁸

Accordingly, requiring an operative record of a surgical sex change in order to receive a corrected birth certificate fails to account for the nature of transgender healthcare; a transgender person’s treatment plan is based on an individualized assessment of medical needs that may not include genital surgery. Hormone therapy is the most common treatment for transgender people.⁹ While chest reconstruction surgery is a common surgical treatment for transgender men, recent data shows that few

⁴ See P.T. Cohen-Kettenis & L. J. Gooren, *Transsexualism: A Review of Etiology, Diagnosis and Treatment*, 46 *Journal of Psychosomatic Research* 315-33 (1999); see also Louis Gooren, *Gender Transpositions: The Brain Has Not Followed Other Markers of Sexual Differentiation*, 4 *Int’l J. of Transgenderism* (2000) (concluding that there is mounting scientific evidence that transsexualism is caused by biological rather than psychological factors); J.-N. Zhou, M.A. Hoffman, L.J. Gooren & D.F. Swaab, *A Sex Difference in the Human Brain and its Relation to Transsexuality*, *Nature* 378 (1995) (concluding that “gender identity alterations may develop as a result of an altered interaction between the development of the brain and sex hormones [in utero]”). At least one New York court has recognized this evidence. See, e.g., *Davidson v. Aetna Life & Cas. Ins. Co.*, 101 Misc. 2d 1, 4, 420 N.Y.S.2d 450, 452 (N.Y. Sup. Ct. N.Y. Co. 1979) (citing expert testimony that transsexualism is likely caused by difference in brain structure.)

⁵ See, e.g., *Davidson v. Aetna Life & Cas. Ins. Co.*, 101 Misc. 2d 1, 4, 420 N.Y.S.2d 450, 452 (N.Y. Sup. Ct. N.Y. Co. 1979) (citing expert testimony that transsexualism is likely caused by difference in brain structure.)

⁶ See Harry Benjamin International Gender Dysphoria Association’s (now known as WPATH) *Standards of Care for Gender Identity Disorders*, 6th Version, Feb. 2001 at 2 (available at www.hbigda.org/documents2/socv6.pdf) (“Harry Benjamin Standards of Care”); see also DSM-IV at 533 (indicating that Gender Identity Disorder may be manifested by “adopt[ing] the social role of the other sex or [by] acquir[ing] the physical appearance of the other sex through hormonal or surgical manipulation”) (emphasis added).

⁷ Harry Benjamin/WPATH Standards of Care at 3.

⁸ *Id.*

⁹ See Shannon Minter et al., *Trans Realities: A Legal Needs Assessment of San Francisco’s Transgender Communities*, National Center for Lesbian Rights and Transgender Law Center Report (2003).

transgender men have genital surgery.¹⁰ Current regulations thus exclude a significant number of transgender people from acquiring the basic documentation that they need to live and work in New York City.

B. Omission of Gender Designation Is Confusing, Stigmatizing, and of Limited Utility

The lack of a gender designation on newly issued birth certificates renders the document much less useful and exposes transgender persons to many of the same problems faced by those with incorrect gender designations. This failure to provide a gender designation is stigmatizing because it applies only to transgender persons; it is also unnecessary, and leads to a host of practical problems. Moreover, New York is the only jurisdiction that omits the gender designation -- *every* other jurisdiction (except ID, TN, and OH which do not allow any changes of birth certificates to reflect the transition of transgender people) issues a birth certificate reflecting the new gender.¹¹ The NYCLU supports the Department's proposal to include the gender designation on new birth certificates.

II. The NYCLU's Concerns About the Proposed New Regulations

There are, however, the following other aspects of the proposed Code that cause the NYCLU significant concern, and which the NYCLU addresses in detail below: (1) the proposal to require that a transgender person live in the acquired gender for a period of at least two years -- even though the recognized standard of care for gender transition is only one year; (2) the retention of the requirement for transgender individuals to acquire a Court Ordered name change; and (3) the proposal to add a series of burdensome requirements on health care professionals. The remainder of our testimony addresses these issues in turn.

1. Two Year "Real Life Test" Is Inconsistent with the Medical Standard of Care for Transgender Individuals

The proposed new Code would require that applicants live in their desired gender for two years before applying for a new birth certificate. This requirement imposes an unnecessary burden on transgender persons and seemingly has no basis in current medical or mental health treatment. The necessary length of time for an individual to live in his or her gender in order to completely transition and demonstrate an intent to live permanently in that gender should be determined by qualified medical and mental health

¹⁰ *Id.*; Emily Newfield et al., Female-to-Male Transgender Quality of Life, Quality of Life Research: An International Journal of Quality of Life Aspects of Treatment, Care and Rehabilitation, in press, 2006 (on file with NYCLU).

¹¹ Lambda Legal, "Amending Birth Certificates to Reflect Your Correct Sex," available at: <http://www.lambdalegal.org/cgi-bin/iowa/news/resources.html?record=1162>.

providers. If any time period is required, however, accepted standards of care suggest that one year is sufficient.¹²

Additionally, many people cannot fully transition at their workplace or in other central institutions until they possess corrected documentation required by their workplace or institution. To make transgender persons in these situations wait for two years means that they are unable to participate fully in the medical standard of care recommendations, which is to engage in a documented real-life experience of living in their desired gender. The proposed regulation should be amended to address this concern and, at the very least, the requirement should be eased to a period of one year.

2. The Name Change Requirement is Inappropriate and Unlawful

The proposed regulations retain a name change requirement. The NYCLU believes a name change order should only be required when an individual also wishes to change the name on his or her birth certificate. Many transgender persons may not choose to change their name as a part of their transition. Because an individual's name has no relevance to the correct determination of his or her gender, the proposed regulation should be amended to remove this requirement. Gendered connotations of a name often change over time. Furthermore, why should an individual with a gender-neutral name such as "Chris" or "Dale" be required to change his or her name in order to acquire a birth certificate? Requiring individuals to change their name serves no legitimate government interest.

Moreover, such a requirement raises profound civil liberties concerns about the ability to choose one's own name. This proposed requirement in the Code is legally suspect. To burden the ability of an individual to express his identity through his choice of name triggers strict scrutiny under both the Free Expression Clause of the New York Constitution and the First Amendment of the federal Constitution.¹³ The choice of one's name is perhaps one of the most expressive aspects of one's personality. As one court explained,

Given the delicate nature of any name change application . . . , a trial court should not intervene in the name selection process; nor should the court, to any extent or degree, inhibit or "chill" an applicant's freedoms of expression, guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution, to be known as he or she desires.¹⁴

¹² A two year time frame is nowhere identified in the prevailing standard of care literature for transgender individuals. For example, the Harry Benjamin Standards of Care recommend only three months of real-life experience or psychotherapy treatment prior to the administration of hormones. Likewise, the Harry Benjamin Standard of Care recommend only 12 months of continuous hormonal therapy and full time real-life experience prior to genital surgery. *See* Harry Benjamin/WPATH Standards of Care at 13, 20.

¹³ N.Y. Const. art. 1, § 8, , U.S. Const. amend. I

¹⁴ *Raubar v. Raubar*, 315 N.J. Super. 353, 368 n.16, 718 A.2d 705 (N.J. Super. Ct. Law Div. 1998).

Requiring transgender individuals to change their names unconstitutionally interferes with a citizen's exercise of his or her expressive liberty regarding an intensely personal realm of his or her life.¹⁵ Just as the Courts recognize the important expressive value of an individual's name, so should the New York City Health Code. Accordingly, the proposed Code should not require an individual to change his or her name in order to acquire a new birth certificate.

3. The Two Year Specialized Training Requirement is Unduly Burdensome

The proposed regulations require medical and mental health care providers to possess at least two years of experience related to transgender treatment in order to provide the necessary proof of the applicant's gender transition. This requirement may unfairly harm those who have limited healthcare choices. One out of every four New York City residents lack health insurance and, accordingly, have limited access to health care providers.¹⁶ Specialized courses on transgender healthcare are uncommon, even in New York City; and, in any event, this requirement is unnecessary because many providers are qualified to treat and evaluate transgender persons without specialized course work.

Conclusion

With the increasing demand for identification since September 11, 2001, it is particularly important that transgender persons have access to accurate identity documents. Without accurate identification, transgender persons have limited ability to work, vote, travel, enter buildings, or otherwise participate fully in society. Transgender people need birth certificates that accurately indicate their true gender and reflect the individualized nature of transgender healthcare and experience.

¹⁵ See, e.g., *Gay Activists Alliance v. Lomenzo*, 31 N.Y.2d 965, 293 N.E.2d 255 (1973) (per curiam) (Secretary of State acted arbitrarily in refusing to accept certificate of incorporation from gay rights organization because its proposed corporate name was "not appropriate").

¹⁶ United Hospital Fund, *Health Coverage in New York 2002*, at 3, (May 2004).

Testimony of

Anya Mukarji-Connolly

**Staff Attorney of the Peter Cicchino Youth Project
Urban Justice Center**

**Before the New York City Department of Health and
Mental Hygiene**

Board of Health

**Comments on the New York City Department of Mental
Health and Hygiene's Proposed Amendments to Article
207 of the New York City Health Code, Regarding
Change of Gender Designation on a Birth Certificate**

October 30, 2006

New York City Department of Health and Mental Hygiene
Board of Health
Public Hearing
October 30, 2006

Good afternoon. On behalf of the Peter Cicchino Youth Project, I'd like to thank the New York City Department of Health and Mental Hygiene for convening this hearing. My name is Anya Mukarji-Connolly and I am a staff attorney at the Peter Cicchino Youth Project of the Urban Justice Center.

The Peter Cicchino Youth Project (PCYP) is dedicated to serving homeless and at-risk lesbian, gay, bisexual, and transgender (LGBT) youth. We provide free legal services for individual LGBT young people up to the age of 24 and systemic advocacy for the LGBT youth community. The Project is housed at the Urban Justice Center, a non-profit law collective serving New York City's most disenfranchised poverty populations. Since 1994, we have been providing legal services to LGBT teenagers and young adults who are poor, living on the streets, in homeless shelters, in the juvenile justice system or in foster care.

We also advocate for the LGBT community as a whole. We want to make sure that LGBT young people in homeless shelters, foster homes, group homes, and other institutions are safe and free from discrimination, abuse or harassment due to their sexual orientation or gender identity.

I am here today to offer our strong support for the Department's efforts to reevaluate Article 207 so that it more accurately serves the needs of transgender people. Additionally, we applaud the Department's collaboration with Trans health and legal professionals in this process. Together, we believe, the city's policy will allow transgender people safer access to services and fuller participation in society.

For many people, obtaining a birth certificate is the first step to obtaining required photo id. Not having ID presents a formidable barrier to gaining employment, or eligibility for government programs, including access to shelters, government buildings, and public benefits. Since 2001 there has been an even greater need for personal identification in our city. Unfortunately, despite the greater need for identification access to essential documents can be difficult for many people. For Trans youth, this process can be even harder. Many LGBTQ youth are thrown out of their homes or flee abusive families, often leaving behind all forms of identification. For those who may have identification, it may not reflect their lived gender and therefore may lead to problems when trying to use it. Incomplete or inaccurate information on a birth certificate will affect the information on other forms of id. Therefore, having access to accurate birth certificates is essential for transgender people.

Currently, the requirements for obtaining a birth certificate that reflects ones lived identity create an unrealistic and often, impossible barrier for many transgender people, leaving many Trans people in dangerous positions. Therefore, we commend the Department's proposal to amend the city's policy so it better reflects the individualized nature of Trans healthcare without additional arbitrary requirements. With that said, we'd like to see the proposed amendments changed so that Trans applicants are not burdened by unnecessary prerequisites.

1. **The proposal should remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.**

This requirement will only increase the danger and inconvenience that many Trans people already face living with out proper identification. By asking trans applicants to wait an additional 2 years before applying for a birth certificate, they will be forced to rely on either no birth certificate or use a birth certificate with the wrong gender on it, making them more vulnerable to harassment and discrimination.

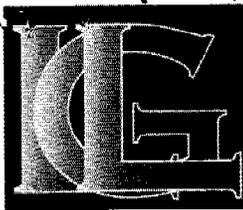
2. **The proposal should be revised to remove the requirement for a name change order**

There is no reason why the Department should require an individual to change his or her name. Many transgender people choose to keep the name they were given. Also, many names are gender neutral and not necessarily tied to ones gender. Naming is a highly personal and individual decision and should not be forced upon someone unnecessarily.

3. **The proposal should be revised to remove the requirement that providers have two years of experience working with transgender people**

This requirement would have a particularly negative impact on Transgender people who were born in New York City but are living outside the city where Trans services are limited. Many areas outside the city lack specialized services for transgender people. However, that said, interested practitioners can become qualified through trainings and education and by consulting with other experts in the field and therefore perfectly capable of providing competent treatment and assessments to trans clients.

Again, I'd like to thank the Department for its proposal. We strongly support your efforts.



LESBIAN, GAY, BISEXUAL AND TRANSGENDER LAW ASSOCIATION OF GREATER NEW YORK

President
Tara Rice, Esq.

October 27, 2006

1st Vice President
John Scheich, Esq.

Rena Bryant
Secretary, Board of Health
125 Worth Street, CN-31
New York, NY 10013

Secretary
Laurie Marin, Esq.

Law Student Representative
Casie McGee

Directors
Hon. Arlene P. Bluth
R. Brent English, Esq.
Michele Kahn, Esq.
Thomas Maligno, Esq.
Frank Nervo, Esq.
Jaime Piazza
Brad Snyder, Esq.

Past Presidents
Prof. Arthur S. Leonard
Morton Newburgh, Esq.
Debra F. Guston, Esq.
Jim Williams, Esq.
Aubrey Lees, Esq.
Hon. Paul G. Feinman
Randy F. Bernfeld, Esq.
Hon. Cynthia S. Kern
Thomas Basile, Esq.
Robert F. Bacigalupi, Esq.
Michele Kahn, Esq.
Thomas Maligno, Esq.

Administrator
Daniel R. Schaffer

Comments pursuant to notice of intention to amend Article 207 of the NYC Health Code Proposed repeal of paragraph 5 of subdivision a of section 207 and amendment of section 207.5 of article 207 of Title 24 of the Official Compilation of the Rules of the NYC Health Code from the Lesbian, Gay, Bisexual and Transgender Law Association of Greater New York (LeGaL).

RECEIVED
GOV. SECRETARY'S OFFICE
RECORDS ACCESS OFFICER
OCT 31 2006 1:11 PM

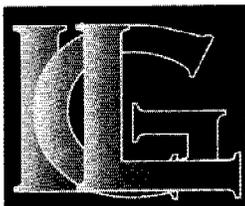
Dear Rena Bryant,

I am writing on behalf of LeGaL in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the NYC Health Code relating to changing the gender on a birth certificate. A birth certificate with the wrong gender indicated can be an impediment to accessing government services, housing, employment or possibly physical endangerment.

While LeGaL supports the intent of the Department of Health and Mental Hygiene, we request that the Department of Health and Mental Hygiene consider the following amendments to their proposal:

If the Department of Health and Mental Hygiene feels a time requirement is necessary, one year (the period most commonly used by health professionals in the treatment of transgender people) should be the rule, though we would advocate no time requirement.

The requirement of having received a court ordered name change is an irrelevant part of this process. Whether or not someone has changed their name does not have a place in changing one's gender. In addition, some names are gender neutral and may never be changed. We ask the Department of Health and Mental Hygiene to remove this requirement from the proposed amendment.



LESBIAN, GAY, BISEXUAL AND TRANSGENDER LAW ASSOCIATION OF GREATER NEW YORK

President

Tara Rice, Esq.

1st Vice President

John Scheich, Esq.

Secretary

Laurie Marin, Esq.

**Law Student
Representative**

Casie McGee

Directors

Hon. Arlene P. Bluth

R. Brent English, Esq.

Michele Kahn, Esq.

Thomas Maligno, Esq.

Frank Nervo, Esq.

Jaime Piazza

Brad Snyder, Esq.

Past Presidents

Prof. Arthur S. Leonard

Morton Newburgh, Esq.

Debra E. Guston, Esq.

Jim Williams, Esq.

Aubrey Lees, Esq.

Hon. Paul G. Feinman

Randy F. Bernfeld, Esq.

Hon. Cynthia S. Kerr

Thomas Basile, Esq.

Robert F. Bacigalupi, Esq.

Michele Kahn, Esq.

Thomas Maligno, Esq.

Administrator

Daniel R Schaffer

The requirement for a physician and a mental health professional to submit a notarized letter indicating their experience in transgender health care for at least two years does not recognize the lack of medical health providers in certain areas where there is a focus on transgender people, including parts of New York City.

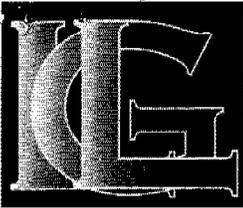
If the transgender person was born in NYC, but lived in an area with limited or no medical services for transgender individuals, that may delay the ability to get their birth certificate amended. Additionally, the requirement of a physician and a mental health professional letter can be burdensome financially. We believe that the requirement should be eased to allow for only one letter and that the standard be a "demonstrated competence in transgender treatment" which would allow for additional qualified health care providers to be used for the required letter.

Finally, individuals below the age of 18 should be allowed to amend their birth certificate with either the permission of their parent or guardian or on their own if they are emancipated.

Sincerely,

A handwritten signature in black ink that reads "Tara Rice". The signature is fluid and cursive, with a large loop at the end of the name.

Tara Rice
President
LeGaL



LESBIAN, GAY, BISEXUAL AND TRANSGENDER LAW ASSOCIATION OF GREATER NEW YORK

President
Tara Rice, Esq.

October 27, 2006

1st Vice President
John Schetch, Esq.

Rena Bryant
Secretary, Board of Health
125 Worth Street, CN-31
New York, NY 10013

Secretary
Laurie Marin, Esq.

Law Student Representative
Casie McGee

Directors
Hon. Arlene P. Bluth
R. Brent English, Esq.
Michele Kahn, Esq.
Thomas Maligno, Esq.
Frank Nervo, Esq.
Jaime Piazza
Brad Snyder, Esq.

Past Presidents
Prof. Arthur S. Leonard
Morton Newburgh, Esq.
Debra E. Guston, Esq.
Jim Williams, Esq.
Aubrey Lees, Esq.
Hon. Paul G. Feinman
Randy F. Bernfeld, Esq.
Hon. Cynthia S. Kern
Thomas Basile, Esq.
Robert F. Bacigalupi, Esq.
Michele Kahn, Esq.
Thomas Maligno, Esq.

Administrator
Daniel R Schaffer

Comments pursuant to notice of intention to amend Article 207 of the NYC Health Code Proposed repeal of paragraph 5 of subdivision a of section 207 and amendment of section 207.5 of article 207 of Title 24 of the Official Compilation of the Rules of the NYC Health Code from the Lesbian, Gay, Bisexual and Transgender Law Association of Greater New York (LeGaL).

RECEIVED
DHA/SECRETARY'S OFFICE
RECORDS ACCESS OFFICER
OCT 31 2006 1:11 PM

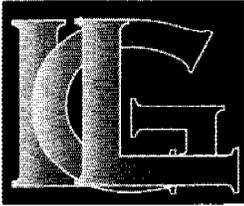
Dear Rena Bryant,

I am writing on behalf of LeGaL in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the NYC Health Code relating to changing the gender on a birth certificate. A birth certificate with the wrong gender indicated can be an impediment to accessing government services, housing, employment or possibly physical endangerment.

While LeGaL supports the intent of the Department of Health and Mental Hygiene, we request that the Department of Health and Mental Hygiene consider the following amendments to their proposal:

If the Department of Health and Mental Hygiene feels a time requirement is necessary, one year (the period most commonly used by health professionals in the treatment of transgender people) should be the rule, though we would advocate no time requirement.

The requirement of having received a court ordered name change is an irrelevant part of this process. Whether or not someone has changed their name does not have a place in changing one's gender. In addition, some names are gender neutral and may never be changed. We ask the Department of Health and Mental Hygiene to remove this requirement from the proposed amendment.



LESBIAN, GAY, BISEXUAL AND TRANSGENDER LAW ASSOCIATION OF GREATER NEW YORK

President

Tara Rice, Esq.

1st Vice President

John Scheich, Esq.

Secretary

Laurie Marin, Esq.

**Law Student
Representative**

Casie McGee

Directors

Hon. Arlene P. Bluth

R. Brent English, Esq.

Michele Kahn, Esq.

Thomas Maligno, Esq.

Frank Nervo, Esq.

Jaime Piazza

Brad Snyder, Esq.

Past Presidents

Prof. Arthur S. Leonard

Morton Newburgh, Esq.

Debra E. Guston, Esq.

Jim Williams, Esq.

Aubrey Lees, Esq.

Hon. Paul G. Feinman

Randy F. Bernfeld, Esq.

Hon. Cynthia S. Keri

Thomas Basile, Esq.

Robert F. Bacigalupi, Esq.

Michele Kahn, Esq.

Thomas Maligno, Esq.

Administrator

Daniel R. Schaffer

The requirement for a physician and a mental health professional to submit a notarized letter indicating their experience in transgender health care for at least two years does not recognize the lack of medical health providers in certain areas where there is a focus on transgender people, including parts of New York City.

If the transgender person was born in NYC, but lived in an area with limited or no medical services for transgender individuals, that may delay the ability to get their birth certificate amended. Additionally, the requirement of a physician and a mental health professional letter can be burdensome financially. We believe that the requirement should be eased to allow for only one letter and that the standard be a "demonstrated competence in transgender treatment" which would allow for additional qualified health care providers to be used for the required letter.

Finally, individuals below the age of 18 should be allowed to amend their birth certificate with either the permission of their parent or guardian or on their own if they are emancipated.

Sincerely,

A handwritten signature in cursive script that reads "Tara Rice". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Tara Rice
President
LeGal

(14)

From: "Lisa Mottet" <lmottet@thetaskforce.org>
To: <resolutioncomments@health.nyc.gov>
Date: Mon, Oct 30, 2006 12:21 PM
Subject: Comments to Birth Certificate Regulations

Ms. Bryant:

Please find the attached official comment from Matt Foreman, Executive Director, National Gay and Lesbian Task Force.

Best,

Lisa

Lisa Mottet

Legislative Lawyer, Transgender Civil Rights Project

National Gay and Lesbian Task Force

1325 Massachusetts Ave. NW, Suite 600

Washington, DC 20005

Phone: 202.639.6308

Fax: 202.393.2241

lmottet@theTaskForce.org

www.theTaskForce.org <<http://www.thetaskforce.org/>>

Important - Confidential: The information contained in this e-mail is intended for the e-mail recipient and may contain confidential and/or privileged information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution, copying, or action taken in relation to the contents of and attachments to this e-mail is strictly prohibited and may be unlawful. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately. Security Warning: Please note that this e-mail has been created in the knowledge that Internet e-mail is not a 100% secure communications medium. We advise that you understand and observe this lack of security when e-mailing us. Viruses: Although we have taken steps to ensure that this e-mail and attachments are free from any virus, we advise that in keeping with good computing practice the recipient should ensure they are actually virus free.

CC: "Monique Hoeflinger" <mhoeflinger@thetaskforce.org>

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

October 30, 2006

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City' (the "New York City Health Code").

Dear Ms. Bryant:

On behalf of the National Gay and Lesbian Task Force, I want to encourage the Board of Health to support the proposed amendment to New York City's birth certificate gender modification policy. The proposed policy is a vast improvement over the current policy and represents a progressive step for New York City. This change will make a substantive difference in real peoples' lives.

Below we outline several adjustments that would further improve the policy to ensure that while only people who permanently transition are able to change their birth certificate, that people's ability to change their birth certificate do not depend on factors irrelevant to whether that transition is in fact permanent..

1. The new policy should not require a name change.

The proposed policy requires a legal name change in order for a person to change the gender on their birth certificate. Section 207.05(b)(1)(first sentence). While a name change often accompanies transitioning, the two are not interdependent. If a person sought to change the name on his birth certificate, then this requirement might be reasonable; however, people who only wish to change their gender should not be forced to change their name. For example, the new policy would require a person with a gender-neutral name to arbitrarily pick a new one. And, names once considered associated with one gender have become popular for use with the other gender or are becoming gender-neutral. Many people in transition will voluntarily change their legal name, especially if they were named a gender-specific name at birth, but they should not be forced to do so. A person's legal name does not actually show whether or not that person has or is permanently transitioning.

2. The new policy should not require two years living in the acquired gender.

The proposed policy requires a person to live in their acquired gender for at least two years in order to change the gender on their birth certificate. Section 207.05(b)(1)(third sentence). The two-year requirement has no basis in current medical or mental health treatment. Transgender people can transition completely and permanently in considerably

less than two years.

One of the foremost reasons transgender people cannot live safely and consistently in their gender is because they lack accurate identification, including a birth certificate. When a transgender person shows a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, or discriminated against. The proposed policy requires transgender people to survive the danger and potential humiliation of lacking proper identification for two years. Ideally, there would be no temporal requirement but instead reliance would be made on the evaluations of the medical professionals.

If, however, a temporal requirement remains necessary, then shorter is better. The Standards of Care of the World Professional Association for Transgender Health (formerly known as the Harry Benjamin International Gender Dysphoria Association) suggest that one year is useful to determine whether a person needs further surgical interventions in order to complete transition. As the standards indicate, not everyone needs this time period to make a permanent decision about transition. If any time period is required for your policy, then 6 months or one year would better represent the current medical standards.

3. The new policy should not require the examining providers have two years' experience working with transgender people and/or specialized courses.

The proposed policy requires one notarized affidavit from a qualified physician and one from a qualified mental health professional. Section 207.05(b)(1)(i), (ii). To be qualified, both the physician and mental health professional need to have two years experience in the last five years related to transgender treatment. Section 207.05(b)(1)(i)(A)(b), (ii)(A)(b). Some places in New York (upstate, for example) as well as places elsewhere in this country do not have any providers who could meet this strict qualification because there is a lack of demand for transgender-specific healthcare. Board certification in their specialty (such as family practice, endocrinology or internal medicine, etc.) should be sufficient.

Similarly, the requirement that providers submit a list of "relevant specialized courses" he or she has taken should also be removed. Section 207.05(b)(1)(i)(A)(b), (ii)(A)(b). In geographic areas such as referenced above, where there is a lack of demand for transgender health care, there is a corresponding lack of courses relating to transgenderism. Furthermore, the relevant specialized courses requirement is ambiguous, and leaves too much discretion to non-medical officials. This requirement should be eliminated.

4. The new policy should not require an affidavit from a physician and a mental health professional.

The proposed policy requires two separate affidavits: one from a qualified physician and one from a qualified mental health professional. Section 207.05(b)(1)(i), (ii). There is no need for this duplicative requirement. Given the requirements necessary to be considered

a qualified physician or mental health professional, either should be able to give an accurate opinion of the person's gender, including the intended permanence of the transition, the psycho-social adjustment, and whether transition is complete. Having two medical professionals attest to these facts adds unnecessary cost and delay to the process.

5. The policy should create a presumption that the applicant will be granted change of sex if the requirements of the policy are met.

As drafted, the new section allows the agency to require additional information from the applicant or refuse to change the sex at its discretion. The regulations should be amended to include a statement that an applicant meeting the stated requirements of this section should be granted the change of sex.

Conclusion

The National Gay and Lesbian Task Force has worked on transgender-related legislation and policy since 1997 and founded our Transgender Civil Rights Project in 2001. The experience of our staff indicates that lack of accurate and updated identification documents, such as birth certificates, is a major catalyst for discrimination and hate violence. Many transgender people who live a fully transitioned life permanently in their new gender are unable to update all of their identification documents because of unnecessary policies and unnecessary administrative burdens. Updating New York City's policy is a crucial step toward ensuring that unnecessary burdens are removed. We urge you to adopt the proposed policy, with modifications, to ensure that all people who have transitioned can be treated equally and respectfully in their new gender.

If you have any questions or concerns, please feel free to contact me at 212.604.9830 or mforeman@thetaskforce.org. You may also contact Lisa Mottet, Legislative Lawyer for our Transgender Civil Rights Project, at 202.639.6308 or lmottet@thetaskforce.org.

Thank you very much for your consideration.

Sincerely,



Matt Foreman
Executive Director

13

From: <schere14@earthlink.net>
To: <resolutioncomments@health.nyc.gov>
Date: Mon, Oct 30, 2006 4:46 PM
Subject: transgender birth cert resolution

Dear Rena Bryant, Secretary to the Board of Health,

I am writing to comment on the Department of Health's upcoming decision on regulations affecting transgender peoples' ability to change the gender descriptor on their birth certificates. I'd like to congratulate the Department for its willingness to revise its policies to better safeguard the health of all New Yorkers. New York City's transgender population is a population at risk and so demands the attention and protection of the Department of Health. However, three aspects of the proposed change in regulations would create insurmountable obstacles for transgender people born in New York City, including myself.

As a transgender man born in New York City, I currently face the dilemma of possessing a birth certificate that describes me as female. While I have followed all the legal procedures to change my name and gender on other official documents, I am, under both the current and proposed Department of Health regulations, currently unable to change the gender on my birth certificate. This has caused me many problems and under new federal identification regulations is sure to cause me even more problems. Without a birth certificate that designates me as male, I am unable to get a passport that attests to my male gender. I have been fortunate enough to be able to jump through the many procedural hoops, including expensive surgery and therapy required to change my name and gender on other official documentation. I am currently employed under my male name and gender designation and able to avoid curious and often suspicious and even hostile questioning in other situations that require ID, such as bank transactions or credit card purchases. I am not so fortunate at international airports, however. Airport security personnel are paid to be suspicious. When they see a passport that does not seem to match its owner, they will, naturally, give you major problems.

While I don't object to the requirement that health professionals describe in writing the psychosocial and medical dimensions of a person's transition from one gender to another, the requirement that those professionals have two years of experience working with transgender people is unnecessary and obstructive. When I began transitioning, I did not change therapists to do so. I had a therapist with whom I was comfortable and who knew my history, my strengths and challenges. While she had no specific training on transgender issues, she is an expert in her field and professor of social work. She was able not only to put my process into a larger context, but to bring this experience into her work as a professor. Outside NYC, therapists are even less likely to have had contact with or training in how to deal with transgender people. Requiring a certain kind of therapist causes transgender people serious inconvenience and makes us vulnerable to therapists who seek to corner this niche market and charge outrageous fees for the service. Transgender people should choose their therapist based on their own individual and holistic needs and should not be forced to choose among a narrow range of specialists.

Requiring that transgender people live in their chosen gender for two years leaves people in a limbo that's cruel and humiliating. The choice to officially transition is often long in coming and when that choice is made it's important for employment and other purposes that one's identity lines up relatively quickly. In my own case, I had decided to transition and was out to my friends, but was in a situation that made a public transition very difficult. I had to change my job in order to fully transition. It was important for me to have some documentation lined up in order to make this change. Enforcing a waiting period on individuals who already struggle to maintain continuous employment and otherwise live through the challenge of gender transition would only add insult to injury. Transition is not a crime, but a personal choice. Transgender people should not be singled out for a special waiting period. If anything, it's imperative that we receive speedy transition in documents to match our chosen gender so as not to put ourselves in jeopardy.

Finally, it is not logical to require that transgender people also change their names in order to change their birth certificates. Many transgender people have names that require no change as they transition from one

gender to another. This requirement is simply unnecessary; name change is a purely personal choice and should remain so.

I hope that as a directly affected individual, that you will consider my comment as you decide the fate of the thousands of transgendered people born in New York City. As you revise the regulations affecting the change of gender on birth certificates, justice for transgender people would mean eliminating the two year time requirement for both transgender people and health professionals attending to their needs, as well as the requirement of a name change.

Thank you for your consideration,

Lee Joseph Schere
2022 Beverley Road Apt. 8
Brooklyn, NY 11226

RECEIVED
DOH/SECRETARY'S OFFICE
RECORDS ACCESS OFFICER

October 30, 2006

OCT 31 P 3: 30

Franklin Romeo
674 Park Place, Apt. 2
Brooklyn, NY 11216

BY ELECTRONIC AND U.S. MAIL

Rena Bryant
Board of Health
125 Worth Street, CN-31
New York, NY 10013

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code")

Dear Ms. Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. I am an attorney in New York City. From 2005-2006, I worked as a Kirkland and Ellis Legal Fellow at Lambda Legal Defense & Education Fund. Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work. My work focused on the needs of low-income transgender people in New York City, and included both litigation and policy advocacy. Through this work, as well as my own experiences as a transgender man, I am aware that obtaining identity documents that correctly reflect a person's name and lived gender is of vital importance to people of transgender experience.

Birth certificates are needed by most people to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When transgender people show a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, humiliated, or discriminated against. Even in the best of cases they may face embarrassment, confusion and delays. Transgender people need a policy that entitles them to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people.

I am asking that the proposed new regulations be adopted with the following amendments:

1. The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.
 - a. The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times *because* we lack an accurate birth certificate.
 - b. At the least, if any time period is required, it should only be one year. According to the Standards of Care of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBIGDA), one year of living in the new gender can be useful in determining whether or not certain surgical interventions are indicated to complete a transition.

Specifically, § 205.05(b)(1) should be amended so that the sentence:

“No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made”

Instead reads:

“No application shall be approved unless the applicant is over 18 years of age.”

2. The proposal should be revised to remove the requirement for a name change order.
 - a. A name change order has nothing to do with the completeness of one’s gender transition and is unrelated to one’s gender or sex status on a birth certificate.
 - b. In addition, some transgender people have gender neutral names that they may never change.

Specifically, § 205.05(b)(1) should be amended so that the sentences:

“Upon application, a new birth certificate shall be filed when: The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate.”

Would now read:

“Upon application, a new birth certificate shall be filed when: Proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate.”

3. The proposal should be revised to remove the requirement that providers must have two years of experience working with transgender people.
 - a. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City.
 - b. Some transgender people who were born in New York City may now live in areas where providers with a significant amount of experience in treating transgender people or with access to specialized courses are simply unavailable.
 - c. Treatment providers without access to specialized coursework can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments.

Specifically, § 205.05(b)(1)(i)(A)(b) should be amended so that the sentence:

“Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated”

Would now read:

“Information demonstrating at competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated.”

In addition, § 205.05(b)(1)(ii)(A)(b) should be amended so that the sentence:

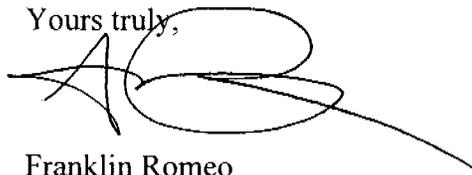
“Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated”

Would now read:

“Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated.”

I commend the Department of Health for undertaking the current revisions. Please contact me directly if you have questions regarding these comments at 917-637-3653.

Yours truly,



Franklin Romeo

11

From: "Z Gabriel Arkles" <z@srlp.org>
To: <resolutioncomments@health.nyc.gov>, <resolution_comments@health.nyc.gov>
Date: Mon, Oct 30, 2006 11:45 AM
Subject: comment on Section 207.05

Z Gabriel Arkles

Staff Attorney

Sylvia Rivera Law Project

322 8th Ave. 3rd Floor

New York, NY 10001

(212) 337-8550 ext. 113

fax (212) 337-1972

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) and may contain legally privileged and/or confidential information. If you are not the intended recipient, please do not disclose, distribute or copy this communication. Please notify the sender that you have received this e-mail in error and delete the original and any copy of the e-mail.

Rena Bryant
Secretary to the Board of Health
125 Worth Street, CN-31
New York, NY 10013

October 30, 2006

**Re: Comments pursuant to notice of intention to amend
Article 207 of the New York City Health Code**

Dear Secretary Bryant:

I am writing on behalf of the Sylvia Rivera Law Project in support of the Board of Health and Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding amendments to the gender on birth certificates. The Sylvia Rivera Law Project has appreciated working with the Department over the course of the last four years to help update the regulations concerning birth certificates for transgender people. We thank the Department and the Board for their thoughtful and thorough approach to investigating the concerns we and others raised about the current policy, as well as for their commitment to making sure that the policy is in line with current understandings of transgender healthcare and the realities of transgender people's lived experience. Throughout this process, we have also learned a great deal about the Department's goals related to maintaining security, protecting against fraud, and acknowledging the gravity of altering a vital record. We believe that the proposed amendments, with a few adjustments that I will discuss below, will come much closer to achieving all of these goals than the current regulation.

The Sylvia Rivera Law Project is a not for profit organization in New York City dedicated to serving low-income people and people of color who are transgender, intersex, or gender nonconforming. SRLP works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, without facing harassment, discrimination, or violence. SRLP is a collectively-run organization that provides free legal services, advocates for policy reform, supports community organizing efforts, brings precedent-setting law suits, and educates the public to achieve our mission. We have served over 700 clients and have close relationships with many expert medical and mental health providers in the area of transgender health. Therefore, we have had an opportunity to understand many of the problems that the current policy regarding change of gender on birth

SYLVIA RIVERA LAW PROJECT

322 8TH AVENUE, 3RD FLOOR NEW YORK, NY 10001 212 337 8550 T 212 337 1972 F WWW.SRLP.ORG

certificates presents. I think I can safely say that none of our clients feel that the current policy has worked for them.

The majority of our clients are not eligible for a new birth certificate under the current regulations because they have not had the specific type of genital surgery contemplated by the current regulation as interpreted by the Department of Health and Mental Hygiene. Many of them have had multiple other forms of treatment according to the treatment plan they developed with their providers, such as orchiectomy, electrolysis, mastectomy, hormone therapy, breast augmentation surgery, facial feminization surgery, supportive psychotherapy, tracheal shave, voice therapy, and/or hysterectomy. Even those who have had the specific forms of treatment currently required often do not have the specific documentation required, such as the operative report from the surgery or a post-operative psychiatric evaluation. Through working closely with transgender and intersex people and their providers, it has only become more and more clear to us over the years how very individualized the course of treatment for each person is. It is impossible to select *any* one form of treatment as *the* type of treatment to show that a person has completed their gender transition, at least while staying in line with the opinion of expert healthcare professionals and with the lived realities of transgender and intersex people.

For one example, I recently received a letter from an intersex woman. She was identified as male at birth because of the appearance of her external genitals. However, at puberty she experienced development of breasts, menstruation, and the other common aspects of female puberty, not those of male puberty. She learned that she had an intersex condition and that she had internal reproductive organs typical for women. She also identified as female. As soon as she became an adult she began living as a woman, consistent with her identity and her physical attributes, and has done so consistently since that time. Based on this information, she seems to be one of the relatively rare people who has completely transitioned without receiving any form of medical treatment at all. Under the current policy and under any other policy that required a particular form of treatment, she would never be able to receive a new birth certificate that reflected her true, current, lived gender, regardless of the opinion of her medical or mental health care providers. There is no legitimate reason to have a policy that is not sufficiently flexible to work for all transgender and intersex people who have evidence that they have transitioned.

For those people who cannot access a new birth certificate, presenting a birth certificate with the wrong gender on it often has a major impact in their lives. I have one client who had a part-time low-wage job and was offered a higher-paying, salaried, full-time position. She turned down the offer because the job required

foreign travel. She felt that without a corrected birth certificate, she would not be able to obtain a passport showing the right gender, and given her female identity and appearance she feared for her most basic physical safety if she had to travel using a passport that designated her as male. I have another client who fled to a domestic violence shelter to escape a severely abusive relationship, only to be kicked out and become homeless when she was not able to produce a corrected birth certificate. I also have many clients who had to produce a birth certificate when they applied for public benefits or when they started a job. The uncorrected birth certificate revealed them to be transgender and subsequently they were subjected to serious verbal harassment and discrimination. Having a birth certificate or other identity document that still shows the assigned sex at birth is also a hindrance to any law enforcement or other government official attempting to correctly identify the individual.

For those people who do receive new birth certificates under the current policy, many experience receiving a birth certificate that eliminates any gender designation as a great indignity. It is stigmatizing for transgender people who have proven their complete transition to be the only ones singled out for this genderless birth certificate. Also, on at least one occasion a client came to us because a federal government agency wanted to see a birth certificate with a gender listed on it and had some concerns about the validity of our client's amended birth certificate.

For all of these reasons, the Sylvia Rivera Law Project strongly supports the adoption of the proposed amendment to the regulation. Gathering evidence from treating professionals about the completion of transition without requiring evidence of one arbitrary particular form of treatment succeeds in focusing on the question most relevant for birth certificate determinations and permits deference to the professionals with the most relevant information and experience to make the assessment for the individual. This approach also has the advantage of less need for amendments in the future as knowledge in this field continues to develop.

However, there are some aspects of the proposed amendments that remain troubling, in that they are not supported by current medical and mental health standards and would keep some transgender people born in New York City from obtaining appropriate documentation. These aspects of the proposed amendments were not a part of the recommendations of the expert advisory committee convened by the Department. Therefore, we make the following recommendations for changes. It is our sincere hope that the Board of Health will see fit to consider these recommended changes with the same care they have considered other aspects of the regulation and will address these problems before promulgating the final regulation.

1. **The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.**

The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times *because* they lack an accurate birth certificate.

Specifically, § 207.05(b)(1) should be amended so that the sentence:

“No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made”

Instead reads:

“No application shall be approved unless the applicant is over 18 years of age.”

2. **The proposal should be revised to remove the requirement for a name change order.**

The gendered connotations of names change over time and are highly culturally contingent. Some transgender people have gender neutral names that they may never change. A name change order is not relevant to the completion an individual's gender transition. In our experience, the vast majority of government agencies, as well as the courts in the context of name changes, recognize that a name change and gender change are separate processes and do not require a name change order to change a sex designation or proof of gender transition to change a name. The Sylvia Rivera Law Project has assisted a small but significant number of clients who were quite content with their given names and did not desire a name change, but who had completed their transition and, with the support of their healthcare providers, wished to change their gender designation on identity documents and records to reflect that fact. However, it is important, in the many cases where transgender people do change their names, that the new certificate reflect the new name and only that name.

Specifically, § 207.05(b) should be amended so that the sentences:

“Upon application, a new birth certificate shall be filed when (1) The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate.”

Instead read:

“Upon application, a new birth certificate shall be filed when (1) Proof satisfactory to the Department has been submitted that such person has

completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate."

3. The proposal should be revised to remove the requirement that providers must have two years of experience related to transgender treatment in the last five years

Some transgender people who were born in New York City now live in areas where providers with a significant amount of experience in treating transgender people over the last two years are simply unavailable. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City. It is important that transgender people be able to seek treatment from local providers they know and trust, even if those providers are not necessarily among the most expert providers in the country. Such providers can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments. For example, they can consult with experts, review the medical literature, and consult published training and educational resources and standards of care. Setting an arbitrary time limit here does not help—all the factors should be considered with the door open to the possibility of competent providers with less than two years experience in the last five years.

Specifically, § 207.05(b)(1)(i)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated"

Instead reads:

"Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated."

In addition, § 207.05(b)(1)(ii)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated"

Instead reads:

“Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated.”

4. The proposal should be amended to include a presumption regarding applications meeting the enumerated requirements of Section 207.05

Another portion of the proposed amendment as written would for the first time give the Department virtually unfettered discretion to request additional information of any kind from an applicant, or to deny an application that meets the requirements of § 207.05. This authority must be bounded, at least in a modest fashion, to ensure that the regulations comport with due process principles. Applications meeting the enumerated requirements of the proposed regulation, including the changes described above, will already include extensive, even invasive, information about a transgender applicant’s medical and mental health history and status with respect to their gender and will constitute powerful, thorough evidence of complete gender transition and intent to live permanently in the new gender. The evidence required in the proposed amended regulation was selected and proposed by the Department of Health as the most effective and appropriate evidence to require for issuance of a new birth certificate after extensive consideration and consultation with experts. It is our hope that it is the intent of the Department to only request additional evidence in rare circumstances where some other information is required to clarify material information in the affidavits already submitted, not to make sweeping additional inquiries unrelated to the requirements established in the regulation. Accordingly, we recommend the addition of the language below, which limits the Department’s discretion only to the extent of (a) creating a rebuttable presumption that an application containing the information set forth in § 207.05 is sufficient; and (b) requiring the Department to explain its grounds when it rejects, or requires additional information in support of, an application that contains the information set forth § 207.05.

Section 207.05(c) should be amended so that the paragraph:

When an application for a new birth certificate is filed pursuant to § 207.05(b)(1), the Department may request the applicant to provide other information or evidence demonstrating the applicant’s transition to his or her acquired gender.

Instead reads:

An application containing all of the information described in §

SYLVIA RIVERA LAW PROJECT

322 8TH AVENUE, 3RD FLOOR NEW YORK, NY 10001 212 337 8550 T 212 337 1972 F WWW.SRLP.ORG

207.05(b)(1) shall be presumed sufficient, and the Department shall not request additional information from the applicant unless the Department provides the applicant with written notification setting forth with particularity the additional information requested and the Department's reasons for requesting the additional information. An application containing all of the information described in § 207.05(b)(1) shall be granted unless the Department provides the applicant with written notification setting forth with particularity the Department's grounds for concluding that the application lacks satisfactory proof that the applicant has completed the transition to another gender and intends permanently to remain in such acquired gender.

Again, we greatly appreciate the opportunity to work with the Department of Health and Mental Hygiene throughout this process. We congratulate the Department and Board on their work. We strongly urge the Board to adopt the proposed amendments to §207.05 of the New York City Health Code with the following changes: 1) removal of the requirement of a name change order; 2) removal of the requirement of living two years in the new gender; 3) removal of the requirement of two years of experience in transgender health in the last 5 years for providers submitting affidavits; and 4) addition of a presumption that the evidence required in §207.05 will be sufficient for issuance of the new birth certificate. Thank you and please do not hesitate to contact us if we can provide you with any additional information. I am also attaching letter from two people impacted by the policy that they asked us to share.

Very truly yours,

Z Gabriel Arkles
Staff Attorney
(212) 337-8550 ext. 113
Gabriel@srlp.org

10

From: Elinore Kaufman <elinore@sas.upenn.edu>
To: <resolutioncomments@health.nyc.gov>
Date: Mon, Oct 30, 2006 11:43 AM

As a future healthcare provider, I am writing in support of the proposed NYC transgender birth certificate regulations.

Especially in light of the increased attention being paid to identification documents in our new security situation, it is imperative that transpeople have access to documents that match their gender identity and gender presentation.

The current policy, requiring every person to prove they've had convertive surgery is based on and perpetuates a misunderstanding of transpeople and trans healthcare. Transpeople get the treatments that make sense for their health needs. The need for appropriate documentation should not compel them to surgery which may be unnecessary and dangerous.

All Americans, including transpeople, must increasingly rely on identification to live and work, and having documentation that does not match current gender identity and presentation can often trigger bias, harassment, discrimination, or groundless accusations of fraud. Incorrect gender on trans people's ID also make it more difficult for government or other agencies to identify transgender people effectively.

Every other U.S. birth certificate jurisdiction, except the three (ID, TN, OH) that do not allow any changes of birth certificates to reflect the transition of transgender people, issues a birth certificate showing the gender. New York is the only jurisdiction that omits the gender. This practice is stigmatizing, unnecessary, and does not assist the individual or society with correct identification of transgender people. The proposed regulation would address this problem and bring NYC in line with other birth certificate jurisdictions on this issue.

Thank you for your consideration.

Sincerely,

Elinore Kaufman

9

FAX TRANSMISSION COVER SHEET

DATE: 10/30/06

NUMBER OF PAGES (inc. this page): 2

TO: Ms. Rene Bryant, Secretary Dept. of Health.

TELEPHONE #: FAX #: 212-788-4315

FROM: Moonhawk River Stone, PO Box 9179, Niskayuna, NY 12309

TELEPHONE #: (518) 446-1261 FAX #: (518) 393-7439

COMMENTS:

Please note letter of support for Oct. 30th hearing.

MR Stone

Notice of Confidentiality

This fax transmission contains confidential information intended only for the use of the party to whom it is addressed. If you are not the intended recipient, please be aware that you are strictly prohibited from sharing, distributing or copying this document. If you have received this communication by mistake, please telephone the individual sender listed above to arrange the return or proper delivery of this document. Thank you

RiverStone Consulting

Moonhawk River Stone, M.S.

PO Box 9179, Niskayuna, New York 12209 (518) 446-1261 HawkRStone@aol.com

October 30, 2006

Ms. Rena Bryant
Secretary of the Board of Health
125 Worth Street
CN-31
New York, New York 10013

RE: Proposed Changes to New York City Health Code
Regarding Birth Certificate Regulations for Transgender People

Dear Ms. Bryant:

My name is Moonhawk River Stone, M.S., LMHC. I am writing to you from several perspectives regarding this proposed change. First of all, I am a licensed mental health counselor with over nineteen years direct service experience working in transgender mental health care and have seen hundreds of clients during the course of that time. Secondly, I am, myself a person of transgender experience and have a wide range of experience in education, policy and activism with regard to transgender civil rights and human rights. I have had an integral part in passing Local Law 3 in 2003, the New York City transgender civil rights law and in passing the Albany, NY transgender civil right law in April 2004. I served as Co-Chair of the New York Association for Gender Rights Advocacy, Inc. for five years and as Board Chair of the International Foundation for Gender Education, Inc. for 2.5 years. Currently, I am a member of the Board of Directors of the Empire State Pride Agenda Foundation.

I am writing to you today as a individual, a psychotherapist who daily sees the injustice wrought by identity management discrimination in the lives of transgender people.

I fully support the New York City Department of Health's proposal that change in how transgender people's birth certificate corrections are done is in need of a complete overhaul.

However, I would like to point out two concerns that I have regarding the new proposed regulations.

First of all, I disagree with the fact that a person must obtain a legal name change prior to having the birth certificate amended. Not all transgender people choose to change their names as many have gender neutral birth names which they are comfortable with. I would suggest that for those who wish to change their names that this be completed prior to the birth certificate change.

Secondly, I would recommend that the proposal of living two years in one's correct gender prior to changing the birth certificate be reduced to one year. Many

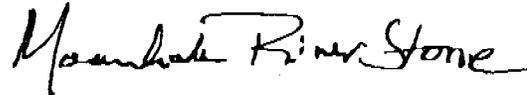
people accomplish a complete gender transition in less than two years and so should not be unduly punished for having done so. This is especially true with anticipated regulations coming from the federal government regarding the The Real ID Act.

Finally, I am in support of the part of the regulation which require that medical and mental health practitioners have two years experience in working with transgender health care. It is my clinical experience than a person can from a textbook standpoint make a diagnosis, but may miss others symptoms which might contraindicate such a diagnosis. However, I strongly recommend that exceptions to this be made on a case by case basis as in general there is a lack of knowledge in the medical and mental health professions regarding transgender care and people in rural areas may not have access to professionals who work with transgender people on a frequent basis.

I would recommend that the New York City Department of Health adopt an amended version of the proposed regulation to reflect concerns myself and others knowledgeable in transgender care are raising and that such adoption be done without delay as discrimination is a daily burden for transgender people to bear.

If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,



Moonhawk River Stone
M.S., LMHC

8



SPEAKER'S OFFICE tel. 212.788.7210

The Council of The City of New York • City Hall • New York, NY 10007

to: Rena Bryant from: Keri Sender

fax: (212) 788-4315 fax: _____

phone: _____ pages: 2 excl. cover

re: _____ date: 10-30-06

- urgent
- for review
- please comment
- please reply
- please recycle

◆ comments:



THE COUNCIL
OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, NY 10007

CHRISTINE C. QUINN
SPEAKER

TELEPHONE
212-788-7210

Testimony of New York City Council Speaker Christine Quinn
to the New York City Board of Health
On amending Section 207 of the New York City Health Code
October 30, 2006, 2 PM

Thank you for the opportunity to submit this testimony. For too long, transgender people have had to live with birth certificates that do not accurately reflect their current identity or with certificates that render them as having no official gender at all. I am pleased the Department of Health and Mental Hygiene (DOHMH), and the Board of Health have taken up this matter and are considering changes to current regulations that have been in existence for 30 years and which in effect prevent transgender New Yorkers from fully participating in many aspects of society.

The ability to provide proof of one's identity is essential in our society. Most people take for granted the ease with which they can present materials proving personal characteristics such as name, place of birth and gender. Without the ability to provide such documentation, however, one cannot get a job, drive a car, apply for social services, take a trip or partake in many other daily activities. For transgender individuals, providing proof of their identity has been extremely difficult because he or she cannot obtain a new birth certificate.

Therefore, I wholeheartedly support this effort to revise the Health Code.

However, there are a few provisions in the proposals being considered today that should be further explored before the change is made. First, the proposed regulations require a transgender individual to obtain a name change order before applying for a new birth certificate. As a name change is not necessarily a step in the gender transition process, this may needlessly complicate the process for those individuals who choose not to change their names. I urge you to drop this name change requirement.

Second, the new regulations would require a person to have lived in their new gender for a minimum of two years. Since professional organizations serving transgender people recommend one year of living in a new gender before surgery is undertaken to complete the transition, it is unclear why the proposed regulations insist that a person wait two years to change the birth certificate. Since it is widely agreed that a one year period is

sufficient enough a wait time before a person undergo serious surgery, one year seems to be a similarly reasonable period of time to be able to get birth certificate changed.

Third, the proposals require a transgender New Yorker to obtain affidavits from medical professionals in support of the application to change a birth certificate. In order to be qualified to complete these affidavits, the medical professionals must have at least two years of experience in transgender healthcare. I would like a further explanation on your rationale for this provision.

I applaud DOHMH for proposing new regulations that would include the person's chosen gender on the newly issued birth certificate. I would appreciate a clarification on the before mentioned provisions and I look forward to your response to the points I have raised.

Again, I would like thank the Department and the Board of Health for proposing these critical changes to the Health Code on behalf of transgender New Yorkers. The proposals are a positive step towards providing the transgender community with equal rights in New York City.

Thank you.

Christine Quinn
Speaker
New York City Council



www.theTaskForce.org

Washington, DC
1325 Massachusetts Avenue, NW
Suite 800
Washington, DC 20005
Phone: 202.395.8377
Fax: 202.395.2244

New York, NY
80 Madison Ave
Suite 501
New York, NY 10050
Phone: 212.604.9850
Fax: 212.604.9883

Los Angeles, CA
8704 Santa Monica Boulevard
Suite 200
West Hollywood, CA 90069
Phone: 310.555.7810
Fax: 310.555.9415

Cambridge, MA
131 Massachusetts Avenue
Cambridge, MA 02139
Phone: 617.492.6392
Fax: 617.492.0175

Miami, FL
3510 Biscayne Boulevard
Suite 206
Miami, FL 33137
Phone: 305.571.9744
Fax: 305.571.7222

Minneapolis, MN
810 West 5th Street
Minneapolis, MN 55408
Phone/Fax: 612.321.4337

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

October 30, 2006

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City' (the "New York City Health Code").

Dear Ms. Bryant:

On behalf of the National Gay and Lesbian Task Force, I want to encourage the Board of Health to support the proposed amendment to New York City's birth certificate gender modification policy. The proposed policy is a vast improvement over the current policy and represents a progressive step for New York City. This change will make a substantive difference in real peoples' lives.

Below we outline several adjustments that would further improve the policy to ensure that while only people who permanently transition are able to change their birth certificate, that people's ability to change their birth certificate do not depend on factors irrelevant to whether that transition is in fact permanent..

1. The new policy should not require a name change.

The proposed policy requires a legal name change in order for a person to change the gender on their birth certificate. Section 207.05(b)(1)(first sentence). While a name change often accompanies transitioning, the two are not interdependent. If a person sought to change the name on his birth certificate, then this requirement might be reasonable; however, people who only wish to change their gender should not be forced to change their name. For example, the new policy would require a person with a gender-neutral name to arbitrarily pick a new one. And, names once considered associated with one gender have become popular for use with the other gender or are becoming gender-neutral. Many people in transition will voluntarily change their legal name, especially if they were named a gender-specific name at birth, but they should not be forced to do so. A person's legal name does not actually show whether or not that person has or is permanently transitioning.

2. The new policy should not require two years living in the acquired gender.

The proposed policy requires a person to live in their acquired gender for at least two years in order to change the gender on their birth certificate. Section 207.05(b)(1)(third sentence). The two-year requirement has no basis in current medical or mental health treatment. Transgender people can transition completely and permanently in considerably less than two years.

One of the foremost reasons transgender people cannot live safely and consistently in their gender is because they lack accurate identification, including a birth certificate. When a transgender person shows a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, or discriminated against. The proposed policy requires transgender people to survive the danger and potential humiliation of lacking proper identification for two years. Ideally, there would be no temporal requirement but instead reliance would be made on the evaluations of the medical professionals.

If, however, a temporal requirement remains necessary, then shorter is better. The Standards of Care of the World Professional Association for Transgender Health (formerly known as the Harry Benjamin International Gender Dysphoria Association) suggest that one year is useful to determine whether a person needs further surgical interventions in order to complete transition. As the standards indicate, not everyone needs this time period to make a permanent decision about transition. If any time period is required for your policy, then 6 months or one year would better represent the current medical standards.

3. The new policy should not require examining providers have two years' experience working with transgender people and/or specialized courses.

The proposed policy requires one notarized affidavit from a qualified physician and one from a qualified mental health professional. Section 207.05(b)(1)(i), (ii). To be qualified, both the physician and mental health professional need to have two years experience in the last five years related to transgender treatment. Section 207.05(b)(1)(i)(A)(b), (ii)(A)(b). Some places in New York (upstate, for example) as well as places elsewhere in this country do not have any providers who could meet this strict qualification because there is a lack of demand for transgender-specific healthcare. Board certification in their specialty (such as family practice, endocrinology or internal medicine, etc.) should be sufficient.

Similarly, the requirement that providers submit a list of "relevant specialized courses" he or she has taken should also be removed. Section 207.05(b)(1)(i)(A)(b), (ii)(A)(b). In geographic areas such as referenced above, where there is a lack of demand for transgender health care, there is a corresponding lack of courses relating to transgenderism. Furthermore, the relevant specialized courses requirement is ambiguous, and leaves too much discretion to non-medical officials. This requirement should be eliminated.

4. The new policy should not require an affidavit from a physician and a mental health professional.

The proposed policy requires two separate affidavits: one from a qualified physician and one from a qualified mental health professional. Section 207.05(b)(1)(i), (ii). There is no need for this duplicative requirement. Given the requirements necessary to be considered a qualified physician or mental health professional, either should be able to give an accurate opinion of the

person's gender, including the intended permanence of the transition, the psycho-social adjustment, and whether transition is complete. Having two medical professionals attest to these facts adds unnecessary cost and delay to the process.

5. The policy should create a presumption that the applicant will be granted change of sex if the requirements of the policy are met.

As drafted, the new section allows the agency to require additional information from the applicant or refuse to change the sex at its discretion. The regulations should be amended to include a statement that an applicant meeting the stated requirements of this section should be granted the change of sex.

Conclusion

The National Gay and Lesbian Task Force has worked on transgender-related legislation and policy since 1997 and founded our Transgender Civil Rights Project in 2001. The experience of our staff indicates that lack of accurate and updated identification documents, such as birth certificates, is a major catalyst for discrimination and hate violence. Many transgender people who live a fully transitioned life permanently in their new gender are unable to update all of their identification documents because of unnecessary policies and unnecessary administrative burdens. Updating New York City's policy is a crucial step toward ensuring that unnecessary burdens are removed. We urge you to adopt the proposed policy, with modifications, to ensure that all people who have transitioned can be treated equally and respectfully in their new gender.

If you have any questions or concerns, please feel free to contact me at 212.604.9830 or mforeman@thetaskforce.org. You may also contact Lisa Mottet, Legislative Lawyer for our Transgender Civil Rights Project, at 202.639.6308 or lmottet@thetaskforce.org.

Thank you very much for your consideration.

Sincerely,



Matt Foreman
Executive Director

68

Lorna Thorpe, Ph.D.
Deputy Commissioner
Division of Epidemiology
New York City Department of Health and Mental Hygiene
125 Worth Street
New York, New York 10013

Re: Proposed Amendments to Article 207 of the New York City Health Code

Dear Ms. Clark, Ms. DeFreitas, Dr. Schwarz and Dr. Thorpe:

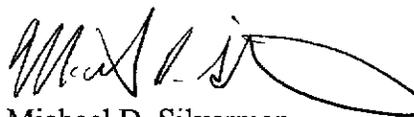
I write on behalf of the Transgender Legal Defense & Education Fund (TLDEF), the New York Association for Gender Rights Advocacy (NYAGRA) and the members of the Transgender Health Initiative of New York to thank you again for the opportunity to provide comments at yesterday's hearing on the proposed amendments to Article 207 of the New York City Health Code. A copy of TLDEF's and NYAGRA's full testimony is enclosed.

As we stated at the hearing, we believe that revisions to Article 207 of the New York City Health Code are vitally important to the well being of transgender New Yorkers. The proposal that was the subject of yesterday's hearing is a step in the right direction. We believe, however, that, among other things, its emphasis on the role of physicians and mental health providers as arbiters of an individual's transition is problematic. Better procedural alternatives – that address both the needs of transgender New Yorkers and any concerns that the Department may have about the issuance of amended birth certificates – can be found.

We are committed to working with the Department to ensure that the amendments to Article 207 that are ultimately adopted are as good as they can be. We would like to schedule a meeting with you and any other interested or necessary parties to discuss this further.

Thank you again. We look forward to hearing from you.

Very truly yours,



Michael D. Silverman

Encls.

Cc: Pauline Park (by electronic mail)



New York City Department of Health and Mental Hygiene
Board of Health

Public Hearing on Proposed Amendment to Article 207
of the New York City Health Code

Testimony by Michael Silverman
Executive Director & General Counsel
Transgender Legal Defense & Education Fund, Inc.

My name is Michael Silverman. I am Executive Director and General Counsel of the Transgender Legal Defense & Education Fund ("TLDEF"). I submit these comments on behalf of TLDEF and the members of our community organizing project, the Transgender Health Initiative of New York (THINY).

TLDEF is a nonprofit civil rights organization committed to ending discrimination based upon gender identity and expression and to achieving equality for transgender people through public education, test-case litigation, direct legal services, community organizing and public policy efforts. THINY is a community-based group whose goal is to ensure that all transgender and gender-variant people can access health care in a safe, respectful and non-discriminatory manner.

THINY arose from the recognition that transgender people face massive and systemic discrimination within the health care system. From instances of humiliation and degradation to outright refusals to provide care, the health care system presents a minefield of discrimination for transgender people seeking to access care. The end result is a community-wide disengagement from the health care system. Rather than enduring abuse and poor treatment, transgender people often simply do without health care.

Our understanding of the difficulties that transgender people face when seeking to access health care animates our response to the proposed amendment to Article 207 of the New York City Health Code.

Transgender Legal Defense & Education Fund, Inc.
216 Avenue A
New York, New York 10009
347.328.6710 (tel)
515.581.0991 (fax)
www.transgenderlegal.org

We commend the Department for its efforts to update Article 207. We believe, however, that the current proposal continues to treat transgender New Yorkers in a regressive manner and call upon the Department to reconvene a working group that includes, in addition to advocates for the transgender community, a broad spectrum of average transgender people – the people whose lives are affected by this proposal. They can speak to the abuse and neglect that they have suffered at the hands of a transphobic health care system – the very same system empowered to determine whether a transgender person qualifies for an amended birth certificate under the Department’s current proposal.

The Department’s proposal raises fundamental questions about transgender identity and its expression. The core question raised by the proposed policy is, “Who decides?” Who decides when a person is transgender enough to qualify for a new birth certificate? Who decides that the level of medical and psychiatric intrusion into that person’s life is sufficient to qualify that person for gender-appropriate identity documents? We believe that the Department’s answer to these questions in the proposed policy – that the medical and mental health professionals decide – is misguided and harmful to transgender people.

We have a number of suggestions for improving the proposed policy as it currently stands. But we emphasize that the policy should be reconceived at its core and that individual transgender people must have a seat at the table when the policy is revisited.

Physician and Mental Health Affidavit Requirements

We believe that the requirement that a transgender person present an affidavit from a physician and a mental health professional must be changed.

To the extent that any modified policy continues to focus on the views of medical and mental health professionals as arbiters of an individual’s gender transition, we believe that the requirement that affidavits be presented be changed such that an affidavit from a physician or mental health professional will suffice. As discussed earlier, transgender people face tremendous discrimination in the health care and mental health systems. Many simply do without health care to avoid the humiliation, stigma, neglect and outright refusals to provide care that often characterize their interactions with the health care system. Additionally, the pervasive poverty and unemployment in the transgender community due to societal discrimination means that most transgender people

Transgender Legal Defense & Education Fund, Inc.
216 Avenue A
New York, New York 10009
347.328.6710 (tel)
515.581.0991 (fax)
www.transgenderlegal.org

do not have health insurance and cannot afford to access care in the manner contemplated in the Department's proposal.

There are unique problems associated with the requirement of a physician affidavit. The physician affidavit contemplates that a physician will have provided, and will report on, "all medical treatments received by the applicant for the purpose of modifying sexual characteristics." This presumption is rooted in the incorrect notion that transgender people uniformly seek surgical and/or hormonal treatment to complete their transitions. For many transgender people, their transitions are complete without any medical intervention whatsoever. Indeed, throughout most of human history, the medical treatments contemplated in the Department's proposal simply were not available. Many transgender people choose to live full and complete lives in their chosen gender without the aide of costly, invasive and often unwanted medical treatments. For some, surgical and hormonal treatments are medically contra-indicated and would represent a threat to health, and possibly life. They are no less transgender, and no less in need of appropriate identification documents, than an individual who chooses to undergo medical treatments as part of his or her transition.

Similarly, there are problems particular to the requirement of an affidavit from a mental health professional. This requirement is based on the assumption that a transgender person has a "gender identity disorder," a term that many transgender people would reject. It assumes that a transgender person cannot transition without first undergoing "psychological treatments related to his or her gender transition." It is true that the social stigma and discrimination directed towards transgender people can cause great psychological strain for them, and that mental health professionals can play an integral role in relieving that strain. But the notion that mental health professionals *may* be of assistance is different from the assumption that a transgender individual *must* be treated by a mental health professional as a requirement towards obtaining appropriate identification documents. Again, for many transgender people, the cost of obtaining mental health treatment would present a severe financial hardship, or be impossible.

Accordingly, while we object overall to the current proposal's focus on medical and mental health affidavits, we believe that, at a minimum, the current proposal must be modified to require only one affidavit.

Physician and Mental Health Professional Qualification Requirements

The requirement that the physician presenting the affidavit be board certified should be stricken. Board certified physicians charge higher rates for

Transgender Legal Defense & Education Fund, Inc.
216 Avenue A
New York, New York 10009
347.328.6710 (tel)
515.581.0991 (fax)
www.transgenderlegal.org

consultations, making it even more costly and difficult for transgender people to obtain the affidavit contemplated in the proposal. The board certification requirement has no bearing on the information sought by the Department. It is unlikely that a physician board certified in internal medicine, for example, can more accurately attest to the transition-related medical treatments that an individual has undergone than a non-certified physician. It is extremely likely, however, that consultations with the board-certified physician will be significantly more expensive.

Additionally, the requirement that the physician and mental health professional providing affidavits have "at least two years experience in the last five years related to transgender treatment" should be stricken. Many transgender individuals are treated by primary care physicians and/or mental health professionals who do not otherwise have significant transgender practices. These professionals provide excellent care to their transgender patients, and where necessary, consult professional literature and/or experts in various fields to provide quality care for their patients. There is simply no reason to disqualify these professionals from providing the required information. Additionally, many transgender people who were born in New York City now live in areas of the country where access to professionals with the required level of experience in transgender treatment is impossible. Accordingly, it is essential that this requirement be modified to ensure that all physicians and mental health professionals providing care to transgender people may provide the necessary affidavits.

Two-Year Waiting Period

We believe that the provision requiring that the applicant "has lived in the acquired gender for at least two years" is inappropriate and should be removed. Pursuant to the proposed policy, the Department already will receive a wealth of information about each applicant. To the extent that a doctor or mental health professional has already provided information about the individual's gender transition, the blanket two year requirement is unnecessary, excessive and far too rigid. Additionally, an individual seeks an amended birth certificate in part to be able to live in his or her acquired gender. The requirement that an individual already have done so for two years prior to seeking an amended birth certificate is a "catch 22." Many individuals will find it difficult or impossible to live in their acquired gender without an amended birth certificate. Accordingly, we believe that the two year requirement should be removed from the policy.

Transgender Legal Defense & Education Fund, Inc.
216 Avenue A
New York, New York 10009
347.328.6710 (tel)
515.581.0991 (fax)
www.transgenderlegal.org

Name Change

The policy should not require a legal name change as a prerequisite to obtaining a new birth certificate. Many names are gender-neutral. The decision to change one's name is highly personal and may not bear at all on an individual's decision to change his or her gender.

Age Requirement

We believe that the requirement that the applicant be "over 18 years of age" should be modified. An emancipated minor or other minor with consent of a legal guardian should be granted an amended birth certificate where he or she otherwise complies with the requirements for receipt of one.

"Catch-all" Provision

The policy provides that, at its discretion, the Department "may request the applicant to provide other information or evidence demonstrating the applicant's transition to his or her acquired gender." This provision should be modified. It must be presumed, absent a contrary showing by the Department, that applicants who comply with the proposal's requirements are entitled to an amended birth certificate. The current proposal places unfettered discretion in the Department's hands to request additional information beyond that required in the proposal, with no guarantee that, at any point, an applicant will finally have satisfied the Department's demands. Such unfettered discretion is inappropriate. Due process demands that limits be placed upon it, and that applicants who comply with the policy's requirements presumptively be granted amended birth certificates absent a detailed explanation from the Department of its grounds for denying an application or requesting additional information.

Thank you for the opportunity to present these comments. Transgender people have waited decades for a humane birth certificate policy that allows them to live their lives as who they are, with appropriate identity documents to allow them to live, work and otherwise participate fully in society. The Department's proposal, unfortunately, is not that policy. We have a unique opportunity to craft a truly progressive policy that meets the needs of the transgender community while addressing the Department's various concerns. I hope you will heed my call to reconvene a working group on this policy. TLDEF and the members of THINY are prepared to assist the Department in any way we can. Rather than rushing to adopt this policy, we propose taking the time now

Transgender Legal Defense & Education Fund, Inc.
216 Avenue A
New York, New York 10009
347.328.6710 (tel)
515.581.0991 (fax)
www.transgenderlegal.org

to get the policy right. It may be decades before we have another opportunity to do so.

Again, thank you.

Transgender Legal Defense & Education Fund, Inc.
216 Avenue A
New York, New York 10009
347.328.6710 (tel)
515.581.0991 (fax)
www.transgenderlegal.org



NYAGRA

New York Association for Gender Rights Advocacy

24 W. 25th St., 9th floor

New York, NY 10010

(212) 675-3288, ext. 338

<http://www.nyagra.com/>

New York City Department of Health and Mental Hygiene
Board of Health
public hearing on
proposed amendment to Article 207 of the New York City Health Code

testimony by
Pauline Park, Ph.D.
Chair

New York Association for Gender Rights Advocacy
(NYAGRA)

My name is Pauline Park and I chair the New York Association for Gender Rights Advocacy. NYAGRA is the first statewide transgender advocacy organization in New York and we are perhaps best known for having led the campaign for enactment of the New York City transgender rights law (Int. No. 24, enacted as Local Law 3 of 2002).

On behalf of the board of directors and the members of NYAGRA, I would like to commend you for your efforts to make Article 207 of the New York City Health Code more transgender-friendly. I would also urge you to reconsider the proposed amendment under discussion here because in many ways the language of the proposed amendment represents one step forward and one step back for the transgender community here in New York.

While we in NYAGRA welcome the removal of sex reassignment surgery (SRS) as a requirement for a change of legal sex designation on one's birth certificate, and while we commend the change to allow a full change of legal sex designation from either 'M' to 'F' or 'F' to 'M,' we also would like to express our deep concern with other aspects of the proposed amendment that we view as misguided and even harmful to transgendered New Yorkers seeking a change of legal sex designation on their birth certificates.

information or evidence demonstrating the applicants transition to his or her acquired gender.” Such a provision could potentially allow an official at the DOH to delay action on an application indefinitely and for no apparent reason.

One final recommendation: we urge the Department of Health to allow for the continued possibility of a change from ‘M’ or ‘F’ to no legal sex designation for those who were born intersexed. It is crucially important that the new policy allow for newborn intersexed individuals to be issued birth certificates with no sex designation, in view of the widespread practice of intersex genital mutilation (IGM) imposed on such individuals in infancy or childhood by misguided surgeons and panicked parents who fear social ostracism for children whose external (and/or internal) genitalia do not appear to be fully male or female (see www.isna.org for more on intersex and IGM).

Our central concern with the proposed amendment to Article 207 is that it is rooted in a medical model of transsexuality that assumes that there is only one linear medical transition that all transsexual and transgendered people pursue. That medical model of transsexuality is a disease model based on the false diagnosis of ‘gender identity disorder’ (GID), which suggests that the mere fact of being transgendered – that is to say, the mere identification with the gender opposite one’s sex assigned at birth – constitutes prima facie evidence of a mental pathology. In fact, there is no empirical evidence whatsoever for the hypothesis that identification with the gender opposite one’s sex assigned at birth (in the absence of any other mental pathology) constitutes mental illness per se. In many if not most pre-modern non-Western societies (as well as in many pre-modern Western ones), there was a recognized ‘third sex/third gender’ subject position, an identity formation that accommodated those who identified with the gender opposite their birth sex. Only with the development of psychology and psychiatry in the late nineteenth century were terms and concepts such as ‘transvestism’ and ‘transsexualism’ constructed by European sexologists such as Kraft-Ebbing as pathological. And only with the development of HRT and SRS in the twentieth century were technologies developed that could ‘re-sex’ the body both internally as well as externally.

In other words, the proposed amendment to Article 207 of the New York City Health Code – just like existing policy – is premised on the notion that transgender constitutes a mental illness. Because a change in legal sex designation on one’s birth certificate may be a crucial step in obtaining a change of legal sex designation (or ‘gender marker,’ as it is often called) on

④

From: Thomas Hickey <thomasfhickey@yahoo.com>
To: <RESOLUTIONCOMMENTS@HEALTH.NYC.GOV>
Date: Sat, Oct 28, 2006 8:06 PM
Subject: Register to Speak at Public Hearing

Dear Ms. Bryant:

I would like to register to speak on behalf of the West Village Trans-Legal CLinic at the Public Hearing on Monday regarding the new rules for changing gender on birth certificates.

Attached (and appended below) are a copy of my comments.

I can be reached during the day at (917) 648-9096.

Thank you.

Cynthia Kern

My name is Cynthia Kern, and I am one of the coordinators of the West Village Trans-Legal Clinic. This legal clinic is an independent not-for-profit organization serving the legal needs of the Transgender communities, and was the first of its kind in the New York City area.

The clinic is a collaborative effort among a group of volunteers from legal, transgender, social service and community groups, including the Lesbian and Gay Law Association Foundation ("LeGaL Foundation"), the LGBT Committees of the New York County Lawyers' Association ("NYCLA") and the New York City Bar, the Gender Identity Project of the Lesbian, Gay, Bisexual and Transgender Community Center, Housing Works, the New York Association for Gender Rights Advocacy and the LGBT Committee of Community Board # 2.

The primary focus of the clinic is to provide legal advice and assistance to transgender individuals who wish to change their name and/or gender on government and other identification documents. Transgender clients who come to the clinic meet with attorneys who advise and assist them in filling out the necessary paperwork to get a court-ordered name change. The clients leave with a set of papers that can be filed in court. The clinic attorneys also provide clients with advice on how to go about getting their gender changed on important records and documents.

I am here to express the clinic's qualified support of the proposed amendments to Article 207 of the New York City Health Code concerning gender changes on birth certificates. Although we at the clinic are pleased and appreciative that the Department of Health is taking this bold step, we believe that some amendments are necessary before the proposed rules are adopted.

You no doubt have heard much about the requirement that applicants must live in their gender for two years before applying for a new birth certificate, and the requirement that medical providers have two years experience working with transgender people.

We echo the sentiments of other advocates that these requirements are not necessary and would pose an undue hardship of transgender applicants.

I would like to focus my comments on the requirement that an applicant must provide proof of a court-ordered name change. We believe this is an unnecessary and overly burdensome requirement.

First and foremost, a change of name has nothing to do with a change of gender, and is unrelated to one's gender or sex on a birth certificate. In the course of our work, we have come upon a number of

judges who have made the similar mistake of equating a name change with a gender change. They have denied name changes because the applicant did not have gender conforming surgery. Luckily, those judges reversed themselves and recognized that a gender change and a name change are two entirely different things. We believe that the better approach is to let the courts handle name changes and let the Department of Health concentrate on the simple issue of changing the gender marker on the birth certificate.

Another reason why a name change order should not be required is because many transgender people have gender neutral names that they do not want to change. For example, a transgender person whose birth name is Kerry should not be required to change that name just because he or she wishes to change the gender on their birth certificate. In such a situation, it makes absolutely no sense to require a court ordered name change.

Finally, implementing such a requirement would have a disproportionate income on low income and people of color in the transgender community. Although there are legal clinics such as ours that provide free legal assistance, all transgender applicants must have their change of name published in a newspaper, which could cost hundreds of dollars. No subsidies are available to help defray the cost of publication, and it would be inequitable to deny their request to change their gender on their birth certificate simply because they cannot afford to get a court-ordered name change.

We hope that the Department of Health adopt the proposed rules with the changes I've discussed.

Thank you for giving me the opportunity to express the views of the West Village Trans-Legal Clinic.

Access over 1 million songs - Yahoo! Music Unlimited Try it today.

My name is Cynthia Kern, and I am one of the coordinators of the West Village Trans-Legal Clinic. This legal clinic is an independent not-for-profit organization serving the legal needs of the Transgender communities, and was the first of its kind in the New York City area.

The clinic is a collaborative effort among a group of volunteers from legal, transgender, social service and community groups, including the Lesbian and Gay Law Association Foundation ("LeGaL Foundation"), the LGBT Committees of the New York County Lawyers' Association ("NYCLA") and the New York City Bar, the Gender Identity Project of the Lesbian, Gay, Bisexual and Transgender Community Center, Housing Works, the New York Association for Gender Rights Advocacy and the LGBT Committee of Community Board # 2.

The primary focus of the clinic is to provide legal advice and assistance to transgender individuals who wish to change their name and/or gender on government and other identification documents. Transgender clients who come to the clinic meet with attorneys who advise and assist them in filling out the necessary paperwork to get a court-ordered name change. The clients leave with a set of papers that can be filed in court. The clinic attorneys also provide clients with advice on how to go about getting their gender changed on important records and documents.

I am here to express the clinic's qualified support of the proposed amendments to Article 207 of the New York City Health Code concerning gender changes on birth certificates. Although we at the clinic are pleased and appreciative that the Department of Health is taking this bold step, we believe that some amendments are necessary before the proposed rules are adopted.

You no doubt have heard much about the requirement that applicants must live in their gender for two years before applying for a new birth certificate, and the requirement that medical providers have two years experience working with transgender people. We echo the sentiments of other advocates that these requirements are not necessary and would pose an undue hardship of transgender applicants.

I would like to focus my comments on the requirement that an applicant must provide proof of a court-ordered name change. We believe this is an unnecessary and overly burdensome requirement.

First and foremost, a change of name has nothing to do with a change of gender, and is unrelated to one's gender or sex on a birth certificate. In the course of our work, we have come upon a number of judges who have made the similar mistake of equating a name change with a gender change. They have denied name changes because the applicant did not have gender conforming surgery. Luckily, those judges reversed themselves and recognized that a gender change and a name change are two entirely different things. We believe that the better approach is to let the courts handle name changes and let the Department of Health concentrate on the simple issue of changing the gender marker on the birth certificate.

Another reason why a name change order should not be required is because many transgender people have gender neutral names that they do not want to change. For example, a transgender person whose birth name is Kerry should not be required to change that name just because he or she wishes to change the gender on their birth certificate. In such a situation, it makes absolutely no sense to require a court ordered name change.

Finally, implementing such a requirement would have a disproportionate income on low income and people of color in the transgender community. Although there are legal clinics such as ours that provide free legal assistance, all transgender applicants must have their change of name published in a newspaper, which could cost hundreds of dollars. No subsidies are available to help defray the cost of publication, and it would be inequitable to deny their request to change their gender on their birth certificate simply because they cannot afford to get a court-ordered name change.

We hope that the Department of Health adopt the proposed rules with the changes I've discussed.

Thank you for giving me the opportunity to express the views of the West Village Trans-Legal Clinic.

③

From: <KRachlin@aol.com>
To: <resolutioncomments@health.nyc.gov>
Date: Sun, Oct 29, 2006 8:53 AM
Subject: Birth Certificate hearing October 30th

Dear Ms. Bryant,

I would like to speak at the hearing on Monday. I sent you comments regarding birth certificate policies in an earlier email. I realized that I should have communicated with you earlier to get on the list of speakers, but hope that it is not too late. I will be there and look forward to the proceedings.

Best,
Katherine Rachlin

Katherine Rachlin, Ph.D.
49 West 24th St. 9fl
New York, NY 10010

(212) 206-3636
KRachlin@aol.com

From: <KRachlin@aol.com>
To: <resolutioncomments@health.nyc.gov>
Date: Sat, Oct 28, 2006 2:23 PM
Subject: Transgender Birth Certificates

Please see the attached statement with comments on the resolution.

Sincerely,
Katherine Rachlin

Katherine Rachlin, Ph.D.
49 W 24th St. 9fl
New York, NY 10010
(212) 206- 3636
KRachlin@aol.com

KATHERINE RACHLIN, PH.D.
49 WEST 24 ST.
NEW YORK, NY. 10010

TELEPHONE: (212) 206-3636
E-MAIL: KRACHLIN@AOL.COM
PSYCHOLOGIST #102029

NEW YORK STATE LICENSED

Rena Bryant
Secretary to the Board of Health
125 Worth Street
CN-31
New York, NY 10013

October 17, 2006

Re: Comments pursuant to notice of intention to amend Article 207 of the New York City Health Code
Proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section
207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the
"New York City Health Code")

Rena Bryant,

I am writing in support of the Department of Health and Mental Hygiene's intention to amend Article 207 of the New York City Health Code regarding changing the gender on a birth certificate. Birth certificates are needed by most people to prove eligibility to work when starting a new job, to get certifications in some professions, to obtain identification like driver's licenses and passports, and to apply for many types of housing programs and other social services. Having a birth certificate that shows the wrong gender can make doing any of those things difficult or impossible. When transgender people show a certificate with a gender other than the one they live in, they may be accused of fraud, turned away, or harassed, attacked, humiliated, or discriminated against. Even in the best of cases they may face embarrassment, confusion and delays. Transgender people need a policy that entitles them to birth certificates that accurately indicates their true gender and reflects the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people.

I am asking that the proposed new regulations be adopted with the following amendments:

1. The proposal should be revised to remove the requirement that applicants live in their gender for two years before applying for a new birth certificate.
 - a. The two year requirement has no basis in current medical or mental health recommendations or treatment. Some transgender people transition completely, including with genital surgery when it is indicated, in considerably less than two years. Also, some transgender people transition completely but are not always able to live fully as their gender at all times *because* we lack an accurate birth certificate.
 - b. At the least, if any time period is required, it should only be one year. According to the Standards of Care of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBIGDA), one year of living in the new gender can be useful in determining whether or not certain surgical interventions are indicated to complete a transition.

Specifically, § 205.05(b)(1) should be amended so that the sentence:

"No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made"

Instead reads:

"No application shall be approved unless the applicant is over 18 years of age."

2. The proposal should be revised to remove the requirement for a name change order.
 - a. A name change order has nothing to do with the completeness of one's gender transition and is unrelated to one's gender or sex status on a birth certificate.
 - b. In addition, some transgender people have gender neutral names that they may never change.

Specifically, § 205.05(b)(1) should be amended so that the sentences:

"Upon application, a new birth certificate shall be filed when: The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate."

Would now read:

"Upon application, a new birth certificate shall be filed when: Proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. When the name of the person has been changed pursuant to court order the new name shall also be entered on the new certificate."

3. The proposal should be revised to remove the requirement that providers must have two years of experience working with transgender people.
 - a. Specialized courses specifically concerning the treatment of transgender people are rare, even in locations like New York City.
 - b. Some transgender people who were born in New York City may now live in areas where providers with a significant amount of experience in treating transgender people or with access to specialized courses are simply unavailable.
 - c. Treatment providers without access to specialized coursework can still demonstrate considerable competence in treating transgender people and can still be qualified to make these assessments.

Specifically, § 205.05(b)(1)(i)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated"

Would now read:

"Information demonstrating at competence related to transgender treatment, including listing any relevant specialized courses taken by the physician and/or relevant educational resources the physician has consulted and information about the number of transgender patients the physician has treated."

In addition, § 205.05(b)(1)(ii)(A)(b) should be amended so that the sentence:

"Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients the mental health professional has treated"

Would now read:

"Information demonstrating competence related to transgender treatment, including listing any relevant specialized courses taken by the mental health professional and/or relevant educational resources the mental health professional has consulted and information about the number of transgender patients the mental health professional has treated."

I am a Clinical Psychologist and specialist in the treatment of Gender Identity Disorders and Transgenderism. I have a private practice in New York City. In my private practice I provide psychotherapy services to transgender people and their families and partners. I also conduct research on transgender issues and provide training and supervision for professionals who want to increase their competence in working with gender variant individuals. I am a member of the American Psychological Association (currently serving as a member of the Taskforce on Gender Identity, Gender Variance, and Intersex Conditions) and of the New York State Psychological Society. I am also a member of the World Professional Organization for Transgender Health (WPATH), formerly known as Harry Benjamin International Gender Dysphoria Association (HBIGDA). I have served on several taskforces within that organization including the Ethics Committee and the Committee to Revise the Standards of Care. I am also a long-time member of a Working Group for professionals who specialize in gender which meets regularly at the Columbia Presbyterian Psychiatric Institute.

Through my work, I have seen the urgent need for a policy that entitles transgender people to birth certificates that accurately indicates their true gender. To be effective the policy would reflect the individualized nature of trans healthcare and experience, without requiring specific, arbitrary forms of treatment or documentation that are not right for all people. When an individual's documents do not reflect their visible gender, this can lead to psychological stress and make them vulnerable to harassment and physical violence. They may be denied basic services and prevented from working or obtaining housing. For these, and other reasons it is essential that the regulations regarding birth certificates be made to accommodate the real needs of transgender citizens. Individuals change gender with the help of a team of medical and legal and mental health people. The process is never undertaken lightly and by the time one requests a change of gender on the birth certificate it is seriously warranted and necessary in order to live a full life.

If you have any further questions or concerns, please do not hesitate to contact me directly at: (212) 206-3636.

Sincerely yours,

Katherine Rachlin, Ph.D.
Clinical Psychologist

2B

**NEW YORK
CITY BAR**

**COMMITTEE ON LESBIAN, GAY,
BISexual AND TRANSGENDER RIGHTS**

ALLEN A. DREXEL
CO-CHAIR
885 Third Avenue
Floor 32
New York, NY 10022
Phone: (212) 326-1708
Fax: (212) 980-3448
aadrex@yahoo.com

LISA R. BADNER
CO-CHAIR
40 Rector Street
Floor 14
New York, NY 10006
Phone: (212) 788-8644
Fax: (212) 788-8652
lbadner@gmail.com

ANTHONY R. HIRD
SECRETARY
56 Seventh Avenue
Apt 8B
New York, NY 10011
Phone: (847) 951-7241
anthony.hird@judiciary.state.nj.us

November 6, 2006

Ms. Rena Bryant
Secretary, New York City Board of Health
125 Worth Street
New York, NY 10013

Michelle DeFreitas, Esq.
Assistant General Counsel
New York City Department of Health and Mental Hygiene
125 Worth Street
New York, NY 10013

Stephen Schwarz, Ph.D.
New York City Department of Health and Mental Hygiene
125 Worth Street
New York, NY 10013

Lorna Thorpe, Ph.D.
Deputy Commissioner
Division of Epidemiology
New York City Department of Health and Mental Hygiene
125 Worth Street
New York, NY 10013

Dear Ms. Bryant, Ms. DeFreitas, Dr. Schwarz and Dr. Thorpe:

On behalf of the New York City Bar Association, I write concerning the proposed amendment to Article 207 of the City's Public Health Code, which governs changes in the gender classification shown on an individual's birth certificate.

The New York City Bar Association (the "Association"), founded in 1870, has over 22,000 members in the New York area, around the United States, and in over 50 countries. The Association has a strong commitment to full equality under the law for transgender individuals. We strongly support the Department of Health's (the "Department's") goal of updating and amending Article 207

to ensure that transgender individuals are able to document their acquired gender appropriately. By taking this important step, the Department will help protect the basic rights of transgender people to live, work, and otherwise fully participate in society.

The draft amendment to Article 207, if adopted, will help transgender persons realize their full legal rights by, most importantly, eliminating the requirement that applicants undergo "convertive surgery" before they may obtain a new birth certificate. Current legal understandings of transgender identity, as recognized by the New York Department of Motor Vehicles and in the policies of other states, do not require genital reconstructive surgery. Indeed, relatively few transgender individuals undergo such surgery, both for personal reasons and because of the medical risks and enormous expenses associated with these procedures (expenses which are not covered by insurance). The draft policy would also assist transgender individuals by ensuring that their new birth certificates designate them as male or female, rather than effacing their sex designation altogether, as is the Department's current practice.

While the Association believes that the current draft of the proposed amendment to Article 207 marks a substantial improvement over the 35-year-old policy now in place, we have a number of concerns about the amendment, as well as recommendations for ways of improving it. We urge the Department to revise the current draft of the amendment to Article 207 in accordance with the recommendations below, and to adopt the amendment as revised.

The Association's concerns center primarily on the risk we believe the draft amendment would create for unnecessary and potentially harmful governmental intrusions into the private lives of transgender individuals. We are troubled in particular by the broad disclosures the amendment would require transgender persons to make regarding their medical and mental health histories. The draft amendment would require a person seeking to change his/her birth certificate gender to submit an affidavit from a physician including, *inter alia*, "[a] detailed diagnosis and case history of the applicant, including results from physical examinations and a description of all medical treatments received by the applicant for the purpose of modifying

sexual characteristics.” (Section 207.05(b)(1)(i)(D) of draft amendment to N.Y.C. Health Code (emphasis added).) The amendment would also require that a mental health professional submit an affidavit including, *inter alia*, “[a] detailed diagnosis and case history of the applicant including the applicant’s psychological treatments related to his or her gender transition,” and “[t]he affiant’s professional opinion regarding the applicant’s psychosocial adjustment and support network.” (Section 207.05(b)(1)(ii)(D) of draft amendment to N.Y.C. Health Code (emphasis added).)

The Association believes that the medical and mental health disclosures required by the draft amendment sweep considerably more broadly than necessary for the limited purpose Article 207 is intended to serve. The Department does not, in order to determine the validity of a citizen’s application to change his/her birth certificate gender, need to review the applicant’s entire “detailed . . . case history” or evaluate the sufficiency of his or her “support network.” In the context of an Article 207 application, an applicant’s medical or mental health “case history” can only be relevant insofar as such history relates directly to the applicant’s gender transition. The Department surely does not need to ascertain – and an applicant should not be required to divulge – information concerning other aspects of his or her private medical or psychological history, *i.e.*, intimate information relating to the diagnosis and/or treatment of medical or psychological conditions unrelated to his or her gender identity.

The requirement that a mental health professional opine as to the adequacy of an applicant’s “support network” is, we believe, similarly unwarranted and intrusive. The Department’s decision whether to grant or deny an application for a birth certificate gender change should not hinge on a concept as ill-defined and inherently subjective as that of “social network.” Furthermore, we do not perceive a rational, let alone important or compelling, interest on the part of the Department in acquiring information about an applicant’s social network, *however* that term might be defined. An individual who has transitioned from one gender to another should be entitled to a birth certificate modification recording this fact, whether or not a mental health professional or the Department deems the applicant to have an acceptable “support network.” The

proposed “support network” requirement would vest the Department with the authority to discriminate on the basis of subjective judgments it forms about an applicant’s relationships with his or her family and friends, based entirely on the affidavit of a mental health professional who, in turn, almost certainly has no personal knowledge of these individuals. We believe this broad, unfettered discretion and intrusion into applicants’ private lives called for by the draft amendment is unnecessary to the evaluation of an Article 207 application.

The Association also objects to section 207.05(c) of the draft amendment, which authorizes the Department to request “other information or evidence demonstrating the applicant’s transition to his or her acquired gender.” This proposed catch-all provision would confer unbounded discretion upon the Department to condition the issuance of an amended birth certificate on an applicant’s submission of whatever information a given Department official (who may or may not have any expertise in transgender issues) arbitrarily determines (based on undisclosed criteria) would more adequately demonstrate a specific applicant’s transition. An applicant who provides the detailed, sworn information specifically required by sections 207.05(b)(1)(i)-(ii) – excluding the information that, as discussed above, those sections inappropriately seek – has satisfied any legitimate criteria for the amendment of his or her birth certificate sex. The proposed catch-all provision serves no legitimate purpose and, like the “support network” requirement, raises substantial equal protection and due process concerns. It should therefore be omitted from the draft amendment.

In light of the foregoing objections, the Association recommends that, at a minimum, the draft amendment to Article 207 be revised to eliminate the requirements (i) that an applicant submit affidavits from a physician and mental health professional disclosing (1) a “detailed diagnosis” for the applicant, except insofar as such diagnosis relates directly to the applicant’s gender transition, and (2) the applicant’s medical or mental health “case history,” except insofar as such “case history” relates directly to the applicant’s gender transition; and (ii) that an applicant submit an affidavit from a mental health professional opining as to the applicant’s “support network.” The Association further recommends that the “catch-all”

provision of the draft amendment, *i.e.*, section 207.05(c), be deleted in its entirety.

Separately, to the extent that the amended Article 207 will require applicants to disclose any of the categories of medical and mental health information called for in the draft amendment, the Association believes that the Department should provide notice to applicants of the standards and processes by which it intends to evaluate this highly technical information. For example, what "results from physical examinations" or evidence of "medical [or psychological] treatments," if any, will the Department of Health require be shown in an applicant's "case history" in order for his or her application to be deemed sufficient? (Section 207.05(b)(1)(i)-(ii).) What "specialized courses," if any, must a physician or mental health professional have taken – and what number of transgender patients, if any, must he or she have cared for – in order to be considered qualified to submit an affidavit on the "fullness" and "intended permanence" of an applicant's gender transition? (*Id.*; Section 207.05(b)(1).) How can a physician or mental health professional demonstrate that he or she has "at least two years experience in the last five years relating to transgender treatment?" (Section 207.05(b)(1)(A)(b).) Must he or she have cared full-time for transgender individuals for two years (if so, the standard would be attainable by few, if any, providers in New York City), or is it sufficient for the provider to have treated one transgender patient and/or taken one "specialized course" on transgender issues sometime during the two-year period preceding the submission of the application in question? Must a physician or mental health professional have received his or her highest degree from one of a select group of institutions, as suggested by sections 207.05(b)(1)(i)(A) and 207.05(b)(1)(ii)(A)? If so, which institutions are included in this group?

Relatedly, what are the qualifications of the Department officials who will review Article 207 applications to determine the sufficiency of the highly technical "detailed diagnosis," "case history," "specialized courses," and other information proposed to be submitted by medical and mental health providers, or to evaluate the "credentials" of such providers?

Without the foregoing information, applicants would have no way of knowing what criteria their applications must satisfy. An applicant could be denied the important right to a birth certificate which accurately reflects his or her acquired gender based on arbitrary considerations which he or she would have no way of knowing and thus no way of attempting to address in a subsequent, amended application. Such an applicant would be placed in legal limbo, unable to obtain an amended birth certificate and ignorant of the reasons for the Department's denial of his or her application. No rational governmental interest would be served by the Department of Health's withholding of the basic information requested. This information should therefore be disclosed to applicants under Article 207.

Finally, the Association urges the Department to make the following additional changes to the draft amendment:

- Eliminate the requirement under section 207.05(b)(1) that an applicant obtain a court-ordered name change before applying for or receiving an amended birth certificate. Many names are gender-neutral and may not require or suggest a need for alteration to conform to the applicant's post-transition gender.
- Amend section 207.05(b)(1) to eliminate the requirement of proof that an applicant has lived in the acquired gender for "at least two years" ending with the date on which the application is made. Although the Association takes no position as to whether or how long a transgender individual should be required to live in his or her acquired gender before applying for an amended birth certificate, we note that under widely-accepted guidelines issued by the World Professional Association for Transgender Health (formerly "HBIQDA"), individuals who live in their acquired gender for only one year are eligible for sex-reassignment surgery (which surgery is, properly, no longer even a condition for a change in birth certificate sex designation under the draft amendment). Thus, the draft amendment's two-year time requirement for simply changing one's birth certificate sex is substantially more onerous than that applicable to the often highly-invasive surgical procedures associated with sex

reassignment. And indeed, this time requirement is more onerous than the effective one-year requirement for birth certificate modifications under the existing regulation, which does require “convertive surgery.” Given the harassment and discrimination frequently faced by transgender persons, especially in employment and public accommodations settings, it may be excessively burdensome for an individual applicant to demonstrate that he or she has lived in the acquired gender for a continuous period of two years.

- Amend section 207.05(d) to specify that the applications and supporting materials submitted by applicants whose applications are denied by the Department will either be returned to the applicant, with no copies maintained by the Department, or placed under seal, like the applications and supporting materials submitted by successful applicants.
- Amend section 207.05(b)(1) to require applicants to submit an affidavit from a physician or mental health professional, but not both. The two-affidavit requirement is unreasonable. Many applicants will either be unable to afford the protracted medical and psychological care necessary to obtain such documentation and/or will live in geographical areas where they cannot obtain both a skilled physician and a skilled mental health professional – particularly a physician and mental health professional with the “qualifications” and “credentials” required by the draft amendment.
- Amend the “Notes” regarding subdivisions (b) and (c) as follows: (1) replace “authorize . . . to *apply for* a new birth certificate” with “authorize to . . . *obtain* a new birth certificate,” which more accurately expresses the purpose of the draft amendment; (2) for clarity, insert a comma after “birth certificate” in sentence two, so that the sentence reads, in pertinent part, “The former provision . . . , requiring a person to have had convertive surgery prior to filing for a new birth certificate, did not recognize the highly individualized health care now available”

Thank you again for your crucial efforts to modernize and improve Article 207. We look forward to assisting you in any way we can to improve the draft

amendment in order to ensure that the policy ultimately adopted by the Department is one which both ensures the right of transgender individuals to change their birth certificate gender, and also conforms with the basic rights of all citizens to privacy and equal treatment under the law.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Drexel', with a stylized flourish at the end.

Allen A. Drexel
Co-Chair, Committee on Lesbian, Gay, Bisexual and
Transgender Rights

Cc: Alan Rothstein, Esq.
General Counsel
New York City Bar Association
42 W. 44th Street
New York, NY 10036

50

Message Type: Complaint

Topic: Other Health Matters

Contact Info: Yes

First Name: Daren

Last Name: DeBow

City: Woodland Hills

State: CA

Postal Code: 91367

Country: United States

Email Address: darendebow@priorityfinancial.net

Message: Oh my God! What are you doing to this country? Allowing people to choose what sexual orientation, allowing transvestites to use the women's restrooms????? Are you guys losing all sense of moral values? Modern day Sodom and Gomorra--May God forgive you for your personal contribution to the moral decay that will lead this country to its ultimate ruin. Why?

REMOTE_HOST: 71.5.47.166

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322)
