



Kosilek v. Spencer: Questions and Answers

Why should a prisoner get medical care that is often denied to people on private or public insurance programs?

GLAD agrees with the American Medical Association's position that exclusion of coverage in private and public contracts is wrong and unprincipled. We recently celebrated victories in Vermont and Connecticut, where the state insurance agencies issued bulletins requiring insurers operating in those states to cover transition-related care. We are working with advocates in Maine and Massachusetts to expand access in those states as well.

The American justice system requires that incarcerated people, who cannot obtain medical care for themselves, must be provided with adequate medical care while they are in prison. The denial of such care is a violation of the constitutional prohibition against cruel and inhumane treatment. This basic requirement of humane treatment of people in prison is part of the United States Constitutional system of justice, and is a bedrock of American society.

Why should Michelle Kosilek or any other prisoner get elective or cosmetic treatment?

Medical professionals have concluded that medical treatment of gender dysphoria is not elective and is not for the purpose of improving someone's appearance. It is essential care to treat a serious medical condition in which a person's sense of who they are as male or female is misaligned with their body. The only successful treatment of the debilitating condition of gender dysphoria is the realignment and restructuring of the body. This treatment, known as sex reassignment surgery, is medically necessary in many cases. Contrary to some public views, it is neither elective nor cosmetic. It is essential medical care.

Aren't there other ways to treat this condition?

A person's sense of who they are as male or female is often referred to as one's brain sex. In people with gender dysphoria, the brain sex is misaligned with the person's body causing disabling distress. No efforts to change a person's brain sex, including psychotherapy, have ever been successful. As a result, there are many cases of gender dysphoria for which sex reassignment surgery is the only known treatment.

Isn't psychotherapy or hormone therapy sufficient to treat Kosilek's condition?

The trial court concluded, and the appeals court confirmed, that even though Kosilek has received years of psychotherapy and hormone therapy for her medical condition, it has not been sufficient to treat her condition adequately. The Court compared DOC's defense based on this view to that in which a person who had cancer might be treated with aspirin. Even though chemotherapy might not be guaranteed to "cure" the condition, the Court said that simply providing aspirin, which is inadequate, would not be sufficient.

Why should a person convicted of a heinous crime receive any medical care?

Providing incarcerated persons with care for basic and serious medical needs is part of what makes America a civilized society. No matter the crime a person commits, the United States Constitution guarantees that he or she will receive adequate medical care. While some may disagree with this, it is a basic principle of justice in American law and well-established by legal precedent.

Does this mean that Michelle Kosilek will have to eventually be transferred to a women's prison?

Neither the District Court nor the Appeals Court has answered this question and it would be premature to comment on it.

Didn't the DOC have legitimate concerns about safety and security? Couldn't that have been a basis for denying Kosilek the sought-after treatment?

The Appeals Court confirmed the District Court's findings that the evidence showed safety and security were not behind the DOC's decisions. The Appeals Court detailed evidence that showed: the DOC asserted safety and security concerns without ever making an actual assessment of them; DOC did not follow standard procedures for evaluating concerns about safety and security; and that DOC ignored the actual reports of prison officials about how DOC could minimize safety concerns and optimize security ones. As a result, DOC had no basis for challenging the District Court's factual findings on this point.

Does this mean that Kosilek will now get the surgery she seeks?

It is our hope that Michelle will get the treatment that she needs, but we will need to wait and see if there will be further legal proceedings. GLAD is hopeful that the Department of Corrections will not appeal and further waste taxpayer dollars on needless attorney costs.

For more information see www.glad.org