

Health Care Fairness for LGBT People and People Living with HIV: Lambda Legal's Health Care Docket

Working to Defeat Discriminatory Refusals of Medical Care

Baxter v. Montana (Montana): In this case, Lambda Legal joined an amicus brief to support terminally ill patients, Montana physicians, and Compassion & Choices, a non-profit advocacy organization dedicated to expanding choice at the end of life, who argue that the Montana Constitution's guarantees of privacy and dignity protect the choice of aid in dying. The brief joined by Lambda Legal argued that personal autonomy in making important healthcare choices – and not having that autonomy improperly limited due to other people's religious objections – has great significance to LGBT individuals and people living with HIV. The Montana Supreme Court ruled in 2009 that state law protects doctors from prosecution for providing end of life assistance to terminally ill patients.

North Coast Women's Care Medical Group, Inc. v. Superior Court (California): Guadalupe "Lupita" Benitez was referred for infertility care to North Coast Women's Care Medical Group, which had an exclusive contract with Benitez's insurance plan. After eleven months of preparatory treatments, including medication and unnecessary surgery, Lupita's doctors finally admitted they would not perform donor insemination for her because she is a lesbian. The doctors claimed a right to opt out of California's civil rights law because they hold fundamentalist Christian views and they objected to treating a lesbian patient as they treat others. In a unanimous decision in August 2008, the California Supreme Court ruled that religion cannot be used as a legal excuse for doctors to violate the civil rights of a lesbian or gay patient, enforcing Lupita's right to be treated equally with other patients facing the same health care needs. The case settled the following year for an undisclosed sum of money, with the doctors stating publicly that they welcome and treat equally all of their patients, regardless of their sexual orientation and marital status.

In re Shuffield (Washington): In 2007 Jonathan Shuffield was denied a medical prescription when his doctor claimed that private religious beliefs gave the doctor a right to withhold care based on Jonathan's sexual orientation. Lambda Legal represented Jonathan in negotiations and achieved a successful settlement in which the doctor and medical center agreed to take steps to protect other LGBT patients, including training physicians and staff about culturally competent care for LGBT patients, incorporating training into new employee orientations, amending the center's antidiscrimination policy and publishing it on their website and in employee manuals.

Fighting for Family Recognition in Health Care Facilities

Langbehn v. Jackson Memorial Hospital (Florida): Just as Janice Langbehn and Lisa Pond were about to depart from Miami on a family cruise with their three children, Pond suddenly collapsed. From the moment Langbehn and the children arrived at Jackson Memorial Hospital, they encountered prejudice and apathy. Even though Langbehn held Pond's durable health care power of attorney, the hospital refused to accept information from Langbehn regarding Pond's medical history. The hospital also informed her that she was in an "antigay city and state" and that she could expect to receive no information or acknowledgment as family. A doctor finally spoke with Langbehn, telling her that there was no chance of recovery. Despite the doctor's acknowledgment that no medical reason existed to prevent visitation, hospital personnel refused to allow either Langbehn or their children to see Pond until nearly eight hours after their arrival. Lambda Legal filed a lawsuit against the hospital on behalf of Janice Langbehn and her three children. In August of 2009, as a result of our lawsuit, the Committee for Fair Visitation at Jackson Memorial Hospital formed and after a meeting with the committee, the hospital announced an

intention to revise their policies in response to the committee's demands. The court issued a devastating ruling in September of 2009 denying the Langbehn-Pond family their day in court. After hearing about Janice's case, President Obama ordered the U.S. Department of Health and Human Services to create new regulations protecting LGBT people from discrimination, and those regulations now provide important protections in most hospitals across the country.

Flanigan v. University of Maryland Hospital System (Maryland): On a cross-country trip to visit family, Bill Flanigan's partner Robert Daniel was admitted to the University of Maryland Hospital's Shock Trauma Center with a serious illness. Despite the fact that Flanigan and Daniel were registered as domestic partners in California and that Flanigan had with him a power of attorney to make health care decisions for Daniel, hospital personnel prevented Flanigan from seeing his partner. Hospital staff told Flanigan that only "family" members were permitted to visit and that "partners" did not qualify. Flanigan was unable to consult with doctors or to tell surgeons of Daniel's wish to forego life-prolonging measures such as a breathing tube. Several hours later, when Flanigan was finally allowed to visit, Daniel was no longer conscious, his eyes were taped shut and doctors had inserted a breathing tube. Daniel never regained consciousness and died three days later. Lambda Legal's arguments in 2002 that the hospital was liable for damages were unsuccessful before a local jury, but the former couple's story has been a key feature in presentations to state and local legislators around the country, and part of nationwide educational work that led vice presidential candidate John Edwards to raise the importance of hospital visitation rights for same-sex couples in the 2003 debates.

Advocating for Transgender Health Care

Esquivel v. Oregon (Oregon): Alec Esquivel is a law school graduate who is clerking for the Oregon Court of Appeals. Assigned female sex at birth, he was diagnosed with Gender Identity Disorder ("GID") in 2001 and began to take steps to have his body match his male gender identity. In 2010, as part of his transition-related health plan, Alec sought insurance coverage for a hysterectomy, a procedure that routinely is covered for other employees under the state's health plan. Esquivel's doctor then submitted a request for insurance coverage. On June 21, 2010, Esquivel was denied based on the plan's categorical exclusion of transition-related health care, a violation of Oregon's antidiscrimination guarantees. Lambda Legal's lawsuit seeks recognition that denying a public employee the same coverage that others receive because of the employee's gender identity

violates Oregon's Equality Act and its guarantees of equal treatment in the workplace regardless of gender identity.

Fields v. Smith (formerly Sundstrom v. Frank) (Wisconsin): Lambda Legal and the ACLU filed a federal lawsuit on behalf of several transgender women incarcerated in Wisconsin, challenging a Wisconsin law that bars access to hormone therapy or sex reassignment surgery for prison inmates and others in state custody. Prison doctors used to be allowed to determine proper treatment for transgender inmates, but this new law strips them of that power. Wisconsin is the only state in the country that has passed a law barring its Department of Corrections from providing medically necessary care to transgender inmates, and reversing this law will ensure that transgender inmates receive necessary medical care and help to dispel myths about transgender health needs. After a four-day trial in 2007, the trial court struck down the law in 2010. The case was then appealed by the State and the ruling was upheld by the Seventh Circuit Court of Appeal in 2011.

In the Matter of Brian (a.k.a. Mariah) L. (New York): Mariah had been in the care of New York City's Administration for Children's Services (ACS) since she was 10 years old. When she was 18, ACS arranged for several health care providers experienced in treating transgender youth to evaluate Mariah, who identified as transgender. All of those providers determined that necessary therapeutic treatment for Mariah includes sex reassignment surgery. However, ACS continued to send Mariah for repeated medical evaluations in an apparent attempt to delay the recommended treatment until Mariah turned 21 and aged out of the foster care system. The family court ordered ACS to provide the necessary treatment, and ACS filed an appeal. In 2008 Lambda Legal collaborated on a friend-of-the-court brief filed in New York Supreme Court's First Appellate Division, arguing that sex reassignment is neither experimental nor unduly "risky" and that ACS is bound to provide the treatment. While the First Appellate Division ruled that the Family Court lacked authority to order ACS to provide treatment for Mariah, Lambda Legal will continue to work to eradicate health care discrimination against transgender people.

Rodriguez v. Johnson et al. (New York): Alyssa Rodriguez is a transgender woman who was deprived of her prescription hormone medication and punished for her feminine hairstyle and other aspects of her gender expression by the Office of Children and Family Services while at the Red Hook Residential Center and other New York juvenile detention facilities. Rodriguez had been on hormone therapy from a young age and

experienced severe health consequences and emotional distress due to withdrawal symptoms after being forced to go without treatment. The case filed on Rodriguez's behalf resulted in a settlement in 2006. OCFS paid a monetary award to Rodriguez and took significant steps to improve its treatment of transgender youth.

Ending HIV Discrimination

U.S. v. Q.L.T. (Maine): In this case, Lambda Legal joined a brief in support of Q.L.T., a Cameroon immigrant who was sentenced to an extended prison term because she was pregnant and had HIV. The federal district court judge went outside the federal sentencing guidelines because he wanted her to give birth while incarcerated to reduce the risk she would transmit HIV to the child she is carrying. Lambda Legal joined an amicus brief in support of re-sentencing which argued, *inter alia*, that current treatment regimens for HIV do not support the assumption that maternal and fetal health will be advanced by incarceration. On re-sentencing, the judge revised the sentence to time served and the woman was released in 2009.

Rose v. Cahee (Wisconsin): In addition to living with HIV while incarcerated, 35-year-old Melody Rose experienced serious health problems with her gallbladder. Rose's physician referred her to Fond du Lac Regional Clinic, where she met with Dr. Steven Cahee to discuss having her gallbladder removed. When Cahee learned of Rose's HIV status, he refused to perform surgery on her – stating he was concerned she might infect him and his surgical team. Later, a surgeon at another medical facility removed Rose's gallbladder in what is considered a routine surgical procedure. Lambda Legal and AIDS Resource Center of Wisconsin (ARCW) filed a federal lawsuit on behalf of Rose. The lawsuit alleges that those who were asked to provide health care to Rose – Cahee, the Fond du Lac Regional Clinic and Agnesian HealthCare, Inc. – violated both federal and state law by refusing to do so based on her HIV status. The case was resolved in 2010.

In re Spera (Wisconsin): Stephen Spera sought treatment from an orthopedist for severe and debilitating back pain in 2000. For nearly two years, Spera received care from the orthopedist with a series of pain management procedures, but with little success. The doctor finally recommended spinal fusion surgery, and Spera submitted to a blood test to enter the hospital as a patient for surgery. The blood test revealed that Spera, who had previously tested negative for HIV, was HIV-positive. The orthopedist informed Spera of his status and said he would not perform the surgery. Lambda Legal sued, arguing that the doctor's discriminatory

actions were illegal under both federal and state law. The case was successfully resolved in 2006.

In re Murray (Maryland): Morris Murray had HIV for more than a decade when he developed end-stage liver disease due to his concurrent condition of Hepatitis C infection. Murray's physicians at the University of Pittsburgh approved him for placement on their transplant list. Upon visiting his health care administrator for the required pre-approval, Murray was denied because of his HIV status. Lambda Legal began working with Murray during the second round of appeals with his benefits program, the UFCW Local 56 Health & Welfare Fund. Lambda Legal argued that scientific evidence clearly shows that HIV does not affect the outcome of liver transplantation. The fund reversed its decision, and agreed to cover his transplant and allow him to be placed on a national waiting list. Later, however, when his health care administrator recalculated his eligibility for continued health insurance benefits, Murray was told he had to pay an increased premium during his final six months of coverage – this additional hurdle was appealed twice by Lambda Legal before finally being resolved by settlement in 2006.

In re Gwin (Arizona): Brenda Gwin was diagnosed with end-stage liver disease as a result of Hepatitis C. Her condition was deteriorating rapidly, and her doctors determined that she met the criteria for and needed a liver transplant. Mercy Care, one of the providers within the Arizona Health Care Cost Containment System ("AHCCCS" – Arizona's Medicaid program), informed Gwin's doctor that the request for coverage had been turned down because she had HIV. AHCCCS refused to cover costs for organ transplants for people living with HIV because it claimed the treatment was experimental. Lambda Legal filed an administrative appeal on behalf of Gwin, arguing that people with HIV should be evaluated on a case-by-case basis like any other transplant candidates. The AHCCCS Director agreed. As a result of his 2005 decision, Mercy Care paid for Gwin's transplant. After advocacy by Lambda Legal, working with the Arizona Center for Disability Law, AHCCCS also modified its policies.

In re Little (Louisiana): Cecil Little suffered two consecutive strokes and brain aneurysms, leaving him on life support and in a coma for one month. After recovering he still required a feeding tube and assistance with walking and bathing. When it was time for Little to be discharged from the hospital, Little's mother and sister began making plans for his long-term care. Six nursing homes, all of which initially accepted Little into their care, declined after learning he had HIV. Little's mother and sister were forced to place him in a facility

80 miles away from their home and travel that distance to visit him on a near daily basis. In 2003 Lambda Legal filed discrimination complaints with the U.S. Department of Health and Human Services Office for Civil Rights against the six nursing homes for refusing Little care. The complaints argued that these care providers violated the federal Rehabilitation Act prohibiting facilities that receive federal funds (such as Medicare or Medicaid) from discriminating against people with disabilities (including HIV). Soon thereafter, one of the six nursing homes agreed to admit Little after all. The remaining matters were successfully settled.

Galanty v. Paul Revere Life Insurance Company (California): Paul Revere Life Insurance Company issued Mark Galanty a disability income insurance policy in 1989. In 1994, Galanty presented Paul Revere Insurance with a claim for disability benefits because Galanty had to stop working as a court reporter due to pain in his hands and other medical conditions related to his HIV. After accepting his premiums for more than five years, the company claimed that Galanty was ineligible for benefits for an AIDS-related disability because he had tested positive for HIV antibodies before the policy was issued. Lambda Legal joined in representing Galanty on appeal, arguing that California law bars insurers from taking years of premium payments from a policyholder and then denying coverage when the person becomes disabled. The appellate court agreed that Paul Revere Insurance could not do this under the circumstances presented; the insurer settled in 2001 and paid Galanty over \$170,000 in withheld benefits.

Bragdon v. Abbott (Maine): Dentist Randon Bragdon of Maine refused to fill a cavity for patient Sidney Abbott because she had HIV. Although Bragdon later told Abbott that he would treat her in a hospital setting so that he could take “extra precautions,” Bragdon never had admitting privileges at any hospital and never explained what these extra precautions might be. Abbott sued the dentist in federal court for violating the Americans with Disabilities Act (ADA), which prohibits discrimination against people with disabilities. Abbott won her claim against Bragdon in the trial court and later in the First Circuit Court of Appeals. The dentist then petitioned the U.S. Supreme Court to consider (among other things) whether patients such as Abbott, who show no visible HIV symptoms, are covered by the ADA. Lambda Legal filed a friend-of-the-court brief supporting the plaintiff, on behalf of 16 major medical and public health associations and individual experts. The Supreme Court ruled in 1998 that Abbott was indeed protected by the ADA on the basis of HIV,

establishing that HIV is a disability within the meaning of the ADA and confirming that all people with HIV are entitled to the protections of that law. This was the first Supreme Court case involving a claim of HIV discrimination under the Americans with Disabilities Act. Lambda Legal took a leading role in the friend-of-the-court strategy for the Supreme Court appeal, and the Justices’ decision relied heavily on the analysis in our brief.

Access to Health Benefits for Same-Sex Partners

Diaz v. Brewer (formerly Collins v. Brewer) (Arizona): In the summer of 2009, while our nation was in the grips of an intense debate about improving health care access, the state of Arizona enacted a mean-spirited law to strip lesbian and gay state employees of domestic partner health coverage. Lambda Legal sued to block enforcement of this law, and to restore fair treatment for the state’s valuable lesbian and gay workers. Lambda Legal represents 8 government employees who have, among other things, protected the public as law enforcement officers and educated our best and brightest in Arizona’s universities. Their families’ circumstances represent some of the terrible harms that lesbian and gay state employees will face without equal health benefits for their families. In April 2010, we filed a request for preliminary injunction, seeking to keep partner health coverage in place for lesbian and gay state employees during the case, which was granted by the District Court. The defendants filed an appeal seeking to overturn the preliminary injunction, but the Ninth Circuit Court of Appeal upheld the preliminary injunction in June 2011.

Ralph v. City of New Orleans (Louisiana): In 1997, the City of New Orleans extended insurance benefits to same-sex partners of city employees. In 1999, the City Council created a domestic partner registry. Both policies came under attack through a lawsuit brought by an extremist religious-based legal group. At the city’s request, Lambda Legal joined a lawsuit to uphold these policies. Lambda Legal secured a victory in 2009 when the Louisiana Court of Appeal, Fourth District ruled that the City of New Orleans does have the authority to offer health benefits to the domestic partners of city employees and maintain a registry of domestic partners for city residents.

Funderburke v. New York State Department of Civil Service (New York): Duke Funderburke worked as a teacher at the Uniondale Union Free School District in Nassau County for more than two decades before retiring in 1986. He married his partner of over four decades, Bradley Davis, in 2004 in a ceremony in

Ontario, Canada. When Funderburke requested that his retirement health benefits be extended to his spouse, just as benefits are extended to the spouses of other married retirees, the school district refused. With Lambda Legal's help, Funderburke won respect for his marriage in New York. While this case was on appeal, the New York State Department of Civil Service (DCS) agreed in 2007 to extend health benefits to same-sex spouses of public employees covered under the New York State Health Insurance Program, including Funderburke and his spouse. As a result, married lesbian and gay public employees working at more than 800 New York state and local government employers have access to health insurance coverage for their spouses.

Lewis v. New York State Department of Civil Service (New York): On May 1, 2007, the New York Department of Civil Service (DCS) adopted a policy according respect to valid out-of-state marriages of same-sex couples for the purposes of extending health insurance to spouses of public employees. The policy shift came after several years of Lambda Legal's litigation in *Funderburke v. New York State Department of Civil Service*, on behalf of an elderly retired couple who were denied these benefits under DCS's prior policy to disrespect out-of-state marriages. *Lewis* was filed by an antigay group as one of four taxpayer challenges against public officials who confirmed that they will abide by New York's comity doctrine by requiring respect for out-of-state marriages of same-sex couples. Lambda Legal won an important victory in November of 2009 when New York's highest court ruled that the State acted lawfully in extending employee health benefits to same-sex couples in out-of-state marriages. DCS is the largest public health insurance program in the nation, excluding that of the federal government.

deGroen v. City of Bellevue (Washington): Every day that Larry deGroen, Faun Patzer and George Einsetler clock in for their jobs, they work with married colleagues who are paid more for performing identical work. As part of employees' compensation, the city of Bellevue provides valuable family benefits to its married employees for their spouses and children but refused to provide comparable benefits to its gay and lesbian employees for their loved ones. Patzer and deGroen are firefighters and paramedics for the city; Einsetler is a lead "911" dispatcher for the city – each has served the city for more than 10 years with distinction. In 2007, Lambda Legal sued the city on their behalf seeking to enforce the city's constitutional duty to provide equal protection by providing domestic partner benefits. A few months later the Bellevue City Council approved domestic partner benefits by a unanimous vote.

Wilson v. City of Redmond (Washington): Commander Kristi Wilson has been a police officer for over 20 years, and is raising two young children with her partner, a stay-at-home mom. When Wilson was diagnosed with breast cancer, she was relieved to have health insurance, but terrified to think what might have happened if her partner had received the diagnosis instead – Wilson's employer, the City of Redmond, refused to provide domestic partner benefits, leaving Wilson's partner without any access to affordable health care benefits. Wilson and her colleague, Lieutenant Betsy Lawrence, a law enforcement veteran of over 20 years, joined forces with Lambda Legal to demand benefits for their families. Lambda Legal threatened the city with legal action in 2007, and the city council subsequently approved domestic partner benefits for city employees.

Brinkman v. Miami University (Ohio): When a lawsuit by an extremist religious-based legal group and ultraconservative Ohio legislator Thomas Brinkman threatened Miami University's domestic partner benefits program, Lambda Legal intervened on behalf of Professors Jean Lynch and Yvonne Keller – two university professors whose families stood to lose their medical coverage if the ADF prevailed. The ADF lawsuit claimed that Miami University's domestic partner benefits violate Ohio's constitutional amendment, which limits marriage to a man and a woman. Lambda Legal argued that Ohio's constitutional amendment does not apply to the university because it concerns only marriage and does not address the legality of domestic partnership benefits. Lambda Legal also moved to dismiss the case on the ground that Brinkman lacked legal standing to sue, since providing health care to same-sex couples caused him no injury. In November 2006, the court accepted Lambda Legal's argument and dismissed the ADF's lawsuit. The ADF appealed and the Ohio Court of Appeals affirmed the dismissal of Brinkman's lawsuit.

Snetsinger v. Montana University System (Montana): The University of Montana maintained a discriminatory health benefits scheme, providing health benefits to unmarried partners of heterosexual employees, but refusing to provide coverage to unmarried same-sex partners. A suit was filed to challenge this practice, and Lambda Legal helped achieve a victory in the case by filing a friend-of-the-court brief in the Montana Supreme Court, which struck down the university's discriminatory health benefits scheme in 2004.

City of Atlanta v. Oxendine (Georgia): Since 1995, the Georgia Insurance Commissioner, John Oxendine had refused to approve any insurance policy provided health

benefits for domestic partners, despite a 1997 Georgia Supreme Court ruling in *City of Atlanta v. Morgan* allowing the City to offer benefits to the partners of City workers who qualify as “dependents.” Lambda participated as a friend of the court in the *Morgan* case. The City of Atlanta filed a lawsuit when Oxendine attempted to block implementation of Atlanta’s domestic partner ordinance. Lambda Legal intervened and in 1999 a trial court judge admonished the Commissioner and ordered him to lift his ban on domestic partner coverage.

Tanner v. Oregon Health Sciences University

(Oregon): Oregon Health Sciences University employee Christine Tanner, two other colleagues, and their domestic partners sued the university for failing to provide domestic partner health benefits in violation of the university’s constitutional equal protection duties. Lambda Legal submitted a friend-of-the-court brief on their behalf, and in 1998 an Oregon appellate court became the first in the nation to hold that public entities’ equal protection obligations required them to provide equal compensation in the form of domestic partner benefits to same-sex couples.

Eliminating Discrimination in Reproductive Care

See *North Coast Women’s Care Medical Group, Inc. v. Superior Court* above.

Infertility Insurance Coverage (Illinois): Lambda Legal successfully advocated for a change to administrative insurance regulations effective March 2010 governing coverage for infertility, a condition which state law defines as “the inability to conceive after one year of unprotected sexual intercourse or the inability to sustain a pregnancy.” The new regulation clarifies the existing law by stating that a woman is eligible for insurance coverage for infertility treatment if a physician determines that medically-based and supervised methods of conception (such as artificial insemination) have failed and are not likely to lead to a successful pregnancy. The new regulation states that this determination can be made without requiring a woman to demonstrate that she has engaged in unprotected sexual intercourse.

Barros v. Riggall (Florida): Dennis Barros, a veterinarian in Orlando, Florida, and his partner planned to have a child through a surrogate mother, who consented to carry an egg fertilized by Barros’s sperm. But the clinic they enlisted refused to provide services to Barros. In refusing service, the clinic cited Food and Drug Administration guidelines, which suggest refusing

anonymous donations from men who have had sex with men in the past five years, prevented the clinic from performing the procedure. Lambda Legal explained that those guidelines do not apply in this case (Barros is hardly anonymous), but the clinic still refused to comply. Lambda Legal filed a complaint with the Orlando Human Rights Board in 2006, which held in early 2009 that discrimination had occurred but was unable to provide relief. Barros then took his case to Circuit Court in Florida, where it is currently pending.