

**Appeal
to the
NARR Standards Review Board**

Now comes the Michigan Association of Recovery Residences, Inc. (MARR) and hereby submits the following question to the NARR Standards Review Board and requests guidance thereon.

Question presented:

Is a Michigan RR operator, contracting with state agency to accept all men successfully exiting from a treatment center into its MARR accredited RR, required to accept a biologically female transsexual into its male-only shared-bedroom RR program, based upon federal law, state law in Michigan, or the NARR Standards?

Facts:

A MARR certified RR operator of a program limited to males entered into a contract with a state agency (PIHP) to accept all men who successfully completed a 90 day treatment program. Consistent with the protocol between the RR operator and the treatment center, a copy of the person's file was forwarded to the housing director of the RR operator. The person's name was "Mary" Smith. The RR housing director contacted the treatment program who explained that "Mary" had decided she identified as a man and wanted to be called "John" and refused placement in a MARR certified woman's RR home and insisted upon being placed in the all-men's RR home.

During the following interview with the housing director, John Smith presented as a 40 year old woman. John advised that although he had not legally changed his name, and that he had not undergone any type of hormonal treatment or surgery, he nonetheless had recently decided he identified as a man, wanted to be called "John" and wanted to stay in a men's RR home. The RR operator initially placed John Smith into a 2-person men's bedroom with a vacancy in the 2nd bed in the room. Within the week a man was placed into the 2nd bed in the room with John Smith; with full disclosure of John Smith's transsexual identity. To date (about 6 weeks), there have been no complaints or issues arising from John Smith residing in the men's home.

Law and Discussion

There is no federal law designating transgender as a protected class, or specifically requiring equal treatment for transgender people. Having said that, the law has rapidly evolved concerning claims of discrimination based upon sexual orientation or gender identity of persons seeking housing.

In 2012, the US Department of Housing and Urban Development (HUD) promulgated new regulations requiring all housing providers receiving HUD funding to prevent housing discrimination based on sexual orientation or gender identity. In 2015, the US

Immigrations and Customs Enforcement office directed staff to house transgender immigrants in sex-segregated housing that corresponds with their gender identity. Also in 2016, HUD declared that the homeless shelters it funds must give transgender people the option of being housed with the gender with which they identify.

In addition to federal law, at least 22 states (excluding Michigan) have passed legislation prohibiting discrimination based upon gender identity in either employment, housing, and/or public accommodations. (Minnesota, Rhode Island, New Mexico, California, District of Columbia, Maine, Illinois, Hawaii, Washington, New Jersey, Vermont, or God, Iowa, Colorado, Nevada, Connecticut, Massachusetts, Delaware, Maryland, Utah, New York, New Hampshire and Virginia).

Perhaps the most factually similar situation to placing a transsexual into a recovery residence is the placement of transsexuals into university dormitories. Both Michigan State University and the University of Michigan (the 2 largest public universities within Michigan) both offer housing assignments for transexuals consistent with their gender identity. The housing choice is guided by the student's gender identity, physical safety and emotional health.

In summary, although there is no federal or Michigan state law that prohibits discrimination based on gender identity, there is clearly a consensus building that supports housing for transexuals consistent with their gender identity, as opposed to their biological sex.

In addition to an examination of federal and state law relevant to the question presented, the NARR Standards also provide for RR to offer residents a "...safe place to recover." Although there is no specific reference to housing assignments for transexuals in the NARR Standards, a strong argument exists for the position that the NARR Standards requirement for a "safe place" to recover would include a requirement for recognition of gender identity within the "penumbra" of rights listed in the NARR Standards.

Based upon the existing law and NARR Standards, MARR would propose that the NARR Standards Board determine that Best Practices require all MARR certified RR operators to place transexuals in a RR setting consistent with their gender identity.

MARR, Inc.

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