



PENNSYLVANIA INSTITUTIONAL LAW PROJECT

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June 15, 2022

Via First Class Mail and Email

Warden Orlando Harper
Allegheny County Jail
950 2nd Avenue
Pittsburgh, PA 15219
orlando.harper@alleghenycounty.us

Dear Warden Harper:

We are writing on behalf of the Pennsylvania Institutional Law Project and Abolitionist Law Center to express serious concern over egregious deficiencies in the medical care of our client, Keyshawn Pennybaker, 168582. Mr. Pennybaker is a transman diagnosed with gender dysphoria, who is currently incarcerated at Allegheny County Jail (“ACJ”). We request that Mr. Pennybaker immediately be provided necessary medical treatment to prevent further serious harm.

Mr. Pennybaker is experiencing several emergency medical issues, most troubling of which is that he has seemingly developed a serious infection while at ACJ. Mr. Pennybaker has also been denied timely and safely administered intramuscular injections of testosterone which had been prescribed by his physician at Central Outreach Wellness Center as part of his Hormone Replacement Therapy (“HRT”). Additionally, medical staff at ACJ have refused to treat or competently assess Mr. Pennybaker’s significant concerns over blood clotting. Notably, when Mr. Pennybaker finally met with an OBGYN at ACJ to discuss the blood clotting issues, the doctor told him that medical staff at ACJ don’t know how to treat “LGBT people.”

Mr. Pennybaker received a double mastectomy on September 20, 2021. Following a double mastectomy, a person has two incision sites where the surgeon has removed breast tissue. Mr. Pennybaker was discharged with instructions on how to properly care for his two incision sites, and proper care at the surgical site is vital to prevent serious infection and or reopening of the incision. Mr. Pennybaker was able to care for his incision sites until he was incarcerated at ACJ in November 2021. Since arrival at ACJ, Mr. Pennybaker has neither been able to properly care for his incision sites, nor has he received proper wound care from ACJ medical staff.

Mr. Pennybaker’s incision sites have reopened, developing into a keloid scar¹ which has split open on several occasions while in custody. The keloid scar opens and becomes inflamed when Mr. Pennybaker showers, preventing him from properly cleaning around the incision sites or showering regularly. Furthermore, Mr. Pennybaker’s incision sites have developed dangerous infections which have not been effectively treated at ACJ. The incision sites now have yellow green and brown discharge, and are hot to the touch. We request that medical staff at ACJ give Mr. Pennybaker proper wound care immediately.

¹ A keloid is a type of raised scar which can occur when the scar tissue overgrows the scar site.

Additionally, Mr. Pennybaker has started experiencing significant blood clots forming in his period. While he was told that he would receive an ultrasound, as of yet, he has not received an ultrasound or any other type of assessment to determine what could be causing these blood clots. When one doctor at ACJ met with Mr. Pennybaker, this doctor told Mr. Pennybaker that he should simply keep a used menstrual pad in his cell until the doctor could see him again, but also informed him it would be two weeks before he could be seen again. Keeping a used menstrual pad in a cell for an extended period of time is obviously not sanitary, and neither was this encounter a sincere effort at a medical assessment.

Prison officials “have an obligation to provide medical care” to those in their custody. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). This obligation precludes prison officials from being “deliberately indifferent” to an incarcerated person’s “serious medical needs.” *Id.* at 106. Federal courts “have routinely held that gender dysphoria is a serious medical need.” *Doe v. Pa. Dep’t of Corr.*, No. 1:20-cv-00023-SPB-RAL, 2021 U.S. Dist. LEXIS 31970, *69 (W.D. Pa. Feb. 19, 2021) (adopted in relevant part at *Doe v. Pa. Dep’t of Corr.*, No. 1:20-cv-00023-SPB-RAL, 2021 U.S. Dist. LEXIS 55312, *10 (W.D. Pa. Mar. 23, 2021). *See also Battle v. Perry*, No. 3:16-cv-293-FDW, 2016 U.S. Dist. LEXIS 114031,*7 (W.D.N.C. Aug. 25, 2016); *Soneeya v. Spencer*, 851 F. Supp. 2d 228 (D. Mass. 2012) (finding that gender dysphoria is a serious medical need and failure of prison officials to appropriately treat it constituted deliberate indifference); *Cuoco v. Moritsugu*, 222 F.3d 99, 106 (2d Cir. 2000). This includes federal courts in the Western District of Pennsylvania. *See, e.g. Doe*, 2021 U.S. Dist. LEXIS 31970, at *69 (finding that gender dysphoria is a serious medical need); *Wolfe v. Horn*, 130 F. Supp. 2d 648, 652 (E.D. Pa. 2001) (finding that gender identity disorder and transsexualism constitute serious medical needs). Consequently, the failure by ACJ medical staff to provide treatment for gender dysphoria and related conditions may constitute deliberate indifference.

Moreover, Mr. Pennybaker has been prescribed injections of testosterone as part of his HRT regimen, which increase the levels of testosterone present in the body. With HRT, testosterone levels must be monitored closely. The standard practice is to check testosterone levels on a monthly basis through blood tests. It is also against medical standards for a person to stop taking testosterone suddenly, as this can lead to serious side effects.² Mr. Pennybaker’s prescription calls for weekly injections of testosterone. This weekly injection of testosterone has frequently been missed or skipped at ACJ. The consequences for skipping or missing doses of hormones can include extreme psychological distress. Mr. Pennybaker has been left to feel increasingly uncertain about whether or when ACJ administer his next testosterone injection. We ask that Mr. Pennybaker’s testosterone injections to be returned to his prescribed therapeutic dosage, injections administered reliably, and testosterone levels monitored consistently.

Furthermore, testosterone injections are administered intramuscularly and typically require one larger needle for drawing the medication into the syringe and another much smaller needle for

² The WPATH guidelines, internationally recognized standards of care for treatment of people with gender dysphoria, warn that “abrupt withdrawal of hormones ... include[s] a high likelihood of negative outcomes such as ... depressed mood, dysphoria, and/or suicidality.” World Prof Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender and Gender-Nonconforming People 2* (7th ed. 2011).

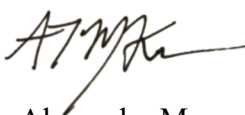
administration into the muscle tissue. ACJ medical staff have been occasionally using the same needle used for drawing Mr. Pennybaker's testosterone injections to also administer the testosterone into the muscle tissue. Using this large needle size is against basic medical standards for intramuscular injections, extremely painful, and has the potential to cause future harm to the muscle tissue. These injections have already resulted in bruising to Mr. Pennybaker's thigh. We ask that medical staff follow basic safety standards and use separate, appropriately sized needles for the drawing of the medication and the administration of the medication and draw the medication in front of Mr. Pennybaker.

The administration of hormone therapy to induce masculinizing changes is a recognized medically necessary intervention for many transgender and gender nonconforming individuals with gender dysphoria. Courts have routinely recognized that prisons must provide hormone therapy. *See e.g., Phillips v. Michigan Dep't of Corrections*, 932 F.3d 969 (6th Cir. 1991) (upholding District Court's grant of TRO which mandates prison to provide hormone treatment for gender dysphoria). Importantly, abrupt termination or reduction of previously prescribed hormonal treatments for individuals with gender dysphoria can constitute deliberate indifference. *See Wolfe*, 130 F. Supp. at 653; *Doe*, 2021 U.S. Dist. LEXIS 31970, at *72.

For these reasons, ACJ's failure to provide adequate medical care to Mr. Pennybaker likely violates the Fourteenth Amendment of the U.S. Constitution. We urge ACJ to immediately provide necessary medical care, including adequate wound care for his double mastectomy incision sites, hormone replacement therapy (testosterone) according to the dosage and administration requirements on his prescription order and medical standards, as well as an in depth medical assessment of his blood clotting issues.

We would appreciate a response by June 29, 2022, with an explanation for these deficiencies and the steps ACJ plans to take to correct them. If we do not receive a response, we may take further action. If you have any questions or concerns, you may contact Alexandra Morgan-Kurtz (amorgan-kurtz@pailp.org), 412-434-6004 or Richardo K. Brown-Whitt (rbrown-whitt@pailp.org). Thank you for your quick attention to this matter.

Sincerely,



Alexandra Morgan-Kurtz
Managing Attorney

/s/ Richardo K. Brown-Whitt, Esq.
MLK Legal Fellow

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