

# APPENDIX F

## STRUGGLES

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### DISCRIMINATORY INCIDENT AT OREGON DEPARTMENT OF HEALTH

*\*\*Summary of what exactly happened in "TLC" unit incident as reported*

*\*\*by Alena Treat who actually spoke with the TLC.*

My partner, Aaron Davis, is scheduled for surgery at the Oregon Health Science University in Portland, Oregon July 26th with Dr. Toby Meltzer. He and his staff have been just wonderful. This incident should not reflect directly on him or his staff.

We want to make sure that NO ONE else has to be humiliated like this.

In trying to lodging arrangements in Portland, there was a question as to whether the hotel had the 26th open due to multiple conventions in the area. Aaron contacted Dr. Meltzer's office and someone there told him about a TLC unit that cares for surgical outpatients the night after the surgery. Since he had to work, I called yesterday and made the arrangements in case he would need them. The following is an account of what happened:

When I called the TLC (Temporary Living Center) unit today in Portland, OR, I spoke with a woman that obviously had a relatively high level of incompetence and presented a very biased attitude toward transgendered persons. This is what happened:

1)She spent a good portion of time (I was calling long distance) complaining about how the OHSU should not be telling patients and their caregivers that the TLC unit provided transportation, and how OHSU should, as a service to patients, maintain a list of available transportation options and their phone numbers. Then she had me wait while she took her time looking up the phone number for a patient transportation service.

2)After giving me the seven digit phone number, she then proceeded to inform me that in order to dial the number from Texas, I would need to first dial "0" then "503". I then asked her if I was supposed to dial that number collect, and she said "No. If you're dialing from Texas, the only way to get through is if you dial "0" then the area code and then the phone number." I again stated that to dial a "0" first will result in going through the operator in order to make a collect call. She STILL insisted that I was wrong until I told her that I just called HER by dialing "1-503", not "0-503".

What happened next is totally inexcuseable!!!!!!!

1)She, when asking what kind of surgery the patient was having, kept referring to the patient as "IT", even after I repeatedly emphasized the word "HE" and his first name when discussing Aaron's care.

2)She asked what the patient's name used to be, which I think was none of her business. I refused to tell her and instead stated what his legal name is now. (\*\*As a side note his name and gender have been legally changed now for years. Any previous data was irrelevant.)

This person is not competent enough to handle the position of public contact she is presently in. The very fact that she referred to anyone going through SRS as "IT" should be enough to justify firing her. An employee in such a public contact position should not be permitted to imply that transgendered persons are not even human. When weighed with the fact that this particular facility deals quite frequently with SRS patients, it becomes even more appalling. The rest of her statements simply underline her lack of intelligence, consideration and tact.

I called again today and found out that the only person answering the phone [503-692-2161] yesterday was a NURSE by the name of Marilyn Stern. I wish she could have seen Aaron in person...you can be rest assured she would NOT have referred to him as "IT". To think that one of the primary health care givers in this facility does not even view some patients as being human is horrifying!!!

Aaron states that he will almost have to be dead to stay there now. We don't intend to spend money to be humiliated. He can get that for free here in Texas and a lot of other places.

If you wish to take action, feel free to use our names in any communications with the TLC Unit. The contact info is:

Sandi McKendrick, Supervisor  
Legacy Visiting Nurses's Association  
2701 NW Vaughn, Suite 850  
Portland, OR 97210  
503-225-6291 phone, 503-225-6345 FAX

Thanks.

Alena Treat

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***\*\* Fax I sent to Meltzer's office the day after the incident.***

July 19, 1995

FAX TRANSMISSION

From: Aaron Davis

To: Dr. Toby Meltzer and Staff

Re: Prejudicial Treatment at the TLC unit

First of all I want to thank everyone there in the office for their assistance and kindness in helping me with all the discrimination I have faced at work in trying to secure this loan for my surgery. Everyone in the office has shown me nothing but kindness.

It is because of all this kindness, that I feel I must report an incident to you that you need to know about considering all the Gender patients Dr. Melter has.

Since I was unsure of my hotel arrangements for the day of the surgery, July 26th, your office suggested that I contact the TLC unit for care for the one night after the surgery.

As I work in the afternoons I had my finance call to make the arrangements. This is her account of what happened during that call.

*\*\* The following is an account of what happened as she was making the arrangements:*

When I called the TLC (Temporary Living Center) unit today in Portland, OR, I spoke with a woman that obviously had a relatively high level of incompetence and presented a very biased attitude toward transgendered persons. This is what happened:

1)She spent a good portion of time (I was calling long distance) complaining about how the OHSU should not be telling patients and their caregivers that the TLC unit provided transportation, and how OHSU should, as a service to patients, maintain a list of available transportation options and their phone numbers. Then she had me wait while she took her time looking up the phone number for a patient transportation service.

2)After giving me the seven digit phone number, she then proceeded to inform me that in order to dial the number from Texas, I would need to first dial "0" then "503". I then asked her if I was supposed to dial that number collect, and she said "No. If you're dialing from Texas, the only way to get through is if you dial "0" then the area code and then the phone number. I again stated that to dial a "0" first will result in going through the operator in order to make a collect call. She STILL insisted that I was wrong until I told her that I just called HER by dialing "1-503", not "0-503".

**What happened next is what is totally inexcusable!!!!!!!**

1)She, when asking what kind of surgery the patient was having, kept referring to the patient as "IT", even after my SO repeatedly emphasized the word "HE" and my first name when discussing my care.

2)She asked what the patient's name used to be, which I think was none of her business. My SO refused to tell her and instead stated what my legal name is now.

*\*\* As a side note my name and gender have been legally changed now for years.  
Any previous data was irrelevant.*

Gee! This person is not competent enough to handle the position of public contact she is presently in. The very fact that she referred to anyone going through SRS as "IT" should be enough to justify firing her. An employee in such a public contact position should not be permitted to imply that transgendered persons are not even human. When weighed with the fact that this particular facility deals quite frequently with SRS patients, it becomes even more appalling. The rest of her statements simply underline her lack of intelligence, consideration and tact.

I realize that your office is not directly responsible for this person behavior but I thought you should be aware of her insensitivity so it will not happen to anyone else. Needless to say I feel VERY uncomfortable at staying there now and will only do so if it is absolutely necessary.

I would appreciate it if you could tell me who I could contact to complain further about this woman's behavior. This needs further attention so no one else will have to be humiliated like this.

Thank you for taking the time to read this letter. I thought it warranted your immediate attention.

Sincerely,

Aaron Davis  
606 Royal Crest Drive  
Richardson, Texas 75081  
Phone-Fax: 214-994-9314

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***\*\*Second fax to TLC unit after initial complaint and response.***

To: Sandi McKendrick, Administrator  
Legacy Visiting Nurses Association  
2701 NW Vaughn, Suite 850  
Portland, OR 97210  
503-225-6291  
503-225-6345 FAX

From: Alena R. Treat, Partner of Patrick Aaron Davis  
606 Royal Crest Drive  
Richardson, TX 75081-3540  
214-994-9314 (Voice and FAX)

Re: Disciplinary Actions regarding Marilyn Stern, LPN

Date: Friday, July 21, 1995

Thank you for your prompt response to my letter dated July 19, 1995. I look forward to receiving the faxed

letters from you (detailing our conversation about the disciplinary actions) and from Cheryl Swenson (detailing the education plan to ensure non-repetition of such prejudicial behavior by other employees).

Since the offender will receive only a Final Written Warning and mandatory enrollment in your Employee Assistance (counseling) Program, **a personal written apology from Marilyn Stern to me and to Aaron would seem to be in order**, too. Would you please investigate this possibility with the Director of Human Resources? It does not seem too much to ask at this point, and certainly should have been automatically done without my asking.

Individuals in the TS/TG nationwide online network have been keeping track of the progress of this case. While appalled by the actions of Ms. Stern (calling my partner "IT" and demanding his previous name even though his legal name has been Patrick Aaron Davis for years), they are eager to see that your organization takes effective action to ensure that no one else is subjected to such indignities.

Would you like a member(s) of the TG/TS community to speak with your organization as part of your staff development plan? Perhaps if they met individuals who have gone through SRS (Maybe one Female to Male and one Male to Female), someone in the medical field that can explain the need for gender re-assignment and possibly a partner of someone that has undergone SRS, they may realize that these persons are indeed human and not freaks at all. While I do not presently have anyone in mind, we could submit an inquiry online to see if anyone is willing to help you in this matter.

Thank you.

Sincerely,

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***\*\* Final fax received from TLC Unit. We got this on the day we returned from Portland, August 1, 1995***

Dear Alena and Patrick:

Sandi McKendrick of VNA Health Services has provided me information and copies of your letters dated July 19 and July 21 regarding our LPN, Marilyn Sturm.

First, let me say thank you for taking the time to write and inform us of your concerns. Your letters request our response to three issues of concern. First, you have asked what disciplinary action we will take. I have completed a thorough review of the issues regarding this incident. LVNA management has taken appropriate disciplinary action in delivering a final written warning to Marilyn and mandatory referral to our Employee Assistance Program for counseling. LVNA must follow stringent laws and regulations to protect not only patient confidentiality, but also employee confidentiality so I am not at liberty to share specific information involving our counseling with Marilyn which led to the final written warning.

Your second concern is that we develop an education plan to ensure that our employees are sensitive to the needs in gender re-assignment cases. Sandi McKendrick is working with her manager in developing the

appropriate education on this issue for the TLC staff. We appreciate your offer to inquire of a member of the TG/TS community who would be willing to speak.

Your third request is for a personal written apology from the employee. Given the final written warning which is a serious final step in our progressive discipline policy prior to termination, and the fact that it becomes part of the employee's permanent personnel record, and the mandatory referral to EAP, I believe that the appropriate disciplinary actions have been taken.

We sincerely regret the indignities you experienced. We are eager to regain your confidence, and trust that the actions we have taken allow you some closure on your concerns.

Sincerely,  
Cheryl J. Swenson  
Director Human Resources

cc: Sandi McKendrick  
Cindy Jenkins, Manager

*Note from Alena: I am very pleased with the results of this action. Now the entire TLC Unit will receive education and the offending nurse has been both reprimanded and educated. Thanks to all who helped bring this case to its successful conclusion. Don't give up, though, until the staff development plan is implemented. This is not just a simple case of discrimination against Aaron (Patrick Aaron Davis). It is an example of discrimination against all TG/TS individuals.*

*Thank God we can do something about it!*

## REPORT ON ADMINISTRATIVE HEARING FOR TS SEEKING SOCIAL SECURITY DISABILITY

The following is the case of a transgender individual with a long-standing severe mental impairment. This individual was seeking disability benefits from the Social Security Administration (SSA). By way of background, the SSA administers 2 disability programs. The first is the Title II disability insurance benefits available to individuals with a sufficient work history. The second is the Title XVI supplemental security income benefits available to persons with limited income and resources.

In a nutshell, the SSA administrative process has four stages in claims processing. First, the initial application for benefits which is filed with the SSA field office. Second, the appeal for reconsideration of SSA's denial of an initial claim. Third, the request for an administrative hearing before a Social Security Administrative Law Judge (ALJ) at which evidence is examined and testimony is taken. This hearing is a de novo review of the claim and the ALJ is not bound by any findings at the previous stages. Fourth, the request for review by the Appeals Council. Review at the fourth stage is based on more narrow grounds such as substantial evidence, error of law, and abuse of discretion.

Each of the four stages, described above, is subject to a 60 day limitations period within which an appeal must be requested by the individual seeking benefits (the claimant). The average time for resolution of a disputed SSA claim in the Houston, Texas area is approximately 2 years from the date of initial filing through the ALJ decision. If the claim is granted review by the Appeals Council another 3 months to 1 year should be added for Appeals Council action. If the claim is remanded for another hearing before the ALJ, add another 6 to 8 months.

In 1991, a transgendered individual filed a claim under Title II (DIB) that was denied 6 months later on the basis of a non-severe impairment labeled "gender identity disorder". No appeal was taken by the claimant. A second claim for Title II (DIB) and an initial application for Title XVI (SSI) were filed in June 1993 by the claimant, both of which were denied by SSA approximately 6 months later, in December 1993, again on the basis of "gender identity disorder".

Fortunately, she was accepted as a client by South Texas College of Law Disability Clinic. Typically the Clinic would have terminated representation because the client was not at the "hearing" level of the administrative process. However, in this case it was apparent the client did not appreciate what she needed to accomplish to preserve her right to appeal her claims denial. Therefore, the Clinic worked with the client's case manager to process the necessary SSA paperwork to request a "reconsideration" in January 1994 which was denied by SSA in March 1994. A request was submitted on the client's behalf requesting a hearing before an Administrative Law Judge (ALJ) in April 1994.

A hearing was originally scheduled for May 1995. However, in reviewing this file, this attorney discovered, for the first time, the existence of the previously denied claim of 1991. The ALJ was petitioned to continue the hearing and obtain the prior case file. The ALJ agreed. The hearing was continued and the ALJ ordered the prior case file be located.

A review of the prior claim file confirmed the current records of this client's severe and long-standing mental impairment. The client's hearing was rescheduled for September 1995 with the presence of a testifying medical expert (paid by SSA). During the hearing, the ALJ characterized my client as a person suffering from some gender confusion in transition who lead a nomadic existence. It was his belief my client simply did not fall within the Social Security disability guidelines.

This attorney countered with the argument that gender identity was a non-issue in this hearing and the focus should be on the claimant's mental impairment which was well documented in the record. I argued this claimant was subject to ridicule and harassment because of her inability to obtain the gender change operation she so desperately desired, which was argued exacerbated her existing mental impairment. Additionally, evidence was put before the Court which established the claimant's inability to adequately understand the Social Security process and pursue her appellate rights. Therefore, this attorney argued her 1991 benefits claim should be "re-opened" (limited legal doctrine in Social Security law). After the evidence was put forth, the ALJ agreed to consider the issue of re-opening.

Since it was difficult to get concise and explicit information from my client, the ALJ decided to limit her testimony and move to cross-examination of the testifying medical expert. The medical expert was a psychiatrist from Baylor who agreed with this attorney that the sole significance of the transgendered status of the claimant related to exacerbation of an underlying impairment (due to social stigmata) and should not be considered as an impairment simply because the claimant required an operation to correct the birth gender. He went on to testify as to the history, nature, and limitations of the claimant's mental impairment within the context of the Social Security regulations.

At this time no decision has been rendered by the ALJ. However, this attorney believes (based on experience and the specific events of the hearing) that this client will ultimately have her claim approved. The message here is to pursue your claim if you are a transgendered person with a disability. Be prepared to advocate your claim be judged not on gender, but on disability. This can be very frustrating when your disability has not been considered because your adjudicator can not see through the facetious label of "gender identity disorder".

The author of this article is Betty J. Luke, J.D., a staff attorney for South Texas College of Law Disability Clinic in Houston, Texas.



# CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

FEPA  
 EEOC

320931256

Colorado Civil Rights Division and EEOC  
*State or local Agency, if any*

NAME (Indicate Mr., Ms., Mrs.)

HOME TELEPHONE (Include Area Code)

Ms. Michelle L. Southworth

(303) 745-5630

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

15650 E. ILIFF PLACE #2-203, AURORA, CO 80013

07/13/60

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

TELELINK SYSTEMS

Cat B (101-200)

(303) 860-8989

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

707 17TH ST. SUITE 3700, DENVER, CO 80202

031

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

DATE DISCRIMINATION TOOK PLACE  
EARLIEST                      LATEST

RACE       COLOR       SEX       RELIGION       NATIONAL ORIGIN  
 RETALIATION       AGE       DISABILITY       OTHER (Specify)

07/01/92                      03/11/93

CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. On or about March 8, 1993, prior to and continuing I have been passed over for promotion to supervisor, a position for which I am qualified to fill. For at about the last year I have been subjected to sexual harassment from my co-workers.

II. I have been given no reason for the above.

III. I believe that I have been discriminated against on the basis of sex, in violation of Title VII of the Civil Rights Act, as amended, inasmuch as:

a. I made my interest in the position of supervisor known to the company in July 1992 when I formally applied for an advertized position. Since that time there have been several openings for which I have been passed over. Many of these positions were filled by males who had less education and were less qualified than I was;

b. I was informed by the vice president that the company hired from within and was fair to everyone on March 5, 1993. On March 8, 1993, the company hired two males, that were less qualified than I was for the position of supervisor, off the street;

c. For about the last year I have been subjected to unwelcome comments and jokes relating to my sex from male co-workers. I have made this known to my supervisors who have done nothing to correct the situation.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

*Michelle Southworth* 3-17-93

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(Day, month, and year)

Date

Charging Party

© ICTLEP, Inc., June 1995

STATE OF CO

CASE NAME Southworth

CITY/COUNTY OF \_\_\_\_\_

CASE NUMBER \_\_\_\_\_

### AFFIDAVIT

I, Michelle L. Southworth being first duly sworn upon my oath affirm and hereby say:  
(Name)

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 32 years of age, my gender is Female and my racial identity is White.  
(sex) (race)

I reside at 15650 E. ILIFF PLACE #2-203,  
(Number/Street)

City of AURORA, County of ARAPAHOE,

State of CO, Zip Code 80013.

My telephone number is (including area code) (303) 745-5630.

My complaint is against TELELINK SYSTEMS which is  
(Name of Union/Company/Agency)

located at 707 17TH ST. SUITE 3700,  
(Number/Street)

in DENVER CO 80202.  
(City) (State) (Zip)

My job classification is (If applicable) Telemarketer.  
(job title)

My immediate supervisor is (If applicable) James Sierra, Supervisor, Night Shift.  
(Name) (job title)

I have been employed at Telelink Systems since March 1989 as a Telemarketer. For at least the last year I have been subjected to unwelcome sexual comments from co-workers. I have also been denied several opportunities for promotion to Supervisor since July 1992.

I have applied for several supervisory positions including on July 1992, October 1992, January 1993, and March 1992. The company has been aware since July 1992 that I have been interested in supervisory positions, and that I am qualified for these positions, but I have not been interviewed for any of the openings. The candidates that were interviewed were less qualified than myself and the candidates selected for the positions in July 1992, October 1992 and March 1993 were male. To date I have not been promoted to supervisor, even though there have been openings. I have not been given reasons for the denial of promotions by management.

On October 12, 1992 I was told by James Sierra, my supervisor, that I would be entering training for a supervisory position, as the company was trying to create a position for me. I trained on the computer system and in quality assurance for one week, and was then put back on the phones as a telemarketer "temporarily" until something else opened

**AFFIDAVIT (cont.)**

up. A male replaced me in this position as well.

I spoke to the president, John Woods, Jr., in December about the denial of promotions and was told that they preferred to have me work on the phone because I have high sales. On March 5, 1993 the vice president, Tim Hardin, addressed the night shift telemarketers in a meeting and stated that the company promoted from within and that they were fair and just.

On March 8, 1993, two people were hired for supervisory positions that were male, less qualified than me, and were hired off the streets. Because of this continued denial of promotion in which the selected candidates are male I feel that I have been discriminated against because of my sex.

Many of the positions I have been passed over for are not advertized.

For about the last year I have been subjected to jokes and comments directed at me because of my sex. I have repeatedly complained to both James Sierra, the night shift supervisor, and Al Larson, the assistant supervisor about this behavior and they just turn their heads. The comments and jokes have made my working environment hostile.

*I Am transsexual,*

I have read and had an opportunity to correct this Affidavit consisting of \_\_\_\_\_ handwritten  typed  pages and swear that these facts are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_.