

April 26, 2010

Edgar J. Roberts, Director  
Farrokh Hormazdi, Deputy Director  
Nevada Department of Motor Vehicles  
Directors Office  
555 Wright Way  
Carson City, NV 89711-0900

Nancy Wojcik, Administrator for Field Services  
Nevada Department of Motor Vehicles  
8250 W. Flamingo Rd.  
Las Vegas, NV 89147

Dear Director Roberts, Deputy Director Hormazdi, and Administrator Wojcik:

It has come to our attention that employees of the Nevada Department of Motor Vehicles are not following current regulations with respect to changing the gender marker on an applicant's driver's license or state-issued identification card, and are instead inserting their own personal judgment. We have received reports of DMV employees asking inappropriate personal questions regarding federally-protected health information (PHI) of transgender people who have submitted requests for gender marker changes, and in some instances, in violation of the Federal *Health Information Portability and Accountability Act* (HIPAA), contacting applicants' doctors.

The controlling regulation (NAC 483.070) requires that:

1. A person who wishes to change the gender indicated on his driver's license, motorcycle driver's license or identification card must submit proof satisfactory to the Department that his gender was changed. The proof must include documentation prepared by a physician or an osteopathic physician indicating that the gender of the person has been changed.
2. A statement by a physician who practices in the area of psychiatry that the gender of the person will be changed or is in the process of being changed is not sufficient documentation for the purposes of subsection 1.

The N.A.C. does not require proof that an individual has had surgery. Instead, it appropriately leaves the determination of whether gender has changed with the applicant's licensed physician. This medical determination can only be made by a physician who has evaluated his or her transgender patient and determined what form of transition therapy is appropriate for that patient's clinical needs.

To give an analogy, the DMV requires medical proof of disability before it will issue a handicap parking placard. A licensed physician must certify an individual's disability by completing a DMV-issued form. The physician must also certify whether a patient's condition is subject to change and, if so, the length of time the disability is expected to last. It would be unacceptable for a DMV employee to make personal inquiries about the veracity of a person's disability or to ask for proof not required by law in order to determine the extent of an individual's disability. This practice would not likely be supported by DMV management or the Nevada Equal Rights Commission (NERC) and possibly violates the Americans with Disabilities Act (ADA), the Wellstone Mental Health Parity Act, and certainly HIPAA. It is likewise

unacceptable to inquire about the completeness of person's gender change. The physician's letter should be the final word.

The fact that DMV employees are asking invasive personal questions regarding federally-protected private health information and imposing their own standard in assessing changes in gender, violates the N.A.C. and raises privacy concerns, HIPPA violations, and runs the risk of sex discrimination. Denying a warranted gender marker change creates safety and healthcare problems for the person who must carry a license or state-issued identification card with an incorrect gender marker. It also threatens the person's economic, social, and emotional well-being.

For example, one woman reported being denied a gender marker change at the DMV in Henderson, even though she had presented a letter from her physician stating that her gender had been changed. The DMV employee ignored the letter, demanded to know whether she had had "the surgery" and then summarily denied her request when the woman refused to answer such questions. The woman has returned twice with the required letter and was denied each time. Another woman was initially issued a license with a gender marker that corresponded to her gender. She later received correspondence from the DMV demanding that she surrender her new license and be reissued a license in her former gender or risk losing her driving privileges. She now is living as a woman with a license that identifies her as male. When she displays the license which does not correspond to her gender she has been harassed in shops and businesses, and has been subjected to humiliating searches at airports.

We understand that the DMV's mission is to provide progressive and responsive service to our citizens. We welcome an opportunity to discuss this matter with you further, and we expect to hear back from you no later than Friday May 7, 2010. A response can be sent to 732 S. Sixth Street, Suite 200A, Las Vegas, NV 89101.

Sincerely,

ACLU of Nevada  
Equality Nevada  
Stand Out for Equality  
Gay and Lesbian Community Center of Southern Nevada  
Progressive Leadership Alliance of Nevada  
NV Log Cabin Republicans  
Nevada Stonewall Democratic Caucus  
The Stonewall Democratic Club of Southern Nevada  
The Stonewall Democrats of Northern Nevada  
Lambda Business & Professional Association  
3 Degrees, Northern Nevada's GLBT Business and Professional Network  
Human Rights Campaign Las Vegas  
Human Rights Campaign for Northern Nevada  
Parents, Families and Friends of Lesbians and Gays (PFLAG), Carson Chapter  
Abundant Peace Church  
The Rev. Neal T. Anderson, Minister, Unitarian Universalist Fellowship of Northern Nevada  
Senator Dave Parks  
Assemblyman Paul Aizley  
Jerry Cade, M.D.